**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 Motion to Dismiss the 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 moves the New Hampshire Public Utilities Commission (the "Commission") to dismiss the Petition for Resolution of Rate Dispute (the "Petition") dated August 22, 2022. In support hereof, Consolidated hereby states as follows:

## I. Introduction

1. On August 22, 2022, Charter Communications, Inc. on behalf of its affiliate, Spectrum Northeast, LLC ("Charter"), Cogeco US Finance, LLC d/b/a Breezeline on behalf of its affiliate, Cogeco US (NH-ME), LLC d/b/a Breezeline ("Breezeline"), and Comcast Cable Communications, LLC ("Comcast", and together with Charter and Breezeline, collectively "the Petitioners") filed the instant Petition requesting the Commission to "… resolve their dispute with [Consolidated] regarding unjust, unreasonable, and unlawful annual pole attachment rental rates that Consolidated charges the Petitioners for their attachments on Consolidated's poles, and

regarding the unjust, unreasonable, and unlawful 'joint use' charges imposed by Consolidated for Petitioners' attachments on poles in which Consolidated has no ownership interest." *See* Petition, p. 1. The Petitioners submitted the Petition pursuant to N.H. RSA 374:34-a. *See id.*, p. 1. A summary of the alleged dispute is as follows:

> … the Petitioners pay Consolidated for over 350,000 attachments. Consolidated charges the same annual pole attachment rates to each Petitioner. Consolidated's current annual per attachment rates are $11.67 for attachments on poles solely owned by Consolidated, and $6.84 for attachments on jointly owned poles. In addition, Consolidated imposes a joint use ("JU") charge of $6.84 for attachments on poles in which Consolidated has no ownership interest. The Petitioners assert that all of these rates and charges are unjust and unreasonable because they have not been established in accordance with the six factors required by N.H. Code Admin. R. Puc 1304.06 (a) (which are discussed more fully herein), or by using any specific formula.

Petition, p. 2, citing Prefiled Direct Testimony of Patricia Kravtin at p. 6.

2. The Petitioners admit in the Petition that they have been reviewing and examining the "justness and reasonableness" of the above-referenced pole attachment rates via submissions made in Docket DE-21-020[1], which commenced with a petition filed during February 2021. *See id.*, ps. 2-3. The Petitioners seek, through the present Docket, revised pole attachment rates based on calculations and testimony offered by Ms. Patricia Kravtin. Allegedly, Ms. Kravtin used the cable rate formula adopted by the Federal Communication Commission (the "FCC") when calculating the Petitioners' preferred rates. According to the Petitioners, Ms. Kravtin found the cable rate formula "…consistent with the Commission's six rate review standards contained in N.H. Code Admin. R. Puc 1304.06 (a)…" *See generally* Petition, ps. 3-5.

[1] This Docket is known as the Joint Petition to Approve Pole Asset Transfer, filed by Consolidated and Public Service Company of New Hampshire ("Eversource") in support of their request for approval of the sale to Eversource of Consolidated's ownership interest in approximately 347,000 solely owned and jointly owned utility poles (hereinafter the "Pole Sale Docket").

3. Each of the Petitioners submitted a single Pole Attachment Agreement between Consolidated and the respective Petitioner via an affidavit from one of their company representatives.[2] Consolidated does not dispute for purposes of this Motion to Dismiss that each Pole Attachment Agreement governs the rates, terms and conditions of their respective attachments to poles owned or jointly used by Consolidated and a New Hampshire electric utility along with the related license issued pursuant to those agreements. Consolidated now seeks the dismissal of the Petition as it states no claim upon which relief may be granted because no such "dispute" actually exists; the parties' business relationship regarding pole attachments, vis-a-vis each Pole Attachment Agreement, is clear on its face and those agreements must be enforced consistent with New Hampshire law.

## II. Legal Standard

4. When ruling on a motion to dismiss, the Commission "assume[s] that the factual allegations in the petition are true and all reasonable inferences therefrom must be construed in favor of the petitioner[s]." *Liberty Utilities Corp. 2017 Least Cost Integrated Resource Plan*, Order No. 26,225 (March 13, 2019) in Docket No. DG 17-152 at 5-6 (citing *Public Service Company of New Hampshire Petition for Approval of Power Purchase Agreement with Laidlaw Berlin BioPower, LLC*, Order No. 25,171 at 9 (November 17, 2010)); *see also Krainewood Shores Ass'n, Inc. v. Town of Moultonborough*, 2021 WL 787081 at *2 (2021) (similar in context of civil proceedings, also noting that when the motion raises "certain defenses," then "the trial court must look beyond the plaintiffs' unsubstantiated allegations and determine, based on the facts, whether the plaintiffs have sufficiently demonstrated their right to claim relief") (citation omitted).

