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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

December 4, 2020- 11:14 a.m.

[Remote Hearing conducted via Webex]

RE: DT 20-111
COMCAST OF MAINE/NEW HAMPSHIRE, INC.:
Petition for Resolution of Dispute
and Declaratory Ruling
[Adjudicatory Hearing]

PRESENT:

Chairwoman Dianne Martin, Presiding
Commissioner Kathryn M. Bailey

Doreen Borden, Clerk
Eric Wind, PUC Remote Hearing Host

APPEARANCES:

Reptg. Comcast of Maine/New
Hampshire, Inc.:
Susan S. Geiger, Esq. (Orr & Reno)
Jay F. Ireland, Esq.(Davis Wright...)
Sharon L. Webber, Esq. (Comcast Corp.)

Reptg. Consolidated Communications of
Northern New England Company, LLC:
Patrick C. McHugh, Esq.
Sarah A. Davis, Esq.

Reptg. PUC Staff
David K. Wiesner, Esq.
Kath Mullholand, Dir. Regulatory
Innovation & Strategy

COURT REPORTER: SUSAN J. ROBIDAS, N.H. LCR NO. 44

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EXHIBITS	PAGE	
1	Petition for Resolution of Dispute and Declaratory Ruling	Premarked
2	Petition Attachment 1 ("Connecting NH Emergency Broadband Expansion Program")	Premarked
3	Petition Attachment 2 (Pole Attachment Agreement - Excluding Appendices)	Premarked
4	Petition Attachment 3 (Form 3- Consolidated Itemized Pole Make-Ready Work Charges)	Premarked
5	Petition Attachment 4 (Comcast's Application for Belmont Pole Licenses)	Premarked
6	Petition Attachment 5 (Map/Belmont Poles)	Premarked
7	Petition Attachment 6 (Email correspondence between Consolidated and Comcast)	Premarked
8	Petition Attachment 7 (Town of Belmont Permit for Work in a Public Way or Place)	Premarked
9	Petition Attachment 8 (Comcast's Rise Application Belmont Poles)	Premarked
10	Petition Attachment 9 (Letter from Sarah Davis to Sharon Webber)	Premarked

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EXHIBITS		PAGE
11	Petition Attachment 10 (Email from Consolidated/Rebecca DeRoche cancelling Comcast's rise application for Belmont poles.	Premarked
12	Petition Attachment 11 Letter from Comcast/Sharon Webber to Consolidated/John Stevenson)	Premarked
13	Supplement to Petition and Notice of Recent FCC Ruling	Premarked
14	Prefiled Rebuttal Testimony of Terrence O'Brien on behalf of Comcast	Premarked
15	Attachment TOB-1	Premarked
16	Attachment TOB-2	Premarked
17	Attachment TOB-3	Premarked
18-1	Attachment TOB-4-1 (ZIP file)	Premarked
18-2	Attachment TOB-4-2 (ZIP file)	Premarked
18-3	Attachment TOB-4-3 (ZIP file)	Premarked
18-4	Attachment TOB-4-4 (ZIP file)	Premarked
19-1	Attachment TOB-5-1 (ZIP file)	Premarked
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3	19-7	Attachment TOB-5-7 (ZIP file)	Premarked
4	19-8	Attachment TOB-5-8 (ZIP file)	Premarked
5	19-9	Attachment TOB-5-9 (ZIP file)	Premarked
6	20	Stipulation of Facts	Premarked
7	21	Consolidated's Response to Staff Data Requests 1-1, 1-2 and 1-3	Premarked
8			
9	22	Prefiled Direct Testimony of Glen Fournier on behalf of Consolidated Communications	Premarked
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11	23	Draft Plant Layout of Main St. Broadway Intersection Project (Salem, NH)	Premarked
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13	24	8/31/20 Letter from Jeremy Katz to Debra A. Howland (MARKED FOR I.D. ONLY)	
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1 P R O C E E D I N G S

2 CHAIRWOMAN MARTIN: We're here this
3 morning in Docket DT 20-111, which is
4 Comcast's Petition for Resolution of Dispute
5 and for Declaratory Ruling. I need to make
6 some findings required for remote hearings.

7 As Chairwoman of the Public
8 Utilities Commission, I find that due to the
9 State of Emergency declared by the Governor
10 as a result of the COVID-19 pandemic, and in
11 accordance with the Governor's Emergency
12 Order No. 12, pursuant to Executive --
13 (connectivity issue)

14 (Court Reporter interrupts.)

15 CHAIRWOMAN MARTIN: Let's go off
16 the record.

17 (Pause in proceedings)

18 CHAIRWOMAN MARTIN: All right.
19 Back on the record.

20 Pursuant to Executive Order
21 2020-04, this public body is authorized to
22 meet electronically. Please note that there
23 is no physical location to observe and listen
24 contemporaneously to this hearing which was

1 authorized pursuant to the Governor's
2 Emergency Order. However, in accordance with
3 the Emergency Order, I am confirming that we
4 are utilizing Webex for this electronic
5 hearing. All members of the Commission have
6 the ability to communicate contemporaneously
7 during this hearing, and the public has
8 access to contemporaneously listen and, if
9 necessary, participate. We previously gave
10 notice to the public of the necessary
11 information for accessing the hearing in the
12 Order of Notice. If anyone has a problem
13 during the hearing, please call
14 (603)271-2431. In the event the public is
15 unable to access the hearing, the hearing
16 will be adjourned and rescheduled.

17 Okay. We have to take a roll call
18 attendance. My name is Dianne Martin. I am
19 the Chairwoman of the Public Utilities
20 Commission, and I am alone.

21 Commissioner Bailey.

22 COMMISSIONER BAILEY: Good morning,
23 everyone. Commissioner Kathryn Bailey, and I
24 am alone.

1 CHAIRWOMAN MARTIN: All right.
2 Let's take appearances, starting with Ms.
3 Geiger.

4 MS. GEIGER: Yes, good morning,
5 Chairwoman Martin and Commissioner Bailey.
6 I'm Susan Geiger from the law firm of Orr &
7 Reno, and I represent Comcast of Maine/New
8 Hampshire, Inc. And with me virtually on
9 behalf of Comcast today are Attorney Sharon
10 Webber, Attorney Jay Ireland, and Comcast
11 Witness Terry O'Brien. And for non-active
12 participants on behalf of Comcast are Stacy
13 Parker, James White and Andrew Fisher. Thank
14 you.

15 CHAIRWOMAN MARTIN: Okay. Thank
16 you.

17 Mr. McHugh.

18 MR. MCHUGH: Good morning,
19 Chairwoman Martin, Commissioner Bailey. I'm
20 Attorney Patrick McHugh, representing
21 Consolidated Communications of Northern New
22 England Company, LLC. With me today are
23 Attorney Sarah Davis and Witness Glen
24 Fournier of Consolidated Communications LAG.

1 For the court reporter, when we
2 refer to "LAG," it's capital L-A-G, and it
3 stands for licensed administration group.

4 Thank you.

5 CHAIRWOMAN MARTIN: Okay. Thank
6 you.

7 And Mr. Wiesner.

8 MR. WIESNER: Good morning,
9 Commissioners. David Wiesner, attorney for
10 Commission Staff in this matter. And with me
11 virtually is Kath Mullholand, director of the
12 Regulatory Innovation & Strategy Division at
13 the Commission with responsibility for
14 telecommunications matters.

15 CHAIRWOMAN MARTIN: Okay. Thank
16 you.

17 All right. I have Exhibits 1
18 through 28 premarked -- prefiled and
19 premarked. And have the parties stipulated
20 to the admission of 1 through 23 as full
21 exhibits?

22 MS. GEIGER: Yes, I believe that's
23 correct.

24 MR. MCHUGH: Consolidated agrees.

1 CHAIRWOMAN MARTIN: And Mr.
2 Wiesner, did you have any position on that?

3 MR. WIESNER: There's no objection
4 to admission of 1 through 23.

5 CHAIRWOMAN MARTIN: Okay. So those
6 Exhibits 1 through 23 are admitted as full
7 exhibits. I understand there will be some
8 debate over 24 through 28, and we can take
9 that up at the time.

10 Any other preliminary matters
11 before we hear from the witnesses?

12 [No verbal response]

13 CHAIRWOMAN MARTIN: Okay. And are
14 we proceeding with a panel, or are we going
15 individually by party?

16 MS. GEIGER: I would propose that
17 each party puts their own witness on. There
18 are just two witness, to my knowledge, in
19 this case.

20 MR. MCHUGH: I agree.

21 CHAIRWOMAN MARTIN: Okay. Then
22 that's what we'll do. We'll start with the
23 Comcast witness.

24 Ms. Robidas, if you could swear in

1 Mr. O'Brien.

2 (WHEREUPON, TERRENCE O'BRIEN was duly
3 sworn and cautioned by the Court
4 Reporter.)

5 TERRENCE O'BRIEN, SWORN

6 CHAIRWOMAN MARTIN: Okay. Ms.

7 Geiger.

8 DIRECT EXAMINATION

9 BY MS. GEIGER:

10 Q. Mr. O'Brien, could you please state your name
11 and spell your last name for the record.

12 A. My name is Terrence O'Brien. O, apostrophe,
13 B-R-I-E-N.

14 Q. Thank you. Mr. O'Brien, what is your
15 business address?

16 A. My business address 55 Executive Drive,
17 Hudson, New Hampshire, 03051.

18 Q. By whom are you employed, and what position
19 do you hold?

20 A. I'm employed by Comcast Communications Cable
21 LLC. I hold the position of director of
22 Construction, Planning and Design for the
23 Greater Boston Region. It covers --

24 Q. Mr. O'Brien, could you please provide a brief

1 summary of your background and experience.

2 A. Yes. I've worked for communications
3 companies since 1992, primarily in the
4 construction-related positions. I began my
5 career as a cable television lineman, was
6 promoted to construction supervisor at
7 Continental Cablevision, which was then
8 succeeded by MediaOne and then by AT&T
9 Broadband. I was a construction manager at
10 Waveguide, Incorporated in 2001 to 2005. In
11 2005 I joined Comcast as a project
12 coordinator, with responsibility for
13 construction, maintenance, restoration and
14 documentation of all outside plant activity
15 within the Greater Boston area. I assumed my
16 current position of director of construction
17 for the Greater Boston region in 2016. I
18 served in the United States Marine Corps for
19 five years and have taken undergraduate
20 courses at Framingham State. I'm a member of
21 the Society of Cable Television Engineers.

22 Q. Mr. O'Brien, what are your responsibilities
23 at Comcast as director of construction?

24 A. I have supervisory responsibility for all

1 commercial, residential, network construction
2 projects within the Greater Boston region. I
3 manage a staff of 81 construction, planning
4 and design employees, as well as a contractor
5 work force with 22 project coordinators. I
6 work with the sales and business leadership
7 to support all construction and expansion
8 initiatives, including site discovery,
9 business case preparation, acceleration and
10 completion of broadband construction.
11 Relevant to the issues in this docket, I
12 supervise and assist Comcast employees and
13 contractors with issues concerning the
14 construction, installation and maintenance of
15 aerial pole line attachments, risers and
16 conduit, as well as issues related to pole
17 licensing.

