

February 3, 2020

### Via Electronic and Overnight Mail

Mr. John Stevenson License Administration Group Consolidated Communications 5 Davis Farm Rd Portland, ME 04103

Re: Denial of pole access – Bishop Road, Belmont NH, pole 1100/2 and Mile Hill

**Road, pole 110/47** 

Dear Mr. Stevenson:

Pursuant to Section 15.10 of the controlling Pole Attachment Agreement ("Agreement") executed by and among the predecessors of Comcast, Eversource, and Consolidated Communications ("Consolidated") on April 15, 2003, and amended on June 13, 2003, Comcast formally disputes Consolidated's denial of access to Poles 1100/2 (Eversource # 187/2) and 110/47 (Eversource #18/49) ("Poles") respectively, located on Bishop Road and Mile Hill Road in Belmont, New Hampshire. Comcast also disputes Consolidated's position that Comcast may not install conduit between the Poles. As discussed more fully below, Comcast submits that; (1) Consolidated does not have the authority to prevent Comcast from placing and owning conduit in the public right-of-way between the Poles; and (2) Consolidated, through its actions and communications, improperly denied Comcast riser access to the Poles.

### **Background**

As you are aware, Comcast is in the process of expanding its network and has worked closely with Consolidated on the application, survey, and make-ready process throughout New Hampshire, most recently in the Belmont area. On or about August 5, 2019, Comcast submitted an application for pole licenses (LAG Application # A-2019-1036) including for the two Poles at issue and an intervening pole (1100/1), all of which Consolidated jointly owns with Eversource. See Map at Attachment 1.

On or about October 17, 2019, Comcast representatives Dave Tessier and Todd Austin, and Consolidated representative John Robinson, completed a joint survey of the requested pole license applications to ascertain the scope of any required make-ready work. During that survey,

Consolidated's representative verbally informed Comcast's representatives that Comcast would be unable to attach aerially to the Poles due to space restrictions on the intervening pole (1100/1). Normally, in the event of space restrictions, the pole would be replaced with a new, taller pole as part of the make-ready process. Pole 1100/1, however, could not be replaced with a taller pole due to overhead high-tension electrical facilities that crossed over the pole line. During the field survey, the parties discussed other options if pole replacement was not an option. Comcast's representatives indicated that Comcast would typically trench the span between the Poles and install its own conduit, access the two Poles via a riser on both ends, and continue to connect to the pole line aerially.

In response to this alternative presented by Comcast, Consolidated informed Comcast that Consolidated policy prohibits Comcast from installing conduit between two Consolidated pole assets. Consolidated notified Comcast that if Comcast required connection between two Consolidated poles, *Consolidated* must place a conduit and then lease it to Comcast. Also via email on October 30, 2019, Glen Fournier of the Consolidated License Administration group notified Comcast that if Comcast opted "not to follow the rules, [Consolidated] will not be licensing LBFT-05 [LBFT-05 is Comcast's internal number associated with LAG Application # A-2019-1036]", and that "[e]ven if that license were issued, Comcast is not licensed for the risers on each pole." Mr. Fournier directed Comcast to "submit a conduit request between 1100/2 and 110/47" (i.e., a request to lease conduit space from Consolidated pursuant to a Conduit Agreement). Based on Mr. Fournier's email, Comcast understood the "rules" to be that Comcast must lease conduit from Consolidated and Comcast could not install its own conduit and connect to the Poles via riser.

Comcast does not wish to lease a conduit from Consolidated because of concerns about potential damage from third parties to whom Consolidated would be obligated to lease ducts in the same conduit. Where at all possible, Comcast prefers to own and control all of its network facilities so that they can be readily accessed (i.e. without reliance on third parties) in order to ensure reliability, and to eliminate the risk of third-party damage that could impact Comcast's service. Accordingly, Comcast has not submitted an application for a conduit license.

