



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**I N D E X**

**PAGE NO.**

<b>SUMMARY OF DOCKET BY CHAIRMAN GOLDNER</b>	5
<b>DISCUSSION RE:</b> To include Record Request 1 and Record Request 2 as evidence in the docket	5
<b>SUMMARY OF THE SCOPE BY CHAIRMAN GOLDNER</b>	7
<b>STATEMENTS RE: CONSOLIDATED'S OBJECTION TO EXHIBITS 8, 9, AND 10 BY:</b>	
Mr. McHugh	8
Ms. Geiger	9
<b>STATEMENTS RE: PRELIMINARY ISSUES BY:</b>	
Ms. Geiger	10, 15
Mr. McHugh	12
Mr. Young	15
<b>WITNESS: PATRICIA D. KRAVTIN</b>	
Direct examination by Ms. Geiger	18
Interrogatories by Cmsr. Simpson	33
Interrogatories by Cmsr. Chattopadhyay	48
<b>WITNESS: SARAH DAVIS</b>	
Direct examination by Mr. McHugh	62
Cross-examination by Ms. Geiger	74
Interrogatories by Cmsr. Simpson	82
Interrogatories by Cmsr. Chattopadhyay	98
<b>CLOSING ARGUMENTS BY:</b>	
Mr. McHugh	108
Mr. Young	111
Ms. Geiger	112

**E X H I B I T S**

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
1	Petition for Resolution of Rate Dispute	<i>premarked</i>
2	Attachments to Petition for Resolution of Rate Dispute	<i>premarked</i>
3	Prefiled Direct Testimony of Patricia D. Kravtin	<i>premarked</i>
4	Attachments to Prefiled Direct Testimony of Patricia D. Kravtin	<i>premarked</i>
5	Affidavit of Yann Querre and Attachment	<i>premarked</i>
6	Affidavit of Nadine Heinen and Attachment	<i>premarked</i>
7	Affidavit of James G. White, Jr., and Attachments	<i>premarked</i>
8	<i>[Not used]</i>	
9	<i>[Not used]</i>	
10	<i>[Not used]</i>	
11	Consolidated's Responses to Petitioners' First Set of Data Requests	<i>premarked</i>
12	Consolidated's Response to Petitioners Data Request 1-01	<i>premarked</i>
13	Prefiled Surrebuttal Testimony of Patricia D. Kravtin	<i>premarked</i>
14	Attachments to Prefiled Surrebuttal Testimony of Patricia D. Kravtin	<i>premarked</i>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**E X H I B I T S (continued)**

<b>EXHIBIT NO.</b>	<b>D E S C R I P T I O N</b>	<b>PAGE NO.</b>
15	Response to Department of Energy Staff Data Request 3-005b.2020 in DE 21-020	<i>premarked</i>
16	Responses to Petitioners' Technical Session Data Requests	<i>premarked</i>
17	Revised Attachment SD-1 to the Prefiled Testimony of Sarah Davis	<i>premarked</i>
18	Consolidated's Updated Response to Petitioners' Data Request 1-01	<i>premarked</i>
19	Rebuttal Testimony of Sarah Davis, with attachment	<i>premarked</i>
20	Record Request Response to Record Request 1	6
21	Record Request Response to Record Request 2	6
22	<b>RESERVED FOR RECORD REQUEST</b> <i>(Calculate the rate using the telecom formula and indicate the difference relative to the rate calculated using the cable formula, in percentage term)</i>	107

**P R O C E E D I N G**

1  
2 CHAIRMAN GOLDNER: Okay. Good morning,  
3 everyone. I'm Chairman Goldner. I'm joined  
4 today by Commissioners Simpson and Chattopadhyay.

5 We're here this morning for a hearing  
6 in Docket DT 22-047. The authority to confine a  
7 hearing in this matter is provided in RSA  
8 374:34-a. We are considering testimony and  
9 evidence concerning the attachment rates paid by  
10 the Petitioners and contained in their attachment  
11 agreements with Consolidated Communications. We  
12 note that the Commission is required to issue a  
13 decision in this docket within 180 days of the  
14 filing, which was made on August 22nd, 2022. We  
15 intend to issue an order on or before February  
16 17th, 2023.

17 To start, we'd like to hear from the  
18 Parties on whether there is any objection to add  
19 the two record requests from January 24th as part  
20 of the evidence during this hearing?

21 MS. GEIGER: No objection. Thank you.

22 CHAIRMAN GOLDNER: Thank you. Any  
23 objections?

24 *[Atty. Young indicating in the*

1                   *negative.]*

2                   CHAIRMAN GOLDNER: No objection?

3                   MR. MCHUGH: No objections.

4                   CHAIRMAN GOLDNER: Okay. Very good.

5                   We'll add that in as "Exhibit 20" in this  
6                   proceeding.

7                   (The document, as described, was  
8                   herewith marked as **Exhibit 20** for  
9                   identification.)

10                  CHAIRMAN GOLDNER: Okay. Appearances.  
11                  Let's begin with the Petitioners.

12                  MS. GEIGER: Yes. Good morning, Mr.  
13                  Chairman and Commissioners. I'm Susan Geiger,  
14                  from the law firm of Orr & Reno, and I'm  
15                  appearing on behalf of the Petitioners. And with  
16                  me today, at counsel's table, for each company  
17                  are Mr. Jim White, on behalf of Comcast; and to  
18                  his right is Ms. Danielle Duplessis, on behalf of  
19                  Charter; and to her right is Ms. Adrianna  
20                  Michalska, on behalf of Breezeline.

21                  CHAIRMAN GOLDNER: Thank you. And  
22                  we'll move to Consolidated Communications.

23                  MR. MCHUGH: Good morning, Mr.  
24                  Chairman, Commissioners. Patrick McHugh,

1 appearing on behalf of Consolidated  
2 Communications. With me is Ms. Sarah Davis.

3 Thank you very much.

4 CHAIRMAN GOLDNER: Thank you. And,  
5 finally, the New Hampshire Department of Energy?

6 MR. YOUNG: Good morning,  
7 Commissioners. Matt Young, appearing on behalf  
8 of the Department of Energy. And with me today  
9 is Amanda Noonan, who is the Director of the  
10 Consumer Services Division.

11 CHAIRMAN GOLDNER: Okay. Very good.  
12 Thank you.

13 Okay. Well, I'd like to begin by  
14 offering some observations on the scope of the  
15 docket. We're here today to consider whether the  
16 attachment rates that Consolidated charges the  
17 Joint Petitioners are reasonable and  
18 nondiscriminatory.

19 In this docket, we will not determine  
20 whether or not Consolidated should transfer its  
21 poles in New Hampshire to another utility. And,  
22 also, we're not going to determine whether or not  
23 the proposed terms of the Parties' Purchase  
24 Agreement concerning Consolidated's poles are

1 reasonable.

2 With that in mind, we'd like to hear  
3 from the Parties concerning Consolidated's  
4 objection to the Petitioners' Exhibits 8, 9, and  
5 10.

6 Attorney McHugh, would you care to  
7 address that please?

8 MR. MCHUGH: Yes, Mr. Chairman.

9 Many of the exhibits are legal  
10 documents, several of which are not in any way  
11 authored by Consolidated Communications.

12 To the extent they attempt to do  
13 anything with respect to the Commission's  
14 administrative rules, much like a statute, the  
15 rules are presumed to be clear and unambiguous,  
16 unless you determine that they are somewhat  
17 ambiguous and require additional evidence in  
18 order to interpret them.

19 So, to the extent there's anything in  
20 there from Consolidated Communications, we think  
21 the Commission should take it as an admission,  
22 and I have no problem with that.

23 However, all the other documents have  
24 nothing to do with Consolidated. And materials

1 provided from other parties in the ratemaking --  
2 I'm sorry, not "ratemaking", the rulemaking  
3 proceeding I would ask be stricken from the  
4 record.

5 CHAIRMAN GOLDNER: Okay. Mr. Young,  
6 any -- Attorney Young, any comments?

7 MR. YOUNG: There's no comments from  
8 the Department at this time.

9 CHAIRMAN GOLDNER: Thank you. And  
10 Attorney Geiger?

11 MS. GEIGER: Yes. Thank you, Mr.  
12 Chairman.

13 I'm not sure I understood Mr. McHugh's  
14 comments. But I thought what you were asking  
15 about was arguments about the three exhibits that  
16 were submitted with the Joint List that to which  
17 Consolidated had objected. And I agree with Mr.  
18 McHugh that, you know, to the extent that those  
19 are legal pleadings, that they would be part of  
20 the record under 541-A, which indicates that, and  
21 the subparagraph escapes me at the moment, but  
22 there is prior authority in 541-a for legal  
23 pleadings, motions, *et cetera*, to be part of the  
24 record.

1           So, out of an abundance of caution, I  
2 marked them as exhibits. I know I probably  
3 didn't need to do that. So, if you don't want  
4 them as exhibits, that's fine. But I just want  
5 it understood that they are part of the record.

6           CHAIRMAN GOLDNER: Okay. Okay. Thank  
7 you very much.

8           So, we'll confer later on in the  
9 proceeding and return with a ruling on that from  
10 the Bench.

11           But, at the moment, we'll proceed on.  
12 And I'll ask at this point if there are any other  
13 preliminary issues that the Parties wish to raise  
14 before we go to the witnesses?

15           MS. GEIGER: Mr. Chairman, the only  
16 question I have is, you indicated earlier about  
17 marking as exhibits the submissions that were  
18 made on Tuesday afternoon, Excel spreadsheets.  
19 And, just for the sake of clarity, I would assume  
20 that each one of those will be given a different  
21 exhibit number. And, if we need to refer to them  
22 during the hearing, I was just curious how you  
23 wanted to handle that, in terms of the numerical  
24 references?

