

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

**CHARTER COMMUNICATIONS, INC.,
COGECO US FINANCE, LLC d/b/a
BREEZELINE, and**

**COMCAST CABLE COMMUNICATIONS,
LLC**

Petitioners

v.

**CONSOLIDATED COMMUNICATIONS OF
NORTHERN NEW ENGLAND COMPANY,
LLC**

Respondent

Docket No. DT 22-_____

**PREFILED DIRECT TESTIMONY OF
PATRICIA D. KRAVTIN**

**On Behalf of
PETITIONERS**

August 22, 2022

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PREFILED DIRECT TESTIMONY OF PATRICIA D. KRAVTIN

I. Introduction, Qualifications and Purpose of Testimony

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

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

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Petitioners Charter Communications, Inc. (“Charter”), Cogeco US Finance, LLC d/b/a Breezeline (“Breezeline”) and Comcast Cable Communications, LLC (“Comcast”).

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

A. I received a B.A. with Distinction in Economics from the George Washington University. I studied in the Ph.D. program in Economics under a National Science Foundation Fellowship at the Massachusetts Institute of Technology (M.I.T.), completing all course requirements for the Ph.D. degree and passing oral and written examinations in my chosen fields of study: government regulation of industry, industrial organization, and urban and regional economics. My professional background includes a wide range of consulting experiences in regulated industries. Between 1982 and 2000, I was a consultant at the national economic research and consulting firm Economics and Technology, Inc. (ETI) in 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
5 field of public utility economics, policy, and regulation. I have worked extensively in the
6 area of telecommunications economics and regulatory policy, focusing on such issues as
7 industry 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
21 telecommunications matters in proceedings before over 30 state, provincial, and federal
22 regulatory commissions, including the Federal Communications Commission (“FCC”), the

1 Federal Energy Regulatory Commission (“FERC”), the Canadian Radio-Television and
2 Telecommunications Commission (“CRTC”) and the Ontario Energy Board. In addition, I
3 have testified as an expert witness in litigation before a number of state and federal district
4 courts on matters relating to telecommunications competition, market power, and barriers to
5 entry, and concerning access and use of poles, conduits, and public rights-of-way. I have
6 also testified before a number of state legislative committees and served as advisor to a
7 number of state 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 two papers submitted to
10 the FCC in WC Docket No. 17-84 concerning broadband deployment in unserved, rural areas
11 of 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

22

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

2 A. Yes. Most recently, I testified in Docket DE 21-020, *Public Service Company of New*
3 *Hampshire d/b/a Eversource Energy and Consolidated Communications of Northern New*
4 *England Company, LLC d/b/a Consolidated Communications – Joint Petition to Approve*
5 *Pole Asset Transfer* (“the Pole Transfer Docket”), on behalf of the New England Cable and
6 Telecommunications Association, Inc. (“NECTA”). My testimony in that docket concerned,
7 among other things, the issue of the unjustness and unreasonableness of the pole attachment
8 rates currently charged by Consolidated Communications of Northern New England
9 Company, LLC (“Consolidated”) in New Hampshire. My testimony in the Pole Transfer
10 Docket demonstrated that, when compared to the rates produced using the FCC’s cable rate
11 formula, Consolidated’s current rates are unjust and unreasonable. My testimony also
12 advocated for the use of the FCC’s cable rate formula which, as discussed herein, I believe
13 satisfies the Commission’s rate review standards set forth in N.H. Code Admin. R.
14 1304.06(a).

15 I also testified on the subject of pole attachment rates before this Commission in Docket
16 DT 12-084, *Time Warner Entertainment Company L.P. d/b/a Time Warner Cable, Petition*
17 *for Resolution of Dispute with Public Service Company of New Hampshire*, on behalf of
18 Time Warner Cable. That case resulted in a settlement that adopted an agreed-upon formula
19 that Eversource Energy uses to calculate its pole attachment rates in New Hampshire. In
20 addition, I testified in the Commission’s 1992 *Generic Competition Docket*, DR 90-002, on
21 behalf of the Office of the Consumer Advocate. My testimony in that proceeding addressed

1 the economics of monopoly bottleneck toll and switched access services, and the design and
2 implementation of intrastate access charges.

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

4 A. The purpose of my testimony is to present information supporting the Petition for
5 Resolution of Rate Dispute filed by Charter, Breezeline and Comcast (“the Petitioners”),
6 demonstrating that Consolidated’s current pole attachment rates are unjust and unreasonable
7 and therefore in violation of RSA 374:34-a: II. My testimony discusses why the Federal
8 Communications Commission’s (“FCC’s) cable rate formula set forth in 47 C.F.R.
9 §1.1406(d)(1) satisfies the rate review standards in N.H. Code Admin. R. Puc1304.06(a) that
10 this Commission must consider when determining just and reasonable pole attachment rates.
11 My testimony also calculates the just and reasonable pole attachment rates for Consolidated
12 using the FCC’s cable rate formula and data provided by Consolidated and Eversource
13 Energy in the Pole Transfer Docket.

