

STATE OF NEW HAMPSHIRE

Before the

PUBLIC UTILITIES COMMISSION

DE 21-020

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

d/b/a EVERSOURCE ENERGY and

CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND

COMPANY, LLC d/b/a CONSOLIDATED COMMUNICATIONS

Joint Petition to Approve Pole Asset Transfer

PREFILED DIRECT TESTIMONY OF

PATRICIA D. KRAVTIN

On Behalf of

NEW ENGLAND CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC.

January 31, 2022

PREFILED DIRECT TESTIMONY OF PATRICIA D. KRAVTIN

1 **I. Introduction, Qualifications and Purpose of Testimony**

2 **Q. Please state your name, position and business address.**

3 A. My name is Patricia D. Kravtin. I am principal and owner of Patricia D. Kravtin
4 Economic Consulting, a private practice specializing in the analysis of communications and
5 energy regulation and markets. My business address is 2100 Park Avenue, Unit 682316,
6 Park City, Utah 84068.

7 **Q. On whose behalf are you testifying?**

8 A. I am testifying on behalf of intervenor New England Cable and Telecommunications
9 Association, Inc. (“NECTA”). A description of NECTA is contained in Mr. White’s prefiled
10 testimony.

11 **Q. Please provide a brief summary of your educational background and experience.**

12 A. I received a B.A. with Distinction in Economics from the George Washington University.
13 I studied in the Ph.D. program in Economics under a National Science Foundation
14 Fellowship at the Massachusetts Institute of Technology (M.I.T.), completing all course
15 requirements for the Ph.D. degree and passing oral and written examinations in my chosen
16 fields of study: government regulation of industry, industrial organization, and urban and
17 regional economics. My professional background includes a wide range of consulting
18 experiences in regulated industries. Between 1982 and 2000, I was a consultant at the
19 national economic research and consulting firm Economics and Technology, Inc. (ETI) in
20 that firm’s regulatory consulting group, where I held positions of increasing responsibility,

1 including Senior Vice President/Senior Economist. Upon leaving ETI in September 2000, I
2 began my own consulting practice specializing in telecommunications, cable, and energy
3 regulation and markets.

4 During the forty years of my professional career, I have been actively involved in the field of
5 public utility economics, policy, and regulation. I have worked extensively in the area of
6 telecommunications economics and regulatory policy, focusing on such issues as industry
7 structure, competition and market analysis, cost allocation, capital recovery, utility
8 infrastructure, cost and demand studies, total factor productivity, and deployment of
9 advanced broadband technologies. I have conducted numerous studies and authored a
10 number of studies and papers pertaining to these issues among others. A detailed resume
11 summarizing my training, previous experience, and prior testimony and reports is provided as
12 Attachment PDK-1 to this testimony.

13 **Q. Please describe your experience of particular relevance to this proceeding.**

14 A. Over the course of my career, I have been actively involved in a number of state and
15 federal regulatory commission proceedings involving rates charged by utilities in exchange
16 for access to their poles, ducts, conduits, and rights-of-way. Many of the proceedings in
17 which I have served as an expert have involved the calculation of just and reasonable pole
18 attachment rental rates. Through the course of my involvement in these proceedings, I have
19 substantial experience in applying regulated rate formulas.

20 I have testified or served as an expert witness on these and other related telecommunications
21 matters in proceedings before over 30 state, provincial, and federal regulatory commissions,
22 including the Federal Communications Commission (“FCC”), the Federal Energy Regulatory

1 Commission (“FERC”), the Canadian Radio-television and Telecommunications
2 Commission (“CRTC”) and the Ontario Energy Board. In addition, I have testified as an
3 expert witness in litigation before a number of state and federal district courts on matters
4 relating to telecommunications competition, market power, and barriers to entry, and
5 concerning access and use of poles, conduits, and public rights-of-way. I have also testified
6 before a number of state legislative committees and served as advisor to a number of state
7 regulatory agencies.

8 In addition, I have submitted reports on pole attachment rates, terms and conditions in
9 numerous proceedings before the FCC. Most recently, I authored a paper submitted to the
10 FCC in WC Docket No. 17-84 concerning broadband deployment in unserved, rural areas of
11 the country. I submitted reports in the Commission’s seminal 2010 pole rulemaking
12 proceedings, *Implementation of Section 224 of the Act; A National Broadband Plan for Our*
13 *Future*, as well as its 2007-2008 predecessor. In 2006, I submitted testimony and was subject
14 to live cross-examination before the FCC’s Chief Administrative Law Judge in a complaint
15 proceeding pertaining to utility compensation for pole attachments.

16 I have also been actively involved in the area of broadband deployment, having testified
17 extensively on the matter. In addition to having authored a number of reports on the subject,
18 *see* Attachment PDK-1, I participated as a grant reviewer for the Broadband Technology
19 Opportunities Program administered by the National Telecommunications and Information
20 Administration.