1                   CHAIRMAN GOLDNER: That's a good point.  
2                   I had originally just thought of it as a single  
3                   exhibit, but probably two would be better. So,  
4                   maybe Record Request Number 1 would be "Exhibit  
5                   20" and Record Request Number 2 would be  
6                   "Exhibit 21". Would that be helpful?

7                   MS. GEIGER: So, in response to Record  
8                   Request Number 1, my client submitted, I think,  
9                   five different Excel spreadsheets. So, I didn't  
10                  know if you wanted those numbers separately, or  
11                  you know what I'm saying?

12                  CHAIRMAN GOLDNER: For purposes of  
13                  today, I think we can just refer to them as  
14                  "Exhibit 20" and "21", --

15                  MS. GEIGER: Okay.

16                  CHAIRMAN GOLDNER: -- or "Record  
17                  Request 1" and "2".

18                  MS. GEIGER: Okay.

19                  CHAIRMAN GOLDNER: But, if we --

20                  MS. GEIGER: That's fine.

21                  CHAIRMAN GOLDNER: We'll go back and  
22                  take a look to see what would make the most  
23                  sense.

24                  MS. GEIGER: No problem.

1 CHAIRMAN GOLDNER: If that's okay?

2 MS. GEIGER: That's fine. Thank you.

3 CHAIRMAN GOLDNER: Thank you.

4 Okay. Are there any other preliminary  
5 issues? Attorney McHugh?

6 MR. MCHUGH: Yes, Mr. Chairman. One  
7 additional one, please.

8 I'm going to ask that the 180-day "shot  
9 clock", so to speak, be reset. And I'm going to  
10 ask that, in part, this hearing be continued to  
11 an extent.

12 I think, when you look at Puc Rules  
13 203.05, which go back to 202.01, as well as 204,  
14 in terms of what needs to be in a petition and  
15 what the petitioner's requested relief needs to  
16 be, it's very clear everything needs to be set  
17 forth in a petition, and everything flows from  
18 there.

19 And, given the various submissions in  
20 this docket, when you compare the theories of  
21 relief in the prefiled surrebuttal testimony,  
22 that only came in last Thursday afternoon, plus  
23 all the additional material we got only one  
24 business day ago, with respect to Record

1 Request 1, we have not been able to conduct any  
2 discovery.

3 And I think, when you compare -- at  
4 least I believe, when you compare Table 1 and  
5 some other items in the prefiled rebuttal  
6 testimony filed with the initial Petition back in  
7 August of 2022, to the surrebuttal testimony, we  
8 have not had an opportunity at Consolidated to  
9 thoroughly be available to evaluate all of the  
10 new information. The tables have clearly  
11 changed. There's new theories in the surrebuttal  
12 testimony involving an update to the Commission's  
13 rules. That's in Exhibit 13, starting at  
14 Bates 002. And then, there's a new analysis  
15 starting at Bates, again, it's Exhibit 13,  
16 Bates 008 through 011, which I think diverges  
17 significantly from the initial Petition and Ms.  
18 Kravtin's prefiled testimony, and this whole new  
19 analysis regarding GAAP and additional regulatory  
20 accounting that was never raised in the Petition.

21 And, so, when -- and, in addition, by  
22 the way, yesterday afternoon, there was a page  
23 swapped out in part of the testimony that has to  
24 do with Tables 1 and 2, which is Bates Page 017

1 of Exhibit 13, and there was no explanation  
2 provided for what the changes were.

3 But we are entitled to defend  
4 ourselves. And I think, in light of all the new  
5 claims, what I am asking for, in terms of the  
6 relief, in terms of the resetting of the shot  
7 clock, is not a whole new proceeding, I don't,  
8 but I think it's justified that the shot clock  
9 can be restarted, so the Commissioners not be  
10 bound, if it agrees with me, to the February 17th  
11 deadline.

12 And I would request we go forward today  
13 with Ms. Kravtin, the testimony and any questions  
14 that anybody have. But, then, what I would ask  
15 for is what the Petitioners want be reset in a  
16 petition. I'd like an opportunity to conduct a  
17 technical session over all of the material we've  
18 received late last week, and including Tuesday.  
19 And we do one or two things with, because I'm  
20 asking that Ms. Davis not be put on the stand  
21 today, because we have not had an opportunity to  
22 prepare adequately, I think, for the new  
23 testimony. But we can either file an updated  
24 rebuttal, some rebuttal testimony and exhibits

1 from Ms. Davis, or, we can proceed directly to,  
2 say, a Day 2 of the hearing with Ms. Davis only.

3 But that all requires some resetting of  
4 the shot clock, and then setting out a further  
5 schedule. So, that's what I would ask. And  
6 thank you for hearing me out.

7 CHAIRMAN GOLDNER: Thank you. Attorney  
8 Young, any comments on Attorney McHugh's  
9 statement, or questions?

10 MR. YOUNG: I'm not sure the Department  
11 has a comment at this time.

12 I think one issue that -- one thing  
13 that may be an issue is whether the 180 days can  
14 be reset. And that was something that the  
15 Department would have to look into. At this  
16 time, that's just a preliminary issue.

17 CHAIRMAN GOLDNER: Okay. Thank you,  
18 Attorney Young. Attorney Geiger.

19 MS. GEIGER: Yes. Thank you, Mr.  
20 Chairman.

21 Mr. McHugh's request and arguments are  
22 catching me completely offguard. I mean, he  
23 hasn't consulted with me about any of this. So,  
24 I'm, you know, sort of at a loss to understand

1 exactly, you know, why -- you know, why he wants  
2 to proceed in the fashion that he's suggesting.

3 We are not seeking any different relief  
4 than what we filed in the Petition back on August  
5 22nd of last year. Ms. Kravtin had the  
6 opportunity, under the procedural schedule, to  
7 file surrebuttal, which is what she did.

8 The errata sheet that we filed  
9 yesterday, and that we were asked by the Clerk's  
10 Office to refile as a revised Exhibit 13, Ms.  
11 Kravtin could have done that on the stand. But  
12 we thought we would do everyone the courtesy of  
13 giving that information ahead of time. She  
14 basically corrected for a minus that should have  
15 been a plus, and then some of the calculated  
16 calculations needed to change. So, she's going  
17 to explain that in her direct testimony.

18 But, at this point, the Petition, you  
19 know, was filed, obviously, several months. Our  
20 position hasn't changed. Ms. Kravtin's position  
21 hasn't changed. New information has been  
22 submitted in her surrebuttal, in response to what  
23 Ms. Davis put in the record.

24 And then, obviously, the Commission had

1 record requests that we were required to answer.  
2 That's not information we put into the record,  
3 you know, for lack of a better term, voluntarily  
4 or unilaterally. It's information that the  
5 Commissioners wanted.

6 So, at this late date, I don't see any  
7 basis for restarting the shot clock. I think the  
8 Petition is filed, and the federal law is very  
9 clear, is that this Commission's jurisdiction and  
10 authority goes for 180 days from the time the  
11 Petition was filed.

12 And, therefore, I would strongly object  
13 to any request that this matter be delayed any  
14 further. Thank you.

15 CHAIRMAN GOLDNER: Thank you, Attorney  
16 Geiger.

17 So, given the complexity of the issues,  
18 the Commission will take a 15-minute recess to  
19 confer. And we'll return at 11:30. Thank you.

20 Off the record.

21 *(Recess taken at 11:15 a.m., and the*  
22 *hearing resumed at 11:30 a.m.)*

23 CHAIRMAN GOLDNER: Okay. So, back on  
24 the record.

[WITNESS: Kravtin]

1           It's unclear whether we can waive the  
2           180-day requirement. So, we'll proceed today  
3           under the 180-day timeline.

4           Second, we'll note that the record  
5           request was just live Excels of material already  
6           submitted.

7           And then, number three is, the  
8           Petitioners' rebuttal or surrebuttal, there's  
9           some nomenclature there, was in the procedural  
10          schedule, and is common practice at the PUC.

11          So, we'll deny the motion, and proceed  
12          today as planned.

13          And we'll move directly to the  
14          Petitioners' witness and the direct examination  
15          of that witness.

16          MS. GEIGER: Thank you.

17          (Whereupon **Patricia D. Kravtin** was duly  
18          sworn by the Court Reporter.)

19          **PATRICIA D. KRAVTIN, SWORN**

20          **DIRECT EXAMINATION**

21          BY MS. GEIGER:

22          Q       Good morning, Ms. Kravtin. Could you please  
23                  state your name and spell your last name for the  
24                  record?

[WITNESS: Kravtin]

1 A Yes. My name is Patricia Kravtin, spelled  
2 K-r-a-v-t-i-n.

3 Q And, Ms. Kravtin, by whom are you employed and  
4 what is your occupation?

5 A Yes. I'm Principal and Owner of my consulting  
6 practice, Patricia D. Kravtin Economic  
7 Consulting. I'm a consulting economist, with  
8 specialization in communication and energy  
9 regulation and markets.

10 Q Could you please briefly describe your work  
11 experience that is particularly relevant to this  
12 docket?

13 A Yes. During the 40 years of my professional  
14 career, I've been actively involved in the field  
15 of public utility economics and regulation. And  
16 I've developed a particular expertise in issues  
17 relating to essential facilities, such as the  
18 poles, conduits, and rights-of-way, and in the  
19 calculation of just and reasonable rates for pole  
20 attachments in particular. I've testified as an  
21 expert witness before state and federal  
22 regulatory commissions, at agencies, and courts.

23 Q And, Ms. Kravtin, have you previously testified  
24 before this Commission?

[WITNESS: Kravtin]

1 A Yes, I have. And let me add, I have submitted a  
2 detailed *curriculum vitae* with my prefiled direct  
3 testimony contained in Hearing Exhibit 4.