On or about October 31, 2019, Consolidated provided to Comcast the completed Form 3, which outlines the itemized make-ready work associated with LAG Application # A-2019-1036. On page 7 in the line for Bishop Road 1100 pole 1, the Form 3 notes that "No CCI LICENSED REQUIRED" due to no room for attachment and no ability to replace pole due to the crossing of a power line. As indicated to Consolidated previously, Comcast believes that a reasonable alternative to an aerial line on pole 1100/1 is to install, operate, and maintain its own conduit and connect to the two Consolidated Poles via risers. Comcast made its proposal for conduit and risers known to Consolidated on several occasions, but Consolidated is not allowing this solution to address the problem of inadequate overhead space above pole 1100/1. By failing to accept Comcast's conduit and riser alternative to address the space and pole height restrictions associated with pole 1100/1, Consolidated has effectively denied Comcast access to the Poles at issue.

The basis for this denial was communicated in a November 26, 2019, e-mail from Sarah Davis of Consolidated to Stacey Parker of Comcast, in which Ms. Davis stated: 1) Consolidated "is not

allowing conduit to be run between two Consolidated assets"; 2) Consolidated has "never allowed that anywhere"; and 3) If Comcast is concerned with Consolidated building the conduit then Comcast is free to place the conduit and it will become a Consolidated conduit." Consolidated has not provided a legal basis for not accepting Comcast's proposal

# Consolidated Lacks Authority to Prevent Comcast from Placing and Owning Conduit in the Public Right-of-Way

Consolidated's claim that it must own the conduit between its poles ignores the fact that publicly-owned rights-of-way such as the one at issue in Belmont are owned and controlled by municipalities, not the owners of the poles located in such rights-of-way. Under N.H. RSA 231:160, Comcast has the right to install conduit in the public right-of-way. To do that, Comcast must receive approval from the appropriate public body that maintains the stretch of the public right-of-way that Comcast seeks to use. *See* N.H. RSA 231:161. Comcast applied for and on December 5, 2019, was granted a Permit for Work in a Public Way or Place by the Town of Belmont for the purpose of installing conduit between the Poles. Comcast therefore has the right to construct, own, and control its conduit in the public right-of-way between the two Poles at issue. *See* Permit at Attachment 2. Consolidated has not previously compelled Comcast to lease conduit from Consolidated as a condition of granting riser access to poles and has no legal authority to do so. Lastly, Consolidated's position that it must own Comcast-built conduit located between two Consolidated poles would constitute nothing short of an unlawful taking of Comcast's facilities.

### Consolidated Unlawfully Denied Comcast's Riser Alternative

In addition to verbal requests for riser access to the Poles from a Comcast-owned conduit, an email from David Tessier to Glen Fournier et al., dated October 30, 2019, stated that Comcast wanted to add riser requests for the Poles in question. However, given Consolidated's numerous verbal and e-mail refusals to accept a Comcast-owned conduit alternative to address the denial of an overhead license for pole 1100/1, Comcast did not submit riser license applications. Comcast believed that submitting riser license applications would have been an exercise in futility because Consolidated had already effectively denied them by failing to acknowledge Comcast could own the conduit that would have connected the Poles. Based on the numerous conversations and emails, Comcast believed that Consolidated would only issue a riser license if Comcast leased conduit from Consolidated. Nonetheless, in the event that Consolidated requires the formality of written riser applications for the Poles to be used to connect Comcast-owned conduit, those applications and payment were submitted on January 23, 2020, and are also submitted herewith for consideration as part of this dispute resolution request. See Applications at Attachment 3. As explained below, the licenses must be granted as there is no legitimate basis to deny them.

Consolidated's unreasonable failure to grant Comcast riser access to the two Poles at issue violates the Pole Attachment Agreement. *See* Pole Agreement Section 5.3 (Licensor must specify reasons for denial and shall not unreasonably exercise its denial rights). It also violates the New Hampshire Public Utility Commission ("NH PUC") Pole Attachment Rules. Subject to certain exceptions, a pole owner must provide access to poles on terms that are just, reasonable and nondiscriminatory. N.H. Admin. R. Puc. 1303.01(a). Those exceptions include: (1)

insufficient capacity on the pole; (2) for reasons of safety, reliability, or generally applicable engineering purposes; or (3) if the pole owner does not possess the authority to allow the proposed attachment. N.H. Admin. R. Puc. 1303.01(b). However, a pole owner may not deny a requested attachment for the first two reasons stated above if "other make-ready work or another alternative can be identified that would accommodate the additional attachment." N.H. Admin. R. Puc. 1303.01(c).