21 **Q. Have you previously testified before this Commission?**

1 A. Yes. I testified before this Commission in docket DT 12-084, *Time Warner*
2 *Entertainment Company L.P. d/b/a Time Warner Cable, Petition for Resolution of Dispute*
3 *with Public Service Company of New Hampshire*, on behalf of Time Warner Cable. That
4 case resulted in a settlement that adopted the Unified Pole Rent Formula that Eversource uses
5 to set pole attachment rates in New Hampshire. In addition, I testified in the Commission's
6 1992 *Generic Competition Docket*, DR 90-002, on behalf of the Office of the Consumer
7 Advocate. My testimony in that proceeding addressed the economics of monopoly
8 bottleneck toll and switched access services, and the design and implementation of intrastate
9 access charges.

10 **Q. What is the purpose of your testimony in this docket?**

11 A. The purpose of my testimony is to present information regarding the net book value of
12 the poles that Consolidated proposes to transfer to Eversource ("the Transferred Poles"), and
13 how that value impacts the rates that pole attachers such as NECTA members must pay to
14 rent pole space for their facility attachments to the poles. My testimony also presents
15 information supporting the position that the Consolidated rates that Eversource proposes to
16 charge for the Transferred Poles are excessive and therefore are not just and reasonable, and
17 that the pole attachment fees to be paid by Consolidated to Eversource for the first two years
18 after the pole transfer are discriminatory. My testimony also makes recommendations to
19 address the above-described issues.

20 **II. Net Book Value of the Transferred Poles**

21 **Q. Please explain why the issue of the net book value of the Transferred Poles is**
22 **relevant in this proceeding.**

1 A. The net book value (“NBV”) of the Transferred Poles is relevant to this proceeding in
2 several respects, but especially insofar as it impacts entities such as NECTA members and
3 other entities that have attachments on the Transferred Poles. This is because NECTA
4 members - in addition to being customers of Eversource’s retail electric services subject to
5 rates, and other cost recovery mechanisms impacted by the net revenue requirement of
6 Eversource’s pole acquisition - must also pay annual pole attachment fees for the Transferred
7 Poles that are directly impacted by the acquisition transaction.

8 Historically and continuing to the present day, NECTA members have no practical or
9 economically feasible alternative but to attach to the existing network of utility poles in order
10 to provide their broadband and other advanced communication services to end user
11 subscribers. The pole attachment fees that NECTA members pay Eversource for access to
12 the latter’s poles in New Hampshire are calculated using a formula contained in a 2012
13 settlement agreement that follows the Telecom Rate Formula adopted by the FCC pursuant to
14 Section 224 of the Federal Communications Act (47 U.S.C. Section 224). That formula
15 methodology is based on a regulatory, just and reasonable net book value of Eversource’s
16 pole assets, expressed on a per unit basis. An overview and explanation of the regulatory
17 pole attachment rate formula is provided in Attachment PDK-2.

18 As described further below, regulatory accounting data concerning the regulatory net book
19 value of Consolidated’s pole assets which Consolidated provided in response to the
20 Commission’s order on NECTA’s Motion to Compel, indicates the purchase price
21 Eversource agreed to pay Consolidated for the Transferred Poles is well in excess of the just

1 and reasonable regulatory net book value amount for these poles.¹ Eversource has indicated
2 that the full Net Purchase Price of the Transferred Poles will be incorporated into its
3 accounting system as the Book Value of the Transferred Poles. *See* Attachment PDK-3. To
4 the extent Eversource is permitted to book this acquisition premium (i.e., the difference
5 between its negotiated purchase price and the regulatory net book value of the Transferred
6 Poles) to the pole asset account (FERC Account 364) used to calculate the regulated rate
7 formula, future pole attachment rates calculated and charged by Eversource based on the
8 purchase price of the Transferred Poles will be in excess of the lawfully permitted, just and
9 reasonable level.

10 Table 1 below shows mechanically how the net book value figure for poles enters into the
11 calculation of the regulated rate formula, and why a higher NBV, all other things being equal,
12 produces a higher pole attachment rate. The estimated impact on the pole rate associated
13 with Eversource's acquisition premium is calculated using the below template in Attachment
14 PDK-4 CONFIDENTIAL.

¹See Consolidated's filing dated December 6, 2021 pursuant to Commission Order No. 26,534 providing "restated figures responsive to NECTA's [data] requests [2-019 and 3-020]," as a response to a Commission request for specific answers pursuant to RSA 365:15.