[2] *See* Affidavit of Yann Quere, on behalf of Charter Communications, Attachment YQ-1; Affidavit of Nadine Heinen, on behalf of Breezeline, Attachment NH-1; and Affidavit of James G. White, Jr., on behalf of Comcast, Attachment JGW-1. The Petitioners filed each of the affidavits with the Petition on August 22, 2022.

5. The proper interpretation of a contract is a question of law for the Court to resolve. *See Mountain View Park, LLC v. Robson*, 168 N.H. 117, 119 (2015); *see also Czumak v. N.H. Div. of Developmental Servs.*, 155 N.H. 368, 373 (2007). "When interpreting a written agreement, [the Court] give[s] the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated, and reading the document as a whole." *Mountain View Park, LLC v. Robson*, 168 N.H. 117, 119 (2015). Courts "will, where possible, avoid construing a contract in a manner that leads to harsh and unreasonable results". *Cath. Med. Ctr. v. Exec. Risk Indem., Inc.*, 151 N.H. 699, 702 (2005); *Theim v. Thomas*, 119 N.H. 598, 604 (1979); *see also McDonald v. Company*, 91 N.H. 411, 412 (1941) ("[Individuals], in general, do not enter freely into contracts which are absurd or frivolous.") Instead, an interpretation of a contract that yields a "reasonable" meaning is preferred. *Restatement (Second) of Contracts* § 203(a).

**III. Argument**

6. These principles, applied to the situation presented by the Petition, compel dismissal of the Petition because the Petitioners have not alleged that a valid dispute or controversy exists under the Pole Attachment Agreements. In reviewing the applicable statutory authority, the Commission first should consider NH RSA 374:34-a as referenced in the Petition. *See* Petition, p. 6. The most relevant section of that statute states:

> II. Whenever a pole owner is unable to reach agreement with a party seeking pole attachments, the commission shall regulate and enforce rates, charges, terms, and conditions for such pole attachments, with regard to the types of attachments regulated under 47 U.S.C. section 224, to provide that such rates, charges, terms, and conditions are just and reasonable. This authority shall include but not be limited to the state regulatory authority referenced in 47 U.S.C. section 224(c).

RSA 374:34-a (II) (emphasis added). Similarly, after directing in Sections III and IV of the statute

that the Department of Energy adopt administrative rules related to pole attachments, the New Hampshire Legislature made clear that "[n]othing in this subdivision shall prevent parties from entering into pole attachment agreements voluntarily, without department approval." RSA 374:34-a (V) (emphasis added).

7. The plain language of RSA 374:34-a makes it clear that the Commission has jurisdiction relating to pole attachments only when a pole owner and an attacher are unable to reach agreement. In other words, it is a precondition of the Commission's jurisdiction that such parties cannot reach agreement; only if they cannot reach an agreement does the Commission's jurisdiction vest in terms of regulating and enforcing attachment rates, terms and conditions. As discussed more fully below, the Petitioners have multiple valid and enforceable Pole Attachment Agreements with Consolidated. The Pole Attachment Agreements are clear with respect to: (i) the applicable rates for attachments to Consolidated's solely and jointly owned poles, (ii) the applicable rate that applies for attachments to Consolidated's joint use poles, (iii) the definition of a joint use pole and (iv) how and when the Petitioners may dispute the pole attachment rates. Because of the clear terms of the Pole Attachment Agreements, the Petition contains no claims that any valid dispute exists between the parties and the Commission should dismiss the Petition.

8. Instead, in order to obtain the relief they seek, the Petitioners manufactured a dispute regarding the core term of the contracts – the pole attachment rates charged by Consolidated pursuant to those agreements. The Petitioners cite RSA 374:34-a (VII) which states that "[t]he commission shall have the authority to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments." While the Petitioners' 36 page Petition speaks for itself, the Petitioner's main argument is that Petitioners do not like the attachment rates to which they contractually agreed,

they subjectively believe the rates are too high, they want the attachment rates lowered on a retroactive basis and they want the Commission to unilaterally impose solely on Consolidated (and no other pole owners, telecommunications utility based or electric utility based) a pole attachment rate formula of their choosing that differs dramatically from the terms of the Pole Attachment Agreements.

