

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

**DOCKET NO. DT 22-047**

**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*

**REBUTTAL TESTIMONY OF SARAH DAVIS**

**On behalf of Consolidated communications of Northern New England Company, LLC**  
**d/b/a Consolidated Communications**

**December 15, 2022**

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1           **I           INTRODUCTION**

2           **Q.           Ms. Davis, please state your full name and business address.**

3           A.           My name is Sarah Davis. My business address is 5 Davis Farm Road, Portland, Maine  
4                       04103.

5           **Q.           By whom are you employed and in what capacity?**

6           A.           I am employed by Consolidated Communications as Senior Director, Government Affairs.

7           **Q.           What are your principal responsibilities in this position?**

8           A.           In my role, I am responsible for various regulatory matters before this Commission, the  
9                       Maine Public Utilities Commission, the Vermont Public Utility Commission and other  
10                      state based regulatory bodies. In addition, for the past 14 years I have been the regulatory  
11                      lead on pole attachment issues in Northern New England. Since Consolidated's acquisition  
12                      of FairPoint during 2017, I have been the regulatory lead on all pole attachment issues in  
13                      all 23 states where Consolidated operates.

14          **Q.           Please summarize your educational background and professional experience.**

1 A. I have Bachelor of Arts from Clark University and have a Juris Doctorate degree from the  
2 University of Maine, School of Law. I graduated from the University of Maine, School of  
3 Law in 2007. I have 15 years' experience in the telecommunications industry. I have  
4 handled a wide variety of telecommunications regulatory issues in Consolidated's service  
5 territory as well as for its predecessor, FairPoint Communications, including pole  
6 attachments. I have been responsible for negotiating pole attachment agreements in  
7 Consolidated's 23 state territory both as an attacher and a pole owner. I have worked on  
8 pole attachment rules and regulations including active participation on the last three pole  
9 attachment rulemaking proceedings in New Hampshire.

10 **Q. Have you previously testified before this Commission or other State Commissions?**

11 A. Yes, I have testified previously before this Commission, in Docket DE 21-020. I have also  
12 participated in various technical sessions, rulemaking proceedings or informal proceedings  
13 involving Commission Staff. I have testified before the Vermont Public Utility  
14 Commission in Case No. 18-1543-PET, which involved a petition regarding service to  
15 microcell sites. I also filed testimony and was a witness in Consolidated's Vermont  
16 Approval for a Successor Incentive Regulation Plan, Case No. 21-4060-PET.

17 In addition, I have testified before the Maine Public Utilities Commission in several  
18 dockets. Briefly stated, those dockets were Rapid Response proceedings involving pole  
19 attachment access issues, two service quality proceedings and a proceeding to implement  
20 a new Wholesale Performance Plan.

21 **Q. Please summarize your testimony.**

1 A. In their Petition, the Joint Petitioners assert that the only reasonable rate that can be charged  
2 for pole attachments is the rate that emerges from application of the FCC cable formula  
3 using Consolidated's GAAP accounting information NECTA obtained in Docket DE 21-  
4 020. Through my testimony I demonstrate that this assertion is incorrect. I demonstrate that  
5 New Hampshire law allows for contractual arrangements with negotiated rates and that  
6 each of the Joint Petitioners has such an arrangement and that the rates negotiated in those  
7 contracts are the rates that should be applied until such time as each Petitioner terminates  
8 its respective contractual arrangements and requests to renegotiate. I also demonstrate that  
9 the New Hampshire Pole Attachment Rules, codified as PUC Chapter 1300, do not limit  
10 the rates that can be charged to the rates produced through application of the FCC's cable  
11 rate formula. Finally, I explain that even if the New Hampshire Commission were to adopt  
12 the Cable Rate Formula, that formula would produce a different pole attachment rate than  
13 that claimed by the Petitioners' witness, Patricia Kravtin.

14 Secondly, I address the assertion by the Petitioners that application of the Joint Use charge  
15 is appropriate as it was agreed to by the Parties through contractual negotiations.

## 16 II CONTRACTUAL POLE RATES

17 **Q. Please describe the Pole Rates Charged by Consolidated.**

18 A. Consolidated charges \$6.84 for each attachment affixed to a jointly owned or jointly used  
19 pole. Consolidated charges \$11.67 for each attachment affixed to a Consolidated solely  
20 owned pole.

1 **Q. What is the origin of those rates?**

2 A. The rates charged by Consolidated come from contracts assumed as part of the merger  
3 between FairPoint Communications and Verizon in 2008. Pursuant to the terms of the  
4 contracts those rates may be increased on 60 days' notice. The attachment rates referenced  
5 above have been in effect since at least 2013.