14 **II. Overview of Testimony**

15 **Q. Please provide a brief overview of your testimony.**

16 A. My testimony presents information demonstrating that Consolidated’s current pole
17 attachment rates are excessive, unjust and unreasonable. More specifically, my testimony
18 discusses: Consolidated’s current pole attachment rates (which were not set according to any
19 particular formula); reasons why the FCC’s cable rate formula is the appropriate
20 methodology for calculating just and reasonable pole attachment rates, and why it satisfies
21 the Commission’s six rate review standards; my calculation of Consolidated’s pole

1 attachment rates using the FCC’s cable rate formula and data provided in the Pole Transfer
2 Docket; and my opinion that Consolidated’s “joint use” (“JU”) charges are unjust and
3 unreasonable, and therefore should be eliminated.

4 **III. Consolidated’s Current Pole Attachment Rates**

5 **Q. What rates does Consolidated currently charge Petitioners as pole rental fees for**
6 **their attachments to Consolidated’s poles in New Hampshire?**

7 A. Consolidated currently charges the Petitioners \$11.67 annually for each attachment to
8 poles solely owned by Consolidated, and \$6.84 annually for each attachment to poles that
9 Consolidated jointly owns with other entities. Consolidated also imposes a JU fee of \$6.84
10 annually per attachment for poles in which Consolidated has no ownership interest. For the
11 reasons discussed below, because these rates vastly exceed those produced by using the
12 FCC’s cable rate formula, they are unjust and unreasonable.

13 **Q. Under what formula or methodology are Consolidated’s current pole attachment**
14 **rates established?**

15 A. Consolidated’s pole attachment rates have not been calculated according to any particular
16 formula. *See* Attachment PDK-2 (DE 21-020, Exhibit 53-Response to Staff Data Request 1-
17 28). They were inherited as part of its acquisition of FairPoint Communications in 2017, and
18 have not changed since that time. *Id.*

19 **IV. Appropriate Methodology for Calculating Just and Reasonable Pole**
20 **Attachment Rates Charged to Petitioners**

21 **Q. Do you have an opinion as to the most appropriate methodology or regulatory**
22 **formula for determining the just and reasonable pole attachment rates that**

1 **Consolidated may charge Petitioners pursuant to RSA 374:34-a and the Commission's**
2 **rate review standards contained in N.H. Code Admin. R. Puc 1304.06?**

3 A. Yes. The language in RSA 374:34-a, II and N.H. Code Admin. R. Puc 1304.06 both
4 require that Consolidated charge attaching entities pole rental rates that are just and
5 reasonable. Because the Petitioners are cable operators, the provisions of N.H. Code Admin.
6 R. Puc 1304.06(a) apply. In my opinion, the formula for calculating Consolidated's rates that
7 is most consistent with effective pole rate regulation and the public interest that satisfies all
8 six criteria in N.H. Code Admin. R. 1304.06(a) (both individually and collectively) is the
9 widely accepted and commonly used FCC cable rate formula set forth in 47 C.F.R.
10 §1.1406(d)(1).

11 **Q. Please explain why you believe the FCC cable rate formula is consistent with**
12 **effective pole rate regulation?**

13 A. The FCC cable rate formula produces a result that is just and reasonable to pole owning
14 utilities, attachers, and other ratepayers. In particular, rates derived using the cable rate
15 formula, coupled with additional make-ready charges that cover a pole owner's true
16 incremental costs for accommodating third party attachers, provide contribution over and
17 above economically efficient prices, and have shown over time not to affect the utilities'
18 investment in pole plant. As discussed further below, rates at levels produced by the cable
19 rate formula, as found by the FCC and by the overwhelming majority of certified states that
20 regulate pole attachments, is appropriate from economic and policy perspectives.

21 In ways not fully anticipated at the time the federal Telecommunications Act was passed
22 in 1996, the communications industry has become increasingly convergent over the past

1 couple of decades with telecommunications, cable television (and in some cases, electric co-
2 operatives and/or utilities) competing for the same customers in the voice, video, broadband
3 data and wireless marketplaces. In an increasingly convergent marketplace, markets that
4 were traditionally considered as separate, no longer function separately or independently of
5 one another. In light of these important structural changes in the industry, a regulatory policy
6 that is readily adaptable and competitively neutral (*i.e.*, does not give one competitor in a
7 given market an undue competitive advantage) with respect to changes in service usage, mix
8 of services, and technology over time is highly desirable from the standpoint of both
9 economic efficiency and equity.