9. The Commission should disregard the Petitioners' unsubstantiated allegations and should recognize upon review of the Petition that the Petitioners have not demonstrated any cognizable claim for relief. The Petitioners simply want a lower pole attachment rate via a contorted reading of the Pole Attachment Agreements without having to follow the contractual process to do so.

10. The Petitioners expend considerable effort trying to convince the Commission that a dispute exists because they invoked the dispute resolution procedures per Section 15.10 of the Pole Attachment Agreements. They cite their letters of October 18, 2021, and March 15, 2022 (*see* Petition, para. 28, p. 13, and paras. 38-39, p. 15) as well as Sections 15.6 and 15.10 of the Pole Attachment Agreements (*Id.*, at paras. 79-81). Consolidated submits, however, that when the Commission interprets the Pole Attachment Agreements as a whole and gives the language used by the parties its reasonable meaning, these arguments fail.

11. It is axiomatic that the Commission should not read the Pole Attachment Agreements in a manner that leads to absurd results. Yet that is what the Petitioners seek in this docket. By the Petitioners' interpretation, they simply can claim at any point in time the existence of an "unjust" or "unreasonable" term or condition within the Pole Attachment Agreements despite not doing so for years. The Petitioners' theory appears to be that the Pole Attachment Agreements contain rights that spring into action when the Petitioner decide they no longer want to be held to

voluntarily agreed to contractual provisions. Under such a theory, at any day or any point in time, they can pick a section or sections within the Pole Attachment Agreements and issue a dispute letter, seek negotiations and file a complaint with the Commission if (or when) they do not secure what they demand. The ability to enter into voluntary agreements, as RSA 374-34-a permits, would be rendered completely meaningless if Petitioners are allowed to unilaterally determine at any point in time that a "dispute" exists as a way to claim that the Commission has jurisdiction.

12. A review of the actual Pole Attachment Agreements reveals the terms that govern the parties' business arrangement with respect to pole attachment rates. The attachment rates in the Pole Attachment Agreements are not the rates presently charged by Consolidated. According to Mr. White's affidavit, Consolidated charges Comcast $11.67 annually for each Comcast attachment on poles owned solely by Consolidated, $6.84 annually for each Comcast attachment on poles that Consolidated owns jointly with another pole owner and $6.84 annually for each Comcast attachment on poles Consolidated does not own, but in actuality are joint use poles. *See* Affidavit of James G. White, para. 8, p. 2. These same attachment rates are contained in the Affidavits from Breezeline and Charter. *See* Affidavit of Yann Quere para 8, p.2, and Affidavit of Nadine Heinen, para. 8, p. 2. Such rates do not match the rates and are higher than the rates initially set forth in the Comcast Pole Attachment Agreement at PDF page 32 (JGW-1[3], Pole Attachment Agreement Appendix I (Attachment Fees)); as well as the Charter Pole Attachment Agreement (Attachment YQ-1) at PDF page 29, and the Breezeline Pole Attachment Agreement (Attachment NH-1) at PDF page 39.

[3] All page citations to the Petitioners' affidavits shall be to the respective affidavit PDF pagination.

13. With the current pole attachment rates being higher than the rates set forth in the Pole Attachment Agreement, a rate increase occurred at some point in time not specified in the Petition. Such an increase triggered Comcast's – and the other Petitioners' – rights to invoke the rate review provisions of Sections 3.1.2 and 3.1.3 of the Pole Attachment Agreements. Per Section 3.1.2 of the Pole Attachment Agreement, Consolidated's predecessor had to provide a required sixty (60) day notice period of a rate increase. Comcast could have disputed the rate increase and could have terminated the agreement "…if the change in Fees and Charges is not acceptable to Licensee" at the end of this timeframe. *See* JGW-1, ps. 11-12 (Section 3.1.2 of the Comcast Pole Attachment Agreement). Comcast had a contractual remedy per the voluntary Pole Attachment Agreement but clearly Comcast did not invoke that contractual remedy and instead paid the increased attachment rates. The other Petitioners also were subject to rate increases that they accepted instead of invoking their rights under Section 3.1.2 of their respective Pole Attachment Agreements. *See* NH-1, ps. 18-19; YQ-1, ps. 11-12.