6 **Q. At the time that rates were increased, did the joint petitioners have the ability to**  
7 **dispute the rate increase?**

8 A. Yes, pursuant to Section 3.1.2 of the Joint Petitioners various pole attachment agreements<sup>1</sup>,  
9 rate increases can be made on not less than 60 days' notice. This section further allows a  
10 licensee, such as the Joint Petitioners, to terminate the pole attachment agreement  
11 following a rate increase so long as the attacher provides its own 60-day notice of the  
12 termination prior to the end of 60-day notice period related to the rate increase. Section  
13 3.1.2 also allows for the parties to agree to a longer time period in this regard. Pursuant to  
14 Section 3.1.3 of those same pole attachment agreements, at the time of the rate increase, an  
15 attacher has 30 days to dispute the rate increase and submit the issue to the New Hampshire  
16 Public Utilities Commission, in which case the existing attachment rates continue subject  
17 to true-up upon completion of the Commission action.

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<sup>1</sup> A representative agreement appears as Attachment JGW 1 to the Affidavit of James White.

1 **Q. Did any of the Joint Petitioners dispute those rate increases at the time they were**  
2 **implemented?**

3 A. No.

4 **Q. Does New Hampshire Law allow for Parties to enter into negotiated contracts**  
5 **governing pole attachment rates?**

6 A. Yes, NH RSA 374:34-a(v) provides that “[n]othing in this subdivision shall prevent parties  
7 from entering into pole attachment agreements voluntarily, without commission approval.”  
8 Section I of that same statute provides that the Commission shall regulated the rates terms  
9 and conditions of attachments “[w]henever a pole owner is unable to reach agreement with  
10 a party seeking pole attachments...” The statute is clear, pole owners and attachers are  
11 supposed to negotiate pole attachment agreements that govern the rates, terms and  
12 conditions of attachment and only when they cannot reach agreement is it necessary for the  
13 Commission to step in and resolve the outstanding issues.

14 **Q. Do the Joint Petitioners have a mechanism to renegotiate rates?**

15 A. Yes, each of the Joint Petitioners are parties to pole attachment agreements which allow  
16 for termination. Each of the Joint Petitioners have the ability to terminate their pole  
17 attachment agreements and renegotiate new agreements. Section 3.1.2 of the pole  
18 attachment agreements require at least 60 days’ notice of the termination of the pole  
19 attachment agreement and further provides that the Parties can agree to a different time

1 frame. If the Parties failed to agree on new rates, terms or conditions either Party has a right  
2 to submit that dispute to the New Hampshire Public Utilities Commission.

3 **Q. Did any of the Parties exercise their right to terminate their agreement?**

4 **A.** No.

5 **Q. The Petitioners assert at Paragraph 25 of the Petition that they did not terminate their**  
6 **agreement because they feared they risked having their pole attachments removed.**  
7 **How do you respond to this?**

8 **A.** This is a red herring. First, pursuant to RSA 374:34-a Consolidated is required to provide  
9 access to poles, and it is required to negotiate in good faith. If Consolidated failed to do so,  
10 the Joint Petitioners could submit a dispute to the Commission. The Commission could  
11 hear the dispute and order whatever rates, terms and conditions it believed were reasonable.  
12 Secondly, Consolidated Communications has never involuntarily removed a pole  
13 attachment in New Hampshire, nor would it do so in anything but very extreme  
14 circumstances. Removing pole attachments would create a situation where customers in  
15 New Hampshire could be left without service. Consolidated would not take such an  
16 extreme action during pending negotiations. Furthermore, assuming arguendo, that  
17 Consolidated would take such actions, any of the Joint Petitioners so affected could seek  
18 relief from the Commission or the New Hampshire Department of Energy. Those  
19 regulatory agencies undoubtedly would take action to prevent any unfair removal of pole  
20 attachments to protect the residents and businesses serviced by the Joint Petitioners.



1 **Q. Is Consolidated charging the Joint Petitioners Just and Reasonable pole attachment**  
2 **rates consistent with New Hampshire Law?**

3 A. Yes, it is undisputed that Consolidated is charging each of the Joint Petitioners rates that  
4 are consistent with negotiated contracts as anticipated by New Hampshire Law.