10 In this context, the adoption of the FCC cable rate formula, which would apply to pole
11 attachments of all kinds across the spectrum of broadband providers, is best suited to achieve
12 the widely accepted public policy goals of encouraging the widespread deployment of
13 broadband services and promoting robust competition in the increasingly convergent
14 communications marketplace. This concept was explicitly recognized in the FCC’s National
15 Broadband Plan, the agency’s Further Notice of Proposed Rulemaking issued in the wake of
16 the National Broadband Plan, and the FCC’s final decision in that rulemaking proceeding.¹
17 The state of New Hampshire has embraced similar goals in the form of a “Broadband Action
18 Plan” designed to encourage and increase broadband deployment throughout all areas of the

¹ FCC, *Connecting America: The National Broadband Plan* (2010), at 110, <http://www.broadband.gov/plan/#read-the-plan>; *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864 (2010) (“FCC 2010 FNPRM”); *Implementation of Section 224 of the Act*, Report and Order on Reconsideration, 26 FCC Rcd 5240 (2011) (“the April 7, 2011 FCC Order”), ¶ 181.

1 state.² More recently, the state dedicated substantial funding to broadband expansion as
2 “another step forward as NH continues to serve as a leader in expanding broadband
3 services.”³ Moreover, as discussed more fully below, the Commission’s standards for
4 determining just and reasonable pole attachment rates require the Commission to consider
5 these goals.

6 Consistent with the findings of the FCC⁴, and findings of the overwhelming majority of
7 “certified states” that have exercised jurisdiction over pole attachment regulation,⁵ in the
8 context of the overarching goals of encouraging and increasing broadband deployment,
9 among other benefits, the existing FCC cable rate formula is the best overall methodology for
10 determining just and reasonable pole attachment rates. As explained further below, the cable
11 rate formula is appropriate for setting just and reasonable pole attachment rates because it is
12 designed in a manner that is fully consistent and transparent with respect to the principles of
13 cost causation and economically efficient pricing, is fully compensatory to the pole owner,
14 and can be applied in a simple, expeditious, and unified manner.⁶

² See New Hampshire Department of Resources and Economic Development (DRED) and the Telecommunications Advisory Board (TAB), State of New Hampshire Broadband Action Plan (June 30, 2008)(“NH Broadband Action Plan”).

³ See “New Hampshire First State to Implement Broadband Expansion,” Press Release (June 7, 2022), governor.nh.gov/news-and-media/new-hampshire-first-state-implement-broadband-expansion.

⁴ See The April 7, 2011 FCC Order, ¶¶ 172-181. FCC 2010 FNPRM ¶ 118 (“increasing cable operators’ pole rental rates—potentially up to the level yielded by the current telecom formula—would come at the cost of increased broadband prices and reduced incentives for deployment. Instead, by seeking to limit the distortions present in the current pole rental rates by reinterpreting the telecom rate to a lower level consistent with the Act, we expect to increase the availability of, and competition for, advanced services to anchor institutions and as middle-mile inputs to wireless services and other broadband services.”)

⁵ The majority of certified states that apply the FCC cable rate methodology to cable operators include, for example, the nearby states of Maine, Vermont, Massachusetts, Connecticut, New York and New Jersey.

⁶ See April 7, 2011 Order, ¶ 183.

1 Additionally, as indicated in Attachment PDK-3 (describing the FCC cable rate formula
2 methodology in more detail), the FCC, in 2015, effectively brought into parity the cable and
3 telecom formulas, such that there is no reason for this Commission, as a certified state, to
4 apply the more complicated telecom formula in lieu of the more widely applied cable rate
5 formula.

6 **V. Application of the Commission’s Rate Review Standards**

7 **Q. Please explain why you believe that the FCC’s cable rate formula meets the criteria**
8 **for determining just and reasonable rates under the Commission’s pole attachment rate**
9 **review standards found at N.H. Code Admin. R. 1304.06(a)?**

10 A. The Commission’s rate review standards for setting just and reasonable rates for the pole
11 attachments of cable television service providers, wireless service providers and excepted
12 local exchange carriers that are not incumbent local exchange carriers require the
13 Commission to consider six factors:

14 (1) Relevant federal, state, or local laws, rules, and decisions;

15 (2) The impact on competitive alternatives;

16 (3) The potential impact on the pole owner and its customers;

17 (4) The potential impact on the deployment of broadband services;

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

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

4 While my analysis, below, is structured to address each of the above criteria individually,
5 the six factors are substantively interrelated. Accordingly, my ultimate determination that the
6 FCC’s cable rate formula produces rates that best satisfy the Commission’s rate review
7 standards is based on the cable rate being best suited to achieve the six identified criteria both
8 individually and collectively.

9 **Factor 1: Relevant federal, state or local laws, rules, and decisions**

10 Relevant federal cases, laws, rules and decisions all support the use of the FCC’s cable
11 rate formula in setting pole attachment rates. In addition, the FCC cable rate formula has
12 been adopted by many “certified states” (for example, Maine and New York) that, like New
13 Hampshire, regulate pole attachment rates.

14 The FCC’s cable rate formula has been utilized by the FCC for several decades and
15 upheld by the federal courts. The United States Supreme Court has found that the formula
16 provides just compensation for utility pole owners and is not confiscatory.⁷ The Eleventh
17 Circuit also upheld the cable rate formula, recognizing that it “requires the attaching cable
18 company to pay for any ‘make-ready’ costs and all other marginal costs (such as maintenance

⁷ *Federal Communications Commission v. Florida Power Corp.*, 480 U.S. 245, 253-54 (1987).