18 Q. And Mr. O'Brien, I believe you mentioned the
19 Greater Boston region a couple of times.
20 Could you please say whether that region
21 includes New Hampshire?

22 A. Yes. The Greater Boston region covers 80 New
23 Hampshire communities, as well as 203
24 Massachusetts communities, and 15 communities

1 in the state of Maine.

2 Q. Thank you. Now, Mr. O'Brien, are you
3 familiar with the petition filed by Comcast
4 in this proceeding which has been marked as
5 Exhibit 1?

6 A. Yes.

7 Q. And are you the same witness who submitted
8 prefiled rebuttal testimony in this docket,
9 dated November 23rd, 2020, which has been
10 marked as Exhibit 14?

11 A. Yes.

12 Q. Do you have any corrections or updates to
13 your prefiled rebuttal testimony?

14 A. No.

15 Q. And if you were asked the same questions
16 contained in your prefiled rebuttal testimony
17 today under oath, would your answers be the
18 same?

19 A. Yes.

20 Q. And could you please provide a brief summary
21 of the petition and your rebuttal testimony.

22 A. The petition describes a situation in
23 Belmont, New Hampshire that occurred last
24 year. Comcast was seeking to run a line

1 aerially on poles that are jointly owned by
2 Consolidated and Eversource. Comcast applied
3 to Consolidated for pole attachment licenses
4 on several poles in Belmont, including three
5 consecutive poles located in the town
6 right-of-way. During the joint survey of the
7 poles, Consolidated representatives informed
8 Comcast representatives that there was
9 inadequate space on the middle pole, and the
10 middle pole could not be replaced with a
11 taller pole due to the high-tension overhead
12 facilities that cross over the pole line. To
13 resolve this problem, Comcast proposed to
14 install a riser on the first of three poles
15 to bring Comcast's aerial plant down to an
16 underground conduit that Comcast would bury
17 in the public right-of-way. The conduit
18 would bypass the inaccessible middle pole and
19 go directly to the third pole, where another
20 Comcast riser would rise up and connect
21 aerially for the continuation of the pole
22 line. This is a standard industry practice
23 that Comcast uses routinely to resolve
24 similar circumstances around the country,

1 including in New Hampshire.

2 Consolidated did not accept Comcast's
3 proposed solution. Consolidated informed
4 Comcast that Consolidated's policy prohibits
5 Comcast from installing conduit between two
6 Consolidated poles. Consolidated indicated
7 that if Comcast required connection between
8 two Consolidated poles, Consolidated must
9 place a conduit at Comcast's expense and then
10 lease the Consolidated-owned conduit back to
11 Comcast. In the alternative, Consolidated
12 would allow Comcast to install the conduit,
13 but Comcast would then have to turn ownership
14 of the conduit over to Consolidated and lease
15 the conduit from Consolidated.

16 Comcast applies for riser licenses for
17 the two Belmont poles, but Consolidated did
18 not grant those licenses, even though the
19 poles don't have any other risers on them and
20 could easily accommodate Comcast risers.
21 Eversource, however, did grant the licenses
22 to Comcast for those two poles.

23 In my many years of experience, I have
24 not heard about Consolidated's policy. I

1 have not encountered a situation where a
2 policy was invoked to prevent Comcast from
3 attaching its own risers to poles and
4 installing Comcast's own conduit between
5 them. In my experience, and consistent with
6 New Hampshire's rules, pole attachment
7 licenses are granted or denied based upon
8 whether the particular poles in question can
9 accommodate the attachment based on capacity,
10 safety, reliability and engineering concerns.
11 In my experience, pole attachment licenses
12 are not denied based on a general policy that
13 does not consider the specific circumstances
14 and use.

15 As I note in my rebuttal testimony,
16 despite Consolidated's policy, Consolidated
17 actually granted Comcast riser licenses for
18 two Consolidated poles in Rochester, New
19 Hampshire that are on either end of a
20 Comcast-owned conduit.

21 COMMISSIONER BAILEY: Excuse me,
22 Mr. O'Brien. I think --

23 We lost you, Chairwoman Martin, for
24 a second. Are you there?

1 CHAIRWOMAN MARTIN: I am here. I
2 actually -- off the record for a minute.

3 (Discussion off the record.)

4 CHAIRWOMAN MARTIN: Back on the
5 record.

6 Okay. Mr. O'Brien.

7 A. Consolidated actually granted Comcast riser
8 licenses for two Consolidated poles in
9 Rochester that are on either end of a
10 Comcast-owned conduit.

11 My rebuttal testimony and photographs
12 submitted with it also describe a situation
13 in Londonderry, New Hampshire, where a third
14 party, FirstLight, has attached its risers to
15 two Consolidated poles and installed
16 underground conduit in the public
17 right-of-way between those poles.

18 In addition, my rebuttal testimony
19 responds to statements in Mr. Fournier's
20 prefiled testimony that I disagree with. For
21 example, it is my opinion that the
22 installation of Comcast risers on Belmont
23 poles would not pose any safety or climbing
24 issues to employees who need to work on those

1 poles. The Belmont poles are easily
2 accessible from the street via an aerial lift
3 or a ladder; there would be no need to climb
4 them. Even if the poles had to be climbed,
5 the presence of a single Comcast riser would
6 not interfere with industry climbing space
7 standards and would not inhibit or prevent
8 Consolidated or other attachers from
9 accessing their facilities. As indicated in
10 my rebuttal testimony, in my experience, the
11 Belmont poles could accommodate at least four
12 or five risers without posing any safety or
13 climbing issues.

14 Even though Comcast has found an
15 alternative solution here, we expect to
16 confront situations similar to Belmont as we
17 build out our network to serve customers in
18 other New Hampshire locations and expand
19 broadband service. Comcast is challenging
20 Consolidated's policy because it disrupts and
21 delays Comcast's network construction.

22 Q. Mr. O'Brien, is there any additional
23 information that you'd like to present to the
24 Commission?

1 A. No.

2 MS. GEIGER: Mr. O'Brien is
3 available for cross-examination.

4 CHAIRWOMAN MARTIN: Okay. Mr.
5 McHugh.

6 MR. MCHUGH: Thank you, Chairwoman
7 Martin. At this time, however, I have no
8 questions for Mr. O'Brien.

9 CHAIRWOMAN MARTIN: Okay. Thank
10 you.

11 Mr. Wiesner.

12 MR. WIESNER: I have no questions
13 for Mr. O'Brien either.

14 CHAIRWOMAN MARTIN: Okay.

15 Commissioner Bailey.

16 COMMISSIONER BAILEY: Thank you.

17 INTERROGATORIES BY COMMISSIONERS:

18 BY COMMISSIONER BAILEY:

19 Q. Mr. O'Brien, in the example that you
20 referenced in Rochester, is that in any way
21 different than the example in Belmont? Is
22 there one pole that the conduit bypasses? Is
23 there several poles? Can you give me a
24 little more information about that?

1 A. Yes, Madam Commissioner, it is a little bit
2 different, whereas in Rochester, on Chestnut
3 Hill Road, we transitioned from overhead to
4 underground to go under a highway, where all
5 facilities went underground. Atlantic
6 Broadband, FirstLight, Consolidated,
7 Eversource, everybody went underground. We
8 did the same to get under the highway, and
9 then we rose back up for the continuation of
10 the overhead facilities. In Belmont, it's a
11 high-tension line where the poles existed.
12 But the poles could not be replaced because
13 they would encroach on the high-tension
14 lines. So we had proposed to go underground
15 to mitigate that.

16 Q. So in Rochester, you go from -- you go
17 between two consecutive poles, but the
18 facility crosses the highway; is that right?

19 A. The facilities go -- it's an overpass, so the
20 facilities go underneath the bridge and then
21 rise back up.

22 Q. Are the two poles consecutive?

23 A. Yes.

24 Q. Okay. And --

1 CHAIRWOMAN MARTIN: Commissioner?

2 COMMISSIONER BAILEY: Yes.

3 CHAIRWOMAN MARTIN: Could I
4 interject one question on that as a
5 follow-up?

6 COMMISSIONER BAILEY: Sure.

7 CHAIRWOMAN MARTIN: In Rochester,
8 Mr. O'Brien, did each entity install its own
9 conduit?

10 THE WITNESS: Yes, Madam
11 Commissioner.

12 CHAIRWOMAN MARTIN: Okay. Thank
13 you.

14 COMMISSIONER BAILEY: Thank you.
15 That was my follow-up we that I was -- that I
16 lost in my head for a second. Okay.

17 BY COMMISSIONER BAILEY:

18 Q. Did you say that in Massachusetts, Verizon
19 has a similar policy or does not have a
20 similar policy?

21 A. I didn't say either way, Madam Commissioner.
22 But I am not aware of any policy as such in
23 the state of Massachusetts.

24 Q. Okay. Thank you. That's all I had.

1 A. You're welcome.

2 (Connectivity issue)

3 (Pause in proceedings)

4 CHAIRWOMAN MARTIN: I'll try again.

5 BY CHAIRWOMAN MARTIN:

6 Q. Mr. O'Brien, you mentioned that the poles
7 were jointly owned by Eversource as well; is
8 that right?

9 A. Yes.

10 Q. And I heard you testify that Eversource
11 granted approval. Is that right?

12 A. Yes.

13 Q. In scenarios like this where the pole --
14 (connectivity issue)

15 (Court Reporter interrupts.)

16 Q. In scenarios like this, where the poles are
17 jointly owned, do you need approval from both
18 pole owners? Can you explain how that works?

19 A. Yes, we do need approval from both pole
20 owners. We need to get licenses from both.
21 The way that it works, at a high level, is
22 joint surveys are conducted by
23 representatives of the pole owners and the
24 applicant. In this case, there was the

1 Consolidated representative, an Eversource
2 representative and Comcast representatives.

3 What happens is they go out there and
4 they do joint surveys, where they look at
5 every single pole and they discuss every
6 single pole and they inspect every single
7 pole. They look for safety, they look for
8 clearance, they look for decay, they look for
9 age, any sort of existing violation, and then
10 they negotiate each pole. And the
11 negotiation can include a simple conversation
12 on site saying this pole looks good or this
13 pole needs replacement, Comcast needs to
14 raise this line, lower this line, and then
15 they determine who is responsible for the
16 costs of each one. Once those results are
17 compiled and put together by the pole owners,
18 they in turn send them back to the applicant
19 for make-ready. There may be make-ready
20 payments that are needed. They may say these
21 four poles don't need make-ready. So they
22 send a very detailed list. It's a Form 3
23 that the parties look at. If we agree to it,
24 we pay it. We cut a check and we pay it. If

1 we don't agree to it, if we have a question
2 about a pole, we take that offline and we all
3 discuss that particular pole amongst each
4 other until we resolve it.