5 **Q. The Petitioner's claim that they have a right to dispute the pole attachment rates**  
6 **pursuant to Section 15.10 of the Pole Attachment Agreement without the need to**  
7 **terminate the agreement, do you agree?**

8 A. No. Section 15.10 is a Dispute Resolution provision of the Pole Attachment agreement.  
9 This is the provision that applies when there is a dispute with respect to the application or  
10 interpretation of a term or condition of the contract. In this case, there is no such dispute.  
11 The contract is clear with respect to the pole attachment rates. Instead, the Joint Petitioners  
12 have determined that they no longer should pay the rate they agreed to pay. This is not a  
13 contractual dispute but rather an indication that they no longer wish to be a party to the  
14 contract because they no longer like the terms they agreed to.

15 **III JUST AND REASONABLE POLE RATES**

16 **Q. The Petitioner's assert that pursuant to New Hampshire law, the FCC's cable rate,**  
17 **found in 47 C.F.R. §1.1406(d), is the only reasonable rate. Do you agree?**

18 A. No. First, as stated above, New Hampshire law is clear that parties are supposed to attempt  
19 to negotiate the rates, terms and conditions of attachment and only seek recourse through  
20 the Commission if they cannot agree. Assuming, for argument sake, the facts were

1 different and the Parties did not agree, the New Hampshire Rules are clear that the FCC's  
2 rates are only one factor to consider in determining a just and reasonable pole attachment  
3 rate. When promulgating the Commission's pole attachment administrative rules, PUC  
4 Chapter 1300, the Commission had the ability to dictate that the FCC cable rate formula  
5 was the only method for determining a just and reasonable rate. The Commission did not  
6 promulgate such a requirement. Instead the rules indicate that there are other factors that  
7 should be considered in determining a just a reasonable rate, those factors include:

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

9 (2) The impact on competitive alternatives;

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

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

12 (5) The formulae adopted by the FCC in 47 C.F.R. §1.1406(d) in effect on October 1, 2022;

13 and

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

16 The Commission considered adopting the FCC formula, and made an active decision not  
17 to adopt the formula, recognizing it is not the only measure of what is a just and reasonable  
18 rate.

1 **Q. Is the FCC cable rate a just and reasonable formula to apply to attachments to**  
2 **Consolidated Communication's poles?**

3 **A.** No. The FCC cable rate only allocates a small percentage of Consolidated's total annual  
4 pole costs to the attaching entity (7.4% when using the FCC presumptions, less than that  
5 using Ms. Kravtin's assumptions). This rate fails to reflect the attacher's full use of the  
6 pole, or the value of pole access to the attacher. The FCC cable formula does not reflect  
7 the attacher's actual use of the pole since it only allocates pole costs to attachers based on  
8 the costs that are associated with the proportion of usable space. Furthermore, the FCC  
9 includes the telecommunications worker safety space in its "usable space." This space is  
10 not actually usable to Consolidated and benefits each pole attacher equally since it keeps  
11 all workers safe from the electric utility lines in the electric space of the pole. In the  
12 alternative, a fair rate would equitably allocate all of the pole costs to the attachers on the  
13 pole in recognition that everybody relies equally on the unusable space on the pole. The  
14 attachers achieve the same benefit from the entire pole as Consolidated. Furthermore, since  
15 Consolidated operates in a competitive market, it is unable to recover pole costs from rate  
16 payers like traditional public utilities.. As a result, the only value of the asset is the value  
17 of placing the network infrastructure on that pole in order to deliver a competitive service.  
18 This is exactly the same value achieved by other third party attachers. Therefore, the cost  
19 of this asset, access to which is required to be extended to all competitors in the broadband  
20 market, should be equitably split among all that share that asset and achieve that same  
21 value. Instead, what the cable companies seek here is pay annually, less than 7% of the  
22 costs of the pole. To allocate the pole costs in this manner, unfairly burdens Consolidated

1 as it requires Consolidated to subsidize the broadband expansion of the other attachers.  
2 Since Consolidated itself is engaged in broadband expansion, this is not actually allowing  
3 for more broadband expansion, it is providing a benefit to a single actor in the market at  
4 the expense of the other. Because Consolidated is required to compete with its cable  
5 competitors and other broadband providers, it creates market distortion and unfairly  
6 advantages attaching entities over telecommunications pole owners.