1 costs and the opportunity costs of capital devoted to make-ready and maintenance costs), in
2 addition to some portion of the fully embedded cost.”⁸

3 Although the FCC’s rules contain a separate formula applied to attachments classified as
4 “telecommunications,”⁹ it is important to consider that the FCC revised its telecom formula
5 in its seminal April 7, 2011 order, and refined it further in the FCC’s 2015 Order on
6 Reconsideration,¹⁰ such that the rate produced by that formula, when properly applied, is an
7 exact or very close equivalent of the cable rate. In making this revision, the FCC sought to
8 minimize the difference in rental rates paid for attachments that are used to provide different
9 services in order to remove market distortions that affect attachers’ deployment decisions.
10 Moreover, the FCC has long held that cable operators that offer broadband services along
11 with cable service do not lose the protection of the FCC’s cable rate formula.¹¹ In view of
12 the relevant federal law and rules, and the inherent simplicity and transparency of the FCC
13 cable rate formula vis-à-vis the telecom rate formula as described in Attachment PDK- 3, the
14 FCC’s cable rate formula should be applied in the instant case.

15 When considering relevant state laws and rules, it is important to note that the vast
16 majority of states that regulate pole attachments (*i.e.*, certified states) have adopted the FCC’s

⁸ *Alabama Power Company v. Federal Communications Commission*, 311 F.3d 1357, 1368-69 (11th Cir. 2002).

⁹ 47 C.F.R. §1.1406(d)(2).

¹⁰ *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, Order on Reconsideration*, 30 FCC Rcd 13731 (Nov. 24, 2015)(WC Docket No. 07-245, GN Docket No. 09-51).

¹¹ *See Texas Utils. Elec. Co. v. Federal Communications Commission*, 997 F.2d 925, 27(D.C. Cir. 1993)(upholding FCC’s determination that cable operator could not be charged above cable formula rate if its attachments also transmit nonvideo communications). Further, in 1998, the FCC found that the public interest would not be served by increasing the cable rate for commingled attachments, and instead found that specifying the cable rate would encourage cable operators to make Internet service available to their customers on a cost-effective basis, and encourage greater competition in the provision of Internet service. *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, ¶ 32 (1998).

1 cable rate formula or some close variation of it.¹² As noted above, the certified states that
2 apply the FCC cable rate methodology include, for example, the nearby states of Maine,
3 Vermont, Massachusetts, Connecticut, New York and New Jersey. Of particular note is the
4 neighboring state of Maine where the Maine Public Utilities Commission (“Maine PUC”) has
5 adopted the FCC’s cable rate formula to determine just and reasonable pole attachment
6 rates.¹³ Because Consolidated has owned and operated its Maine poles along with its New
7 Hampshire poles since acquiring them from FairPoint Communications in 2017 as part of an
8 integrated system, the Maine rules adopting the FCC cable rate formula are very relevant to
9 the instant case, and therefore should be considered by the Commission in determining just
10 and reasonable rates for Consolidated. In so doing, it is important for the Commission to
11 note that after the Maine PUC adopted the FCC cable rate formula, Consolidated drastically
12 reduced its Maine pole attachment rates from \$12.60 to \$3.56 for solely owned poles, and
13 from \$6.30 to \$1.78 for jointly owned poles.¹⁴ The fact that this Commission’s Maine

¹² See Conn. Gen. Stat. §§ 16-1, 16-19, 16-332, *Application of the United Illuminating Company to Increase Its Rates and Charges*, [Final Decision](#), Docket 16-06-04, 2016 Conn. PUC LEXIS 466 (Dec.14, 2016); *Application of the Connecticut Light and Power Company*, [Final Decision](#), Docket No. 14-05-06, 2014 Conn. PUC LEXIS 133 (Dec. 17, 2014); 35-A Me. Rev. Stat. § 711CMR 65-407-880 § 4; *Amendments to Chapter 880 of the Commission’s Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, Opinion, Docket No. 2019-00028, 2019 ME. PUC LEXIS 244 (Nov. 6, 2019); Ma. Gen. Laws Ch. 166, § 25(a) Mass. Regs. Code Title 220 § 45.00 –45.11; *Cablevision of Boston v. Boston; Edison Co.*, DPU/DTE 97-82 (1998); *Order Establishing Complaint and Enforcement Procedures to Ensure that Telecommunications Carriers and Cable System Operators Have Non- Discriminatory Access to Utility Poles, Ducts, Conduits and Rights-of-Way*, DTE 98-36-A, Order Promulgating Final Regulations, 2000 Mass. PUC LEXIS 21(2000); N.J. Stat. Ann. §§ 48:5A-20, 48:5A-21, N.J.A.C. 14:18-2.9 - 2.10, 2.12; Regulations of Cable Television Readoption with Amendments: N.J.A.C. 14:18, Docket No. CX02040265 (2003); N.Y. Pub. Serv. Law § 119-a, *Certain Pole Attachment Issues Which Arose in Case No. 94-C-0095*, Opinion No. 97-10, 1997 NY PUC LEXIS 364 (1997); Petition of CTIA – The Wireless Association to Initiate a Proceeding to Update and Clarify Wireless Pole Attachment Protections, *Order Approving Petition in Part and Continuing Proceeding*, Case 16-M- 0330 (Mar. 14, 2019); Vt. Stat. Ann. Title 30 §§ 225,226, Vt. Public Service Board Rules 3.700 – 3.710; Proposed revisions to PUC Rule 3.706 (D)(1) Pole Attachment Rates, 19-3603-RULE, Final Rule (July 20, 2020).