In this instance, Consolidated, which has the obligation to allow access to the Poles, has unreasonably denied Comcast riser access simply because Consolidated does not recognize Comcast's authority to install and own underground conduit between the Poles. There is no evidence that the Poles lack capacity for the addition of a single riser on either end. In fact, based on the survey results, the Poles at issue do not appear to have any existing risers. Use of risers on the side of a pole to access aerial plant is commonplace and typically unobjectionable. Given that, as explained above, aerial attachment is not an option, connecting the Poles via Comcast owned conduit and riser is a viable and reasonable "alternative to accommodate the additional attachment" as set forth in the NH PUC Rules. As such, Consolidated was required to accept it. Although Consolidated may have legitimately denied Comcast's request for pole access to run overhead lines between the Poles due to overhead space constraints, once Comcast identified the reasonable alternative of conduit and risers, Consolidated had no basis to deny that alternative attachment request. Therefore, Consolidated has invalidly rejected Comcast's request for riser access to the Poles. In addition, as noted above, Consolidated has improperly failed to acknowledge Comcast's statutorily protected right to own and control conduit in the public rightof-way; the fact that this conduit would connect to two Consolidated assets in no way affects Comcast's conduit rights.

### **Request for Dispute Resolution**

Pursuant to Section 15.10 of the Agreement, this letter constitutes a formal dispute of Consolidated's denial of Comcast's ability to access Poles 1100/2 and 110/47 via conduit and risers. In addition, because it is common practice to place underground conduit in order to connect two Consolidated poles, we foresee future denials in the near term as Comcast continues to expand its network in New Hampshire. Therefore, we are also disputing Consolidated's policy of prohibiting Comcast (and others) from owning conduit that connects to risers on Consolidated poles.

We look forward to Consolidated's written response within ten (10) business days after receipt of this letter with specific reasons for the denial of said access and specifically addressing all issues raised in this letter. As you know, Comcast has tried on numerous occasions to resolve this matter informally and on mutually acceptable terms without success. Comcast would very much like to seek resolution of this matter through the Dispute Resolution process and avoid the formal

Complaint with the New Hampshire Public Utilities Commission.

Thank you for your attention to this matter.