5 COMMISSIONER BAILEY: Madam Chair,
6 can I ask a follow-up on that, please?

7 CHAIRWOMAN MARTIN: Yes, go ahead.
8 I apologize. My computer froze for a minute.
9 Go ahead.

10 COMMISSIONER BAILEY: Mr. O'Brien,
11 does Eversource have different standards for
12 safety, reliability, capacity and generally
13 applicable engineering purposes that you know
14 of?

15 THE WITNESS: No, ma'am. Not that
16 I'm aware of.

17 COMMISSIONER BAILEY: Okay.
18 Thanks.

19 BY CHAIRWOMAN MARTIN:

20 Q. Mr. O'Brien, can you explain your
21 understanding of why -- (connectivity issue)
22 (Court Reporter interrupts.)

23 Q. -- why Consolidated did not permit access in
24 this case and whether or not that falls under

1 any of the permissible reasons under the
2 rule?

3 A. So as I understand it, Consolidated denied us
4 riser licenses because they have a policy
5 that prohibits connecting two Consolidated
6 assets together. In other words, from what I
7 understand, the policy does not allow Comcast
8 or any other third party to connect two poles
9 together or a pole through a vault, or a
10 manhole back to another pole. That's how I
11 understand it, Madam Chairwoman.

12 Q. Has Consolidated denied a request by Comcast,
13 a similar request by Comcast in the past, or
14 are there any pending similar requests?

15 A. They have not denied any in the past. We
16 fully expect there to be others. There is
17 one that we're aware of as part of our effort
18 to expand broadband up into the Lakes Region,
19 but there aren't any pending that are
20 currently not resolved.

21 (Connectivity issue)

22 Q. Okay. Can you hear me now?

23 A. Yes.

24 Q. Okay. For some reason, my mute and unmute is

1 not telling me whether I'm actually muted, so
2 I apologize. That is all my questions.

3 CHAIRWOMAN MARTIN: Ms. Geiger, if
4 you have any redirect. You're on mute.

5 MS. GEIGER: Could I please have a
6 moment offline with my clients to confer
7 about that issue?

8 CHAIRWOMAN MARTIN: Yes. How long
9 do you need?

10 MS. GEIGER: Five minutes, please.

11 CHAIRWOMAN MARTIN: Okay. We'll
12 take a five-minute recess and return at
13 11:20 -- I mean, sorry, 11:50.

14 MS. GEIGER: Thank you.

15 (Brief recess was taken at 11:45 a.m.,
16 and the hearing resumed at 11:55 a.m.)

17 CHAIRWOMAN MARTIN: Thank you.

18 Let's go back on the record.

19 Ms. Geiger.

20 MS. GEIGER: Yes, thank you very
21 much, Madam Chairwoman, for the opportunity
22 to confer with my clients. After doing so,
23 I've determined that there are -- I have no
24 further questions for this witness, and I'd

1 ask that he be excused.

2 CHAIRWOMAN MARTIN: And I
3 apologize. I do have one more question that
4 I'd like to ask.

5 Mr. O'Brien, you testified that
6 there were none pending, no similar
7 situations pending, but there was one you
8 were aware of. Can you just explain the
9 distinction there and explain what the one
10 you are aware of means?

11 THE WITNESS: Yes, Madam
12 Chairwoman. So we don't have any in the
13 application process with the Consolidated
14 LAG. But we are expanding broadband
15 throughout the state, and we have replied to
16 a couple RFPs throughout the state. And
17 we're also expanding up into the Lakes
18 Region. And as we're doing our design, we do
19 see another area where potentially we're
20 going to have to connect two poles together
21 where there is no existing conduit.

22 CHAIRWOMAN MARTIN: Okay. Thank
23 you.

24 Commissioner Bailey, any follow-up?

1 COMMISSIONER BAILEY: No.

2 CHAIRWOMAN MARTIN: All right.

3 This witness is excused. Let's move on to
4 the next witness, Mr. Fournier.

5 Ms. Robidas, if you could swear him
6 in.

7 (WHEREUPON, GLEN FOURNIER was duly sworn
8 and cautioned by the Court Reporter.)

9 GLEN FOURNIER, SWORN

10 CHAIRWOMAN MARTIN: Mr. McHugh,
11 you're on mute.

12 MR. MCHUGH: Oh, thank you, Madam
13 Chairwoman.

14 DIRECT EXAMINATION

15 BY MR. MCHUGH:

16 Q. Good morning, Mr. Fournier. Would you please
17 state your full name and spell your last for
18 the court reporter.

19 A. My name's Glen Fournier, F-O-U-R-N-I-E-R's.

20 Q. By whom are you employed, sir?

21 A. Consolidated Communications, LLC.

22 Q. And can you tell me your current title and
23 your job responsibilities, please?

24 A. I'm currently the LAG specialist. I oversee

1 the licensing process for Consolidated for
2 Maine, New Hampshire and Vermont, both for
3 conduit and aerial pole attachments.

4 Q. And can you provide the Commission and
5 participants in this proceeding with a
6 description of your background and your work
7 experience, please.

8 A. Yes. I was hired in 1990 as an outside plant
9 engineer. I started as a routine engineer,
10 whereby you cover your turf and the
11 engineering issues within certain areas. I
12 started Down East, covering Eastport, Perry
13 and those areas, and after about six or seven
14 years I moved on to doing work in Central
15 Maine. I also did cell site engineering,
16 whereby I designed the lines for backhaul
17 from the cell towers back to our network for
18 any carrier that was asking for, at the time,
19 Verizon lines to be backhauled. I did that
20 from -- I was an engineer from 1990 to 2015.
21 And then in July of 2015 I took on my current
22 role as LAG specialist, and I've been doing
23 that since.

24 Q. When you said you were hired in 1990, what

1 company hired you, Mr. Fournier?

2 A. That was New England Telephone.

3 Q. And have you been with the telephone company
4 throughout your career?

5 A. Yes.

6 Q. And for the record, does that include when
7 Verizon New England sold its Northern New
8 England assets to FairPoint Communications?

9 A. Yes.

10 Q. And did that employment continue through the
11 time that FairPoint was acquired by
12 Consolidated Communications?

13 A. Yes.

14 Q. Can you -- sorry. Are you the author of your
15 prefiled testimony dated October 26, 2020,
16 premarked as Exhibit 22 in this case?

17 A. Yes.

18 Q. And if you were asked the same questions
19 today under oath that are in your prefiled
20 testimony marked as Exhibit 22, would your
21 answers be the same?

22 A. Yes.

23 Q. And have you had a chance to review the
24 prefiled rebuttal testimony of the Comcast

1 witness, Terrence O'Brien?

2 A. Yes.

3 Q. Okay. Mr. Fournier, would you please provide
4 the Commissioners and the parties with a
5 summary of your prefiled testimony marked as
6 Exhibit 22, please.

7 A. Comcast did apply for risers onto those two
8 poles in Belmont. There were a series of
9 e-mails going back and forth where we tried
10 to negotiate a resolution that was suitable
11 to both parties. At one point there was a
12 proposal made where Comcast initially wanted
13 just to place and own their conduits. They
14 did offer up to place one and then give one
15 to Consolidated for their use -- for our use.
16 However, we would still be at the same issue
17 of the asset-to-asset rule, which the
18 asset-to-asset rule is a guideline given to
19 our surveyors. It's not a formal written
20 rule. It wasn't written until a couple years
21 ago, where in southern New Hampshire we had
22 issues with other licensees trying to
23 circumvent the rule the same way. And what
24 we did was we've had to reword the rule on

1 several occasions for people trying to work
2 around the rule. The rule itself, when you
3 go from one asset to another asset, it's all
4 part of the network and infrastructure that
5 we need to provide access to for not only
6 ourselves, not only Comcast, but all other
7 third parties to participate in pole
8 attachments from a communications standpoint.
9 So the rule tries to keep the integrity of
10 the plant and the access on a
11 non-discriminatory basis.

12 So in the Belmont case, we denied the
13 risers based on the rule, which is not -- it
14 is based on the capacity and the general
15 engineering principles for the efficient use
16 of plant. It's not something that's just a
17 rule for the sake of having a rule and to
18 block people from accessing the poles. It's
19 to properly manage, on a non-discriminatory
20 basis, the utilization of a limited capacity
21 of the poles.

22 Q. Mr. Fournier, when you say "asset to asset"
23 and you use the word "block" in describing
24 it, can you be more descriptive and give the

1 exact example as to what happened in Belmont
2 and why the riser license was rejected for
3 those purposes?

4 A. Okay. The asset to asset could be either a
5 Consolidated manhole, so another Consolidated
6 manhole, a manhole to a pole, both of which
7 Consolidated owns, or a pole to a pole which
8 Consolidated owns. And in the Belmont case,
9 it was pole to pole. It was from one
10 Consolidated pole to another Consolidated
11 pole. And as Terry O'Brien mentioned, the
12 aerial attachments of the pole in the middle
13 were exhausted because the high line above
14 it, we couldn't lower our cable to
15 accommodate Comcast attachments. So we had
16 to deny their attachment on that middle pole.
17 So what we offered was for us to run conduit
18 between the two poles and to fairly provide
19 them access through that conduit. So that
20 was the asset to asset involved in this
21 particular case was the pole to pole.

22 Q. And you mentioned earlier, I believe, but
23 I'll ask you again, are you familiar with the
24 prefiled rebuttal testimony of Mr. O'Brien?

1 A. Yes, I am.

2 Q. Okay. And can you explain -- well, let me
3 ask it this way: Are there any differences
4 between the examples Mr. O'Brien provided in
5 the City of Rochester, New Hampshire and the
6 Town of Londonderry, New Hampshire compared
7 to what occurred in Belmont?

8 A. Yes. In addition to the difference that he
9 mentioned about it being an overpass, it was
10 more than that; it was a turnpike overpass.
11 There are certain situations where the DOTs
12 get involved in each state. It can be a
13 bridge, like in this case, or an overpass
14 where a limited access highway is built, or
15 it can be a bridge over a river or something
16 like that. Any plant that has a DOT design
17 involved, they can and often do dictate
18 design to us. And in fact, they'll reach out
19 to the parties involved individually and ask
20 them if they want to contribute for the
21 structure going over the bridges and things
22 of that nature.

23 So this particular one was the Spaulding
24 Turnpike, and they went underneath the

1 Spaulding Turnpike. And we have no control
2 over whether or not we can police that. It's
3 just the design of the location.

4 The Londonderry one, that was a segTEL
5 application from 2010. We licensed it in
6 January 2011. And they did dip down on one
7 side of a high line on one of our poles;
8 however, on the other side they rose up on a
9 private pole. It was not one of our poles,
10 so it did not violate our asset-to-asset
11 rule. And segTEL's free to rise up wherever
12 they see fit. So that one, it was not a
13 violation of the rule. In fact, the property
14 that it rode up on was a private house
15 located at 300 Nashua Road.