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Table 1		
Illustration of How Net Book Value Enters into the Calculation of the Regulated Pole Attachment Rate Formula		
Line	Formula Input/Calculation	Source/Notes:
1	Gross Investment in Pole Plant	As reported in FERC Form 1 Acct 364
2	- Accumulated depreciation for poles	Prorated from Distribution Plant
3	- Accumulated deferred income taxes for poles	Prorated from Total Utility or Electric Plant including Excess ADIT
4	= Net Book Value of Poles	Ln 1- Ln 2- Ln 3
5	x (1- Appurtenances Factor)	FCC Rebuttable Presumption
6	= Net Bare Pole Investment	Ln 4 x (1-.15)
7	/ Total Number of Poles	Actual per Utility Records
8	= Net Book Value/Pole	Ln 6 /Ln 7
9	x Carrying Charge Factor	Per FCC Methodology (see Att. PDK-2)
10	x Usable Space Factor =	Per NH Unified Rate Formula
11	Pole Attachment Rate	Ln 8 x Ln 9 x Ln 10

2

3 **Q. From a regulatory standpoint, what would be the appropriate treatment of the**
 4 **acquisition premium paid by Eversource for purposes of the calculation of the regulated**
 5 **rate formula for pole attachments?**

6 A. The appropriate treatment for purposes of the pole rate calculation would be to exclude the
 7 acquisition premium from the value assigned to pole plant in service. Just and reasonable pole
 8 attachment rates pursuant to effective pole rate regulation should compensate pole owners for
 9 dollars invested in actual utility pole assets; they should not be used for providing capital
 10 recovery of the amounts that shareholders paid in excess of the net book value of the pole assets
 11 on the date they were acquired. Attachment PDK-5 provides an example involving a peer New
 12 England utility in which the accounting treatment I am recommending was applied to total utility
 13 plant in service in connection with an acquisition of another utility, but the same principle
 14 applies in the context of Eversource's acquisition of Consolidated pole plant.

1 **Q. Given that the pole rate formula is calculated based on Eversource's total embedded**
2 **base of pole plant booked to FERC Account 364 (\$324-million as reported in the year-end**
3 **2019 FERC Form 1 Report), wouldn't that suggest the actual dollar impact on the pole rate**
4 **will be a relatively small dollar amount given the relative magnitude of the net book value**
5 **of the Transferred Poles (approximately \$16-million per Table 2 below)?**

6 A. While the dollar impact of the acquisition premium on the pole rate as estimated in
7 Attachment PDK-4 CONFIDENTIAL discussed above may seem to be a relatively small amount
8 in absolute terms, it is important to understand that the dollar impact of the acquisition premium
9 paid by Eversource will be incorporated into the pole rate for every year going forward because
10 the formula is calculated on the embedded base value of plant. Also, the impact of the
11 acquisition premium on the pole rate is additive to an already excessive pole rate rate that
12 Eversource is currently charging pole attachers. Based on data provided by Eversource in
13 response to a Staff Data Request,² I have determined Eversource's 2021 pole rate (based on
14 year-end 2019 costs) is overstated by approximately \$2.00 (17.5% higher) vis-a-vis the just and
15 reasonable pole rate calculated using economically appropriate inputs and the correct application
16 of the Unified Pole Rent Formula in accordance with current FCC rules and regulations.³ Also,
17 because a number of poles are typically required to reach the average subscriber, particularly in

²See Attachment PDK-20 (Attachment to Response to Staff 1-027).

³Specifically, Eversource (1) overstated its rate of return input vis-à-vis the most current state authorized rate, (2) understated pole height vis-à-vis the actual average pole heights per inspection report data provided in Response to Staff 3-005.b and as described in Response to NECTA TS 3-004, see Attachment PDK-21, and (3) failed to apply the current FCC rules pertinent to the Unified Pole Rent Formula which apply an additional adjustment factor to the Telecom formula upon which the Unified Pole Rent Formula is based, that is scaled to the number of attaching entities. See FCC 15-151, rel. November 24, 2015, Appendix A. To my reading, NH's pole attachment rate review standards as set forth in Rule Puc 1304.06 (a)(5) refers to the formulae adopted by the FCC in 47 C.F.R. §1.1409(b) through (g) in effect on October 1, 2017.

1 less dense areas, the impact of any overcharge on a per pole basis is going to be a multiplier of
2 the per pole rate.

3 To put Eversource's excessive pole rates (some 17% higher than the just and reasonable rate)
4 into economic perspective, consider that the economic literature defines market power as the
5 ability of a dominant firm to be able to charge prices 5% in excess of the economic cost of the
6 service.⁴ Pole rates are regulated for the express purpose of constraining the market power over
7 poles enjoyed by the pole owning utility and ensuring just and reasonable rates for access by
8 communications providers to an essential facility, i.e., the existing utility pole network. Hence,
9 to permit the pole owning utility to charge pole attachment rates in excess of the just and
10 reasonable rate is in contravention of effective pole rate regulation.

