

Consolidated Communications of Northern New England
Company LLC d/b/a Consolidated Communications
Docket No. DT 22-047
Sarah Davis
December 15, 2022

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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STATE OF NEW HAMPSHIRE
BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
REBUTTAL TESTIMONY OF SARAH DAVIS

December 15, 2022

Docket No. DE 21-020

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.

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

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

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

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

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

1 a new Wholesale Performance Plan.

2 **Q. Please summarize your testimony.**

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

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

18 **II CONTRACTUAL POLE RATES**

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

1 A. Consolidated charges \$6.84 for each attachment affixed to a jointly owned or jointly used
2 pole. Consolidated charges \$11.67 for each attachment affixed to a Consolidated solely
3 owned pole.

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

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

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

11 A. Yes, pursuant to Section 3.1.2 of the Joint Petitioners various pole attachment agreements¹,
12 rate increases can be made on not less than 60 days' notice. This section further allows a
13 licensee, such as the Joint Petitioners, to terminate the pole attachment agreement
14 following a rate increase so long as the attacher provides its own 60-day notice of the
15 termination prior to the end of 60-day notice period related to the rate increase. Section
16 3.1.2 also allows for the parties to agree to a longer time period in this regard. Pursuant to
17 Section 3.1.3 of those same pole attachment agreements, at the time of the rate increase, an

¹ A representative agreement appears as Attachment JGW 1 to the Affidavit of James White.

1 attacher has 30 days to dispute the rate increase and submit the issue to the New Hampshire
2 Public Utilities Commission, in which case the existing attachment rates continue subject
3 to true-up upon completion of the Commission action.

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

6 A. No.

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

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

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

18 A. Yes, each of the Joint Petitioners are parties to pole attachment agreements which allow
19 for termination. Each of the Joint Petitioners have the ability to terminate their pole

1 attachment agreements and renegotiate new agreements. Section 3.1.2 of the pole
2 attachment agreements require at least 60 days' notice of the termination of the pole
3 attachment agreement and further provides that the Parties can agree to a different time
4 frame. If the Parties failed to agree on new rates, terms or conditions either Party has a right
5 to submit that dispute to the New Hampshire Public Utilities Commission.

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

7 **A.** No.

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

11 **A.** This is a red herring. First, pursuant to RSA 374:34-a Consolidated is required to provide
12 access to poles, and it is required to negotiate in good faith. If Consolidated failed to do so,
13 the Joint Petitioners could submit a dispute to the Commission. The Commission could
14 hear the dispute and order whatever rates, terms and conditions it believed were reasonable.
15 Secondly, Consolidated Communications has never involuntarily removed a pole
16 attachment in New Hampshire, nor would it do so in anything but very extreme
17 circumstances. Removing pole attachments would create a situation where customers in
18 New Hampshire could be left without service. Consolidated would not take such an
19 extreme action during pending negotiations. Furthermore, assuming arguendo, that

1 Consolidated would take such actions, any of the Joint Petitioners so affected could seek
2 relief from the Commission or the New Hampshire Department of Energy. Those
3 regulatory agencies undoubtedly would take action to prevent any unfair removal of pole
4 attachments to protect the residents and businesses serviced by the Joint Petitioners.

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

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

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

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

19

1 **III JUST AND REASONABLE POLE RATES**

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

4 **A.** No. First, as stated above, New Hampshire law is clear that parties are supposed to attempt
5 to negotiate the rates, terms and conditions of attachment and only seek recourse through
6 the Commission if they cannot agree. Assuming, for argument sake, the facts were
7 different and the Parties did not agree, the New Hampshire Rules are clear that the FCC's
8 rates are only one factor to consider in determining a just and reasonable pole attachment
9 rate. When promulgating the Commission's pole attachment administrative rules, PUC
10 Chapter 1300, the Commission had the ability to dictate that the FCC cable rate formula
11 was the only method for determining a just and reasonable rate. The Commission did not
12 promulgate such a requirement. Instead the rules indicate that there are other factors that
13 should be considered in determining a just a reasonable rate, those factors include:

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;

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

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

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

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

10 **A.** No. The FCC cable rate only allocates a small percentage of Consolidated's total annual
11 pole costs to the attaching entity (7.4% when using the FCC presumptions, less than that
12 using Ms. Kravtin's assumptions). This rate fails to reflect the attacher's full use of the
13 pole, or the value of pole access to the attacher. The FCC cable formula does not reflect
14 the attacher's actual use of the pole since it only allocates pole costs to attachers based on
15 the costs that are associated with the proportion of usable space. Furthermore, the FCC
16 includes the telecommunications worker safety space in its "usable space." This space is
17 not actually usable to Consolidated and benefits each pole attacher equally since it keeps
18 all workers safe from the electric utility lines in the electric space of the pole. In the
19 alternative, a fair rate would equitably allocate all of the pole costs to the attachers on the