4 I have recently testified before this  
5 Commission on behalf of NECTA in the transfer  
6 docket, DE 21-020. And my testimony addressed  
7 the appropriate net book value of Consolidated's  
8 pole assets and just and reasonable for the same  
9 poles basically at issue in this rate dispute.

10 And I also provided testimony on behalf  
11 of Time Warner, in Docket DT 12-084, which  
12 involved also a dispute over Eversource's pole  
13 attachment rates, and I participated in the  
14 development of the settlement rate.

15 Q And, Ms. Kravtin, did you submit prefiled direct  
16 testimony on behalf of the Petitioners in this  
17 docket, dated August 22nd, 2022, which has been  
18 marked as "Exhibit 3", along with attachments  
19 that have been marked as "Exhibit 4"?

20 A Yes, I did.

21 Q Do you have any corrections to your prefiled  
22 direct testimony?

23 A No, I do not.

24 Q Could you please provide a very brief overview of

[WITNESS: Kravtin]

1 your direct testimony?

2 A Yes. My testimony supported the Petition for  
3 Rate Dispute filed by the Petitioners,  
4 Breezeline, Charter, and Comcast. It  
5 demonstrated that Consolidated's pole attachment  
6 rates were unjust and unreasonable. My testimony  
7 provided the calculation of just and reasonable  
8 rates using data provided by Consolidated in the  
9 transfer docket, pursuant to Order 26,534, for  
10 these poles. And also, a proper application of  
11 the Federal Communication Commission's cable rate  
12 formula. And my testimony also addressed why the  
13 FCC's cable rate formula met all of the New  
14 Hampshire Commission's rate review standards,  
15 both individually and cumulatively.

16 Q And, Ms. Kravtin, did you submit prefiled  
17 surrebuttal testimony on January 19th, 2023,  
18 which has been marked as "Exhibit 13", along  
19 with attachments that have been marked as  
20 "Exhibit 14"?

21 A Yes, I did.

22 Q And do you have any corrections to your  
23 surrebuttal testimony?

24 A Yes. But they do fall, I would say, in the

[WITNESS: Kravtin]

1 category of "typographical errors", involving  
2 Tables 1 and 2, appearing on Bates Page 017  
3 Tables 1 and 2.

4 These typographical errors came to  
5 light in preparing the work papers requested by  
6 the Commission, which involve live Excel  
7 spreadsheets. So, I noticed some additional  
8 minus signs that did not make sense within that  
9 live Excel sheet, and I clarified those. One of  
10 those changes, between a minus sign and a  
11 positive sign, did affect, in particular lowered  
12 the regulatory book value of Consolidated poles  
13 that I calculated for year-end 2018, that appears  
14 in the third column of Table 2. The rest of the  
15 changes had no effect, other than clarification,  
16 and it made the work paper sheet work correctly  
17 mathematically.

18 More specifically, just to show you the  
19 extent to which these changes were typographical  
20 largely, on Table 1, I removed minus signs that  
21 appeared in the columns where the numbers sat,  
22 because I had separately had the minus sign as a  
23 mathematical operator in Column 1. Okay? So,  
24 since I was subtracting positive numbers, I just

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 needed to conform the numbers to be positive, not  
2 with the negative which I had had in the Word  
3 table for presentation purposes.

4 And then, on Table 2, I removed all  
5 minus signs for the same reason, that I didn't  
6 want to use them as a mathematical operator in  
7 the live sheets. But, in Table 2, I left one  
8 minus sign in front of the "Accumulated Deferred  
9 Income Tax" figure of "1,047,000" in the  
10 regulatory net book value calculation of 2017.  
11 Because that number, unlike the other numbers,  
12 was actually meant to be a negative number. So,  
13 in that case, I really wanted to subtract a  
14 negative number, which has the effect, actually,  
15 of increasing the net book value algebraically.  
16 Whereas, when you subtract a positive number, it  
17 reduces the net book value; when you subtract a  
18 negative number, it increases it. So, that's why  
19 the number changed.

20 But, really, the changes were just to  
21 change minus signs to positive signs. The table  
22 and the calculation was the same.

23 Q And, Ms. Kravtin, are the changes that you just  
24 described contained in the revised Exhibit 13

[WITNESS: Kravtin]

1 that we filed yesterday afternoon, on Page 17?

2 A Yes.

3 Q Okay. And do you have any updates to your  
4 surrebuttal testimony?

5 A Well, I do want to respond to, in terms of the  
6 record request data filed by Consolidated, to  
7 note that none of the data that Consolidated  
8 provided in response to the Commission's record  
9 requests causes me to update or otherwise change  
10 the positions reflected in my prefiled direct and  
11 surrebuttal testimonies.

12 I would note that the information that  
13 was provided to the Commission on January 24th,  
14 2023, further supports the pole height data  
15 figure that I used in my rate calculation, which  
16 was a 39-foot pole height. I found that  
17 information to be supporting of my own  
18 calculation, based on Eversource data.

19 And that I would also, just to provide  
20 a clarification to my testimony, that, for  
21 example, looking at Table 2, where I refer to  
22 "regulatory accounting", I make this point in my  
23 surrebuttal, but not everywhere in the  
24 surrebuttal, that I'm referring to "regulatory

[WITNESS: Kravtin]

1 accounting" pursuant to the FCC's Part 32,  
2 Uniform System of Accounts system. So, I think  
3 that's clear, but I want to clarify, because I  
4 didn't put that in every column. And, to  
5 understand my surrebuttal, which responds to Ms.  
6 Davis's rebuttal, where certain numbers are  
7 presented as "GAAP accounting" or "regulatory  
8 accounting", I think that clarification is  
9 important.

10 Q And, Ms. Kravtin, could you please provide a very  
11 brief summary of your surrebuttal testimony?

12 A Yes. My surrebuttal testimony was written in  
13 direct response to Ms. Davis's rebuttal  
14 testimony, and it stayed within the corners of  
15 responding to her testimony.

16 In particular, I address certain  
17 inaccuracies and misleading information or  
18 statements contained in her rebuttal testimony.  
19 I counter Ms. Davis's assertion that the "FCC  
20 cable rate should not be used to set  
21 Consolidated's pole attachment rates." One point  
22 she raises is that formula is only one of several  
23 factors in the Commission's rate standards. But  
24 my prefiled testimony explains why the FCC

[WITNESS: Kravtin]

1 formula, in fact, meets all those rate standards.  
2 Even though the formula is mentioned in one of  
3 them, it satisfies the criteria. It is the most  
4 widely used and accepted formula. And it offers  
5 many key advantages over other formulas, and  
6 appropriate to use in the context of the rate  
7 review standards, and in evaluating the  
8 unjustness and unreasonableness of Consolidated's  
9 rates, which is not cost-based.

10 My surrebuttal testimony also addresses  
11 Ms. Davis's erroneous assertions that the "FCC  
12 cable rate doesn't allocate all the costs of the  
13 pole to attachers, and that it unfairly burdens  
14 Consolidated." I explain the FCC formula  
15 allocates the total costs of the pole, including  
16 unusable space. It's just it does so based on  
17 the proportion of usable space. And that, in her  
18 testimony, she confuses the allocator with the  
19 costs that are being allocated.

20 I also counter her claim that my rate  
21 calculations are improper because they're based  
22 on 2020 data. I explained that is the most  
23 recently reported data provided by Consolidated  
24 in DE 21-020, and none has been updated. But

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1           it's typical for rates under this formula to be  
2           based on year-end reported costs for a prior cost  
3           year to --

4                         CHAIRMAN GOLDNER: I'm sorry, Ms.  
5           Kravtin, just quickly. If you can slow down a  
6           bit, so the stenographer can keep up. Just let  
7           him -- give him a second, and then maybe if you  
8           could start again please, not at the beginning,  
9           but where you left off.

10                        WITNESS KRAVTIN: Okay. Thank you.  
11           And I thought I was talking slow. I apologize.

12   **CONTINUED BY THE WITNESS:**

13   A       I explained that it is typical for rates under a  
14           formula methodology, because it requires the data  
15           to be based on publicly reported data, there is a  
16           time lag between when costs are publicly  
17           reported, typically, a year or two. And, so,  
18           that's common. But, also, the formula allows the  
19           utility or the pole owner to update those costs  
20           annually, okay? So, while it's based on a year  
21           or two prior, the pole owner can update as new  
22           filed data is provided, both on costs, but also  
23           characteristics of pole, such as pole counts and  
24           pole heights.

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1           My surrebuttal testimony also refutes  
2           Ms. Davis's claim that "Consolidated pole rates  
3           would be just and reasonable, if they were viewed  
4           in the context of regulatory depreciation." So,  
5           again, her rebuttal introduces the subject; my  
6           surrebuttal responds. I explain the many reasons  
7           why what she purports to call "regulatory  
8           depreciation", as presented in her Attachment  
9           SD-1, and the other revised net book pole, are  
10          not meaningful numbers. They have not been fully  
11          sourced.

12                 But, beyond that, she's changed one  
13          figure for regulatory depreciation, but she's not  
14          made other conforming changes to the asset value  
15          or other aspects of the formula that would also  
16          follow from that. And that's what I'm trying, in  
17          my Tables 1 and 2, I provide that comparison of  
18          what a true regulatory accounting net book value  
19          would be. And it's not the one she presents.  
20          It's the one in Table 2 reflecting consistently  
21          regulatory values. And that the changes she's  
22          made, just unilaterally to one component, makes  
23          no sense from a cost-based perspective, and  
24          neither her revised net bare pole cost, nor the

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 rate benchmark she presents, makes sense from a  
2 cost perspective.