Sincerely

Sharon L. Webber Deputy General Counsel Comcast Corporation

1701 John F. Kennedy Boulevard

Philadelphia, PA 19118

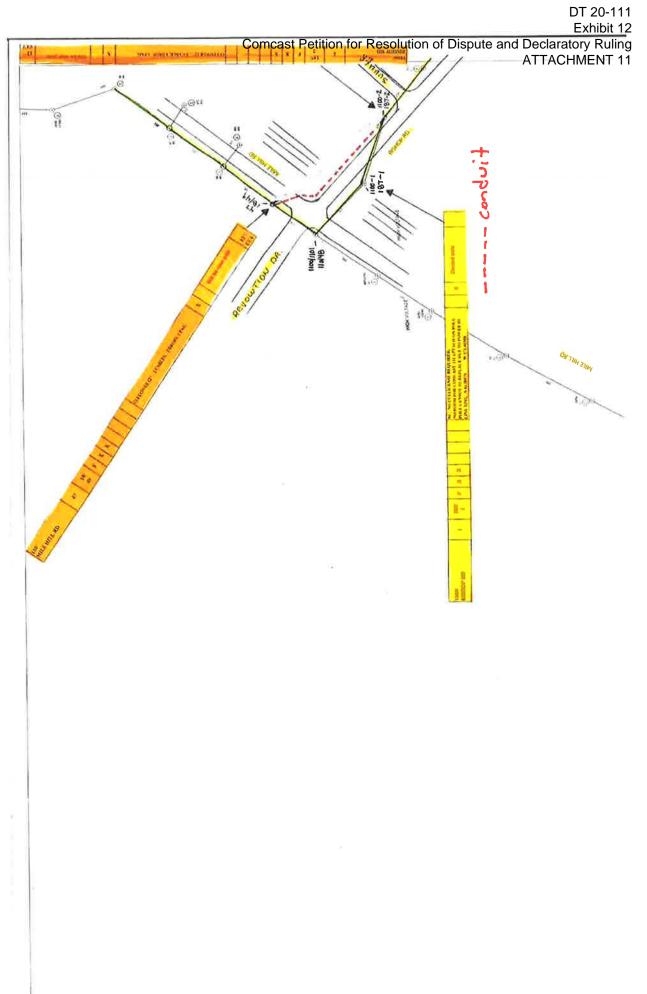
Sharon Webber@comcast.com

(215) 286-4437

Cc (electronically only):

Sarah Davis, Senior Director Government Relations and Wholesale Strategies Consolidated Communications Glen Fournier, License Administration Group Consolidated Communications DT 20-111 Exhibit 12 Comcast Petition for Resolution of Dispute and Declaratory Ruling ATTACHMENT 11

## ATTACHMENT 1



DT 20-111 Exhibit 12 Comcast Petition for Resolution of Dispute and Declaratory Ruling ATTACHMENT 11

ATTACHMENT 2

## **TOWN OF BELMONT**

## **BOARD OF SELECTMEN**

# PERMIT FOR WORK IN A PUBLIC WAY OR PLACE

Subject to certain conditions, restrictions and limitations which are set forth herein and the Ordinance, Rules and Regulations for Work in a Public Way.
Permission is hereby given to: MIRRA Co, Inc of Comcast
To open or do work in: Bishop RD @ Mile Hill RD - Zasiallahan of
For the purpose of: Install 4h pul Schodule 40 From White Rich H 187/2 ON BISHED RO to Utility Page # 47/18 on mile hill RO - Control Concerns - PETTOWN OF BOLLMENT Spaces + Any special conditions
As the applicant for a permit to work in a public way, I hereby agree with the following:
(1) To perform all work in accordance with the Ordinance, rules and regulations governing work in a public way.
(2) To protect all vehicle and pedestrian traffic at all times of the day and night.
(3) To notify all utilities not less then 72 hours before commencing work.
(4) To notify all abutters and affected parties at least 48 hours prior to commencing work.
(5) To hold harmless the Town of Belmont and its duly appointed and elected officials and employees against any action for personal injury and/or property damage sustained by reason of the exercise of this permit.
(6) To carry out all orders of the Board of Selectmen or their, authorized representatives.

(7) I understand that this permit is issued and assigned as a privilege and may be revoked for failure to exercise care and/or comply with the Ordinance, rules and regulations of the Town of Belmont.
(8) I understand that this permit is not valid at certain times of the year as specified in the regulations and Ordinance or as otherwise specified by the Director and that this permit is non-transferable.
(9) I certify that I have read and understand the Ordinance, rules and regulations for work in a public way.
Signature of Applicant: Wick Main )
Mailing Address: Minra Co. Toc 6 Norma way Georgeon M
Telephone Number: 978-758-0213
The authority to do any act under this permit shall expire at six PM on
Approved by the Town of Belmont:
By: Ksteander
DATE: 13.5.19
BOND FILED: 12.5.19 CK. 70612 \$5000
NSURANCE FILED: 12/5/19

Permittee must notify in writing the office of the Board of Selectmen, Road Agent, Police Department and Fire Department 48 hours in advance of starting work hereunder. During the school year, notice must also be given to the Regional School District. Permittee must assure that all utilities have been notified 48 hours before the start of any work.

DIG-SAFE NUMBER: 20194413014 DATE ISSUED: 116/19

DT 20-111 Exhibit 12 Comcast Petition for Resolution of Dispute and Declaratory Ruling ATTACHMENT 11

**ATTACHMENT 3** 

DT 20-111 Exhibit 12

Comcast Petition for Resolution of Dispute and Declaratory Ruling
ATTACHMENT 11

PALCON SERVICES, INC.