11 **Q. Please explain why the issue of increased pole attachment rates is relevant in this**
12 **proceeding.**

13 A. Pole attachment rates are a key cost component of providing broadband service, and given
14 the vital role of broadband service to citizens of New Hampshire, the public good is not furthered
15 by allowing the pole owning utility to extract rates for pole attachments needed to provide
16 broadband service in excess of the just and reasonable level. As explained above, because the
17 NBV is a key component of the pole formula methodology used to determine pole attachment
18 rates, any transaction such as Eversource's proposed acquisition of Consolidated's poles that has

⁴For a lay description of the "Hypothetical Monopolist Test" and the 5% "small but significant and non-transitory increase in price standard" ("SSNIP") used as a benchmark of market power, see U.S. Department of Justice and the Federal Trade Commission, issued August 19, 2010, Sections 4.1.1-4.1.2, at 8-13. Horizontal Merger Guidelines, <https://justice.gov/atr/horizontal-merger-guidelines-08192010>.

1 the potential of increasing the NBV of Eversource’s total pole assets (expressed on a per unit
2 basis) will result in higher pole attachment rates, all other factors being equal.

3 As I have previously testified before this Commission⁵ and regulatory bodies nationwide, and
4 articulated in numerous reports,⁶ higher pole attachment rates, in excess of just and reasonable
5 levels, negatively impact the public good in that they siphon off dollars that broadband
6 companies would otherwise be able to invest in and innovate broadband services, as well as
7 ultimately raise the rates they must charge end user subscribers. Given the vital importance of
8 broadband services, especially in the post-pandemic environment, anything that negatively
9 impacts broadband services is not for the public good.

10 Increased pole attachment rates resulting from the book value of the transferred poles in excess
11 of their regulatory net book value will result in financial harm to pole attachers like NECTA
12 members and the broadband subscribers they serve. However, the Joint Petition filed by
13 Eversource and Consolidated fails to even acknowledge that this transaction will adversely
14 impact pole attachment rates, and instead asserts at page 10 that the Joint Petitioners “foresee no
15 adverse impact to the public as a result of the transaction.”

16 **Q. Please explain why the transaction’s impact on the public is relevant in this proceeding.**

⁵ See Initial Direct Testimony of Patricia D. Kravtin in *Time Warner Entertainment Company L.P. d/b/a Time Warner Cable, Petition for Resolution of Dispute with Public Service Company of New Hampshire*, DT 12-084, on behalf of Time Warner Entertainment Company L.P. d/b/a Time Warner Cable, Comcast Cable Communications Management, LLC, Comcast of New Hampshire, Inc., Comcast of Massachusetts/New Hampshire, LLC, and Comcast of Maine/New Hampshire, Inc., July 20, 2012.

⁶ See, e.g., *Advancing Pole Attachment Policies to Accelerate National Broadband Buildout*, co-authored with Dr. Edward Lopez, underwritten by Connect the Future, December, 2021, <https://connectthefuture.com/advancing-pole-attachment-policies-to-accelerate-national-broadband-buildout/>.

1 A. In paragraph 13 of their Joint Petition, Eversource and Consolidated have stated that in
2 reviewing an asset transfer such as the instant one, the Commission must apply a “no net harm”
3 standard, and that under that standard the Commission should approve the transaction unless it
4 “will have an adverse impact on the public.” As demonstrated below, because Eversource is
5 paying above regulatory net book value for the transferred assets, and plans on booking that
6 acquisition premium into Account 364 such that it will be recoverable from pole attachers, the
7 transaction will result in economic harm in the absence of my recommendation regarding the net
8 book value that should be assigned to the Transferred Poles.

9 **Q. Please state the value that you believe should be assigned to the Transferred Poles.**

10 A. As explained above, the appropriate value of the Transferred Poles for purposes of
11 calculating the regulated pole rate formula in accordance with N.H. Code Admin. Rules Puc
12 1301.01 and RSA 374:34-a is the just and reasonable regulatory net book value of the underlying
13 pole assets. The ability of the formula methodology to produce a just and reasonable rate is
14 dependent on the individual input values used in the calculation of the formula, which
15 themselves must be just and reasonable from a regulatory perspective. That the underlying pole
16 assets have changed ownership multiple times (*i.e.*, from Verizon to Fairpoint to Consolidated)
17 and been subject to non-regulatory based accounting adjustments in connection with these
18 market transactions is irrelevant for purposes of determining the appropriate value of the
19 Transferred Poles for purposes of calculating a just and reasonable regulated pole attachment
20 rate. The appropriate value is one that is a reasonable proxy for a just and reasonable regulatory
21 net book value, *i.e.*, one that reflects the application of capital recovery parameters consistent
22 with regulatory principles.