3 Finally, and essential to the  
4 calculation of just and reasonable rates, I  
5 compared the pole cost data that Consolidated  
6 provided in the transfer docket, DE 21-020, with  
7 the revised data she presents in this docket in  
8 SD-1. And I show the disparity between the net  
9 bare pole costs derived from the data provided in  
10 the transfer docket, and the unsupported figure  
11 by Ms. Davis in this docket. Again, in those  
12 Tables 1 and 2 that comparison is made.

13 And I say that what Ms. Davis is  
14 actually asking the Commission to do is rely on a  
15 different set, an unjustifiably higher net book  
16 value, for purposes of setting Consolidated's  
17 pole rates for Petitioners, than it would have  
18 the Commission adopt -- than the Commission would  
19 adopt in DE 020 [sic] for the setting of retail  
20 rates.

21 These are the same poles. The net book  
22 value, for purposes of transferring, are the  
23 same -- it's the same net book value that would  
24 be appropriate for purposes of pole rates,

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1           because pole rates are based on net book value,  
2           similar to how you what to value them in a  
3           transfer, they're the same poles.

4                     A few more topics my testimony covers.  
5           It explains that the -- the basis upon which I  
6           derived the 39-foot pole height was not based on  
7           a limited subset of data. It was a very  
8           comprehensive set of inspection data over 30,000  
9           poles. And that number is much more than  
10          sufficient to satisfy the FCC standards of what  
11          would rebut the presumption of 37 and a half  
12          feet. It is not correct you need a full  
13          inventory. You need to have data that would  
14          provide statistical reliability. That pole  
15          height data I relied on, which meets those  
16          standards, is contained in Exhibit 15.

17                    My surrebuttal also responds to Ms.  
18          Davis's assertion in rebuttal that the  
19          "Consolidated pole attachment rates in Maine are  
20          not relevant to those in New Hampshire." They  
21          are very relevant. Maine is a neighboring state,  
22          in which Consolidated owns and operates poles it  
23          acquired from FairPoint as part of an integrated  
24          system. And also, subject to Maine rules, pole

[WITNESS: Kravtin]

1 attachment rates are now calculated using the  
2 widely used FCC cable formula.

3 When you make those comparisons, you  
4 see Consolidated's sole pole rate in Maine is  
5 \$3.56, as compared to the non-cost-based rate  
6 that Consolidated is charging Petitioners here of  
7 11.67. So, that is quite a disparity, and  
8 showing the disparity between a cost-based rate  
9 and a non-cost-based rate. And, similarly, the  
10 jointly owned rate for Maine is \$1.78, as  
11 compared to the New Hampshire rate of 6.84.

12 So, the Maine rates underscore the  
13 unjustness and unreasonableness of the  
14 non-cost-based rates here in New Hampshire that  
15 Consolidated is charging. It also provides a  
16 relevant benchmark for the just and reasonable  
17 rates that I've calculated, using the appropriate  
18 data and the appropriate FCC formula.

19 Lastly, my surrebuttal testimony  
20 addresses the issue of the joint use charges  
21 charged by Consolidated, for poles it does not  
22 own, and for which Consolidated provides no  
23 services. I testified to the reasons why they  
24 should be eliminated. It is unjust and

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1           unreasonable. This is especially so, because  
2           pole attachers are paying the sole owners of the  
3           pole their sole pole owned rate. And  
4           effectively, Petitioners are double-paying for  
5           the same poles; once in full to the owner, and  
6           then this additional surcharge to Consolidated.

7 BY MS. GEIGER:

8 Q       Ms. Kravtin, subject to the corrections,  
9       clarifications, and updates to your prefiled  
10       direct testimony and your prefiled surrebuttal  
11       testimony that you just described here under  
12       oath, if you were asked the same questions today  
13       that are in those testimonies here under oath,  
14       would your answers be the same?

15 A       Yes, they would.

16                   MS. GEIGER: Thank you. The witness is  
17                   available for cross-examination.

18                   CHAIRMAN GOLDNER: Thank you. We'll  
19                   begin cross-examination, with Consolidated and  
20                   Attorney McHugh.

21                   MR. McHUGH: Thank you, Mr. Chairman.  
22                   No questions.

23                   CHAIRMAN GOLDNER: Okay. And then,  
24                   we'll move to the Department of Energy, and

[WITNESS: Kravtin]

1 Attorney Young.

2 MR. YOUNG: No questions from the  
3 Department.

4 CHAIRMAN GOLDNER: Okay. We'll move to  
5 Commissioner questions then, beginning with  
6 Commissioner Simpson.

7 CMSR. SIMPSON: Thank you. So, thank  
8 you, Ms. Kravtin, for being here today.

9 BY CMSR. SIMPSON:

10 Q Can you explain how the termination and  
11 renegotiation of agreements can occur in a way  
12 that will not jeopardize the competitive  
13 landscape or curtail the current provision of  
14 telecom services, in your expert opinion?

15 A Sure. Although, I would note that the issue of  
16 the pole attachment agreements fall a little  
17 outside the scope of my testimony. But I can  
18 certainly opine, based on my expertise, and  
19 connect it to my testimony. Because it really --

20 Q Please.

21 A -- it really highlights why the use of a  
22 cost-based formula, and particularly the FCC  
23 cable formula, which is the most widely used and  
24 adopted, deemed compensatory to the pole owner,

[WITNESS: Kravtin]

1 deemed to support the rate review criteria  
2 established by this Commission, in terms of all  
3 the public policy goals involved in pole  
4 attachment, is that one of the major factors in  
5 the competitive landscape is a level playing  
6 field between attachers, which both must compete  
7 against the pole owner, but depend on the pole  
8 owner for provision of an essential facility that  
9 they cannot provide service without.

10 And one of the ways of providing that  
11 level playing field, for an essential facility,  
12 is a reasonable -- just and reasonable price.  
13 And that's what my testimony focuses on, the rate  
14 aspect of this arrangement, where an attacher  
15 must get a service from a pole owner that it also  
16 competes with.

17 And, so, that's why it's important.  
18 The rate is important. And, so, that's why one  
19 of the major things that can happen is that, even  
20 as pole attachment agreements might expire or  
21 renew, that there's an understanding that the  
22 pole owner cannot charge an exorbitant rate, a  
23 rate that is multiples of a cost-based rate,  
24 which is what we're seeing with Consolidated's

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 rate here, relative to the rates I calculated,  
2 relative to the rate levels, for example, that  
3 you see in Maine, which are deemed consistent  
4 with the formula.

5 So, I think that is one of the major  
6 things this Commission can do, as other state  
7 commissions, and the FCC has done federally, is  
8 try to provide that cost-based benchmark, which  
9 is supposed to be the maximum rate.

10 Ideally, the parties would negotiate in  
11 good faith. But the truth is, the pole owner has  
12 a substantial amount of leverage, because they  
13 own the pole, and they ultimately control the  
14 rights to the pole. And, so, it's hard to  
15 negotiate really in a level playing field.  
16 That's the purpose of the rate formula, to  
17 provide this maximum cap, so that it equalizes  
18 that playing field.

19 The same principle applies to non-rate  
20 factors as well, in terms of timelines to get to  
21 access. And those are important, too, because  
22 timing and egregious sort of operational  
23 requirements do impede the petitioner's ability  
24 to get service to their customers. So, those are

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 important, too. But my testimony went more to  
2 the rate. But the same principles would apply to  
3 non-rate. You want to try to level the playing  
4 filed, put in rules and practices that help level  
5 that playing field so that the competitive  
6 landscape can proceed as efficiently as possible.  
7 Because it's efficient for both the owner and the  
8 attacher to know what the rules are, but, most  
9 importantly, for the public good. The public  
10 benefits from broadband. Okay? The state  
11 economy benefits from broadband.

12 So, whatever we can do to help the  
13 markets operate efficiently, both on the rate  
14 side, with going with the FCC regulated formula,  
15 but also trying to smooth those timelines and the  
16 other operational details that could impede the  
17 Petitioners provide their service.

18 Q Thank you. And that's why I was curious to ask  
19 you that question, was to understand barriers  
20 that might exist in New Hampshire, looking at  
21 competitive market opportunities.

22 Recognizing that your testifying about  
23 the rates specifically, do you have any sense of  
24 awareness of competitive market outcomes that

[WITNESS: Kravtin]

1 might result through a change of the rate?

2 A Well, certainly, the concept that has been  
3 underlying effective pole rate regulation is that  
4 a rate that more reflects the cost-based -- a  
5 cost-based undertaking of what the true economic  
6 costs of attaching to poles would be, the closer  
7 you get that rate to the cost-based efficient  
8 rate, then that allows the most efficient  
9 investment and decisions to get services to  
10 market. And that's a feature of fundamental  
11 economics, but it's also been a fundamental  
12 feature of pole rate regulation.

13 So, to the extent rates in New  
14 Hampshire now are very -- for Consolidated,  
15 they're very -- they're excessive, compared to  
16 the regulated rate I calculated, and you see  
17 benchmarked in Maine. Lowering those rates,  
18 okay, will allow for a more efficient provision  
19 of broadband services, both in terms of getting  
20 service out and continually improving the quality  
21 of those services, because it will free up  
22 investment dollars that would otherwise have to  
23 go to pay high monopoly-level rates, it will free  
24 up those dollars to actually get service out to

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 the consuming public.

2 And then, with that, you get  
3 efficiencies throughout the economy, as broadband  
4 can be more effectively rolled out, and also  
5 continually invested in the quality of the  
6 service.