FBO COMCAST 871 Plymouth Street Middleboro MA 02346 Rockland Trust

288 Union Street Rockland MA 02730

19857

Pay to the Order of EVERSOURCE ENERGY

1/23/2020

Exactly

Three Hundred Sixty-Four and 00/100\*\*\*\*\* Dollars

\$364.00\*

Memo: BMT-20-601 POLE SURVEY FEE

他自由明白与京师 。据自卫工员自由工程设施。 2977006119

Record of Payment Check: 19857 Payee: EVERSOURCE ENERGY 1/23/2020

PALCON SERVICES, INC.

BMT-20-601 POLE SURVEY FEE

\$364.00\*

Record of Payment Check: 19857 Payee: EVERSOURCE ENERGY 1/23/2020

## PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY APPLICATION AND POLE ATTACHMENT LICENSE

Licensee Comcast of NF	I/ME Inc.				
Street Address: 91 Indus				02260	
City, State and Zij	Plymouth	, M.	A	02360	
Date: January 23, 2020					
In accordance with the to is hereby made for a lice Supply(ies) and 0 (in the State of New Ham This request will be des Attached are my powe The cable's strand size	onse to make other attach opshire.  Ignated Polar supply spans 6.6	e Attachmer ecifications mm and s Name (Pri	attachmed in the restrict License if applicand weight	nunicipality c	BELMONT  601  1.47lbs/10ft.
	Title:	Comcast U	tilities		
	Tel #:	(508) 846-3		Ext.	
	Fax #:	(300) 040	<u> </u>	JAN.	
		11 1 1		compant com	
	E-mail:	linda_lepa	ge@cable	.comcast.com	
Pole Attachment Licent attachments described poles, attachments to attachments located in New Hampshire as independent of the control of the	se Number in this applinents to Joi Jointly Use the municipal control of the control o	BMT-: ication to ntly Owned ed poles, pality o	poles,Pow_BELI	is nereby grachments to Full	y/Solely Owned ts to Tri Owned poles,
	Licenso	r's Name (Pr	int):		
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		-		明	
ALA-317	Title:				
Agreement ID#	Tel No.				
	E-mail:				
	Date:				
	_				

The Licensee shall submit an original copy of this application to Public Service Company of New Hampshire d/b/a Eversource Energy.

Revised: 01/01/2020

Company of NEW HAMPSHIRE

COMPANY OF NEW HAMPSHIRE

## PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY AUTHORIZATION FOR FIELD SURVEY WORK

	AUTHORIZ	ATION FOR	FIELD SURY	VEY WORK	<u>K</u>
Licensee: Comcast of NF	I/ME Inc.				
apply to complete a field sur BELMONT	vey covering Pole At	tachment License New Hampshire.	NumbiI	3MT-20-601	nmary of the charges which will in the municipality of
1	Field Survey	Number of Poles	Unit Rate	Total	
	Field Survey	2	\$7.00	\$14.00	
	Flat Fee		\$350.00	\$350.00	
	Total Charges			\$364.00	
The charges that will apply case by case basis after revirequired to complete a survivish to have us complete the address below. Everso receipt.	iew by Eversource Civey of requests to attain the required field survey urce Civil Engineering	arvey that includes vil Engineering. I ach to poles locate ey, please provide g will review and	s poles located in Due to the completed in a Right Of V the location of the send to you the p	a Eversource I exity, varying o Vay, a flat unit ne poles and the repayment cos	Right Of Way will be estimated on a conditions and engineering factors cost can not be provided. If you e pole numbers and return it to at for the survey within 14 days of
Mail application and, if app					
	Public Service (	PO B	Hampshire d/b/a lerations Support Box 330 er, NH 03105	Eversource En	ergy
Licensee Applicat \$ 364.00  (b) PRECONTRUCT with the pole num Licensee's Name (Print)	tion Number BN AND/OR	AT-20-601  AY FIELD SURVestimate for the c	is authorized. I	am enclosing a - Please review	I survey covering Pole Attachment of advance payment in the amount of the attached location of poles dustrial Park Rd.  MA 02360
Signature: Market Signature: Comcast Utilities	c reve		Te		er: (508) 846-3282 Ext:
Date: January 23, 2020					

