

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION
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

PETITIONERS' RESPONSE TO CONSOLIDATED'S PROPOSED
PROCEDURAL SCHEDULES

NOW COME Charter Communications, Inc., Cogeco US Finance, LLC d/b/a Breezeline, and Comcast Cable Communications, LLC (collectively, “the Petitioners”), and respond to the proposed procedural schedules filed by Consolidated Communications of Northern New England Company, LLC (“Consolidated”) on November 4, 2022 by stating as follows:

1. Under federal law, the New Hampshire Public Utilities Commission (“the Commission”) has jurisdiction over the Petitioners’ pole attachment rate complaint against Consolidated so long as the Commission takes final action on the complaint within 180 days after the complaint is filed, or 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.” 42 U.S.C. §224(c)(3)(B)(i) and (ii)(emphasis added).

2. “Rules” have a particularized meaning under New Hampshire law. Specifically, RSA 541-A:1, XV defines “rule” as “each regulation, standard...or other statement of general

applicability adopted by an agency to ...implement, interpret, or make specific a statute enforced or administered by such agency...”.

3. RSA 541-A:3 sets out a specific procedure for the adoption of rules by state agencies which includes: filing notice of the proposed rule; filing the text of a proposed rule with the Office of Legislative Services as required by RSA 541-A:10; holding a public hearing and receiving comments as required by RSA 541-A:11; filing a final proposal as required by RSA 541-A:12; and adopting and filing a final rule as required by RSA 541-A:14. Nothing in this statutorily prescribed and detailed rulemaking process permits the adoption of a rule by administrative order. As the New Hampshire Supreme Court has noted, state agencies must comply with the rulemaking process set forth RSA 541-A if their rules are to have effect. *Petition of Daly*, 129 N.H. 40, 41 (1986). Thus, the Commission cannot, by order, establish a “State rule or regulation” within the meaning of state and federal law to extend the 180-day deadline for decisions on pole attachment complaints.

4. The Commission has properly adopted rules under RSA 541-A (*i.e.*, N.H. Admin. R. Chapter Puc 1300), as required by 42 U.S.C. §224(c)(3)(A), to effectuate its authority under federal law to regulate the rates, terms and conditions for pole attachments. However, the Commission’s rules do not prescribe a deadline for the Commission’s final action on pole attachment rate disputes. Accordingly, in the absence of such a deadline, the 180-day deadline required in 42 U.S.C. §224(c)(3)(B)(i) applies.

5. The Petitioners’ complaint against Consolidated was filed on August 22, 2022. The 180th day after that date is Saturday, February 18, 2022. In order to comply with the above-referenced federal law, and keeping with the Commission’s normal business hours, the Commission must take final action on the Petition on or before Friday, February 17, 2022.

6. Consolidated has submitted two different procedural schedules for the Commission's consideration in this docket. The first schedule, set forth in paragraph 7 of Consolidated's November 4, 2022 filing, should be rejected as it culminates in a decision after February 17, 2023. In addition, even if the Commission were to adopt that schedule, the Petitioners would object to it because it calls for a hearing on 3/20/23, a time when the Petitioners' expert witness, Patricia Kravtin, will be out of the country.

7. Although Consolidated's second proposed schedule would enable the Commission to meet the federally-prescribed 180-day deadline, that schedule is problematic for the following reasons:

a. The schedule provides the Petitioners with only 7 days (which include Christmas weekend) to propound data requests on Consolidated's prefiled testimony, but provides Consolidated with 21 days to provide responses to those data requests. This lopsided schedule clearly favors Consolidated and disfavors the Petitioners.

b. The schedule provides for a technical session on 1/12/23 which is prior to the deadline for Consolidated's responses to data requests (1/18). This means that Petitioners cannot utilize the technical session for its intended purpose, *i.e.*, to ask follow up questions on Consolidated's responses to data requests, because the Petitioners would not have those responses in hand at the time of the technical session.

c. The schedule does not permit the Petitioners to submit prefiled rebuttal testimony. This is important because, to date, Consolidated has provided no quantitative data or calculations to demonstrate that its pole attachment rates are just and reasonable. In the event that Consolidated provides such quantitative data, the Petitioners should be allowed to rebut it with

its own data and/or calculations, in writing. Although Consolidated has stated that petitioners would be “free to offer rebuttal testimony to any of Consolidated’s prefiled testimony during the hearing”, oral rebuttal may not be an appropriate substitute for written rebuttal testimony, especially if numerical data and calculations are at issue.

8. Consolidated cannot credibly claim it needs more time to evaluate the Petitioners’ claims or to develop its own testimony “to defend itself”. The undersigned sent Attorney McHugh and Ms. Davis a copy of the Petition via electronic mail on August 22, 2022, the same date on which the Petition was filed with the Commission. In addition, details supporting the Petitioners’ claims that Consolidated’s rates are excessive were provided to Consolidated on January 31, 2022 when Ms. Kravtin filed her testimony, including her rate analysis, in DT 21-020. Consolidated actively participated in that docket, but did not rebut Ms. Kravtin’s rate calculations with its own. In these circumstances, Consolidated is not prejudiced by the compressed schedule necessitated by the 180-day resolution deadline imposed under federal law.

WHEREFORE, the Petitioners respectfully requests that the Commission:

- A. Adopt the procedural schedule submitted by the Petitioners on November 3, 2022, with reasonable adjustments, if necessary; and
- B. Grant such additional relief as is just and appropriate.

**Charter Communications, Inc.,
Cogeco US Finance, LLC d/b/a
Breezeline, and Comcast Cable
Communications, LLC**

By their Attorneys,
Orr & Reno, P.A.



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Dated: November 08, 2022

Certificate of Service

I hereby certify that on the date set forth above a copy of the foregoing Response was sent electronically to the Service List for this docket.



Susan S. Geiger