7 Q So, you, in your testimony, compare the telecom  
8 versus the cable rate, correct?

9 A I certainly address it. I don't know, in this  
10 testimony, this rate dispute, I calculate the  
11 table formula.

12 Q Uh-huh.

13 A I did address that in my testimony in the  
14 transfer docket. What I do say here, in terms of  
15 evaluating those two formulas, is that this  
16 Commission, with its jurisdiction, is not legally  
17 bound to have a separate formula, as between what  
18 you charge a telecom attachment versus a cable.

19 And, so, in this regard, the cable  
20 formula is the most straightforward, the most  
21 simple, the most transparent. And, more  
22 importantly, as it now stands under FCC rules,  
23 which your rules tie to the FCC current rules,  
24 there is not really any difference between the

[WITNESS: Kravtin]

1 two. The FCC made certain adjustments that  
2 basically equilibrate the two rates. The reason  
3 why the FCC did that is because of its policies  
4 to promote broadband, and to not -- and to keep  
5 the level playing field. It shouldn't matter  
6 what the service is, the fundamental asset or  
7 facility is the same. From a cost-based  
8 perspective, there's no difference.

9 It's just the FCC, under 224, is  
10 legally obliged per Congress to have a separate  
11 rate. So, they sort of did a workaround. We'll  
12 keep our separate rate for a telecom rate, but  
13 we'll put in certain cost factors that make them  
14 largely identical.

15 So, my testimony is, there's no reason  
16 for this Commission to do so. It's a lot of  
17 extra factors and adjustments to get you to the  
18 same effective spot.

19 I believe, in my calculations, and  
20 Consolidated did ask me a data request to  
21 calculate my rate, which I did using the cable  
22 formula, and they asked me to calculate it using  
23 the telecom formula. It was very close. I mean,  
24 we're talking about, I don't know the exact

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 difference, but a small difference between the  
2 two rates, under 50 cents, maybe less. I could  
3 look up that response.

4 But what I'm saying is, there's really  
5 not much difference now. So, from an  
6 implementation standpoint, from a level playing  
7 field standpoint, for this Commission, given the  
8 rate criteria, it would make much more policy  
9 sense to do what other state commissions have  
10 done largely, is just charge one rate, the cable  
11 rate, and not worry about the distinctions, which  
12 don't have a cost basis. But, also, with the new  
13 rules under the FCC, they don't get you to a  
14 different rate much anyway.

15 Q Thank you. That's a helpful clarification.

16 Would you be able to turn to Exhibit 17  
17 please? It's the Attachment SD-1 to the prefiled  
18 testimony of Ms. Sarah Davis, as revised.

19 A Yes. If you give me one moment?

20 Q Take your time.

21 A Thank you. There are a lot of files in this  
22 case.

23 *[Short pause.]*

24 WITNESS KRAVTIN: I have her original,

[WITNESS: Kravtin]

1 but I need to find her updated. I apologize.

2 CMSR. SIMPSON: Take your time.

3 MS. GEIGER: If it would help the  
4 witness, I have a hard copy of that exhibit. May  
5 I approach?

6 CMSR. SIMPSON: You can approach.

7 MS. GEIGER: Thank you.

8 CMSR. SIMPSON: Absolutely.

9 WITNESS KRAVTIN: Thank you.

10 *[Atty. Geiger handing document to the*  
11 *Witness.]*

12 WITNESS KRAVTIN: Okay. I now have  
13 that in front of me.

14 BY CMSR. SIMPSON:

15 Q What I'm interested in comparing is the space  
16 factor, and the differences between your space  
17 factor of "0.0667" and what Ms. Davis has  
18 provided as the "FCC rebuttable presumption space  
19 factor" of approximately "0.074"?

20 A Yes. Thank you. So, the difference between  
21 those factors has to do with my use of a pole  
22 height that is different from the presumption.  
23 So, the "7.41 percent" of rebuttable space  
24 factor, and I emphasize the word "rebuttable"

[WITNESS: Kravtin]

1           because it's rebuttable. That's based on an  
2           assumed pole height of 37 and a half feet. And  
3           that was based on data provided to the FCC  
4           decades ago, where the typical joint use poles  
5           were 35 feet and 40 feet, and, effectively, the  
6           FCC took the average. There is no 37 and a half  
7           foot pole. But the FCC took the average,  
8           because, at that time, decades ago, 35 feet poles  
9           and forty feet poles were the common joint use  
10          poles.

11                        And, so, that space factor, which is  
12          only -- it's simply one over usable space. The  
13          presumptive 7.41 is calculated by taking one over  
14          13 and a half feet, 13 and a half feet  
15          corresponds to usable space on a 37 and a half  
16          foot pole. It's that simple.

17                        Because I rebutted the pole height of  
18          37 and a half feet, I had data that allowed me to  
19          rebut that and use a 39-foot pole. The taller  
20          the pole, there's more usable space. So, my  
21          factor of "6.67 percent" is based on one over I  
22          believe it's something like 15, I'd have to look  
23          at my records. But, effectively, if you have 24  
24          feet underground, then you have, of that, you

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 would have 15, about 15. So, it's a different  
2 denominator. But that's why they're different.  
3 Okay?

4 Because they're occupying the same one  
5 foot of space, but one foot of space over a  
6 taller pole or taller amount of usable space will  
7 be a somewhat smaller allocation. You're  
8 allocating less capacity of space on the pole.  
9 So, as your pole height grows, your allocation of  
10 the same one foot that you're occupying is a  
11 smaller rate. So, that's the difference.

12 Q Thank you. And, so, it appears that the 0.0741  
13 figure, which is the FCC rebuttable presumption  
14 space factor, that's a standardized figure that  
15 the FCC has calculated?

16 A Correct. Where pole height data is not  
17 available --

18 Q Uh-huh.

19 A -- to rebut the presumption, the FCC methodology  
20 says "use this number".

21 Q Can you explain the data that you used to  
22 calculate your suggested space factor of  
23 "0.0667"?

24 A Yes. I explain that in both my direct, and then

[WITNESS: Kravtin]

1 again in my surrebuttal, --

2 Q And I'm asking you to explain it here, please.

3 A Yes, and I will. So, data became available in  
4 the transfer docket in the form of inspection  
5 reports provided in response to a Staff data  
6 request. But those inspection reports also  
7 recorded information on pole height. And, so, I  
8 was able to use that data to calculate the  
9 average pole height of the inspection data, that  
10 was roughly 10 percent, I believe, of Eversource  
11 poles were inspected annually, which was  
12 substantial. It's about 30,000 poles in any  
13 given year.

14 And, so, in my -- I provided a  
15 worksheet that showed where I did mathematical  
16 calculations of those 30,000 poles. Not all of  
17 them had pole height data, but most -- actually,  
18 30,000 did. It was actually a slightly larger  
19 amount of poles that were inspected. But I was  
20 able to calculate the average pole height from  
21 that inspection data. And that's how I  
22 calculated the 39-foot, a little over that, 39.2  
23 or .3, mathematically, by simply averaging the  
24 pole height for the poles inspected in year 2020.

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 Q And that process was based on a dataset that had  
2 not previously been available publicly, correct?

3 A Well, generally, I don't think utilities file  
4 this. So, that data -- actually, I don't know.  
5 It's possible those reports might have been  
6 submitted to the Commission. I don't know. I  
7 was not aware of them. But they came to light in  
8 the transfer docket, because Staff asks a  
9 question about inspection data, and this data was  
10 then provided. And, because of that, that  
11 information was in that record publicly, I was  
12 able to use it.

13 I would also comment, and I mentioned  
14 this in my oral summary, is that data provided by  
15 Consolidated in response to the Commissioners'  
16 record requests, also revealed some pole height  
17 data for their past four years of plant  
18 additions, and it is corroborating. If you look  
19 at the pole height data in the worksheets they  
20 provided the Commission, you will see pole  
21 heights largely corresponding to the fact that,  
22 today, it's 40 and 45 feet poles are going in,  
23 not as it was historically, 35 and 40.

24 So, like, if the FCC was looking at

[WITNESS: Kravtin]

1 their data, they would come up with a pole height  
2 of more 42 and a half, not 37 and a half, which  
3 is the average between 35 and 40. But, looking  
4 at the data available today, in 2023, using that  
5 same logic, the FCC would come up with 42 and a  
6 half, which is the average between 40 and 45,  
7 which both Eversource and this new Consolidated  
8 data show.

9 My figure is 39, because I had actual  
10 data to compute it. But, presumably, again,  
11 under the FCC's technique, you'd actually support  
12 42 and a half. But I used 39 based on actual  
13 data, which is how you challenge the presumption.

14 Q And do you have any insight into why the FCC  
15 figure has not been updated in some time?

16 A That is a great question. And it's largely, I  
17 think, the way the FCC operates. That it would  
18 take -- it doesn't do much action on its own  
19 initiative. And that, while it has been raised  
20 in a number of other contexts, it hasn't been  
21 raised directly. There really have not been that  
22 many pole attachment disputes raised at the FCC,  
23 the way they had been before. It is costly to  
24 bring a complaint before the FCC. And that's

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 part of the -- sort of the leverage that pole  
2 owners have, because it is costly to bring an  
3 issue before the FCC like that.

4 And I think the FCC also has felt like,  
5 it's a rebuttable presumption. So, it's not  
6 frozen. So, there's nothing preventing an  
7 analyst, like myself, based on data, to present a  
8 new figure. And, so, I think that's also in  
9 part.

10 If the presumption was not rebuttable,  
11 I think there would be a bigger policy issue for  
12 the FCC, maybe they'd revisit it. But, in fact,  
13 it's rebuttable. And that's why it's important,  
14 I think, for this Commission to understand that  
15 distinction, it's rebuttable, there's data to  
16 rebut it. And, if you don't allow the taller  
17 pole height to go in, you're sort of having a  
18 mismatch, because the taller poles are more  
19 expensive, so they're creating higher costs. If  
20 you don't offset that with the taller pole  
21 height, then you have this mismatch. You're  
22 putting more costs in the bucket of the rate  
23 formula, without adjusting that space factor.

