

STATE OF NEW HAMPSHIRE

Before the

PUBLIC UTILITIES COMMISSION

Docket No. DT 22-047

**CHARTER COMMUNICATIONS, INC., COGECO US FINANCE, LLC
d/b/a BREEZELINE, AND COMCAST CABLE COMMUNICATIONS, LLC
Petition for Resolution of Rate Dispute**

**Consolidated Communications of Northern New England Company, LLC's Response to
Petition dated August 22, 2022**

NOW COMES, Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications – NNE (“Consolidated”) and hereby respectfully submits its preferred procedural schedule options as directed by the Chairman of the Commission at the Prehearing Conference held on November 1, 2022. Consolidated hereby states as follows:

1. The Petitioners¹ seek a procedural schedule in this Docket clearly prejudicial to Consolidated’s ability to defend itself. The Petitioners insist that the Docket be completed by February 17, 2023, under the theory that the Commission is bound by the so-called 180 day shot clock administrative rules issued by the Federal Communications Commission (“FCC”) pursuant to 47 U.S.C 224(c). They demand in the procedural schedule filing made on their behalf on November 3, 2022, that the Consolidated Team work over the Christmas holidays knowing full

¹ Capitalized terms not defined herein shall have the same meaning as set forth in this Commission’s Commencement of Adjudicative Proceeding and Notice of Prehearing Conference, dated September 28, 2022.

well that counsel and one of the Consolidated Team members will be on vacation. As stated at the Prehearing Conference, such a schedule is patently unfair and prejudicial to Consolidated.

2. The “shot clock” emanates from 47 U.S.C. 224(c). The relevant portion of this Federal statute states as follows:

- (3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments-
 - (A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and
 - (B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter-
 - (i) within 180 days after the complaint is filed with the State, or
 - (ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

3. The FCC’s adopted an administrative rule related to the above quoted statute in November 2017. As stated by the FCC:

On November 16, 2017, the Commission adopted a 180-day “shot clock” for disposition of pole attachment complaints alleging a denial of access under Section 224(f) of the Act (“pole access” complaints). The Commission recognized that pole access complaints are more urgent than complaints related to rates, terms, and conditions of attachment, and that pole access complaints generally have only one remedy—a grant of immediate access. The Commission did not apply the 180-day shot clock to complaints alleging unjust and unreasonable rates, terms, and conditions, deferring instead to the record developed in this proceeding.

Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau, EB Docket No. 17-245, Report and Order, FCC 18-96, 33 FCC Rcd 7178 (2018)), at ¶ 20 (emphasis added).

4. Instead, recognizing that pole attachment rate cases cannot necessarily be decided upon such an accelerated timeframe, the FCC established a 270 day “shot clock”. *Id.*, ¶ 21. The FCC reasoned that:

Complaints filed pursuant to Sections 224 and 208 raise an extensive range of issues, however, often requiring the Commission to determine for the first time and in an era of rapidly-changing technology whether specific conduct is lawful under existing rules and orders. A 180-day shot clock would restrict the agency's ability to analyze and adjudicate all cases effectively. For example, a determination of a rate, term, or condition's reasonableness may have a precedential impact on an entire industry, and the Commission may need more time to establish a full record and resolve a complicated matter.

Id., ¶ 22. The FCC concluded that this 270 day shot clock is more reasonable and "...still ensures an expeditious resolution of formal complaints." *Id.*, ¶ 23.

5. It should not be lost on this Commission that the Petitioners have not cited to a single case/docket wherein a state "lost" its jurisdiction for failing to adhere to the FCC's 180 day shot clock. Consolidated has found no such cases or FCC related orders. Neither the Federal statute at issue nor the FCC administrative rules even define what constitutes "such rules and regulations of the State".

6. Clearly orders issued by this Commission have the force of law. As the New Hampshire Supreme Court noted: An "order issued by the commission ... has the 'force and effect of law.'" *Appeal of Vicon Recovery Sys.*, 130 N.H. 801, 805 (1988) (quoting *Appeal of Pennichuck Water Works*, 120 N.H. 562, 566 (1980)). Here, there is nothing preventing the Commission from making the same determination as the FCC regarding the fundamental fairness of the timing of the resolution of this Docket. A 270 day shot clock is more reasonable and still ensures an expeditious resolution of the Petition. Any such ruling constitutes the force of law and would be the State law governing this Docket.

7. What the Petitioners request in terms of relief affects Consolidated in ways well beyond the Petitioners and their attachments. The relief has the potential to adversely affect

Consolidated monetarily vis-à-vis all pole attachers and all pole attachments in New Hampshire. Fairness dictates there should be no rush to judgement. Therefore, Consolidated proposes the following procedural schedule:

11/17 - Data requests to Petitioners
12/02 - Petitioners' responses to data requests
12/9 (10 AM) - Technical Session (via videoconference)
2023
1/13 - Consolidated prefiled testimony
1/23 - Data requests to Consolidated
2/3 - Consolidated Responses to Data Requests issued Jan 23
2/13 (10 AM) - Technical Session/ Settlement Conference (via videoconference)
3/3 - Petitioners' Rebuttal Testimony
3/10 - Consolidated data requests to Petitioner on Rebuttal Testimony
3/21 - Petitioners' responses to data requests
Week of 3/20 – Hearing
10 calendar days following hearing – Post Hearing Briefs

8. While Consolidated does not agree the 180 day shot clock applies, Consolidated hereby complies with the Commission's request for an alternative procedural schedule allowing for such compliance and the scheduling of a hearing in January 2023. Consolidated's request is that the Commission adopt the above referenced procedural schedule. However, Consolidated's alternative procedural schedule is as follows:

11/18 - Data requests to Petitioners
12/05 - Petitioners' responses to data requests
12/12 (10 AM) - Technical Session (via videoconference)
12/21 - Consolidated prefiled testimony²
12/28 - Data requests to Consolidated on prefiled testimony
2023
1/18 - Consolidated responses to data requests
1/12 - (10 AM) - Technical Session/ Settlement Conference (via videoconference)
Week of 1/23 - Hearing

² While this schedule complies with the shot clock, requiring Consolidated to file testimony in such a short period of time is demonstrably unfair when the Petitioners most likely have been working on their prefiled testimony, affidavits and exhibits for at least a year, if not more.

1 week following hearing - Post Hearing Briefs

Such a schedule is more fair to Consolidated and the vacation schedules of its Team members than that submitted by the Petitioners. With this schedule the Petitioner are free to offer rebuttal testimony to any of Consolidated's prefiled testimony during the hearing, so long as it strictly is rebuttal.

November 4, 2022

Respectfully Submitted by

**CONSOLIDATED COMMUNICATIONS OF
NORTHERN NEW ENGLAND COMPANY,
LLC D/B/A CONSOLIDATED
COMMUNICATIONS**

By its Attorneys,

/s/ Patrick C. McHugh
Patrick C. McHugh
Consolidated Communications
770 Elm Street
Manchester, NH 02101
(603) 591-5465
Patrick.mchugh@consolidated.com

Certificate of Service

I hereby certify that on November 4, 2022, a copy of this Pleading has been electronically forwarded to the service list in this docket.

/s/ Patrick C. McHugh
Patrick C. McHugh