1 **Q. Have you been able to calculate an appropriate regulatory net book value figure for the**
2 **Transferred Poles for purposes of the pole attachment rate going forward from the date the**
3 **transferred assets are recorded into Eversource’s Account 364?**

4 A. Yes, I have. The data needed to calculate the appropriate regulatory net book value figure
5 was ultimately provided in response to NECTA discovery compelled pursuant to Commission
6 Order No. 26,534.⁷ The data provided by Consolidated provides a restatement of Consolidated
7 pole assets pursuant to Uniform System of Accounts (“USOA”) Part 32 regulatory accounting
8 principles in the format historically reported to the FCC in ARMIS Annual Summary Report,
9 “Table III - POLE AND CONDUIT RENTAL” as of year-end 2020. The provided data is
10 reproduced in Attachment PDK-6. Table 2 below contains my calculation of the appropriate
11 regulatory net book value of the Transferred Poles based on the data provided by Consolidated.
12 As shown in Table 2, because the data provided was for the total pole assets of Consolidated, an
13 adjustment was required to reflect the percentage of pole assets involved in the transfer. The
14 adjustment I have applied is based on the proportion of total Consolidated poles being acquired
15 by Eversource in the proposed transaction (69%). While Petitioners identified a higher (75%)
16 than proportionate percentage of Consolidated pole assets in a revised discovery response, *see*
17 Attachment PDK-7, Petitioners have not provided any substantive explanation for the revised
18 percentage relative to the number of poles, *see* Attachment PDK-8, other than citing the generic
19 “factors related to the age of poles/date of poles being placed in service.” Such justification
20 would require Petitioners to demonstrate the Transferred Poles to be of younger vintage or higher

⁷ See Consolidated filing dated December 6, 2021 pursuant to the Commission’s Order No. 26,534, Consolidated Communications of Northern New England Company, LLC (“Consolidated”) providing “restated figures responsive to NECTA’s [data] requests [2-019 and 3-020],” as a response to a Commission request for specific answers pursuant to RSA 365:15.

1 service quality so as to warrant a net book value greater than average; in fact, the information
2 provided by Petitioners fails to make such a showing. If anything, Petitioners' adjustment for
3 Transferred Poles failing inspection supports the opposite finding. *See* Attachment PDK-9
4 CONFIDENTIAL.

5

Table 2			
Calculation of Just and Reasonable Regulatory Net Book Value for Determining a Just and Reasonable ("J&R") Regulated Pole Attachment Rate for the Transferred Poles			
	CCI 2020 ARMIS Report	ARMIS Value	Source/Notes:
1	Gross Pole Investment	\$63,500,000	ROW 101
2	- Accumulated Depreciation - Poles	\$35,765,000	ROW 201
3	- Deferred Operating Income Taxes - Poles	\$ 4,865,000	ROW 404
4	= Net Pole Investment	\$22,870,000	Ln 1-Ln 2-Ln 3
5	Number Transferred Equivalent Sole Poles	175,393	Joint Petition
6	Total CCI Poles	251,845	ROW 601
7	Pct. Transferred Equiv. Sole Poles/Total CCI Poles	.6964	Ln 5/ Ln 6
8	J &R Net Book Value of Transferred Poles	\$15,927,407	Ln 4 x Ln 7
Source: Data provided pursuant to Order No. 26,534; Joint Petition to Approve Asset Transfer.			

6

7 **III. Consolidated's Pole Attachment Rates**

8 **Q. Please explain why Consolidated's pole attachment rates are relevant in this**
9 **proceeding.**

10 A. Consolidated's current pole attachment rates are relevant because, post transfer,
11 Eversource proposes to charge pole attachers (other than Consolidated) Consolidated's rates
12 for the Transferred Poles. *See* Attachment PDK-10. Eversource will bill for attachments on
13 poles that were previously jointly owned with Consolidated at the Eversource jointly owned
14 rate and the Consolidated jointly owned rate. *Id.* Attachments on poles that were previously
15 solely owned by Consolidated will continue to be billed the Consolidated solely owned pole

1 attachment rate, and attachments on poles listed as joint use on Consolidated’s invoices will
2 continue to be billed at the same rate, *i.e.*, Consolidated’s jointly owned rate. *Id.* Eversource
3 plans to integrate the costs and data associated with the Transferred Poles into its pole rate
4 calculation in the future, but until that occurs, third-party pole attachers will continue to
5 receive two bills for their attachments on poles that were previously jointly owned by
6 Consolidated and Eversource. *See* Attachment PDK- 11.