Revised: 01/01/2020

ATTACHMENT 11

# PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY Pole Make- Ready Work Charges

PAGE 1 of 1

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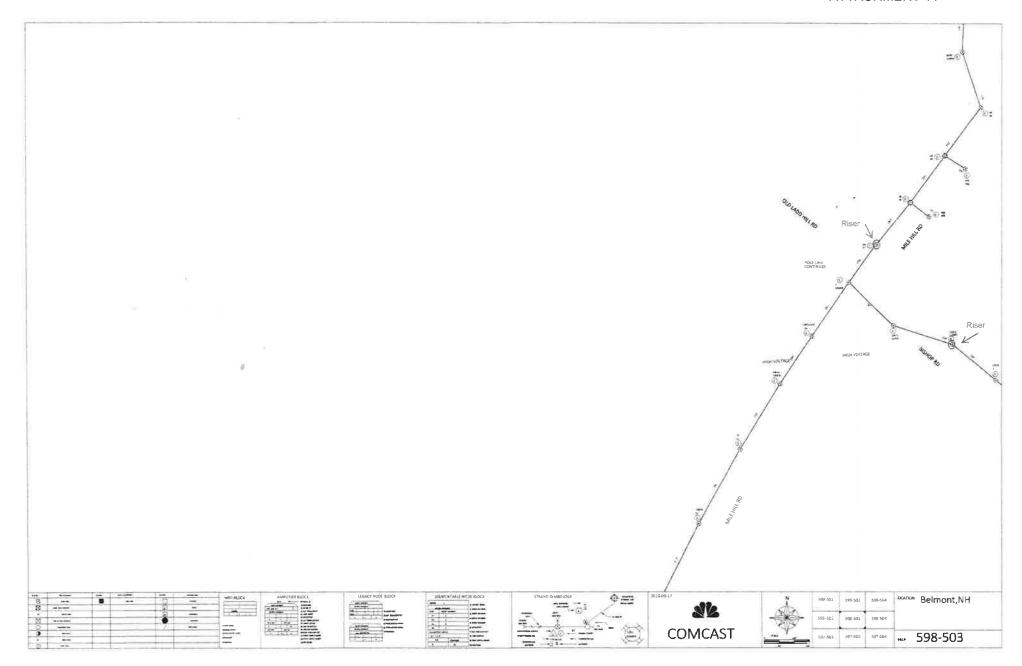
Licensee to complete bold italicized areas only

15

Revised: 01/01/2020

<sup>\*</sup> ATT: F=Fiber C= Copper or Coaxial PS= Power Supply R= Riser Pole

DT 20-111
Exhibit 12
Comcast Petition for Resolution of Dispute and Declaratory Ruling
ATTACHMENT 11



DT 20-111 Exhibit 12

Comcast Petition for Resolution of Dispute and Declaratory Ruling
ATTACHMENT 11

PALCON SERVICES, INC.

FBO COMCAST 871 Plymouth Street Middleboro MA 02346 **Rockland Trust** 

288 Union Street Rockland MA 02730

19856

Pay to the Order of CONSOLIDATED COMMUNICATIONS

1/23/2020

Exactly

Two Hundred Seventy-Five and 00/100\*\*\*\*\* Dollars

\$275.00\*

Memo: BMT-20-601 POLE SURVEY FEES

2977006119 #01985E# #011304478#

Record of Payment Check: 19856 Payee: CONSOLIDATED COMMUNICATIONS 1/23/2020

PALCON SERVICES, INC.