14. Section 3.1.3 of the Pole Attachment Agreement provided Comcast and the other Petitioners with another avenue of relief. That provision states that changes to Fees and Charges

> "… shall be presumed acceptable unless at least thirty (30) days prior to the end of the sixty (60) day notice period Licensee advises Licensor in writing that the changes are unacceptable and, in addition, submits the issue to the regulatory body asserting jurisdiction of this Agreement for decision. Licensee shall pay the existing Attachment Fees and Charges during the time that the issue is being reviewed by said regulatory body, subject to true-up based on the final determination of rates by said regulatory body plus any interest prescribed by said regulatory body.

JGW-1, p. 12 (emphasis added); *see also* NH-1, p. 19 and YQ-1, p. 12.

15. Comcast failed to invoke its rights under Section 3.1.3 of the Pole Attachment Agreement. Similar to Comcast, the other Petitioners failed to invoke the relief that Section 3.1.3 of the Pole Attachment Agreements afforded to them. They never disputed the pole attachment

rate increases within the timeframe afforded by their agreements. They never filed a complaint with this Commission within the timeframe afforded by their agreements. Therefore, by the plain language of the Pole Attachment Agreements, the rates "shall be presumed acceptable". *See* JGW-1, p. 12 (Section 3.1.3 of the Comcast Pole Attachment Agreement); *see also* NH-1, p. 19 and YQ-1, p. 12. The Commission should not now allow the Petitioners to manufacture a dispute after the fact. 2012 N.H. P.U.C LEXIS 72, DT 12-084; Order No. 25,387, *16 (holding that RSA 374:34-a, VII does not impose on the PUC the obligation to hear disputes related to pole attachment agreements). Petitioners long ago forfeited their rights under the Pole Attachment Agreements to challenge the rates and invoke the Commission's jurisdiction. Their present claims are barred by the plain language of the Pole Attachment Agreements cited above.

16. The Petitioners' final claim, a request that the Commission eliminate Consolidated's charges for pole attachments on joint use poles, similarly fails to amount to a dispute that is properly before this Commission. *See* Petition, paras. 76-77, ps. 28-29. According to the Petitioners, the joint use fees are inconsistent with Section 3.2.1 of the Pole Attachment Agreements or any standard of reasonableness. *Id.*, para 77. This claim involves a matter of contract interpretation. Petitioners cannot expand and solicit the Commission's jurisdiction to alter their private contractual relationship with Consolidated, simply because they have become dissatisfied with its terms. *See Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1066-67 (1982) (holding that "the owners of a utility do not surrender to the PUC their rights to manage their own affairs merely by devoting their private business to a public use.") As a result, the Commission has no jurisdiction over this claim. Even if it did, this claim should be dismissed as well based on the plain language of the Pole Attachment Agreement.

17. The Pole Attachment Agreements, by their terms are governed by New Hampshire law, the state where Licensor's poles are located per Section 15.5 of the agreements. *See ex.*, JGW-1, p. 28 (Section 15.5, Choice of Law, of the Comcast Pole Attachment Agreement). Section 3.2.1 of the Pole Attachment Agreements state in relevant part that "Licensees shall pay an Attachment Fee for each attachment made to Licensor's Utility Poles." *Id.*, at p. 12. The term "Utility Pole" is a defined term per section 1.20 of the agreement and is defined therein as "[a] pole solely owned, jointly owned, or jointly used by the Licensor and used to support its facilities and the facilities of an authorized Licensee." *Id.*, at p. 10 (emphasis added); *see also* NH-1, p. 17 and YQ-1, p. 10 (defining "Utility Pole" in the same manner as in the Comcast Pole Attachment Agreement).

18. The language used by the parties in the Pole Attachment Agreement should be given its reasonable meaning. *See* 2010 N.H. P.U.C LEXIS 120, DE 09-174, Order No. 25,184, *18 ("[w]hen interpreting a written agreement [the Commission], like the New Hampshire Supreme Court, give[s] the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated.") Attachment fees for poles owned jointly or solely by Consolidated are not at issue. A utility pole jointly used, but not owned, by Consolidated "to support its facilities" is at issue. The plain language of the Pole Attachment Agreement expressly allows Consolidated to bill an "authorized Licensee" (here, the Petitioners) for their attachments on poles jointly used by Consolidated that support Consolidated's facilities. Consolidated adheres to the terms of the Pole Attachment Agreements in this regard.[4] Petitioners make no claim to the contrary. Thus, this claim should be dismissed.