24 Because, as you see, the space factor,

[WITNESS: Kravtin]

1           which is the percent of costs being allocated to  
2           any one attacher. As pole height goes up, that  
3           percentage correspondingly goes down. So, you're  
4           getting a smaller percentage of a bigger cost.  
5           And, so, it's important to have them change  
6           consistently. As your population of poles  
7           changes to taller, more expensive poles, you want  
8           a space factor that's consistent with that.

9                        CMSR. SIMPSON: Okay. Thank you, Ms.  
10           Kravtin. Those responses clarified some of the  
11           questions I had.

12                       I don't have any further questions for  
13           this witness at this time. Thank you.

14                       CHAIRMAN GOLDNER: Thank you,  
15           Commissioner Simpson. We'll move to Commissioner  
16           Chattopadhyay.

17                       CMSR. CHATTOPADHYAY: Thank you. Good  
18           afternoon.

19                       WITNESS KRAVTIN: Good afternoon.

20 BY CMSR. CHATTOPADHYAY:

21 Q       I want to make sure I'm right. You were  
22        responding to Commission Simpson's question about  
23        telecom and cable, you know, the rates, you  
24        mentioned something like 50 cents difference,

[WITNESS: Kravtin]

1 using either the cable method or the telecom  
2 method. Can you give me a sense of is it, like,  
3 more for the cable, less for the cable?

4 A Yes. And I think it would be helpful, I'd like  
5 to turn, if you'd let me, I can go to that  
6 calculation, if that's helpful? I just -- I  
7 don't recall the exact difference. I will tell  
8 you this, that, in general, the cable rate would  
9 be the slightly lower rate, but there's not much  
10 difference now.

11 Years ago, before the FCC conformed the  
12 two, in an order in 2011, before 2011, the  
13 telecom rate could be double or triple the cable  
14 rate. But, in 2011, the FCC implemented cost  
15 factors that reduced the telecom rate by either  
16 like 60 or 40 percent, depending on the number of  
17 attachers, which enters into the telecom formula,  
18 that doesn't enter the cable, to conform the two.  
19 They'd only differ because of the proportionality  
20 of pole height, how it enters both formulas  
21 algebraically.

22 Ideally, they're supposed to be exact,  
23 but algebra has a way of getting in there,  
24 because the space factors are calculated

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1           differently. The cable formula is strictly  
2           proportionate to height, the telecom formula is  
3           not strictly proportionate, because it has a per  
4           attacher component.

5                        But, in general, the cable formula,  
6           depending on pole height, will tend to be lower,  
7           where a different pole height is used in the  
8           presumption. If you keep the FCC presumptions,  
9           then they're pretty much exact to the penny.  
10          But, where you might change the way the pole  
11          height enters in, the cable might be lower.

12                       But -- and I might look to Ms. Geiger.  
13          I was asked to make that calculation for  
14          Consolidated in a data request. And then, I just  
15          would like to identify that for the record, if  
16          the Commission was interested in actually seeing  
17          the exact number, because I would not want  
18          what -- what I'm saying off the top of my head,  
19          I'm supporting the cable formula. So, I can't  
20          say I retained exactly what the telecom  
21          calculation was. But, if you give me a  
22          moment, --

23          Q        To, if I may, to keep it simple, --

24          A        Yes.

[WITNESS: Kravtin]

1 Q -- what I'm really interested in knowing is the  
2 percentage difference. And I know that you just  
3 talked about "50 cents". But do you have a sense  
4 of what the percentage difference is?

5 A It should be extremely minor, as a percentage.  
6 It should be minor, because, again, the two rates  
7 are meant to conform. It would be easier if we  
8 had the numbers to provide you, maybe I could  
9 take it as a record request so that you see the  
10 exact number. I'm not comfortable speaking from  
11 memory as to what the percent would be.

12 CMSR. CHATTOPADHYAY: Okay. Let's do  
13 that. Let that be a record request.

14 WITNESS KRAVTIN: Okay. Thank you. I  
15 appreciate that courtesy, because --

16 CMSR. CHATTOPADHYAY: So, let me frame  
17 it. Please calculate the rates using the telecom  
18 formula, and indicate, in percentage terms, how  
19 different it is from the rate derived from the  
20 cable formula?

21 WITNESS KRAVTIN: I will do so. And,  
22 to clarify, everything else the same, other than  
23 the difference from the formula, but the inputs  
24 the same.

[WITNESS: Kravtin]

1 CMSR. CHATTOPADHYAY: *Ceteris paribus.*

2 WITNESS KRAVTIN: Thank you.

3 CMSR. CHATTOPADHYAY: Okay.

4 BY CMSR. CHATTOPADHYAY:

5 Q So, I just want to understand this issue.

6 There's the concept of "safety space". Can you  
7 give me a sense of, when you're deriving the  
8 total cost here, like the bare pole costs, do  
9 they include the cost associated with the safety  
10 space, or that is handled completely differently?

11 A No. The safety space is included, because the  
12 FCC formula allocates the cost of the entire  
13 pole. And, so, that, what you're referring to as  
14 "safety space", which is space that communication  
15 attachments cannot be made, but electric  
16 attachments can, is part of the total pole  
17 height. And the FCC, both formulas, will  
18 allocate, okay, the appropriate share of the  
19 total pole, including that safety space. It's  
20 just the cable formula allocates it on a  
21 proportionate basis, the telecom formula  
22 allocates it -- it's a hybrid of proportionality  
23 and per attachment.

24 Q So, let me clarify my question. The total cost

[WITNESS: Kravtin]

1           that you're talking about right now, in your  
2           example, also includes the cost associated with  
3           that, keeping that safety space intact?

4   A       Correct, because the entire net bare cost of a  
5           pole --

6   Q       Yes.

7   A       -- is a component of the formula, and that is the  
8           total pole. Correct.

9   Q       Can we go to, I'm not 100 percent sure, but it's  
10          I think Exhibit 12, and I'll use the Excel file.  
11          And I'll go to "Pole Investment Analysis" tab, if  
12          you can go there?

13   A       This is Exhibit -- Exhibit 12?

14   Q       Yes. It says "Exhibit 12" here. So, I'm just --

15   A       Okay. I now have that open. And that appears to  
16          be Ms. Davis's worksheet.

17   Q       Yes. So, I know that it's not your worksheet.  
18          But, given that you are -- you deal with these  
19          issues and you're an expert on this. So, I'm  
20          just trying to understand, there is the net book  
21          value, which is dated 31st December 2021, at the  
22          end, in the worksheet that is named "Poles  
23          Investment Analysis".

24   A       Yes, I see that.

[WITNESS: Kravtin]

1 Q And the difference between those two numbers, in  
2 Column C and Column E, is roughly \$30 million,  
3 correct?

4 A That is correct.

5 Q Without getting into a lot of details here, just  
6 give me a sense of what's driving that, and as  
7 you understood it? I know it's not your exhibit.

8 A Yes. It's not my exhibit.

9 Q Yes.

10 A And, in fact, I've testified that these numbers,  
11 to me, are not a meaningful presentation of a  
12 comparison of GAAP versus regulatory accounting.  
13 So, just to clarify, because I am happy to answer  
14 your question, but I do want it clear on the  
15 record, I do not accept her labels or her  
16 representation. I point out a lot of problems  
17 with what she's presented.

18 But I will explain that the difference  
19 has to do with the amount of accumulated  
20 depreciation, net book value is simply the gross  
21 investment in the plant at the time of purchase,  
22 less the amount of depreciation accumulated by  
23 annual accruals.

24 Q Yes.

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 A Now, you also deduct accumulated deferred income  
2 taxes, which she has omitted. This is a  
3 simplified analysis. I don't think even she  
4 would represent this to be an accurate  
5 representation, but it's stylized to make her  
6 point, because she is using a different  
7 accumulated depreciation number.

8 So, in what she's calling "actual  
9 GAAP", you have a bigger amount of accumulated  
10 depreciation deducted from the gross book value  
11 to get net book, what she's calling "net book  
12 value". Whereas, under what she's calling the  
13 "regulatory rate", there is a smaller amount of  
14 accumulated depreciation deducted.

15 Q Okay.

16 A So, if you deduct a smaller number, you get a  
17 bigger number.

18 Q Yes.

19 A That's all that's going on here, I believe.

20 Q Yes. I should have made it clear that, yes, I  
21 wanted you to go through the mechanics, not how  
22 you think whether this is right or wrong. So,  
23 you explained to me that, really, it's driven by  
24 the cells C33 and E33, for example, for the

[WITNESS: Kravtin]

1 12/31st/21 numbers?

2 A Right. But I will explain that they're  
3 cumulative. So, I think you're correct, if you  
4 look for every year, --

5 Q Correct.

6 A -- you will see a smaller number in Column E,  
7 relative to Column C. So, in each, she goes  
8 through every year of additions.

9 Q Yes.

10 A Okay. And you'll see, in Column C, there is a  
11 larger amount of depreciation that would be  
12 deducted from gross book value. Although, I  
13 might add, she doesn't start with gross book  
14 value. She appears to start with a net book  
15 value of 40.5 million as the base.

16 But, putting that aside, because I want  
17 to stick to your question, and not to focus on  
18 problems I see. But, just mechanically, she is  
19 deducting a bigger number, a larger number of  
20 depreciation for each of the additional years, in  
21 Column C than in Column E. The result being a  
22 smaller ending net book value, because it's  
23 cumulative. It's a balance sheet item.