7 **Q. In dollar terms, what are the pole attachment rates that Eversource proposes to**
8 **charge for the Transferred Poles after the transaction closes?**

9 A. As delineated above, it is my understanding that Eversource is proposing to charge rates
10 for the Transferred Poles at the current rate being charged attachers by Consolidated for the
11 various types of poles. Those rates (expressed below as “CCI”), along with the Eversource
12 counterpart, expressed on an annual per pole basis, are summarized in Table 3 below.

13

Table 3		
Current Pole Attachment Rates Charged by CCI on Transferred Poles that Eversource Would Continue to Apply in the First Two Years Post-Transfer		
Pole Category:	Rate (Pre-Transfer Invoicing Entity):	Notes:
CCI Sole Owned	\$11.67 (CCI)	
CCI Joint Owned	\$6.84 (CCI) + \$7.09 (Eversource) = \$13.93	Eversource 2022 rate, attachers will be charged at current Eversource Joint Owned Rate calculated based on pre-Transfer poles.
CCI Joint Use	\$ 6.84 (CCI) + \$14.17 (Eversource) = \$21.01	Eversource will discontinue charging the additional CCI rate for JU poles post-transfer. <i>See</i> Mr. White’s Testimony.
Eversource Sole Owned	\$14.17	Eversource 2022 Rate, attachers will be charged at current Eversource Joint Owned Rate calculated based on pre-transfer poles.
Sources: Attachments PDK-10, PDK-11, PDK-17, PDK-18, and PDK-19.		

14

1 **Q. Paragraph 6 of Joint Petition asserts that “[i]n compliance with N.H. Code Admin.**
2 **Rules Puc 1301.01 and RSA 374:34-a, [Consolidated’s] pole attachment fees are**
3 **nondiscriminatory, just and reasonable.” Do you agree with that statement?**

4 A. I do not agree that Consolidated’s pole attachment rates are nondiscriminatory, just and
5 reasonable. First, Consolidated’s rates were not calculated according to the regulatory cost-
6 based formula methodology applicable to pole owners pursuant to New Hampshire Rule Puc
7 1304.06(a)(5) or, for that matter, any particular cost methodology or standard such as would
8 demonstrate the rates charged met a regulatory just and reasonable standard. *See* Attachment
9 PDK-12. Consolidated has further stated it is not required to adhere, nor have its rates been
10 set to adhere, to the FCC rules applicable to rate regulated carriers which include the
11 application of an Implementation Rate Differential for carriers electing to use GAAP
12 accounting standards rather than the regulatory USOA system of accounts. *See* Attachment
13 PDK-13.

14 Second, to be just and reasonable from a regulatory standard perspective, the rates charged
15 by Consolidated (and those charged by Eversource for the Transferred Poles until it
16 recalibrates its pole rates to reflect acquisition of the Transferred Poles) would need to reflect
17 an appropriate just and reasonable regulatory net book value consistent with regulatory
18 treatment of depreciation and deferred income taxes applicable to regulatory assets. The
19 appropriate regulatory net book value for purposes of calculating a just and reasonable pole
20 attachment rate would be determined in accordance with USOA accounting requirements
21 consistent with those reported in the ARMIS reports for communications carriers designated
22 for that purpose described above and as presented in Table 2. However, Consolidated has

1 made clear in response to multiple discovery responses its position that it is not subject to
2 regulatory accounting requirements or other standards for capital recovery applicable to
3 regulatory assets, *see* Attachments PDK-7,⁸ PDK-13, PDK-14, nor has it relied on ARMIS
4 reporting. *See* Attachment PDK- 15.⁹

5 **Q. Do you have an opinion as to what regulatory formula should apply to the pole**
6 **attachment rates applicable to the Transferred Poles such that they meet the**
7 **nondiscriminatory, just and reasonable rate standard, and the public good standard**
8 **that applies to the pole transfer?**

9 A. Yes, I do. Consolidated's pole attachment rates that Eversource proposes to charge for
10 the Transferred Poles, to meet the regulatory standard of nondiscriminatory just and
11 reasonable, should be calculated using the same pole attachment rate review standards set
12 forth in N.H. Code Admin. Rule Puc 1304.06 (a)(5). These are:

13 (a) In determining just and reasonable rates for the pole attachments of cable television service
14 providers, wireless service providers, and excepted local exchange carriers that are not incumbent
15 local exchange carriers to poles owned by electric utilities or incumbent local exchange carriers under
16 this chapter, the commission shall consider:
17 (1) Relevant federal, state, or local laws, rules, and decisions;
18 (2) The impact on competitive alternatives;
19 (3) The potential impact on the pole owner and its customers;
20 (4) The potential impact on the deployment of broadband services;