¹³ Maine PUC Rule 65-407, Chapter 880:4.

¹⁴ See Petition for Resolution of Rate Dispute, Exhibit 7, *Letter from Harry Loring to Maine Licensee* (Feb. 8, 2022).

1 counterpart has adopted the FCC’s cable rate formula, and that Consolidated’s Maine pole
2 attachment rates are substantially lower than its New Hampshire rates now that they are
3 based on the widely accepted cost based methodology, is an important consideration and
4 compelling basis for the Commission to follow Maine’s step and adopt the FCC’s cable rate
5 formula to set Consolidated’s rates in this case.

6 **Factor 2: Impact on Competitive Alternatives**

7 In order to promote competitive services, pole attachments – through which competitive
8 service offerings must be provided– must be priced at an efficient and cost-based level (*i.e.*
9 closer to marginal cost) relative to excessive monopoly rate levels sought by pole owners, and in
10 a manner that does not discriminate against competitive alternatives depending on the provider’s
11 choice as to technology, business plan, or mix of service offerings.

12 The Petitioners compete with Consolidated, and also rely on Consolidated for a vital
13 component of their business – access to Consolidated’s poles. Sound regulatory policy favoring
14 competitive neutrality or a level playing field dictates that all competitors be treated fairly and
15 similarly. This is best achieved by the FCC’s cable rate formula which is not inherently biased
16 in favor of any one industry or one competitor, and can be readily applied in uniform fashion
17 across broadband providers. In addition, the FCC’s cable rate formula is fully compensatory
18 and based on a fully allocated cost standard that produces rates well above the pole owner’s
19 marginal cost. Any rate above this level will introduce market distortions via-a-vis the
20 competitive benchmark of efficient marginal cost pricing which will have a decidedly negative
21 effect on competitive alternatives and competition generally.

1 Using the FCC’s cable rate formula to set Consolidated’s pole attachment rates would
2 have a positive impact on competitive alternatives. While providing sufficient compensation to
3 Consolidated for the use of its poles, the cable formula rates will also level the competitive
4 playing field and promote competitive service offerings by enabling Consolidated’s competitors
5 to redirect the excess pole rent fees they currently pay Consolidated to investments in broadband
6 and competitive service offerings.

7 **Factor 3: Potential Impact on Pole Owner and its Customers**

8 Adoption of the FCC’s cable rate formula would not negatively impact Consolidated or
9 its customers. Under federal law, a cable attachment rate is considered “just and reasonable” if it
10 allows the pole owner to recover at least its incremental costs but no more than the fully
11 allocated costs of the attachment.¹⁵ The FCC developed the cable rate formula methodology “to
12 determine maximum allowable pole attachment rates to ensure that such rates are just and
13 reasonable.”¹⁶ It did so by developing a formula that “allocates the cost of the entire pole by the
14 percentage of usable space occupied by the attachment” and that “includes recovery for all pole-
15 related costs, including administrative, maintenance, and tax expenses, as well as depreciation
16 and a rate of return...”.¹⁷ The FCC’s cable rate formula produces rates on the high end of this
17 statutory range as it attributes the fully allocated cost of the construction and operation of the
18 pole.¹⁸

¹⁵ See 47 U.S.C. § 224(d)(1).

¹⁶ *Cable Television Association of Georgia v. BellSouth Telecommunications, Inc.*, FCC File No. PA 98-004, DA 02-1733 (Rel. July 19, 2002), ¶ 4.

¹⁷ *Id.*

¹⁸ *Federal Communications Commission v. Florida Power Corp.*, 480 U.S. 245, 253 (1987).

1 As noted herein, the courts have found that the rates produced by the FCC cable rate
2 formula fully compensate the pole owner for the use of its poles. In addition, the FCC has
3 concluded that the cable formula rate is compensatory to pole owners “because these rates meet
4 or exceed incremental cost, and satisfy all constitutional compensation requirements.”¹⁹

5 Under the economic definition of subsidy, rates that recover the marginal costs of
6 production are economically efficient and subsidy-free.²⁰ Thus, there is no subsidization of pole
7 attachers by the pole owner’s rate payers when pole rates are set using the cable rate formula.