16 And then he also stated in his testimony
17 a pending situation which I don't think has
18 come up yet. But their design was submitted
19 in Salem, and that also is a situation where
20 Comcast, at an intersection, is putting in
21 multiple handholds, and I believe even a
22 manhole, and they're not violating our rule
23 there either, because even though it's got
24 multiple points of access with Consolidated,

1 they go to separate Comcast assets that are
2 part of a network that they're designing to
3 provide their own service to their customers.
4 You know, that's not a violation of the
5 asset-to-asset rule.

6 Q. Are there any safety issues concerning the
7 application of the rule to the Belmont
8 situation, Mr. Fournier?

9 A. Okay. As Terry mentioned, as Terry O'Brien
10 mentioned, the first attachment, when one
11 person runs a riser up a pole, the safety
12 issue's not going to vary at all for whoever
13 owns that one riser. But as you start adding
14 more individual risers, you increase the
15 safety issue for each one you add that
16 doesn't need to be there. And I agree with
17 Mr. O'Brien's testimony, that there are --
18 you can safely put four or five communication
19 conduits at the base of any given pole.
20 That's what can safely and reasonably be
21 placed. But if you dedicate each conduit to
22 only one party -- in this case it would be
23 Comcast -- then you're only allowing yourself
24 four or five different parties to rise up on

1 this pole. And specific to Belmont, we
2 already know that the aerial attachments
3 running across, underneath this high line,
4 are exhausted. So that leaves the only means
5 to get from Point A to B underneath that high
6 line host limited conduits. So if you
7 restrict and reserve one of those ducts to
8 Comcast, or any other third party, you are
9 greatly diminishing your capacity on that
10 pole. You're going from what -- you could
11 put, easily put three different licensees
12 into one conduit. You're dedicating it to
13 one; so therefore, you're going from being
14 able to transport 15 different parties from A
15 to B to essentially 5. The alternative is
16 you exceed the five conduits at the base of
17 the pole, and then you run into serious
18 safety issues. And that's how it ties into
19 safety.

20 Q. Mr. Fournier, who manages the telecom space
21 on the poles at present?

22 A. Both the -- (connectivity issue)

23 CHAIRWOMAN MARTIN: Ms. Geiger, do
24 you have an objection?

1 (Court Reporter interrupts.)

2 CHAIRWOMAN MARTIN: One moment, Mr.
3 Fournier.

4 MS. GEIGER: Yeah, I think Mr.
5 Fournier's going beyond the scope of the
6 summary of his prefiled testimony, so I would
7 object to -- I would object to this.

8 MR. MCHUGH: The purpose -- well, I
9 think we might have lost the Chairwoman.

10 CHAIRWOMAN MARTIN: I can hear you.

11 MR. MCHUGH: Oh, okay. Thank you.
12 So the purpose of that line of questioning,
13 Commissioner Bailey and Chairwoman Martin, is
14 purely in response to the Chair's questions
15 to Mr. O'Brien.

16 MS. GEIGER: And my response to
17 that is, yeah, I mean, these are not issues I
18 think that should be raised with this
19 witness. They could have been raised with
20 Mr. O'Brien on cross-examination, but they
21 were not.

22 MR. MCHUGH: No, the issues came up
23 in response to Chairwoman Martin's question,
24 and that's the only limited purpose I'm

1 asking Mr. Fournier to respond.

2 CHAIRWOMAN MARTIN: I'm going to
3 let him continue at this point. But Mr.
4 McHugh, let's not go too much farther.

5 MR. MCHUGH: No, that was actually
6 my last question, Madam Chair.

7 BY MR. MCHUGH:

8 Q. Mr. Fournier, do you recall the question, or
9 do you want me to have the court reporter
10 read it back to you?

11 A. No, I understand. I'll be brief.

12 Even though both parties license the
13 poles, typically it's the incumbent telephone
14 company that manages the cables and the com
15 space, and that includes risers, the
16 communication risers that come up on the
17 pole. So it's usually our responsibility to
18 manage the com space.

19 Q. Thank you, Mr. Fournier.

20 MR. MCHUGH: The witness is
21 available for cross-examination.

22 CHAIRWOMAN MARTIN: Okay. Thank
23 you.

24 Ms. Geiger.

1 MS. GEIGER: Yes, thank you.

2 CROSS-EXAMINATION

3 BY MS. GEIGER:

4 Q. Good afternoon, Mr. Fournier.

5 A. Good afternoon.

6 Q. I have some questions about the Belmont poles
7 in particular. And we've established that
8 those poles, the two poles that are at issue
9 in this case, are jointly owned by
10 Consolidated and Eversource; is that correct?

11 A. Yes.

12 Q. And we've established that Eversource has
13 granted Comcast riser license applications,
14 but Consolidated did not; correct?

15 A. I can't speak on the power company's behalf.
16 But we did not. Correct.

17 Q. But have you reviewed the exhibits in this
18 case?

19 A. I did, yes.

20 Q. Okay. So if I were to tell you that
21 Exhibit 15 is a copy of the riser licenses
22 issued by Eversource, would you disagree with
23 that?

24 A. I would not disagree with that.

1 Q. Thank you.

2 Now, do you have your prefiled testimony
3 before you, Mr. Fournier, or accessible to
4 you?

5 A. It is, yeah.

6 Q. Okay. So that's been marked as Exhibit 22.
7 And if you could look at Page 8, Lines 3
8 through 8 of that testimony.

9 (Connectivity issue)

10 Q. I can't hear you, Mr. Fournier.

11 A. I'm sorry. I'm having some issues here.
12 I'll get there.

13 Q. Okay. Well, let me read that to you, and you
14 can tell me if you think I got it wrong or if
15 it sounds like what was in your testimony.

16 At that location in your prefiled
17 testimony, Page 8, Lines 3 through 8, you
18 state, "In connection with the specific poles
19 in Belmont, specifically the middle pole
20 cannot be replaced with a taller pole due to
21 overhead high-tension electrical wires. That
22 same pole also had multiple attachments and
23 did not have sufficient space to accommodate
24 Comcast Cable's aerial attachments. Allowing

1 Comcast Cable to attach in the requested
2 manner would have caused more congestion on
3 the poles, especially the middle pole."

4 Did I read that correctly?

5 A. Yes.

6 Q. But Comcast didn't request a riser license
7 for the middle pole, did it?

8 A. Not the middle one, no.

9 Q. Okay. Again on Page 8, Lines 16 through 18,
10 you state that Section 2.6 of the Pole
11 Attachment Agreement contains language
12 related to not allowing attachments that
13 would interfere with Consolidated's existing
14 service attachment. Did I get that correct?

15 A. That 2.6 refers to that, but it also refers
16 to use of licensor's facilities by other
17 parties, yes.

18 Q. Okay. But with respect to your statement
19 about interference with Consolidated's
20 existing service attachments, what existing
21 service attachments on the Belmont poles
22 would be impacted by the installation of
23 Comcast risers on those poles?

24 A. That question is when you're managing a

1 plant -- it's kind of a longer question -- a
2 long answer to provide. But when you're
3 managing a pole plant -- and the pole owners
4 are going to be responsible for managing the
5 pole plant. I'll try to keep this as brief
6 as possible. We try to -- we need to keep
7 the capacity maximized on that pole plant.
8 And that refers to our need to also augment
9 our facilities on the poles. So, even though
10 that language in that 2.6 says the term
11 "existing," it's the overall management not
12 just for Consolidated's plant and facilities,
13 but also other third parties' use of our
14 facilities. And that's exactly what the rest
15 of that paragraph refers to. So it's hard to
16 say that there's a direct cable that --
17 existing cable that that interferes with
18 immediately. It's a future use and
19 management of, you know, both for us and
20 non-discriminatory access for our other third
21 parties to be able to accommodate them down
22 the road.

23 Q. But Section 2.6 of the Pole Attachment
24 Agreement doesn't talk about future

1 attachments, does it?

2 A. It talks about the use of licensees -- it
3 talks about the use of licensor's facilities
4 by other parties.

5 Q. And isn't it true that the two Belmont poles
6 at issue in this case have no existing risers
7 on them, and that there's sufficient capacity
8 on both of them for the installation of
9 risers?

10 A. Today, yes.

11 Q. Now turning to the Consolidated policy that's
12 at issue in this case. I believe in your
13 testimony this morning you talked about this
14 as being an "asset-to-asset rule," and then I
15 believe you referred to it as a "guideline."
16 I'd be interested in knowing which of those
17 terms applies to this. Is it a policy? Is
18 it a guideline? Is it a rule? What is it?

19 A. Okay. When I picked up this job in 2015 --
20 you know, there's training involved in
21 anything. And internally within
22 Consolidated -- at the time it was
23 FairPoint -- the term "asset-to-asset rule,"
24 it's a very informal guideline given to the

1 surveyors that incorporates the language in
2 the agreements, but also the written rules of
3 pole attachments within the three states, you
4 know, Maine, New Hampshire, Vermont. So the
5 intent behind the rule has never changed.

6 Shortly after I took over the position,
7 I was asked to write it down by a third party
8 that was attempting to, for all intents and
9 purposes, circumvent the rule. So I wrote it
10 down, and they were quick to craft a field
11 scenario whereby they successfully avoided
12 the language of the rule to accommodate what
13 they wanted to accommodate; get from a
14 manhole to a pole, in this particular case.
15 So then I had to reword the rule to basically
16 say that we would give -- Consolidated would
17 give an access point to a third-party plant,
18 and only a single access point. And that's
19 why, in Terry's testimony, he says the rule
20 is a little bit wordy. And I would agree
21 with him, it is a little bit wordy.

22 Q. So Mr. Fournier, your testimony is that this
23 either rule or guideline or policy has
24 existed for a while. But the policy is not

1 stated in the Pole Attachment Agreement
2 anywhere, is it?

3 A. The policy is a summarization, kind of, of
4 the language in 2.6, the language in the
5 agreement 2.6, and 5 point whatever. It's
6 5.3, the right to refuse a license due to
7 capacity. And it also takes into account
8 shared use and access, allowing access by
9 other third parties.

10 Q. But so --

11 A. But it's not written -- I'm sorry. Go ahead.

12 Q. No, I -- so really the question is, and it's
13 a very simple question: The policy as you
14 have written, or as somebody has written it
15 that appears in the stipulation in this
16 docket that's been marked as Exhibit 20, and
17 Paragraph 20, says that the Pole Attachment
18 Agreement between Consolidated and Comcast
19 does not detail this policy. Would you agree
20 with that?

21 A. Right.

22 Q. Okay. And so in response, I believe you
23 provided a response to a Staff Data Request
24 1-3, which has been marked as Exhibit 21,

1 Page 5, in this docket. And you stated there
2 that there is no formal written document that
3 Consolidated can find that states this
4 policy, although Consolidated believes that
5 this policy has been in force since Verizon
6 owned the Northern New England operations.
7 Is that correct?

8 A. Yes. Yeah.

9 Q. Okay. And if Consolidated couldn't find, or
10 if you couldn't find a written document that
11 states its policy, who wrote up the policy
12 statement that was provided by Consolidated
13 in response to that Staff data request?