⁸ *See* Attachment PDK-7: ("As an initial matter, it is important to note that Consolidated, as a minimally regulated Excepted Local Exchange Carrier under New Hampshire law, is not required to adhere to regulatory accounting requirements applicable to EDCs for ratemaking purposes. In particular, the depreciation expense recorded for GAAP purposes is not required to be the result of a Commission-approved depreciation study, as is the case for regulated utilities. Consequently, from the point at which Consolidated purchased FairPoint Communications in 2017, it has depreciated its purchased pole plant over an approximate 5-year period. This extraordinarily shortened amortization period was the result of a management decision based on GAAP purchase accounting and has the effect of allowing Consolidated Communications to minimize any potential accounting losses at the time of sale that would arise from having a higher GAAP net book value. As a result, the Joint Petitioners do not see Consolidated's GAAP net book value as a relevant or useful data point for purposes of going forward ratemaking for Eversource post-acquisition. Unlike the net book value reported for a regulated utility, which represents the unrecovered plant balance not-yet-paid for by customers, Consolidated's GAAP reported net book value does not represent an amount paid for (or not paid for) by its customers.")

⁹ Response to NECTA 1-045 ("Consolidated Communications has not filed ARMIS reports for these years. Consolidated is not required to file these reports for its New Hampshire study area.")

1 (5) The formulae adopted by the FCC in 47 C.F.R. §1.1409(b) through (g) in effect on October 1,
2 2017; and

3 (6) Any other interests of the subscribers and users of the services offered via such attachments or
4 consumers of any pole owner providing such attachments, as may be raised.
5

6 In my opinion, the formula for calculating Consolidated's rates that is most consistent with
7 the purpose of effective pole rate regulation and to best serve the public interest is the widely
8 accepted and most commonly used FCC cable formula or the equivalent current formulation
9 of the FCC telecom rate formula which is effectively identical to the FCC cable formula. At
10 the very minimum, the pole attachment rates applicable to the Transferred Poles must be no
11 greater than those calculated using the Unified Pole Rent Formula as adopted in the 2012
12 Settlement with Time Warner et al.

13 **Q. Have you determined just and reasonable pole attachment rates for Consolidated**
14 **that would be applicable at the time of Eversource's acquisition and until such time as**
15 **Eversource integrates the Consolidated pole assets into its FERC Form 1 books of**
16 **account?**

17 A. Yes. I have calculated appropriate Consolidated pole attachment rates and present a
18 summary of my rate calculations in Table 4 below.
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21
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23

1

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Table 4				
Just and Reasonable Pole Attachment Rates for Consolidated Transferred Poles at Time Transaction Closes Until Integration with Eversource FERC Form 1 Books of Account Calculated Under NH Unified Pole Rent Formula				
Based on Year-End 2020 ARMIS Annual Summary Report Table III, Provided Pursuant to Order 26,534		Just and Reasonable Input Values, FCC Rules as of 2012	Just and Reasonable Input Values, FCC Rules as of 2015	ARMIS ROW/ Calculation
1	Gross Investment in Pole Plant	\$63,530,000	\$63,530,000	ROW 101
2	- Accumulated depreciation for poles	-\$35,765,000	-\$35,765,000	ROW 201
3	- Accumulated deferred income taxes for poles	-\$4,865,000	-\$4,865,000	ROWS 401,404
4	= Net Pole Investment	\$22,900,000	\$22,900,000	Ln 1 - Ln 2- Ln 3
5	x (1- Appurtenances Factor)	.95	.95	FCC 5% Rebuttable Presumption or Actual
6	= Net Bare Pole Investment	\$21,755,000	\$21,755,000	Ln 4 x L5
7	/ Total Number of Poles	251,845	251,845	ROW 601
8	= Estimated NBV Value/Pole*	\$86.38	\$86.38	Ln 6 / Ln 7
9	x Carrying Charge Factor	.9279	.9279	Per FCC Methodology
10	x Usable Space Factor =	.1847	.1847	Per FCC Methodology
11	x Cost Reduction Factor	.44	.396	Pre/Post 2015 FCC Rules
12	Just & Reasonable Pole Rate Sole Owned	\$6.51	\$6.31	L 8 x L9 x L10 x L11
13	Just & Reasonable Pole Rate Joint Owned	\$3.26	\$3.16	L12/2

3 **Q. Please explain the basis of your just and reasonable rate calculations presented in Table**
4 **4 above.**

5 A. As explained above, in my opinion, the just and reasonable rates would be those calculated in
6 accordance with N.H. Code Admin. Rules, which to my understanding would warrant the
7 application of the current FCC rules pursuant to Section 224 of the Communications Act. The
8 new rules were implemented in recognition of the critical role that pole attachment rates play in
9 promoting broadband services and the greater public good. The new rules effectively equilibrate
10 the FCC telecom formula upon which the Unified Pole Rent Formula was directly based with the
11 more widely used FCC cable formula. In addition, the rates I have calculated use the regulated
12 just and reasonable net book value for the Transferred Pole assets consistent with those reported
13 in the ARMIS for communications carriers. For the reasons explained earlier, the use of the

1 equivalent regulatory net book value for the Transferred Poles, *i.e.*, the net book value
2 determined in accordance with regulatory accounting principles, is required in order to produce
3 just and reasonable pole rates consistent with the fundamental purpose of effective pole rate
4 regulation – *i.e.*, to prevent the pole owner from leveraging its market power over the essential
5 pole facilities needed by broadband providers to provide their service to the detriment of the
6 public good.