8 Because the FCC’s cable rate formula complies with federal law and produces rates that
9 are not confiscatory, neither Consolidated nor its customers are harmed by these rates.
10 Moreover, because Petitioners also pay make-ready charges to cover the one-time incremental
11 costs incurred by Consolidated to accommodate third party pole attachments, including costs of
12 facility rearrangements and pole modifications and/or replacements as necessary, there is no
13 financial harm to Consolidated or its customers from application of the FCC cable rate formula.
14 The cable rate and incremental make-ready charges permit the pole owner to recover all of its
15 costs associated with pole attachments – and then some.

16 **Factor 4: Potential Impact on Deployment of Broadband Service**

17 The FCC has recognized that “pole rental rates play a significant role in the deployment
18 and availability of voice, video and data networks.”²¹ Lower and more uniform pole attachment

¹⁹ *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, ¶ 147 (2011)(“April 7, 2011 FCC Order”).

²⁰ *See, e.g.*, Paul A. Samuelson, *ECONOMICS*, 462-63 (10th ed., 1976); Bridger M. Mitchell, *Federal Investment Through Subsidies: Pros and Cons* 159 in *THE CHANGING NATURE OF TELECOMMUNICATIONS/INFORMATION INFRASTRUCTURE* (Nat’l Academy Press 1995), <https://doi.org/10.17226/4816>; *Ala. Power Co. v. FCC*, 311 F.3d 1357, 1369-70 (11th Cir. 2002).

²¹ April 2011 FCC Order, ¶ 172.

1 rates serve to “eliminate barriers to broadband deployment, provide regulatory certainty,” and
2 promote deployment and competition.²² Like the FCC, New Hampshire’s Broadband Action
3 Plan recognizes the impact that pole attachment fees have on broadband deployment, and states
4 that “[a]ttachment fees for pole access should be consistent and competitive so that they do not
5 hinder the further deployment of broadband services.”²³ The Broadband Action Plan also states
6 that public sector initiatives should not impede private investment that would expand broadband
7 services in unserved and underserved regions of the state.²⁴ Allowing a pole owner like
8 Consolidated (which has substantial leverage and hold up power in regard to third party
9 attachments to the essential pole facility) to charge its competitors, *i.e.*, cable operators and other
10 broadband services providers, attachment fees exceeding the economically efficient level
11 produced by the FCC’s cable rate formula is directly contrary to this stated goal, and therefore
12 must be discontinued.

13 Absorbing excessively high pole rents directly and negatively impacts the cable
14 industry’s ability to meet financial and investment obligations including those related to the build
15 out of infrastructure needed to support the widespread deployment of advanced broadband
16 services. Accordingly, reducing Consolidated’s current pole attachment rates to those produced
17 by the FCC’s cable rate formula will positively impact the deployment of broadband
18 infrastructure investment and the deployment of high-speed internet service in New Hampshire,
19 as excess pole rental fees that would otherwise be paid to Consolidated can be used by

²² *Id.*

²³ *NH Broadband Action Plan* (June 30, 2008), p. 39.

²⁴ *Id.*

1 Petitioners for infrastructure investments to support advanced broadband services in the public
2 interest and in advancement of the state’s broadband expansion goals.

3 **Factor 5: Formulae Adopted by the FCC in 47 C.F.R. §1.1409(b) through (g) in**
4 **effect on October 1, 2017**

5 The FCC pole attachment rate formulae in effect on October 1, 2017 include the FCC’s
6 cable rate formula that I am advocating in this docket and which I have used to calculate just and
7 reasonable rates for Consolidated. As discussed above, that formula produces rates that the
8 courts and the FCC have found to be constitutional, just and reasonable.

9 Although the above-referenced federal rules also include a separate but similar formula
10 for “telecommunications” services, I do not believe that formula warrants serious consideration
11 for several reasons. First, pursuant to reforms adopted by the FCC in 2011 and 2015, as
12 explained in Attachment PDK-3, the telecom formula produces rates that are effectively
13 equivalent to those produced by the FCC cable rate formula. As discussed above, the FCC
14 revised its telecom formula for the purpose of minimizing differences in rental rates charged for
15 attachments that are used to provide different services in order to remove market distortions that
16 affect broadband deployment decisions. In doing so, the FCC found that the financial impact of
17 its former telecom rate (which produced higher rates than the cable rate formula and the current
18 telecom formula) had arbitrarily deterred cable operators from offering new, advanced services.²⁵
19 Thus, the FCC determined that implementing a low and more uniform rate would eliminate
20 competitive disadvantages²⁶, and could reduce disputes and costly litigation over whether the
21 cable or telecom formula applies to broadband and other services²⁷.

²⁵ April 7, 2011 FCC Order, ¶174.

²⁶ *Id.*, ¶176.

²⁷ *Id.*, ¶174.

1 In addition, the FCC’s cable rate formula, which allocates costs exclusively in proportion
2 to relative pole usage, has many advantages over the FCC’s telecom rate which allocates costs
3 using a hybrid proportional and per capita approach requiring information on the number of
4 attaching entities which utilities do not regularly track, and therefore introduces a potential area
5 of dispute into the rate formula calculation. These advantages include that the cable rate formula
6 is: designed in a manner that is fully consistent and transparent with respect to the principles of
7 cost causation and economically efficient marginal cost pricing; fully compensatory to the pole
8 owner; and can be applied in a simple, expeditious and less administratively burdensome manner
9 than the telecom rate formula, as explained in Attachment PDK-3, p.6.