14 A. I wrote it, but it was some time ago when I
15 first wrote that policy.

16 Q. Okay. Do you know when you wrote it?

17 A. It was about 2017.

18 Q. Now, are you aware that -- so is it fair to
19 say that Consolidated's decision to deny
20 Comcast's request to install its own risers
21 on the two Belmont poles was based solely
22 upon this asset-to-asset policy or rule or
23 guideline, the policy that appears in the
24 stipulation in Paragraph 19? Is that fair?

1 A. It was -- the denial is based on the reasons
2 for the policy, but not the policy itself.

3 Q. I guess I'm confused. What's the difference?

4 A. Well, the policy itself is based on the
5 owner's requirement to provide
6 non-discriminatory access to our plant, both
7 conduit and poles. So the policy is based on
8 making sure that we have the most efficient
9 use of our plant that's attached to our
10 poles. And that one conduit chews up
11 20 percent of the capacity at the base of
12 that pole, which may not sound like much, but
13 when you're talking multiple attachers on a
14 pole, where you know that the underground,
15 going underneath the high line, has already
16 exceeded the capacity in the air, that would
17 only leave you, if all other parties also
18 were dedicated a single duct, that would only
19 leave you four more pathways between the two
20 poles, only four more attachers.

21 Q. But, Mr. Fournier, I thought you heard you
22 agree with morning with Mr. O'Brien that the
23 poles in Belmont could accommodate four to
24 five risers. Is that correct?

1 A. Correct. That's what I'm saying.

2 Q. Okay. So is it your testimony or is it not
3 your testimony that the Consolidated policy
4 was the basis for the denial of Comcast's
5 riser applications in Belmont?

6 A. Yes. But it's the reasoning behind it,
7 actually.

8 Q. Okay. And are you aware that July 29, 2020,
9 the Federal Communications Commission issued
10 a decision stating that utilities may not
11 impose blanket restrictions on access to
12 their poles?

13 A. I was -- (connectivity issue)

14 MR. MCHUGH: I have an objection to
15 the question. I didn't know that this
16 witness was supposed to be an expert in FCC
17 law, and I don't think he's been qualified as
18 such. And I don't think that the FCC
19 decision even applies to the State of New
20 Hampshire. Counsel might want to use it in a
21 brief or for any other reason, that's fine,
22 but I object to this line of questioning.

23 (Connectivity issue)

24 MS. GEIGER: I can't hear you,

1 Madam Chairwoman.

2 CHAIRWOMAN MARTIN: How about now?
3 Okay. I'm asking if you have a response to
4 that.

5 MS. GEIGER: Yes. I'm just asking
6 him if he's aware of the FCC's ruling back in
7 July of this year. I'm not asking him to
8 opine on it or to give any other information
9 about it. I just want to know if he's aware
10 of it. It has been marked as an exhibit in
11 this docket, and that's all I want to know is
12 whether he knows about it. I think he said
13 he didn't.

14 CHAIRWOMAN MARTIN: The objection's
15 overruled. Go ahead.

16 MS. GEIGER: Thank you.

17 A. I didn't know about it until I read it in
18 your filings.

19 BY MS. GEIGER:

20 Q. Now, Mr. Fournier, on the top of Page 6 of
21 your prefiled testimony, there's a question
22 there that asked you to explain the pole
23 attachment policy that has been raised in
24 this docket. Do you see that question?

1 (Pause)

2 Q. Do you have it, Mr. Fournier?

3 A. I'm sorry. I don't.

4 Q. Okay. So we've marked -- your testimony has
5 been marked as Exhibit 22. And at the top of
6 Page 6 of that testimony there is a question
7 there that asked you to explain the pole
8 attachment policy that's been raised in this
9 docket.

10 (Pause)

11 Q. Do you see that?

12 A. Just a second. Okay. On Page 6?

13 Q. Yes, at the top, please. And again, the
14 question is, "A Consolidated Communications
15 policy has been raised in this docket by
16 Comcast Cable as being an unlawful policy.
17 Before addressing that issue, please explain
18 this pole attachment policy." That's the
19 question. Did I read that correctly?

20 A. Okay. Yes, you did.

21 Q. Okay. And your answer to that question is
22 that the policy relates to pole attachments,
23 any pole attachments, being installed in such
24 a manner as to block assets. Is that your

1 testimony?

2 A. Yes.

3 Q. Okay. Could you please explain how Comcast's
4 installation of one riser on a pole that has
5 no other risers on it would block assets?

6 A. Because as we're required to provide
7 non-discriminatory access, we would have to
8 provide the same access to all other third
9 parties, most notably the CLECs and also any
10 backhaul company that's handling the small
11 cell backhaul traffic. That said --

12 Q. And Mr. Fournier, how many of those companies
13 have asked for access to those poles in
14 Belmont? Other than Comcast, who --

15 A. Currently none.

16 Q. How many?

17 A. Currently none. Currently none that I'm
18 aware of.

19 Q. Okay. Thank you.

20 So turning to the wording of the policy
21 at issue in this case -- again, that's in
22 Exhibit 20, and that's the stipulation at
23 Paragraph 19 that's on Page 5. And you
24 should be familiar with this because you said

1 that you wrote it. "Consolidated will only
2 allow one point of access from its asset to a
3 third-party asset." Could you please give an
4 example of that situation.

5 A. The Salem example is one that they've done.
6 I mean, we've done it -- we provide riser
7 access to private systems in a lot of cases.
8 If it goes from our pole to a building, that
9 would be an example of where it's not -- it
10 doesn't apply --

11 Q. Why doesn't it apply --

12 (Court Reporter interrupts.)

13 A. The difference is when it's a pole to a
14 building, we need to provide access to third
15 parties. We make the best choice to allow
16 that access that's available. If we're going
17 from one of our assets to another one of our
18 assets, the best way to ensure capacity is
19 shared access to our plant or our network.
20 When we're going from a pole to a building,
21 we have no other choice but to allow a
22 conduit rise-up. It's something we don't
23 like because it does exhaust the capacity of
24 the pole, but it's a needed evil. We have no

1 other choice. There's no other scenario
2 where we could provide shared access because
3 there's no other Consolidated asset to go to.
4 Is it the same safety issue potentially?
5 Sure. But it's one of those you try to
6 minimize the safety and maximize capacity of
7 our plant, and that's the best scenario.
8 That's the only answer to that question.

9 Q. And is there anything in the Commission's
10 rules that requires Consolidated to maintain
11 this policy?

12 A. Non-discriminatory access, I mean, on an
13 equal and fair basis, that's the only thing I
14 can understand that would be pertaining to
15 their rules.

16 Q. So does Consolidated ever make exceptions to
17 this policy?

18 A. It depends on how you define things. Like
19 the highway overpass, I mean, some people may
20 consider that. If they don't define a DOT
21 project where we're required to provide a
22 riser where we wouldn't normally, that may be
23 considered an exception.

24 Q. Why is a DOT project different from a

1 broadband project that a competitor wants to
2 roll out? Why should it matter? It's still
3 the same pole; right?

4 A. Because we're -- because it's a Government
5 agent that does their own design on their
6 network, we can't control property. We can't
7 control what they do on their -- like it
8 especially happens on a bridge, where they
9 will hang ducts underneath a bridge and then
10 solicit whether or not the different parties
11 crossing the bridge want to contribute
12 towards the structure going across the bridge
13 to provide a pathway. We can't tell them no
14 when they've paid a DOT to accommodate them
15 through their own means.

16 Q. But we're still talking about two
17 Consolidated poles on either end; right?

18 A. Or manholes, yeah.

19 Q. So why should it matter whether it was a
20 DOT-required project or a competitor's
21 project that requires the installation of the
22 same facility? Why should it matter who has
23 done the design or who needs the access?

24 A. Because we can't tell DOT how to design their

1 jobs.

2 Q. But you can tell Comcast how to do it.

3 A. We're tasked with providing
4 non-discriminatory access to plant in our
5 network. Pole to pole, manhole to manhole,
6 and manhole to pole is part of our network.
7 And for us to open it up and to accommodate
8 the rules in each state, we've got to have
9 processes to comply with those rules and
10 guidelines to comply with those rules.

11 Q. Mr. Fournier, are you familiar with the
12 Commission's pole attachment rules?

13 A. Yes.

14 Q. Isn't it true that there is no Commission
15 rule that requires a pole owner to conserve
16 space on its poles for future attachers?

17 A. Specifically, I'd say that's not -- that
18 language is not written in there.

19 Q. And isn't it also true that there's no
20 Commission rule requiring a pole owner to own
21 the riser ducts on its own cable -- on its
22 own poles? Correct?

23 A. Well, that would -- that's correct.

24 Q. And there's no Commission rule requiring a

1 pole owner to own the conduit between its
2 poles, is there?

3 A. No.

4 Q. Okay. So could you please refer to the
5 bottom of Page 4 of your prefiled testimony.
6 Let me know when you get there, please.

7 A. Yeah.

8 Q. Okay. Are you there?

9 A. Yes.

10 Q. Okay. Bottom of Page 4, top of Page 5, you
11 state that under subsection (a) of PUC Rule
12 1303.01, Consolidated must allow licensed
13 attaching entities access to poles on just
14 and reasonable terms and cannot discriminate
15 against pole owners. Is that your testimony?

16 A. Yeah, and that "pole owners" is a typo.

17 Q. Okay.

18 A. It should be "attachers" or "licensees." I
19 apologize for that error.

20 Q. No apologies necessary, but I just wanted to
21 clarify the record. And that was my question
22 is whether you meant to say "attaching
23 entities."

24 Now, is it your testimony, again on

1 Page 5, Lines 5 through 9, that pole owners'
2 obligations to provide access to their poles
3 only extends to entities that have some type
4 of authorization from the Commission to
5 operate as telecommunications providers or
6 other type of providers?

7 A. I apologize, Attorney Geiger. You were
8 breaking up. And it may be on my end.

9 Q. Okay. I'm just -- do you want to take a look
10 at your prefiled --

11 A. Please repeat the question?

12 Q. Sure. Take a look at your prefiled
13 testimony, Page 5, Lines 5 through 9, please.

14 A. Okay.

15 (Witness reviews document.)

16 Q. Could you please read that into the record.

17 A. Okay. Well, 5 through 9 is half of an answer
18 on one question and the question on the
19 second one, so... I am on Page 5.

20 Q. I believe there, and you can correct me if
21 I've got this wrong, that your testimony is
22 that under subsection (a) of Commission Rule
23 PUC 1303.01, Consolidated must allow licensed
24 attaching entities to poles -- attaching

1 entities access to poles on just and
2 reasonable terms and cannot discriminate
3 against, and I think you said attaching
4 entities. And then your testimony goes on to
5 say --

6 MR. MCHUGH: I'm sorry, Attorney
7 Geiger. That's not what my Page 5 is reading
8 at the lines you were referencing.

9 MS. GEIGER: I started on the
10 bottom. And I apologize, attorney McHugh.
11 But basically what I'm trying to ask the
12 witness is whether it's his testimony that
13 the access obligation on the part of pole
14 owners extends only to entities that have
15 some type of authorization from the
16 Commission to operate as a telecommunications
17 provider or other type of provider. That's
18 what I'm trying to understand about his
19 testimony.