7 For comparison purposes, and in recognition of this Commission’s jurisdiction over pole rates,
8 Table 4 also presents the corresponding pole rates calculated for the Transferred Poles using the
9 FCC rules in effect in 2012 at the time of the Settlement and initial application of the Unified
10 Pole Rent formula was adopted. The only difference between the two is the current FCC rules
11 apply a cost reduction factor that varies with the number of attaching entities as opposed to the
12 former’s fixed constant. As applied to New Hampshire service areas which meet the FCC
13 definition of “rural,” this means the use of a cost reduction factor of .396 corresponding with the
14 settled number of attaching entities figure of 2.7 versus the fixed value for rural areas of .44.

15 **Q. What rates will Eversource charge Consolidated for its attachments to Eversource’s**
16 **poles post transfer?**

17 A. For the first two years after the pole transfer it is unclear what rate Consolidated will pay
18 Eversource for each Consolidated attachment on an Eversource pole. However, Mr. Horton’s
19 and Ms. Menard’s prefiled testimony dated February 10, 2021 at page 6 (Bates page 000046),
20 lines 14 through 18 indicates that for its attachments to Eversource’s poles, Consolidated will
21 pay Eversource a fixed amount of \$5 million per year for the first 2 years after the transfer, and

1 thereafter Consolidated will be subject to Eversource's pole attachment rates in effect for solely
2 owned poles.

3 **Q. How does this compare to the pole attachment rates that NECTA members will pay to**
4 **Eversource for their pole attachments?**

5 A. The agreed upon \$5 million a year in pole revenues paid by Consolidated to Eversource is
6 equivalent to a rate of approximately \$12.38. *See* Attachment PDK-16. This rate is substantially
7 less than the rates that Eversource will be charging third-party attachers. *See* Attachment PDK-
8 17. As shown in Table 3 above, third party attachers will pay rates of \$14.17 (for Eversource
9 sole owned poles) and \$13.93 (for Eversource/Consolidated joint owned poles).

10 **Q. Do you have an opinion as to whether the pole attachment fees paid by Consolidated to**
11 **Eversource for the first two years after the transaction closes are nondiscriminatory?**

12 A. Based on the facts above, in my opinion, the pole attachment fees paid by Consolidated to
13 Eversource would be discriminatory. Petitioners' reasoning that the \$5 million negotiated
14 payment is nondiscriminatory because it is consistent with rates paid by other third party
15 attachers at the time the purchase price was negotiated has no economic or regulatory logic.

16 **IV. Recommendations**

17 **Q. Do you have any recommendations regarding the net book value and rate issues that**
18 **you have identified in your testimony?**

19 A. Yes. I recommend that if the Commission decides to approve the proposed transaction, it
20 should not allow Eversource to recover in pole attachment rates the acquisition premium it pays
21 for the pole assets it acquires from Consolidated. The Commission has previously determined

1 that the issue of whether an acquisition premium should be recovered is appropriately considered
2 in the context of a rate case, not in the acquisition approval proceeding.¹⁰ The Commission
3 should also preserve pole attachers' rights to challenge Eversource's net book value for the
4 Transferred Poles in connection with any challenge to Eversource's pole attachment rates for the
5 Transferred Poles and all other poles owned by Eversource.

6 I also recommend that in any order approving the transaction, the Commission should set a lower
7 Consolidated rate for the Transferred Poles in accordance with the testimony presented above,
8 and order that Eversource collect that lower rate for the Transferred Poles until such time as
9 Eversource develops new pole attachment rates that reflect inclusion of the Transferred Poles. In
10 the alternative, if the Commission does not order in this proceeding that a lower Consolidated
11 rate be charged by Eversource for the Transferred Poles, the Commission should order that if
12 Consolidated's pole attachment rates are reduced either as the result of a negotiated settlement or
13 Commission order prior to the time that Eversource consolidates its rates, Eversource must bill
14 the lower rate shown in Table 4 for the Transferred Poles until such time as it integrates the costs
15 and data associated with the Transferred Poles into its pole rates.

16 **Q. Does this conclude your testimony at this time?**

17 A. Yes it does.

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¹⁰ See, e.g., *Re: New England Electric System*, 84 N.H. P.U.C. 502, 513, DE 99-035, Order No. 23, 308 (Oct. 4, 1999).