BMT-20-601 POLE SURVEY FEES

\$275.00\*

Record of Payment Check: 19856 Payee: CONSOLIDATED COMMUNICATIONS 1/23/2020

Form 1

# APPLICATION AND POLE ATTACHMENT LICENSE

T. Common	Comcast of NH/ME	Inc.						
Licensee Street Address	91 Industrial Park Rd							
City, State, and Zip	Plymouth, MA 02360							
	January 23, 2020							
Date	A STATE OF THE STA	-						
In accordance with	the terms and conditions of th	e Pole Attachme	nt Agreement,					
application is hereby made for	r a license to make		2 other attachments located in the municipality of					
application is hereby made to	weet Supply and		other attachments located in the management					
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and the second s	Attached are my bu	MOI SUPPLY PARTY	fications if applicable. The cable's					
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strand size isa.			Λ					
	Licens		Comcast-Linda LePage					
		Signature						
		Title	Comcast Utilities					
Eversource		Tel, No.	(508) 846-3282					
Power Company		Fax No.	n/a					
		E-Mail	linda lepage@cable.comcast.com					
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		Signatur	re					
		Title						
(AGREEMENT ID #)		Date						
7		Tel No	).					

The Liceusee shall submit an original copy of this application to Northern New England Telephone Operations LLC, d/b/a Consolidated Communications-NNE and the appropriate Power Company.

Form 2

## AUTHORIZATION FOR FIELD SURVEY WORK

Comcast of NH/ME Inc. Licensee:

In accordance with Article III & Appendix I of the Pole Attachment Agreement, following is a summary of the charges which will apply to complete a field survey covering Pole Attachment License Application Number BMT-20-601

in the municipality

BELMONT of

in the State of New Hampshire.

## FIELD SURVEY CHARGES

Field Survey	#Poles	Unit R	ate			<u>Total</u>
Field Survey 1-10 Poles	1	\$	275.00		\$	275.00
Field Surve 11-200 Poles		\$	9.90	per Pole		
Additional Travel Time*	75+ 150+	\$ \$		per Day per Day	\$ \$	(2)
TOTAL Charges					\$	275.00

<sup>\*</sup> Based on an average of 75 poles surveyed per day, add \$200.00 travel time for each additional day required to complete survey.

Please note, if you calculated the cost incorrectly, your check will be returned and a new check for the correct amount must be received by this office in order to schedule the survey. If you need assistance, please call the HOTLINE on (866) 774-5228.

The required field survey covering Pole Attachment License Application # BMT-20-601 is authorized. I am enclosing an advance payment in the amou \$

Licensee's Name (Print)	Comcast-Linda LoPage
Signature	Linda tetage
Title	Comcast Utilities
Address	91 Industrial Park Rd. Plymouth, MA 02360
Tel. No.	(508) 846-3282
Date	1/23/20

## FORM 3 - CONSOLIDATED ITEMIZED Pole Make-Ready Work Charges

RCE to Complete - Total Poles Surveyed

2 Total Poles requiring CONSOLIDATED Make-Ready

Appendix IV Form 3 FIELD SURVEY / MAKE-READY WORK FORM CWO#: 1/23/2020 DATE OF SURVEY: SURVEYORS: Munic Code: NH Exch Code: MUNIC: BELMONT STATE: CONSOLIDATED Comcast of NH/ME Inc. LICENSEE APPLICATION # BMT-20-601 LICENSEE NAME: Licensee MARK CARTER - CELL 617-279-7792 CONSOLIDATED APPLICATION #: ELCO NAME: Eversource ELCO WORK DESCRIPTION **OWNERSHIP** CHARGE ATT POLE# LOCATION \*Height of Att. TASK #S / REMARKS F.O. YES NO F/C J.O. J.U. El TEL RTE / STREET NAME Tel Tel El Tel El Tel El P.S. Riser **BISHOP RD** NA R 187-2 1100-2 MILE HILL RD 49 R 47 NA 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 TOTALS: \*Height of Attachment = Height of Licensee Attachment shall be 40" below Elco MGN unless otherwise noted here by CONSOLIDATED and Elco surveyor. (Provide ownership information if known) Licensee to complete bold Italicized areas only.

DT 20-111
Exhibit 12
Comcast Petition for Resolution of Dispute and Declaratory Ruling
ATTACHMENT 11