24 Q I know that you had responded in your direct a

[WITNESS: Kravtin]

1 little bit on this, but I'm going to give you  
2 another opportunity for my understanding here,  
3 really. That kind of change, I'm assuming that,  
4 you know, of course, you don't agree with it,  
5 given different methods as such. But were you  
6 able to figure out, like, what else -- what other  
7 problems are there that's doing this?

8 So, let me -- let me clarify again. I  
9 know that you keep talking about "GAAP" and the  
10 "regulatory depreciation" approach. But are  
11 there other issues that's going on, in such a  
12 simplistic analysis, that you want to flag?

13 A Yes. And I flagged several in my surrebuttal.  
14 The first, I mean, again, there are some generic  
15 problems with what she's calling "GAAP" versus  
16 "regulatory". And, so, those are addressed just  
17 to say, in my Table 1 and 2, where I'm comparing  
18 GAAP, GAAP numbers, or GAAP-based numbers in  
19 Table 1, with what were regulatory numbers  
20 pursuant to FCC USOA accounting in Table 2. And  
21 it's important to understand that the FCC allowed  
22 carriers to switch to GAAP reporting, but that  
23 created reevaluations that her table kind of  
24 glosses over. Okay?

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1           So, I guess, as a generic matter,  
2           that's like an overarching problem with what  
3           she's done here, is that she's not taking into  
4           account, if you're really doing regulatory, you  
5           base it on regulatory values, not those restated  
6           for GAAP. Okay?

7           But, mechanically, depreciation is  
8           applied to gross book values. In her analysis,  
9           the starting point is a 40.5 revalued number,  
10          that is not sourced, although represented to be  
11          what Consolidated's accountants revalued the  
12          FairPoint assets. That, at transfer, by my Table  
13          2, were valued at 200 and -- well, at transfer,  
14          were valued about 21 million, and then, all of a  
15          sudden, now it's 40.5 million. But the point is,  
16          that's a net book value. So, depreciation would  
17          apply to gross book. So, I see that she's  
18          applying that to at least a starting value that's  
19          a net book value. So, that's one -- that's one  
20          of the issues.

21          It looked to me also that the six-month  
22          depreciation figure, under the "Regulatory"  
23          column, was divided by four, versus, typically,  
24          it's by two, to suggest the investments made

{DT 22-047} {01-26-23}

[WITNESS: Kravtin]

1 over -- equally over the year, not at the  
2 beginning of the year, not at the end of the  
3 year, but in the middle of the year. That was  
4 also one -- another issue that I had.

5 And then, other than that, I think the  
6 numbers under Column C are hardwired. And I did  
7 not see, in the information provided to the  
8 Commission, that those numbers were sourced,  
9 because those appear to be hardwired in the set,  
10 making it difficult to really evaluate them, or  
11 on what basis they were made.

12 Q That's it? Okay.

13 A Yes.

14 CMSR. CHATTOPADHYAY: Thank you. I  
15 think that's all I have.

16 CHAIRMAN GOLDNER: Okay. Just for  
17 planning purposes, before we -- the Chair has no  
18 further questions.

19 Before we move to redirect, a question  
20 for Attorney McHugh. Are you planning to put  
21 your witness on the stand today? Or I'm just  
22 trying to work out the rest of the afternoon.

23 MR. McHUGH: Yes, Mr. Chairman. I'm  
24 going to -- I don't need a lunch break. But I

[WITNESS: Kravtin]

1 was going to ask, after we're finished with Ms.  
2 Kravtin, that we take a 15-minute break, and then  
3 resume the hearing? Subject to, obviously, what  
4 the Commission wants, and anybody else.

5 CHAIRMAN GOLDNER: Yes. I assume  
6 that -- hold on just a second, I'll let people  
7 confer for a moment.

8 So, a question really for lunch, I know  
9 we had a bit of an awkward start time today  
10 because of the weather, and I don't know people's  
11 lunch situation. And would you like to take half  
12 an hour, or 15 minutes, or an hour? What would  
13 people prefer?

14 MS. DAVIS: Chairman?

15 CHAIRMAN GOLDNER: Yes.

16 MS. DAVIS: I apologize. With the late  
17 start and everything, I have to get home to get  
18 kids that I didn't expect. So, I would ask that  
19 we have a shorter break, if at all possible for  
20 everybody else?

21 CHAIRMAN GOLDNER: Okay. Is that all  
22 right with everyone?

23 MS. GEIGER: That is fine.

24 CHAIRMAN GOLDNER: Okay.

[WITNESS: Kravtin]

1 MR. YOUNG: That's fine with us.

2 CHAIRMAN GOLDNER: Okay. Sure.

3 MS. DAVIS: Thank you.

4 CHAIRMAN GOLDNER: Okay. Very good.

5 So, what we'll do is move to redirect, and let  
6 Attorney Geiger finish with the witness. Then,  
7 we'll take 15 minutes, and then come back with  
8 Attorney McHugh and Consolidated.

9 MS. GEIGER: Mr. Chairman, I don't have  
10 any questions on redirect.

11 CHAIRMAN GOLDNER: Okay. Very good.  
12 So, that makes the math easy. So, we'll return  
13 at 20 to 1:00, so, 12:40. And we'll come back  
14 and begin with Attorney McHugh. All right?

15 Thank you.

16 MR. McHUGH: Thank you.

17 MS. DAVIS: Thank you.

18 *(Recess taken at 12:25 p.m., and the*  
19 *hearing resumed at 12:45 p.m.)*

20 CHAIRMAN GOLDNER: All right,  
21 Mr. Patnaude, we're back on the record. If you  
22 could swear in the witness, then we can move to  
23 direct with Attorney McHugh and Consolidated.

24 (Whereupon **Sarah Davis** was duly sworn

[WITNESS: Davis]

1 by the Court Reporter.)

2 CHAIRMAN GOLDNER: Thank you. Attorney  
3 McHugh, please proceed.

4 MR. McHUGH: Thank you, Mr. Chairman.  
5 Good afternoon, Ms. Davis.

6 WITNESS DAVIS: Good afternoon.

7 **SARAH DAVIS, SWORN**

8 **DIRECT EXAMINATION**

9 BY MR. McHUGH:

10 Q Could you please state for the record your full  
11 name, your title, and your employer?

12 A My name is Sarah Davis. I am the Vice President  
13 of Government Affairs and Wholesale Strategies  
14 with Consolidated Communications.

15 Q All right. And are you familiar with and did you  
16 prepare your prefiled testimony dated December 15  
17 of 2022 in this docket, identified and premarked  
18 as "Exhibit Number 19"?

19 A I did. Yes.

20 Q And, subject to any changes or corrections, which  
21 we'll get into in a minute, do you adopt that  
22 testimony as your own, as if you provided it  
23 under oath today?

24 A I do. Yes.

[WITNESS: Davis]

1 Q Okay. And can you summarize your testimony? And  
2 I'll ask you about a couple of changes,  
3 especially in connection with the Commission's  
4 Record Request Number 2. But, for now, can you  
5 summarize your testimony, subject to that?

6 A Yes. In my prefiled testimony, I rebut the  
7 arguments of the cable companies in this case,  
8 the Petitioners, with respect to their claims  
9 that our rate for pole attachments in the State  
10 of New Hampshire is unjust and unreasonable.

11 I provide information that these rates  
12 come from contracts that were negotiated with  
13 very sophisticated parties, not just one contract  
14 with each party, but multiple contracts. I  
15 provide that each of those contracts was in an  
16 evergreen status, and had the ability to be  
17 terminated at any time by the cable companies,  
18 and they have the ability to renegotiate the  
19 terms to make any updates for changes in  
20 Commission rules or anything else. I provide  
21 that, as a result, the rates we continue to  
22 charge pursuant to those contracts are just and  
23 reasonable.

24 I also take the time to indicate

[WITNESS: Davis]

1           that -- that if, by any fair allocation of pole  
2           attachment costs to cable companies, even using  
3           the data provided by Ms. Kravtin, which I don't  
4           accept as the correct data to use, that the cable  
5           companies are only allocated 15 percent of the  
6           pole costs, the net cost of a bare pole that she  
7           calculates, only 15 percent ever makes it to the  
8           cable companies through use of that rate, and  
9           that that is unjust and unreasonable -- and that  
10          is more than just and reasonable for the 15  
11          percent, and that her claim to go even lower is  
12          unjust and unreasonable.

13                        I address the New Hampshire rules, and  
14           I indicate different than Ms. Kravtin -- sorry, I  
15           just want to make sure I say it right, Ms.  
16           Kravtin, that the rules in New Hampshire, which I  
17           participated in each and every rulemaking before  
18           the Commission in my time at Consolidated  
19           Communications, chose not to accept -- strictly  
20           accept the FCC formula, as she would have  
21           everyone belief, and instead put together six  
22           factors.

23                        I address the fact that Consolidated  
24           has to compete with the cable companies every

[WITNESS: Davis]

1 day, and that the use of the pole, with respect  
2 to Consolidated, who is no longer rate of return  
3 regulated, is exactly similar to that of the  
4 cable companies, and that we achieve the same  
5 value from that pole, that is attachment to  
6 provide broadband services throughout the state.  
7 I indicate that we are building and expanding  
8 broadband just as fast, if not faster, than the  
9 cable companies. So, for them not to pay a fair  
10 allocation of those pole costs harms us in their  
11 favor in a market that is very competitive. And,  
12 as a result, that there should not be a shifting  
13 of those costs back to us on a rate that is  
14 recovering so little of the pole costs to begin  
15 with.

16 I also provided an updated attachment  
17 for representative purposes only, indicating  
18 that, if we were a regulated utility on which  
19 most of this is all based, that, if you used a  
20 much more reasonable regulatory depreciation  
21 rate, using the last FairPoint approved  
22 depreciation rate of 17 and a half years, that  
23 you come up with a much different attachment  
24 rate, just to demonstrate that our rate continues

{DT 22-047} {01-26-23}

[WITNESS: Davis]

1 to fall within that just and reasonable range, if  
2 we were -- if we continued to be a regulated  
3 utility and did regulatory accounting.