20 MR. MCHUGH: Mr. Fournier, do you
21 understand the question?

22 (Witness reviews document.)

23 THE WITNESS: Yes. Yes, and --
24 (connectivity issue)

1 MR. MCHUGH: Can't hear you, Mr.
2 Fournier. At least I can't. I apologize if
3 others can.

4 CHAIRWOMAN MARTIN: Ms. Geiger.

5 MS. GEIGER: Yes.

6 CHAIRWOMAN MARTIN: Mr. Ireland
7 dropped off.

8 MS. GEIGER: I think he lost power.

9 CHAIRWOMAN MARTIN: Are you
10 comfortable proceeding?

11 MS. GEIGER: He said he's trying to
12 come back on. He lost power. Yes, I'm
13 comfortable --

14 (Court Reporter interrupts.)

15 (Discussion off the record.)

16 CHAIRWOMAN MARTIN: Let's take a
17 five-minute break. And Mr. Wind, can you
18 assist Mr. Fournier?

19 All right. Let's come back at
20 12:50, actually, just to make sure there's
21 enough time.

22 MR. MCHUGH: Thank you.

23 CHAIRWOMAN MARTIN: Thank you.

24 (Brief recess was taken at 12:42 p.m.,

1 and the hearing resumed at 12:58 p.m.)

2 CHAIRWOMAN MARTIN: Let's go back
3 on the record. You can proceed, Ms. Geiger.

4 MS. GEIGER: Thank you.

5 BY MS. GEIGER:

6 Q. Mr. Fournier, Consolidated and Comcast
7 compete with one another for customers of
8 voice, video and Internet service in numerous
9 New Hampshire cities and towns; is that
10 correct?

11 A. Yes.

12 Q. And when Consolidated builds out its network
13 on its own poles and needs to install risers
14 and conduits to avoid overhead electrical
15 lines, Consolidated can do that; right?

16 A. Yes.

17 Q. Okay. But Comcast can't do that, can't
18 install its risers onto Consolidated poles
19 and install conduit between those poles
20 because of the policy we've been discussing
21 this morning; is that correct?

22 A. They can if they're licensed.

23 Q. They can if they're licensed. Could you
24 explain that for me, please.

1 A. If they apply to and attach in a
2 non-discriminatory way which follows the
3 rules, then, yes, they can --

4 Q. What is that -- what does that mean? Does
5 that mean that Consolidated must own the
6 risers and the conduit?

7 A. If it's within the scope of the rule, yes.

8 Q. Okay. So Consolidated can own its own risers
9 and its own conduit between its own poles,
10 but Comcast cannot own its own risers and its
11 own conduit between Consolidated poles; is
12 that correct?

13 A. If it's within the scope of the rule, that's
14 a correct statement.

15 Q. Which rule are you talking about?

16 A. Just following the engineering guidelines of
17 capacity, yes, between -- we have to provide
18 access to competitors, such as Comcast and
19 all the other CLECs. So when we're running
20 our conduit between two poles, we're required
21 to allow access from everybody to do the
22 same. So if Comcast wants to attach, connect
23 pieces of our network together, then they
24 should be under the same rule to capacity and

1 engineering guidelines.

2 Q. And could you cite for me the engineering
3 guidelines that you're referencing?

4 A. I don't -- I guess I don't understand the
5 question.

6 Q. Well, you referenced engineering guidelines
7 in the same, seems to me as being
8 commensurate with the responsibility to
9 provide non-discriminatory access. And I'm
10 just curious as to whether or not you can
11 provide me with a citation to a particular
12 engineering guideline that supports what
13 you're saying.

14 A. It's just the basic principle of access to
15 conduit. I'm sorry. I shouldn't have used
16 the term "engineering guideline."

17 Q. Okay. And getting back to this particular
18 case, it's Consolidated's policy, not the
19 specific condition of the poles in Belmont,
20 that is preventing Comcast from installing
21 its own risers on those poles and from
22 installing its own conduit between those
23 poles; is that correct?

24 A. Yes.

1 Q. Thank you.

2 MS. GEIGER: I have no further
3 questions for this witness.

4 CHAIRWOMAN MARTIN: Okay. Mr.
5 Wiesner, did you have any questions?

6 MR. WIESNER: I only have a few
7 clarifying questions for Mr. Fournier. I
8 don't think it will take too long.

9 CHAIRWOMAN MARTIN: Okay. Go
10 ahead.

11 CROSS-EXAMINATION

12 BY MR. WIESNER:

13 Q. So Mr. Fournier, you testified, I believe,
14 that the policy we've been discussing, the
15 "asset-to-asset rule" as you've characterized
16 it, was only reduced to writing about 2017;
17 is that correct?

18 A. Formally put in words, correct, about that
19 time frame, in its current form.

20 Q. And since that time, has the policy been
21 included in any pole attachment agreements
22 with new attaching entities?

23 A. No.

24 Q. Have existing pole attachment agreements been

1 amended to include this policy?

2 A. Nope.

3 Q. How is the policy communicated to attaching
4 entities?

5 A. It's a set of guidelines that the surveyors
6 use based on capacity and non-discriminatory
7 access to our plant. So it's not -- it's
8 just one of those things. There are many
9 field conditions that necessitate certain
10 make-ready processes, and it's just one of
11 those. It's not like it's incorporated in
12 the rules, other than the general language of
13 2.6 and 5.3 within the agreements.

14 Q. So is it fair to say that the first that an
15 attaching entity might learn of the policy is
16 when their license application is denied
17 based on it?

18 A. Yes. And especially true with cable TV
19 companies, where they're less inclined to be
20 involved in underground plant.

21 Q. Okay. Thank you for that.

22 And to use the Belmont situation as an
23 example, it seems to me, and perhaps you can
24 confirm this, but it seems to me that that is

1 a scenario where a single safe attachment
2 proposed by Comcast or another potential
3 attacher is denied largely because the
4 Company has a policy that it wants to reserve
5 capacity for future use either by
6 Consolidated or by other third-party
7 attachers. Is that a correct way to
8 characterize that application of the policy?

9 A. Absolutely.

10 Q. I have no further questions. Thank you.

11 A. Thank you.

12 CHAIRWOMAN MARTIN: Commissioner
13 Bailey.

14 COMMISSIONER BAILEY: Thank you.

15 INTERROGATORIES BY COMMISSIONERS:

16 BY COMMISSIONER BAILEY:

17 Q. Good afternoon, Mr. Fournier.

18 A. Good afternoon.

19 Q. I have some questions about your testimony,
20 so if you could get to that for my first
21 question. It's just things I needed to
22 understand what you were saying.

23 On the bottom of Page 6, carrying over
24 to Page 7 -- are you there?

1 A. Yes, I am. I'm reading it.

2 (Witness reviews document.)

3 Q. Okay. "Attachers' employees do not need to
4 work around excess conduit on the poles or
5 multiple risers on the poles. Employees
6 working on the poles have better access to
7 facilities on the poles."

8 What do you mean by that, "Employees
9 working on the poles have better access to
10 facilities on the poles"?

11 A. Better, in terms of easier access to the
12 poles, especially if more than -- especially
13 if multiple customers or third parties rise
14 up in a single duct, or Consolidated, for
15 that matter. It's better if all facilities
16 rise up on the pole in the minimal number of
17 ducts possible --

18 Q. I see. But it's not impossible to work on
19 the poles with, as you said, up to four or
20 five conduits attached.

21 A. Correct.

22 Q. Okay. And the last sentence in that
23 paragraph, "Otherwise, one company's
24 employees -- in the case [of] Comcast

1 Cable -- would have better access to their
2 facilities than the employees of other
3 companies."

4 So you mean if you give Comcast a
5 license to put their own conduit riser on the
6 pole and somebody else is forced to share a
7 conduit with another carrier, Comcast has an
8 advantage?

9 A. Yeah. I mean, it's not a big one, but it is
10 an advantage. There's not much of a -- it's
11 not a huge advantage for Comcast, but there
12 is an advantage.

13 Q. Okay. Can you go down to Line 18 on Page 7,
14 where you say, "The 2017 version of the
15 National Electrical Safety Code Section 36,
16 Subsection 362, requires risers to be
17 installed in the safest position with respect
18 to climbing space and exposure to traffic..."

19 So it looks like the National Electrical
20 Safety Code allows a riser to be installed on
21 a pole; correct?

22 A. Oh, yeah. Yup.

23 Q. Okay. Is it your position that there's no
24 safe position with respect to climbing space

1 and traffic exposure to install a riser on
2 these poles?

3 A. No. I mean, the issue is going forward where
4 you require -- where you're required to
5 provide equal access and non-discriminatory
6 access for other parties. As Terry O'Brien
7 testified, and I totally agree with, each
8 pole can accommodate four or five
9 communication cable risers. As you're
10 standing with your back to the road, facing a
11 pole in a two-way traffic road, you would
12 want those conduits to be on the left side of
13 the road, so that if a car goes off the road
14 and hits the pole, they're not hitting the
15 facilities on the pole, or if a plow goes by,
16 they're not whacking the cables that are
17 rising out of the ground.

18 So basically you've got those four spots
19 or positions on the pole, and you just try to
20 keep them minimized as much as possible. And
21 that's kind of what the NESC is driving at is
22 to try to minimize the number of conduits you
23 got rising up on a pole.

24 Q. And do you have any information that suggests

1 that you might get requests by four or five
2 additional companies to attach to these poles
3 in Belmont?

4 A. Specifically in Belmont? Probably, yes.
5 Twenty-five years ago, you know, the CLECs
6 were just starting up. No one -- if you were
7 to ask me 25 years ago, would there be six or
8 seven or eight, nine attachers on a pole, I
9 would have probably said you were crazy, you
10 know, different companies attaching to a
11 pole. Now, in Belmont, there's only a
12 couple. I don't know offhand how many are on
13 that particular pole. But we do know that
14 small cell companies are currently deploying
15 antennas, small cell antennas on poles all
16 over the place, and their range is 500 feet.
17 Each one of those sites needs a backhaul
18 company. And they can definitely hire
19 different backhaul companies. They can hire
20 Consolidated, Comcast, or any CLEC to provide
21 that backhaul traffic, and they will need to
22 go through rural areas such as this Belmont
23 location to provide that. And you could have
24 as many backhaul companies as you have

1 carriers, cell carriers out there.

2 So do I know specifically of any pending
3 Belmont attacher needing to go onto those two
4 poles? No. But I can imagine within the
5 next four or five years there will be at
6 least small cell companies going on them.