7 **Q. Please describe how Consolidated's rates are consistent with the criteria set forth in**  
8 **PUC Rule 1303.06.**

9 **A.** First, Consolidated's rates are just and reasonable because they were arrived at through  
10 negotiation with large, sophisticated cable companies as anticipated by New Hampshire law.  
11 Secondly, they have been in effect for over 9 years and have never once been challenged  
12 by any pole attacher until the cable companies participated in Docket DE 21-0202. Finally,  
13 Consolidated's rates are just and reasonable because Consolidated's pole attachment rates  
14 represent only 15% of the cost of a bare pole after the carrying charge<sup>2</sup> used by the cable  
15 company expert Patricia Kravtin. Since Consolidated averages one third party attacher per  
16 pole plus the assumption that both the power company and Consolidated are on the pole,  
17 this means the joint owners (or the sole owner in the case of solely owned poles) are  
18 absorbing 85% of the pole costs while the attacher is absorbing 15%, a more than fair

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<sup>2</sup> Applying the FCC formula based on 2020 data, the net cost of a bare pole calculated by Ms. Kravtin is \$86.38. The 15% is arrived at through the following formula (CCI Attachment Rate/(net cost of a bare pole\* carrying charge) or \$11.64/(86.38\*.9254).

1 allocation. Consolidated believes the most reasonable result treats both Consolidated and  
2 the attachers equitably with respect to the amount of pole costs they bear. All attachers in  
3 the telecom space of a pole are largely unregulated, and they aggressively compete for  
4 residential and business customers. Consolidated, like other attachers, is actively engaged  
5 in the deployment of broadband and its subscribers will equally benefit from a more  
6 equitable sharing of pole costs.

7 **Q. Setting aside the pole attachment agreements and whether the cable rate formula is**  
8 **the correct formula, do you agree Ms. Kravtin has appropriately reflected the**  
9 **resulting rate if the Commission were to adopt the cable rate formula?**

10 A. No. First, Ms. Kravtin should use the most recent cost data, currently 2021 and by the  
11 end of the case, 2022. Additionally, any data used to determine a just and reasonable pole  
12 rate should be based on regulatory depreciation and not accelerated GAAP depreciation.  
13 Finally, the assumed pole height should be based on the FCC rebuttable presumption with  
14 respect to pole height.

15 **Q. Have you preformed an analysis of this cost information for 2021?**

16 **A.** No. At this point a cost analysis for 2021 would not produce a useful result because of the  
17 pending pole sale transaction with Eversource. In the event the transaction closes, then the  
18 number of Consolidated owned poles will be significantly reduced. If the transaction does  
19 not close, there may be some degree of increased costs related to vegetation management  
20 that would need to be included in any cost analysis. That case should be resolved soon. If

1 necessary, at that time, there will be cost and pole count information that can be used to  
2 calculate a pole attachment rate for an appropriate year.

3 **Q. Please explain what you mean by using regulatory depreciation v. GAAP**  
4 **depreciation.**

5 A. Please see Attachment SD-1 to this Prefiled Testimony, Consolidated has recalculated  
6 the net cost of a bare pole using regulatory depreciation v. the accelerated depreciation on  
7 a GAAP basis. Based on this, the net cost of a bare pole goes from \$86.38 based on GAAP  
8 depreciation to \$181.35 based on a 17-year regulatory based depreciation schedule.  
9 Consolidated's pole attachment rate is below the rate produced using this methodology, as  
10 reflected in Attachment SD-1.

11 **Q. In her calculations, Witness Patricia Kravtin applies a pole height of 39 feet as**  
12 **opposed to the 37.5 foot FCC rebuttable presumption, do you agree with this**  
13 **presumed pole height?**

14 **A.** No, Ms. Kravtin based this presumption on limited survey data from only a subset of  
15 Consolidated and Eversource poles, this does not include all of Consolidated's poles  
16 throughout New Hampshire and is therefore insufficient to rebut the FCC presumption. As  
17 a result, the FCC presumption should apply.

18 **Q. In its Petition, the Joint Petitioners references a change to pole attachment rates in**  
19 **Maine, does that have any relevance to the instant case?**

1    **A.**    No, Maine not only is a different state, it also has pole attachment rules different than the  
2           New Hampshire pole attachment rules.

3           **IV     JOINT USE CHARGES FOR POLE ATTACHMENTS**

4    **Q.**    **The Joint Petitioners claim that it is unjust and unreasonable for Consolidated to**  
5           **charge a joint use charge. Do you agree?**

6    **A.**    No, each of the Joint Petitioners which are very sophisticated parties negotiated agreements  
7           that included paying an attachment fee on Joint Use Poles. Each of the Joint Petitioners  
8           have done this for at least 20 years. It is clearly set forth in the contract. It is clearly noted  
9           on the pole attachment rate schedule in the pole attachment agreements and it is clearly  
10          denoted on the multiple bills that these attachers receive at least annually.

11   **Q.**    **Does this conclude your testimony?**

12   **A.**    Yes.

13