[4] There are no claims or accusations in the Petition that Consolidated bills the Petitioners for attachments on utility poles not jointly owned, solely owned or jointly used by Consolidated.

19. The Petitioners also revert to "scare tactics" when referencing Consolidated's position regarding their need to terminate the Pole Attachment Agreements. They state:

> Sections 3.1.2 and 10.3.1 require that the Petitioners remove their facilities from Consolidated's poles, which would prevent the Petitioners from providing services to their customers. Because "terminate and renegotiate" places the Petitioners at the mercy of Consolidated and leads to a harsh and unreasonable result, Consolidated's position cannot be enforced.

Petition, para. 82, p. 31 (citing *Gamble v. Univ. of New Hampshire*, 136 N.H. 9, 15 (1992)).

20. Consolidated agrees that agreements should not be read or enforced in a manner leading to harsh and unreasonable results. However, Consolidated disagrees that the above referenced sections of the Pole Attachment Agreements stand for the proposition asserted by the Petitioners. As a first matter, Article X in general and Section 10.3.1 of the Pole Attachment Agreements do not apply to the present circumstances. Article X in general affords pole owners and joint users of poles (both being Licensors) certain rights to terminate the Pole Attachment Agreements. Section 10.1 begins "In addition to rights of termination provided to the Licensor under other provisions of this Agreement, the Licensor shall have the right to terminate Licensee's license…" JGW-1, p. 21. Section 10.2 contains similar rights for the Licensor as that section begins "Pole attachment license(s), authorization and/or rights are automatically and immediately terminated by the Licensor if…" *Id.* Section 10.3 then follows with the general requirements of what happens when both Licensors terminate the Pole Attachment Agreements for jointly owned or jointly used poles. *Id.*, p. 22. *See ex.*, Affidavit of Nadine Heinen, Attachment NH-1, ps. 29-30 (Section 10.3.1 of the Pole Attachment Agreement between Public Service Company of New Hampshire ("PSNH"), Consolidated and Breezeline).[5] Yet the Petition and its accompanying

[5] Although Comcast submitted to the Commission only a single Pole Attachment Agreement between it and Consolidated, it has entered into or is otherwise bound to multiple such agreements including three-party agreements with Consolidated and PSNH.

affidavits are devoid of any claim or document relating to PSNH or any other joint pole owner or joint user demanding (along with Consolidated) that one or more Petitioners must remove its (or their) attachments in the event the agreements were terminated.

21. In addition, Consolidated is required under New Hampshire law to provide the Petitioners with access to the poles to which they are already attached. *See* RSA 374:34-a(VI); *see also* Puc 1301.01-03. Pole owners also cannot take steps that prevent compliance with the requirement to provide emergency 911 services to the public. *See, e.g.,* RSA 106-H:1 and 106-H:6, 47 C.F.R Part 9 – 911 Requirements. It cannot be seriously argued that Consolidated can remove or have the Petitioners remove 350,000 of their attachments (*see* Petition, p. 2, citing their respective affidavits at para. 10), thereby endangering public safety, when Consolidated and its predecessors previously have issued pole attachment licenses allowing the Petitioners to affix their attachments to the poles.

22. Consolidated has not taken any action to terminate its previously issued authority allowing the Petitioners to attach to the poles if the Petitioners were to terminate their Pole Attachment Agreements. Consolidated has never declared that the Petitioners lack (or would lack) authority to attach to the poles if they were to terminate their Pole Attachment Agreements. Consolidated has never stated that any of the Petitioners would need to remove pole attachments and the Petitioners cite to no statement or notice issued by or on behalf of Consolidated purporting to support such an assertion. In fact, Consolidated would have no contractual right to make such a demand under these circumstances.