7 Q. Do you know how many aerial attachments are
8 on the middle pole in Belmont?

9 A. No.

10 Q. Do you know whether there's any competitive
11 attachments on that pole?

12 A. I do not know the answer to that question.

13 Q. How about the next pole, the first pole or
14 the third pole? Do you know the answer to
15 that question?

16 A. I don't know who the other attachers are on
17 that pole.

18 Q. Are there other competitive attachers on
19 either of the -- on any of the three poles in
20 Belmont?

21 A. I'm sorry. I couldn't understand the
22 question.

23 Q. Do you know whether there are any competitive
24 attachments, aerial attachments --

1 A. No.

2 Q. You don't know or there aren't any?

3 A. I'm sorry. I do not know the answer to that
4 question.

5 Q. Okay. Do you know of any place in New
6 Hampshire where there are competitive
7 attached pole attachments?

8 A. All over the place.

9 Q. Okay. All right. And --

10 A. We issue about -- well, this year we're at
11 about 2400 applications for pole attachments.
12 Those are all competitors.

13 Q. Okay.

14 A. And each one of those applications could have
15 as many as 200 poles. So they're all over
16 the place.

17 Q. Okay. I want you to think about one pole
18 that you know of that has several competitive
19 attachers and no room left on the pole for
20 the next attacher. Do you have that
21 hypothetical in mind?

22 A. Yup.

23 Q. So how is it not discriminatory to allow the
24 last attacher to take the last position on

1 the pole?

2 A. How is it not discriminatory?

3 Q. Right.

4 A. We're forced to allow people to attach to the
5 pole. I mean, I can't -- I don't know how
6 to -- we do --

7 Q. So they're not --

8 (Court Reporter interrupts.)

9 Q. Go ahead. Sorry.

10 A. I'm sorry. Looked like someone was trying to
11 break in.

12 We do try to maximize capacity, whether
13 it's a pole aerial attachment or a conduit,
14 you know, attaching to the butt of our poles.
15 So we are forced to allow that last aerial
16 attachment to attach to the poles. I mean,
17 that's just the way the agreements read. We
18 can't reserve space unless we have a project
19 planned already within, I think it's a year.
20 I always have to refer back to the documents,
21 to the agreements and everything. But we're
22 just trying to maximize the capacity of our
23 plant. That's all we're trying to do.

24 Q. Okay. Do you have any planned projects in

1 the next year that require riser cable on the
2 poles in Belmont?

3 A. I'm not aware of any.

4 Q. So why do you have the right to prevent this
5 attachment for future attachers?

6 A. Well, we didn't prevent the attachment. We
7 were accommodating them by allowing them to
8 use a conduit that we would own and thereby
9 also provide access to two more attachers
10 down the road. We're just trying to manage
11 the com space, whether that com space is in
12 the air with aerial attachments or on the
13 base of the pole in the form of conduit
14 attachments. It's all limited. Everything
15 is limited. The number of attachments on the
16 pole and the number of attachments on the
17 base of a pole is limited. We're just trying
18 to maximize the use for everybody, for us,
19 Comcast, and any other third-party attacher.

20 Q. But right now there is no other third-party
21 attacher, and Comcast doesn't want to do it
22 that way. What makes you think you can force
23 them to do it that way?

24 A. We're just trying to manage the space in the

1 most fair, non-discriminatory method. If you
2 wait until the capacity of a pole is
3 exhausted to start managing the capacity of
4 the pole, you're going to have trouble. I
5 mean, look at it this way: If you had
6 five -- we have five -- Comcast and
7 Consolidated agree that you can put five
8 conduits at the base of a pole. So you can
9 put three different parties in each conduit;
10 so that's 15 potential pathways you can run
11 through that structure. If you start
12 dedicating one conduit to a party, that 15
13 goes down to 5. You've just eliminated --

14 Q. I get the math. But how tall a pole would
15 you need to install to have 15 aerial
16 attachments additional, 15 additional aerial
17 attachments?

18 A. It depends on the clearance, you know, the
19 other structures around. But, I mean, I'm
20 just trying to give you an example of the
21 reasoning behind the policy and why it's
22 based on capacity and not just a rule.

23 Q. Okay. Do you have a copy of the 1300 rules
24 in front of you or with you, or do you want

1 me to read it to you?

2 A. You can read the part that you want to read.

3 Q. Okay. Okay. "Notwithstanding the obligation
4 set forth in (a) above" -- which is "owners
5 of a pole shall provide attaching entities
6 access to such pole on terms that are just,
7 reasonable and non-discriminatory. Such
8 access shall include wireless facility
9 attachments, including those above the
10 communications space on the pole." All
11 right. So, notwithstanding that, the owner
12 or owners of a pole may deny a request for
13 attachment to such pole if there's
14 insufficient capacity on the pole.

15 Today there is not insufficient capacity
16 on the pole to install one riser cable; is
17 that correct?

18 A. That is correct.

19 Q. Okay. "May deny a request for attachment to
20 such pole for reasons of safety." Is there
21 any safety reason today --

22 A. Under the existing --

23 Q. -- that would that occur with one riser
24 attachment?

1 A. No.

2 Q. Is there any reliability concern with the
3 addition of one riser attachment?

4 A. No.

5 Q. Is there any generally applicable engineering
6 purpose that would be a problem with one
7 riser attachment?

8 A. Except for the future capacity issues, no.

9 Q. Okay. And the other reason that you can deny
10 a pole attachment is if the pole owner does
11 not possess the authority to allow the
12 proposed attachment. But you possess --
13 Consolidated possesses that authority;
14 correct?

15 A. Correct.

16 Q. Thank you. I think that's all I have.

17 A. Thank you, Commissioner.

18 CHAIRWOMAN MARTIN: I just have a
19 couple questions remaining.

20 BY CHAIRWOMAN MARTIN:

21 Q. We've heard a lot about the asset-to-asset
22 policy. Would the effect of that policy
23 essentially be that only Consolidated could
24 have a riser attached to a Consolidated pole

1 if it's asset to asset?

2 A. Correct.

3 Q. Okay.

4 A. But we would allow access into it by other
5 parties.

6 Q. And would Comcast be required to allow access
7 to its conduit by other parties if they had
8 access to the pole from Consolidated?

9 A. That would be a question I don't feel I'd be
10 qualified to answer.

11 Q. Okay. I heard your testimony earlier about
12 DOT right-of-way projects, and I was
13 wondering what the difference is if it's a
14 DOT right-of-way versus a municipality
15 right-of-way.

16 A. The DOT, when they're doing bridge jobs --
17 and that's usually what happens. It usually
18 happens when it's either a limited access
19 highway, like in the case of the Spaulding
20 Turnpike, or if it's a bridge job going over
21 a river or other water. They design and
22 coordinate -- they have utility coordinators
23 that coordinate the work. And typically they
24 ask any party going across their property and

1 their land whether or not they want to
2 participate in providing utility structure in
3 terms of contributing towards conduit for
4 that particular party. And that's the
5 difference. We're kind of at their mercy in
6 terms of how they design it. And they allow
7 these other third parties to pay for their
8 own structure across that bridge, or whatever
9 it is. In this case, it was an underpass
10 that might have been done before they -- you
11 know, Comcast wasn't there before, but they
12 were a party after the fact. And to keep
13 things consistent going across that
14 particular location, we licensed the
15 Rochester ones.

16 Q. But in this case, Belmont did grant access to
17 Comcast to be in the right-of-way; correct?

18 A. I believe so, yes.

19 Q. Okay.

20 CHAIRWOMAN MARTIN: All my other
21 questions have been answered. So we can go
22 back to Mr. McHugh, if you have any redirect.

23 MR. MCHUGH: Chairwoman Martin, I'd
24 like to ask for another ten-minute break so I

1 can confer with my client. We weren't able
2 to talk during the last break, as he was
3 working on his audio.

4 CHAIRWOMAN MARTIN: Can we get that
5 down to five minutes? I think we're running
6 on a fairly tight schedule at this point.
7 Would five minutes work?

8 MR. MCHUGH: Yes.

9 CHAIRWOMAN MARTIN: Okay. Let's
10 take a five-minute recess and return at 1:25.

11 MR. MCHUGH: Thank you.

12 (Brief recess was taken at 1:23 p.m.,
13 and the hearing resumed at 1:30 p.m.)

14 CHAIRWOMAN MARTIN: Let's go back
15 on the record.

16 I do see that Ms. Davis is not on.
17 It looks like she's having a broadband
18 connection issue. Is there any issue with
19 proceeding without her?

20 MR. MCHUGH: No, Chairwoman Martin.
21 At this time we have no further questions of
22 Mr. Fournier.

23 CHAIRWOMAN MARTIN: Okay. Just a
24 minute. We need to go back on the record

1 first. Go back on the record.

2 Mr. McHugh.

3 MR. MCHUGH: Thank you, Chairwoman
4 Martin. At this time I have no further
5 questions for Mr. Fournier.

6 CHAIRWOMAN MARTIN: Okay. The
7 issue of the remaining exhibits has not come
8 up. Are we -- are those being left just
9 marked for I.D. and we'll move to closings?

10 MS. GEIGER: Chairwoman Martin.

11 CHAIRWOMAN MARTIN: Yes.

12 MS. GEIGER: I would ask that they
13 be entered into the record and given the
14 weight that the Commission deems appropriate.

15 CHAIRWOMAN MARTIN: Okay. Mr.
16 McHugh.

17 MR. MCHUGH: And I object. It's a
18 written submission. And when you even look
19 at Mr. Katz's letter, he calls it
20 "commentary." So we have a random commentary
21 about something that allegedly happened in
22 the past. I have no ability to determine the
23 voracity of anything in this letter. I think
24 it's unduly prejudicial, and therefore I

1 think it's relevant [sic] and should be
2 excluded. If that were the case, I could
3 have gone out and tried to get all kind of
4 other folks to file letters as just some
5 gratuitous support for my case. But I think
6 requiring somebody to show up and attest to
7 direct knowledge of the facts that they're
8 asserting is required.

9 CHAIRWOMAN MARTIN: Mr. Wiesner.

10 MR. WIESNER: I'll just note that
11 Mr. Katz is not a party in the case and is
12 not a witness for either party in the case.
13 The letter and photos that he submitted have
14 been included in the docket as comments only.
15 And it is typically the Commission's practice
16 not to consider comments filed by non-parties
17 to be a part of the record for a decision in
18 an adjudicative proceeding.

19 CHAIRWOMAN MARTIN: Okay. On that
20 basis, I will exclude them. I do note that
21 the letter itself would not be admitted as
22 testimony in any case because it has not been
23 sworn to here today.

24 Anything else?

1 '[No verbal response]

2 CHAIRWOMAN MARTIN: Okay. Then
3 let's hear closings, starting with Mr.
4 Wiesner, if you were going to do a closing.

5 MR. WIESNER: I'll just briefly,
6 Madam Chair, note that with the stipulation
7 of facts that was filed in this docket, as
8 well as the testimony that you've heard
9 today, and the legal briefs that will be
10 filed within the next two weeks, we believe
11 that the Commission will have a sufficient
12 record both on facts and on the relevant law
13 to render a decision with respect to
14 Consolidated's policy, which is the crux of
15 this proceeding. And we are optimistic, I
16 would say, and hopeful that that decision can
17 be issued by mid-January, which would fall
18 within the 180 days prescribed by federal
19 law, unless an extension is possible.