10 When considering the formulae contained in the FCC’s rules, the cable rate formula is
11 preferable to the telecom rate for the reasons discussed above.

12 **Factor 6: Other Interests of Subscribers and Users of Services Offered Via Such**
13 **Attachments, or Consumers of Any Pole Owners Providing Such Attachments**

14 This factor essentially equates to the regulatory “public interest standard” which dictates
15 that the appropriate methodology for determining just and reasonable rates take into
16 consideration not only the interests of utility pole owners, third party attachers, and both groups’
17 customers, but also the greater “public good.” Consideration of whether the FCC’s cable rate
18 formula produces rates that are for the public good includes analysis of the public benefits of that
19 formula in addition to the private costs and benefits of the parties directly involved.

20 As discussed above, the FCC’s cable rate formula produces rates that fully compensate
21 the pole owner and do not result in subsidization by pole owners’ customers. Those rates are just
22 and reasonable to third party attachers, and benefit their customers as well as the public generally
23 by promoting broadband deployment. When considering these various interests comprising “the

1 public interest,” the benefits associated with the FCC’s cable rate formula outweigh any short
2 term nominal gain to the pole owner from the imposition of pole rental rates that far exceed the
3 incremental or actual costs incurred in direct relation to third party attachments, such as the rates
4 currently charged by Consolidated.

5 The National Association of State Utility Consumer Advocates (“NASUCA”), a national
6 organization of consumer advocates who represent the interests of utility consumers has
7 consistently supported a single, FCC cable rate, finding that, when balancing the interests of pole
8 attachers, pole owners and customers, “the cable rate [formula] should be used for all pole
9 attachments.”²⁸

10 **VI. Calculation of Consolidated’s Pole Attachment Rates Using the FCC’s Cable Rate**
11 **Formula**

12
13 **Q. Have you calculated what Consolidated’s pole attachment rates would be if they**
14 **were set using the FCC’s cable rate formula?**

15 A. Yes. Earlier this year, for purposes of my testimony in the Pole Transfer Docket,²⁹ I
16 calculated Consolidated’s pole attachment rates using data provided by the Petitioners
17 pursuant to Order No. 26,534 as would be contained in a Consolidated 2020 FCC ARMIS
18 report submission³⁰ and applying the FCC’s cable rate formula (which I found consistent
19 with the Commission’s six rate review standards). Those calculations produced the rates of
20 \$6.31 for a solely owned pole, and \$3.16 for a jointly owned pole.

²⁸ *Id.*, ¶147.

²⁹ DE 21-020, Exhibit 39, Prefiled Direct Testimony of Patricia D. Kravtin (Jan. 31, 2022).

³⁰ See Petition for Resolution of Rate Dispute, Exhibit 1 (DE 21-020, Exhibit 56, Response to NECTA 1-045, indicating that Consolidated Communications has not filed ARMIS reports for the years 2018-2020).

1 I have recently recalculated the rates using the FCC’s cable rate formula with a pole
2 height factor of 39 feet instead of the formula’s presumed 37.5 pole height (which is a
3 rebuttable presumption).³¹ Based on those calculations, I determined that Consolidated’s
4 pole attachment rates should be \$5.33 for its solely owned poles, and \$2.67 for its jointly
5 owned poles. Table 1, below, presents a summary of my rate calculations. A more detailed
6 explanation of the formula is contained in Attachment PDK-3.

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³¹ I also updated the rate of return to the current applicable FCC default rate of return of 9.75%. *See* FCC Report and Order, Order and Order on Reconsideration, Further Notice of Proposed Rulemaking, Re: March 30, 2016, FCC 16-33.