23. There are specific terms in the Pole Attachment Agreements which control the process if the Petitioners terminate the Pole Attachment Agreements. *See MPG Bedford v. KDG Bedford,* 2018 N.H. LEXIS 160 *11; 2018 WL 3968473 (NH 2018) ("…the principle of

interpretation known as ejusdem generis is applicable to contracts.") *citing 11 Williston on Contracts* § 32:10 at 739-40 (4th ed. 2012)). The relevant portion of Article XVI states:

> The Agreement may be terminated by Licensee by written notice of termination no less than 30 days prior to the effective date of such termination; provided, however, that such early termination shall not become effective until the Licensee has discontinued all existing licenses and has removed any and all facilities.

*See* Article XVI of the Pole Attachment Agreement, JGW-1, p. 29; NH-1, p. 37; YQ-1, p. 27 (emphasis added). This Article makes clear that Petitioners would not need to remove their attachments in the event they terminated the agreements, despite their claims to the contrary in the Petition.

24. Article XVI also is clear that the Petitioners could have provided any period of Notice they wanted in order to give plenty of time to negotiate a new agreement. Furthermore, in the event that the Parties could not agree to the rates, terms and condition of access, the Petitioners are free to submit such dispute to the Commission. Therefore, in the unlikely event the Parties did not agree to new/revised Pole Attachment Agreements, the Petitioners would have ample time to submit the matter to this Commission which certainly would not allow removal of the attachments while it resolved such dispute.

25. Overall, the Petitioners' pole attachment removal argument is a red herring. There is no evidence that Consolidated has or will demand removal of 350,000 pole attachments. There is no evidence or claim that any third party pole owner or joint user (a Licensor) has or will demand removal of 350,000 pole attachments. There is no evidence (or claim) that any party to this docket in fact could remove so many attachments from the poles prior to Commission involvement pursuant to the terms of Article XVI of the agreements. The Petitioners are well aware of their

ability to seek relief in the unlikely event access is denied or new rates cannot be fairly negotiated. The instant Petition simply is a matter of the Petitioners not wanting to follow the process they agreed to when they signed these agreements in order to get immediate and retroactive relief[6] for their preferred pole attachment rates, despite the fact that the Petitioners voluntarily agreed to the existing rates in not only a single agreement, but in multiple agreements.

26. As described above, the Petitioners come before this Commission seeking extraordinary and unprecedented relief. The Petitioners have filed a complaint that is prohibited under the enabling statute because the Parties have valid and binding agreements. The Petitioners are sophisticated actors that have negotiate more than 20 of these agreements combined, all of which are in evergreen status and allow for termination. The Petitioners have not exercised their right to terminate their agreements any of the multiple times the New Hampshire pole attachment rules have changed (including at least two changes in the last 15 years to the reasonable rate provisions of the rules). They did not exercise their right to challenge the rates when they were provided notice of a change in the pole attachment rate pursuant to the Pole Attachment Agreements. Nor have the Petitioners exercised their right to terminate at any time due to the evergreen nature of the agreements. Despite not exercising their rights at any point, they now ask this Commission to ignore the enabling statute, to ignore the terms of the agreements and order a change in the attachment rates because they claim through other litigation that they have determined the attachment rates are not reasonable.

[6] Section 3.1.3 of the Pole Attachment Agreements provides for an attachment rate true-up, plus interest, but does not grant any party a contractual right of retroactive reimbursement. In fact, no section of the Pole Attachment Agreements allows the parties to seek retroactive reimbursement of attachment fees. Having no contractual rights to the requested relief is yet another reason why the Petitioners claim that disputes exist when in fact they do not so exist.

## IV. Conclusion

27. To allow this complaint to go forward in the face of a voluntarily agreement would create unjustified precedent; it would render pole attachment agreements in New Hampshire meaningless and legally illusory because they could simply be set aside at any point in time by any party under the guise of a "dispute." The Petitioners cite no law that allows this Commission to order such an extraordinary remedy, nor disrupt well settled contract interpretation law in New Hampshire and a statute which by its plain meaning encourages voluntary agreements. This Motion to Dismiss should be granted and the Petition dismissed.

WHEREFORE, Consolidated respectfully request that this honorable Commission:

A. Dismiss the Petition filed in this docket, and

B. Grant any other such relief as it deems appropriate.

Respectfully Submitted by

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

By its Attorneys,

November 16, 2022

/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 16, 2022, this Motion to Dismiss has been electronically provided to the service list in this docket.

/s/ Patrick C. McHugh
Patrick C. McHugh