20 CHAIRWOMAN MARTIN: Okay. Thank
21 you.

22 Mr. McHugh.

23 MR. MCHUGH: Thank you, Chairwoman
24 Martin. In closing, I'll be generally brief.

1 But really, I think part of what is at issue
2 here is the ability of attachers to do
3 whatever they want on a pole whenever they
4 want. And Consolidated has a right to
5 maintain its assets. It has to comply with
6 the law. There is no dispute here. It has
7 to be -- I'm sorry. The maintenance of the
8 assets at issue, the poles, the conduits, has
9 to be on a non-discriminatory basis. It has
10 to satisfy also the requirements of the
11 Commission's rules. But in this case, it's
12 difficult to maintain the assets when you
13 have a pole that is very limited in what you
14 can do with it -- in this case, for the
15 overhead. So if you think about all of the
16 poles in the state that you would drive by on
17 any given day, just using common sense, you
18 will see that there are poles all over the
19 place. And we have right now, as an example
20 from Mr. Fournier's testimony, we have 2400
21 applications, which could include up to 200
22 pole attachments per application. And when
23 you do the math, it becomes unwieldy to
24 necessarily manage the assets unless you can

1 assure both yourself as the pole owner,
2 yourself, Consolidated, that is, as the party
3 maintaining the telecom space, that all
4 attachers are going to have access to these
5 poles. And that is what Mr. Fournier was
6 attempting to do when the issue came up in
7 the town of Belmont for the poles at issue.

8 In the end, Comcast found an
9 alternative. And when you say, well, Comcast
10 could have had the opportunity to put its own
11 pole -- sorry -- its own riser on the pole
12 and its own conduit on the pole, you're
13 necessarily taking away potential future
14 attachers' rights to attach. Comcast, I
15 think when you look at the rules and you look
16 at the statutes, Comcast is under no
17 obligation to share a riser, no obligation to
18 share its conduit. So I don't think the
19 evidence stands in the record that somehow
20 there are other attachers that could in the
21 Comcast conduit. When you look at all of the
22 exhibits that have been marked, the
23 correspondence going back and forth, Comcast,
24 I believe, says very clearly that they don't

1 want other facilities near their facilities.
2 They want their own assets. And that's part
3 of what was at issue here today, or in the
4 past that led to the hearing of the issues
5 today.

6 So some of the other examples from
7 Mr. O'Brien are really not applicable. I
8 don't think there can be really any argument
9 that somehow Consolidated can dictate to the
10 Department of Transportation how it designs
11 its highway jobs or its bridge jobs. So I
12 don't think they're even comparable. And I
13 believe the testimony shows that the issue
14 that came up in the town of Londonderry is
15 different than what came up in the town of
16 Belmont.

17 Again, going back in time with Mr.
18 Fournier's experience, the first hearing
19 that -- if you look at the Commission's
20 records, I think this is the first hearing
21 over such an issue you're going to have. So
22 I think the fact that Mr. O'Brien feels that
23 this might come up in the future doesn't make
24 it necessarily so. CLECs have been attaching

1 to these poles for decades, and yet this is
2 the only complaint that has come up involving
3 a policy as applicable to maintaining these
4 assets in decades, in terms of at least some
5 complaint before the hearing [sic]. And I've
6 been doing this a long time for the Company.
7 I've never been involved in such a
8 proceeding. But I think you can go back to
9 the Commission's records and the various
10 dockets that are even on the web site in the
11 Virtual File Room, and you're never going to
12 find anything like this. So this is not
13 something that I believe rises to the level
14 of somehow Consolidated violated any rules.

15 And certainly while the FCC might have
16 issued a broad ruling regarding pole
17 attachments, that has always been generally
18 the rule in New Hampshire, in terms of
19 favoring pole attachments. We all know that,
20 especially with the pandemic, broadband
21 access is a significant issue for members --
22 residents of the state of New Hampshire, and
23 yet this is the only complaint you really
24 have about all of the access that's required

1 and for build-out of attachments related to
2 broadband or whatever type of facilities need
3 to go out there.

4 So, you know, in summary, I don't
5 believe that the way Mr. Fournier
6 administered the attachment process as it
7 went up in Belmont, New Hampshire violates
8 the Commission's rules. And we will argue in
9 a brief to that effect.

10 So I do thank -- Commissioner Bailey and
11 Chairwoman Martin, I thank you for your time
12 today.

13 COMMISSIONER BAILEY: Chairwoman
14 Martin, can I ask Mr. McHugh a question?

15 (Connectivity issue)

16 CHAIRWOMAN MARTIN: Can you hear me
17 now? Okay. You can. I was just going to
18 ask him a question. I apologize. He just
19 said "in a brief," and that's the first I've
20 heard of a brief. I don't know if that was
21 your question as well or a different
22 question. Okay. We'll take yours first and
23 then come back to mine.

24 COMMISSIONER BAILEY: Okay.

1 Thanks.

2 Mr. McHugh, I think one of the
3 things I heard you just say, and I want to
4 understand if I heard it right, is that
5 Consolidated doesn't like that Comcast gets
6 to have its own space on the pole and it
7 doesn't have to share its conduit with other
8 providers like Consolidated does. Is that
9 what you meant?

10 MR. MCHUGH: Well, I'm not sure if
11 I meant it that way, in the sense -- and I
12 cannot at this time, and maybe if I have a
13 minute to look through the exhibit list,
14 Commissioner Bailey, but I believe there is a
15 statement in the record in terms of the
16 various back and forths between Comcast and
17 Consolidated during this pole attachment
18 process where Comcast mentioned that they
19 don't want to share or they don't want to be
20 in a shared facility. They want their
21 assets, "segregated" is the wrong word. But
22 basically they want their assets protected
23 from other attachers.

24 And so my point was that if Comcast

1 gets, in this instance in Belmont, to put its
2 own attachments on the pole, I don't see any
3 legal obligation that requires Comcast to
4 share those assets with other attachers.
5 That doesn't mean, you know -- versus, for
6 example, Consolidated has to provide those
7 facilities to other attachers. And that was
8 part of Mr. Fournier's point, that if this
9 was a Comcast -- I apologize -- if this was
10 Consolidated's riser and Consolidated's
11 conduit, it would be sharing those facilities
12 with other attachers on the poles.

13 COMMISSIONER BAILEY: It would have
14 to share it if asked.

15 MR. MCHUGH: Correct.

16 COMMISSIONER BAILEY: And Comcast
17 doesn't have to share theirs because it
18 doesn't fit the definition of "conduit" in
19 374:34-a because that has to be owned by a
20 public utility? Is that the problem? You're
21 on mute.

22 MR. MCHUGH: Sorry. I was
23 saying -- I'm looking for the statute. I'm
24 almost there. But it was 374. I apologize.

1 COMMISSIONER BAILEY: 374:34-a,I.

2 (Pause)

3 MR. MCHUGH: Right. Conduit --
4 apologize. Comcast takes the position that
5 it's deregulated. It doesn't have to share
6 its assets if it doesn't want to.

7 COMMISSIONER BAILEY: Right. So
8 isn't that a legislative problem?

9 MR. MCHUGH: I believe it's --

10 COMMISSIONER BAILEY: I mean --

11 MR. MCHUGH: Oh, sorry. Go ahead.
12 I apologize.

13 COMMISSIONER BAILEY: The law seems
14 to say they don't have to share theirs, and
15 the law seems to say you have to share yours.

16 MR. MCHUGH: Right. With everybody
17 who's going to attach to the poles. So
18 that's right. And Mr. Fournier was
19 attempting to make sure that as many
20 attachers as possible could attach to those
21 poles in Belmont.

22 COMMISSIONER BAILEY: Okay.
23 Thanks.

24 MR. MCHUGH: I'm sorry. Chairwoman

1 Martin, I'm going to put myself on mute, but
2 I believe you had a question?

3 CHAIRWOMAN MARTIN: I did. Can you
4 hear me?

5 MR. MCHUGH: I can.

6 CHAIRWOMAN MARTIN: You mentioned a
7 brief, and we had not discussed briefs. And
8 so I'm curious as to what the thought is
9 related to briefs.

10 MR. MCHUGH: There's a secretarial
11 letter that has been approved which included
12 a briefing schedule. I believe the first
13 round of briefs are due next Friday,
14 December 11th. And I apologize, off the top
15 of my head, but I believe the reply briefs
16 are due either the week after, the Friday
17 after that, the 18th I guess, or sometime
18 after that. I don't recall. But there is a
19 procedural schedule which was approved by the
20 secretary letter.

21 CHAIRWOMAN MARTIN: Mr. Wiesner,
22 can you just go through that for Commissioner
23 Bailey and myself?

24 MR. WIESNER: Yes, Attorney McHugh

1 is correct. The approved procedural schedule
2 for this docket provides for the opportunity
3 to file initial briefs by the 11th and reply
4 briefs by the 18th.

5 CHAIRWOMAN MARTIN: Okay. And it
6 sounds like, Mr. McHugh, you're planning on
7 doing that?

8 MR. MCHUGH: We are.

9 CHAIRWOMAN MARTIN: Okay.

10 Ms. Geiger.

11 MS. GEIGER: Yes. Thank you,
12 Chairwoman Martin. Given that the briefs
13 have been -- a briefing schedule has been
14 established for this docket, I wasn't
15 planning on making any kind of closing
16 statement. But I will just leave you with a
17 very brief one, and that is that, as
18 Commissioner Bailey outlined in her
19 questioning of Mr. Fournier, the Commission's
20 rules are very clear about the process and
21 the criteria by which a pole attachment
22 license application are to be denied, and
23 that does not include the ability to deny a
24 pole attachment license request based on a

1 company policy that is grounded in the
2 company's wishes to efficiently manage its
3 plant. Each application has to be decided on
4 its own merits, and it has to be decided with
5 respect to the conditions of the poles that
6 the Applicant is seeking to attach to. And
7 in this case, that did not happen. The poles
8 in this case, as we've heard directly from
9 Mr. Fournier, and in the stipulation, there
10 is capacity on these poles. In fact, Mr.
11 Fournier admitted that with respect to these
12 poles in Belmont, there are no safety,
13 reliability or generally applicable
14 engineering reasons that would prevent
15 Comcast from installing its own risers on
16 these poles.

17 And I appreciate, and Comcast
18 appreciates very much the Commissioners' time
19 and attention this morning, and we look
20 forward to the opportunity to submit our
21 initial brief next Friday. Thank you.

22 (Pause)

23 CHAIRWOMAN MARTIN: All right. Can
24 you hear me now? Okay. I apologize for

1 asking. I am double-muted some of the time.

2 All right. Well, thank you,
3 everyone. With that, we will close the
4 record, other than for the briefs, and take
5 the matter under advisement. This hearing is
6 adjourned. Have a good weekend.

7 (Whereupon the hearing adjourned at 1:44 p.m.)

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