1 pole in recognition that everybody relies equally on the unusable space on the pole. The
2 attachers achieve the same benefit from the entire pole as Consolidated. Furthermore, since
3 Consolidated operates in a competitive market, it is unable to recover pole costs from rate
4 payers like traditional public utilities.. As a result, the only value of the asset is the value
5 of placing the network infrastructure on that pole in order to deliver a competitive service.
6 This is exactly the same value achieved by other third party attachers. Therefore, the cost
7 of this asset, access to which is required to be extended to all competitors in the broadband
8 market, should be equitably split among all that share that asset and achieve that same
9 value. Instead, what the cable companies seek here is pay annually, less than 7% of the
10 costs of the pole. To allocate the pole costs in this manner, unfairly burdens Consolidated
11 as it requires Consolidated to subsidize the broadband expansion of the other attachers.
12 Since Consolidated itself is engaged in broadband expansion, this is not actually allowing
13 for more broadband expansion, it is providing a benefit to a single actor in the market at
14 the expense of the other. Because Consolidated is required to compete with its cable
15 competitors and other broadband providers, it creates market distortion and unfairly
16 advantages attaching entities over telecommunications pole owners.

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

19 **A.** First, Consolidated's rates are just and reasonable because they were arrived at through
20 negotiation with large, sophisticated cable companies as anticipated by New Hampshire law.

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1 Secondly, they have been in effect for over 9 years and have never once been challenged
2 by any pole attacher until the cable companies participated in Docket DE 21-0202. Finally,
3 Consolidated's rates are just and reasonable because Consolidated's pole attachment rates
4 represent only 15% of the cost of a bare pole after the carrying charge² used by the cable
5 company expert Patricia Kravtin. Since Consolidated averages one third party attacher per
6 pole plus the assumption that both the power company and Consolidated are on the pole,
7 this means the joint owners (or the sole owner in the case of solely owned poles) are
8 absorbing 85% of the pole costs while the attacher is absorbing 15%, a more than fair
9 allocation. Consolidated believes the most reasonable result treats both Consolidated and
10 the attachers equitably with respect to the amount of pole costs they bear. All attachers in
11 the telecom space of a pole are largely unregulated, and they aggressively compete for
12 residential and business customers. Consolidated, like other attachers, is actively engaged
13 in the deployment of broadband and its subscribers will equally benefit from a more
14 equitable sharing of pole costs.

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

² 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 A. No. First, Ms. Kravtin should use the most recent cost data, currently 2021 and by the
2 end of the case, 2022. Additionally, any data used to determine a just and reasonable pole
3 rate should be based on regulatory depreciation and not accelerated GAAP depreciation.
4 Finally, the assumed pole height should be based on the FCC rebuttable presumption with
5 respect to pole height.

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

7 **A.** No. At this point a cost analysis for 2021 would not produce a useful result because of the
8 pending pole sale transaction with Eversource. In the event the transaction closes, then the
9 number of Consolidated owned poles will be significantly reduced. If the transaction does
10 not close, there may be some degree of increased costs related to vegetation management
11 that would need to be included in any cost analysis. That case should be resolved soon. If
12 necessary, at that time, there will be cost and pole count information that can be used to
13 calculate a pole attachment rate for an appropriate year.

14 **Q. Please explain what you mean by using regulatory depreciation v. GAAP**
15 **depreciation.**

16 **A.** Please see Attachment SD-1 to this Prefiled Testimony, Consolidated has recalculated
17 the net cost of a bare pole using regulatory depreciation v. the accelerated depreciation on
18 a GAAP basis. Based on this, the net cost of a bare pole goes from \$86.38 based on GAAP
19 depreciation to \$181.35 based on a 17-year regulatory based depreciation schedule.

1 Consolidated's pole attachment rate is below the rate produced using this methodology, as
2 reflected in Attachment SD-1.

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

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

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

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

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

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

17 **A.** No, each of the Joint Petitioners which are very sophisticated parties negotiated agreements
18 that included paying an attachment fee on Joint Use Poles. Each of the Joint Petitioners
19 have done this for at least 20 years. It is clearly set forth in the contract. It is clearly noted

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1 on the pole attachment rate schedule in the pole attachment agreements and it is clearly
2 denoted on the multiple bills that these attachers receive at least annually.

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

4 A. Yes.

5

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Attachment SD-1 to the Prefiled Testimony of Sarah Davis			
2020 ARMIS Revised			
ARMIS ROW	ROW TITLE (a)	Amount (000) (b)	
			Revised - Eliminate Accelerated Depreciation
			Include Regulatory Depreciation
			Balance from Asset Re-Valuation (Jan. 2018)
101	Gross Investment - Poles	\$ 63,530	
201	Less Accumulated Depreciation - Poles	\$ 10,588	
404	Less Net Non-current Deferred Operating I	\$ 4,865	
	Net Pole Investment	\$ 48,076	
	x (1-Appurtenances Factor)	0.95	
	Net Bare Pole Investment	\$ 45,673	
601	Total No. Poles	251,845	Kravtin Table 4
	Cost of bare pole	\$ 181.35	
		0.0667	Kravtin Space Factor
		0.074074074	FCC rebuttable presumption space factor
		\$12.09	Pole Attachment Rate using Kravtin space factor
		\$13.43	Pole Attachment Rate using FCC Rebuttable
			Presumption Space Factor

1