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Table 1			
Just and Reasonable Pole Attachment Rates for Consolidated Calculated Under FCC Cable Rate			
Based on Year-End 2020 ARMIS Annual Summary Report Table III, Provided by Consolidated Pursuant to Order No. 26,534 in DE 21-020	Just and Reasonable Input Values	ARMIS ROW/ Calculation	
1	Gross Investment in Pole Plant	\$63,530,000	Row 101
2	- Accumulated depreciation for poles	-\$35,765,000	Row 201
3	- Accumulated deferred income taxes for poles	-\$4,865,000	Rows 401,404
4	= Net Pole Investment	\$22,900,000	Ln 1 - Ln 2- Ln 3
5	x (1- Appurtenances Factor)	.95	FCC 15% Rebuttable Presumption
6	= Net Bare Pole Investment	\$21,755,000	Ln 4 x L5
7	/ Total Number of Poles	251,845	Row 601
8	= Net Bare Cost/Pole	\$86.38	Ln 6 / Ln 7
9	x Carrying Charge Factor	92.54%	Sum of Ln 14-18
10	x Usable Space Factor =	6.67%	Ln 22/Ln 21
12	Just & Reasonable Pole Rate Sole Owned	\$5.33	L 8 x L9 x L10
13	Just & Reasonable Pole Rate Joint Owned	\$2.67	L12/2
	Carrying Charge Factor:		
14	Maintenance	59.5%	Row 501.1 / (Row 101-Row 201-Row 404)
15	Administrative & General	3.72%	Row 503 / (Row 100-Row 200 – Row 406)
16	Depreciation	16.1%	Row 301/ L1 x L4)
17	Taxes	3.48%	Row 504 / (Row 100-Row 200 – Row 406)
18	Return	9.75%	FCC Default, FCC 16-33
	Usable Space Factor:	Feet	
19	Total Pole Height	39	See Attachment PDK-3, footnote 12.
20	Unusable Space	24	FCC/Industry Std: 18 + (.10 x Ln19 +2)
21	Usable Space	15	Ln 19-Ln 20
22	Occupied Space	1	FCC Presumption

3

1 **Q. Why did you use a pole height of 39 feet in your pole rate calculations?**

2 A. I adjusted the FCC cable rate formula's presumed pole height of 37.5 feet to 39 feet based on
3 pole height data from pole inspection reports for the year 2020 that Eversource Energy compiled
4 in spreadsheets provided in response to Department of Energy Staff data requests in the Pole
5 Transfer Docket,³² In that docket, Eversource and Consolidated seek the Commission's approval
6 to transfer Consolidated's interests in approximately 343,000 poles³³ that Eversource jointly
7 owns with Consolidated. The spreadsheet data provided by Eversource includes height data for a
8 subset of Consolidated's poles that were inspected in 2020, and supports using a pole height of
9 39 feet instead of the FCC's presumed height of 37.5 feet. As described in Attachment PDK-3,
10 the FCC height presumption of 37.5 feet is a rebuttable presumption based on older, historic
11 utility data; where there is actual utility data that would substantiate a more accurate pole height
12 figure, as there is here for the jointly owned Eversource/Consolidated poles, the more accurate
13 figure should be utilized in order to derive a more efficient pole rate. The use of a 39-foot pole
14 height figure derived from the Eversource pole inspection data³⁴ in the pole rate calculation for
15 Consolidated is consistent with widely acknowledged utility construction practices in recent
16 decades that routinely install new poles and replace older, shorter poles with standard pole
17 heights of 40 to 45 feet.

18 **Q. Please identify the source of the data you used in your pole rate calculations.**

19 A. The input values used for my calculations under the FCC's cable rate formula were taken
20 directly from an ARMIS Annual Summary Report for year-end 2020 provided by Consolidated

³²DE 21-020, Excel Spreadsheet Staff 3-005b.2020 consists of pole height data compiled from 2020 inspection reports and provided by Eversource, including data on poles that Eversource owns jointly with Consolidated.

³³ See DE 21-020, Exhibit 67, *Joint Petition to Approve Pole Asset Transfer*, p. 2, ¶ 2.

³⁴The Eversource Inspection reports included Consolidated poles both solely owned and jointly owned with Eversource.

1 in response to Commission Order No. 26, 534 issued October 22, 2021 in the Pole Transfer
2 Docket. *See* Attachment PDK-4 (“2020 ARMIS Report”). The 2020 ARMIS data provided by
3 Consolidated is intended to show the information Consolidated would have reported in FCC
4 Report 43-01 had Consolidated filed an ARMIS report with the FCC for 2020 and been subject
5 to regulatory depreciation and accounting requirements. It provides a restatement of
6 Consolidated pole assets in the format historically reported to the FCC in ARMIS Annual
7 Summary Report, “Table III -POLE AND CONDUIT RENTAL”.

8 **VII. Consolidated’s Joint Use “JU” Charges**

9 **Q. Are you familiar with Consolidated’s Joint Use (“JU”) Charges?**

10 A. Yes. My understanding is that Consolidated imposes a JU charge equal to its jointly-owned
11 pole rate of \$6.84 for third party attachments to poles in which Consolidated has no ownership
12 interest.

13 **Q. Do you have any opinion as to whether Consolidated’s JU Charges are just and**
14 **reasonable?**

15 A. I do. I believe that the JU charges are unjust and unreasonable, and should be eliminated for
16 the following reasons: (1) Consolidated imposes the JU charge even though it does not own the
17 poles to which the Petitioners’ facilities are attached; (2) Consolidated is not providing any
18 services to pole attachers in exchange for their payment of JU Charges; and (3) in addition to the
19 JU charge, third party attachers pay “JU” pole owner, that owner’s solely-owned pole rate.³⁵

³⁵ See *Affidavits of Yann Quere, Nadine Heinen, and James G. White, Jr.*, ¶ 8.

- 1 **Q. Do you have anything further to add to your prefiled testimony?**

- 2 A. No, not at this time. However, I reserve the right to submit additional testimony if necessary.