4 Q I'm going to, before I get into what has been  
5 premarked I think now it would be "Exhibit 21",  
6 but the Record Request 2, can you address one of  
7 the Commissioners' questions about the safety  
8 space, and how that factors into the calculation  
9 of the space factor in the pole attachment  
10 formula?

11 A Yes. So, as I indicate in my testimony, and Ms.  
12 Kravtin mischaracterizes my testimony as  
13 misunderstanding how the pole attachment formula  
14 works, when, in fact, I understand very well how  
15 it works.

16 But the safety space, which is the  
17 space between electric attachments and  
18 communications attachments --

19 *[Court reporter indicating to the*  
20 *witness to slow down just a bit.]*

21 WITNESS DAVIS: Sorry, I'll slow down.

22 **CONTINUED BY THE WITNESS:**

23 A -- communications attachments, that is reserved  
24 for communication worker safety. So that, when

[WITNESS: Davis]

1 workers are up on the poles working on  
2 communications attachments, they are not at risk  
3 of coming in contact with electric attachments,  
4 that that space is considered "usable space".  
5 And, so, when you do the allocation and allocate  
6 one foot of space to the cable companies, and  
7 then calculate a rate, you are assuming that 13  
8 and a half attachers could be attached to that  
9 pole. When, in fact, that's not actually the  
10 case, because that space is reserved to not carry  
11 attachments for other attachers. And, so, as a  
12 result, it's not allocated through that formula  
13 to the cable companies.

14 BY MR. McHUGH:

15 Q And can you break it down in terms of how much is  
16 the safety space versus in the usable space, and  
17 how it works into the formula?

18 A Yes. So, the whole usable space in the FCC  
19 presumption is 13 and a half feet. And, so, that  
20 includes a safety space. And, so, assume -- and  
21 then you take one, assuming that the cable  
22 companies take -- use one foot of space, you take  
23 one, divided by that, to figure out the allocator  
24 of all the pole costs. And, so, as a result,

[WITNESS: Davis]

1 if -- if there could be an attachment in each one  
2 of those spaces, in theory, it would allocate all  
3 the costs of the poles out to attachers,  
4 including electric attachers and the  
5 telecommunications attachers, but that space  
6 cannot be used in that manner. It is space that  
7 is reserved, free of -- largely free of  
8 attachments, so that workers are not injured.

9 And, so, as a result, you can't ever  
10 recover the cost of that space, because of the  
11 way that it allocates it. That's the point I'm  
12 making in my testimony. A more equitable formula  
13 would allow the true entire cost of the pole.  
14 So, as calculated by Ms. Kravtin, \$86 to be  
15 allocated out for each person, in the actual  
16 space that -- where attachments can be placed,  
17 such that you can recover the full cost on an  
18 equitable basis.

19 Q Thank you. Ms. Davis, now, did you update the  
20 original attachment or exhibit to your prefiled  
21 testimony, which was labeled as "SD-1", in light  
22 of the Commissioners' Record Request Number 2?

23 A Yes. So, in light of the Commissioners' record  
24 request, Consolidated updated that attachment.

[WITNESS: Davis]

1 We went to our accounting records and had the  
2 Accounting Department pull actual pole records to  
3 support all of the pieces for that attachment.  
4 As I understand it, those numbers change a  
5 little, depending on timing. And, so, we put in  
6 the actual numbers that tie to the actual, you  
7 know, each attachment on the back, with respect  
8 to additions, so that you could see actual  
9 numbers. And to sort of explain why that changes  
10 over time, if you look at our -- in the pole cost  
11 spreadsheets, you'll see there are different  
12 costs for each pole. And, so, you'll see, in  
13 some instances, "one penny". And one penny for a  
14 pole represents a pole that, for instance, could  
15 have been damaged in a car accident, and then was  
16 reimbursed by the person who hit the pole. So,  
17 Consolidated, in fact, paid no money for that  
18 pole, so that that's the value recorded on our  
19 books.

20 While those invoicing, that invoicing,  
21 and in the case of damage accidents, can result  
22 in litigation or other things that take time.  
23 And, so, when that invoicing gets paid, it's a  
24 timing difference.

{DT 22-047} {01-26-23}

[WITNESS: Davis]

1           But, in that spreadsheet, I have  
2           indicated the differences between each number,  
3           and you can see that it's a relatively low number  
4           in differences, and it does just reflect timing  
5           differences on the accounting books and records  
6           for the way the invoicing can come about.  
7           Invoicing can also take time and take resolution  
8           between utilities. You know, under our Joint  
9           Operating Agreements, we pay the electric  
10          utilities some amount of money, they pay us some  
11          amount of money when we set the poles, and that  
12          can result in differences as well, the timing of  
13          that invoicing and when those invoices get paid,  
14          because we sort of do that in a bulk process  
15          often.

16   Q       Thank you, Ms. Davis. And then, in the  
17           spreadsheet Consolidated provided in response to  
18           Record Request Number 2, the tab labeled "ARMIS  
19           Revised", is that now reflective of your updated  
20           Attachment SD-1 to your prefiled testimony?

21   A       Yes. It is an updated attachment.

22   Q       And I just have a couple of questions in response  
23           to Ms. Kravtin's testimony, in light of the  
24           Commissioners' questions, or some of the

[WITNESS: Davis]

1 Commissioners' questions.

2 Can you respond to Ms. Kravtin's claims  
3 related to "pole owners having leverage in  
4 negotiations"?

5 A Yes. So, this is an oft-cited issue by pole  
6 attachers that there are some sort of leverage by  
7 pole owners because we own facilities that are  
8 necessary to them. And, while it's true we own  
9 those facilities, and while it's true, to some  
10 extent, they're necessary to them, the  
11 commission, in some states, the Federal  
12 Communications Commission, in this state this  
13 Commission, has enacted rules that have leveled  
14 that playing field. And at all times these  
15 attachers, and, in fact, I've been involved in  
16 two cases with them within the last two years,  
17 have come before the Commission and asked for  
18 relief to assert their rights.

19 So, they basically make a claim that we  
20 could abuse our leverage, but they never indicate  
21 the second part, which is, in negotiating with  
22 us, if we were, in fact, abusing our leverage, or  
23 using our leverage as they state, they can come  
24 to this Commission about most of the relevant

{DT 22-047} {01-26-23}

[WITNESS: Davis]

1 terms and conditions and get relief. And they  
2 have, in fact, utilized that.

3 So, largely, there has been a shift in  
4 the United States to favoring pole attachers over  
5 pole owners, and the recovery by pole owners is  
6 really reduced. That's part of the reason that  
7 Consolidated has sold many of its poles in  
8 Vermont, is seeking to sell many of its poles in  
9 New Hampshire, because there isn't -- there isn't  
10 any continued value out of those poles for a  
11 telecommunications provider, such as  
12 Consolidated.

13 Q And do you have any response to Ms. Kravtin's  
14 claims, again, in light of the Commission's --  
15 the Commissioners' questions, related to the  
16 competitive market outcomes that result from pole  
17 attachment rates?

18 A Yes. So, they're sort of -- most of the  
19 jurisprudence with respect to pole attachments at  
20 the federal level has been against power  
21 companies. And, so, quite frequently, we talk  
22 about the expansion of broadband with respect to  
23 a utility that is not, in fact, expanding  
24 broadband.

[WITNESS: Davis]

1                   With respect to Consolidated  
2                   Communications, that's completely different. We  
3                   are expanding broadband heavily throughout the  
4                   state. We have to compete neck and neck with  
5                   these cable companies in most municipalities or  
6                   communities in which we act. And, so, allowing  
7                   them a more favorable rate shifts -- unfairly  
8                   shifts costs off of them and onto our ratepayers,  
9                   in fact, not improving the competitive market,  
10                  since, in large part, our fiber expansion is the  
11                  best alternative to cable that you will see, and  
12                  is really challenging the cable market. And, so,  
13                  not allowing -- shifting those costs back to us,  
14                  making our consumers pay more, in fact, does not  
15                  help broadband expansion in the state.

16                  Additionally, we sought questioning,  
17                  but have seen no evidence whatsoever that  
18                  adjusting a pole attachment rate actually leads  
19                  to more expansion, or that the rate being high  
20                  has led to less expansion with respect to those  
21                  cable companies.

22        Q        Does that complete your direct, your testimony,  
23                  Ms. Davis?

24        A        It does. Thank you.

[WITNESS: Davis]

1 MR. MCHUGH: Thank you. The witness is  
2 available, Mr. Chairman.

3 CHAIRMAN GOLDNER: Thank you. Does the  
4 Department have any questions for the witness?

5 MR. YOUNG: No questions, Mr. Chairman.

6 CHAIRMAN GOLDNER: Thank you. And, so,  
7 let's see here. Just a moment please.

8 Okay. Let's move to Attorney Geiger.

9 MS. GEIGER: Thank you, Mr. Chairman.  
10 Good afternoon, Ms. Davis.

11 WITNESS DAVIS: Good afternoon.

12 **CROSS-EXAMINATION**

13 BY MS. GEIGER:

14 Q I believe, and correct me if I'm wrong, I believe  
15 that I just heard you testify that it was unfair  
16 to -- that you testified that jurisprudence at  
17 the FCC revolved around electric companies --  
18 challenges to electric companies' pole attachment  
19 rates. Did I hear that correctly?

20 A You -- what I was explaining, and maybe not  
21 articulately, is that, if you look at most of the  
22 cases, the relevant cases, that they refer --  
23 that they're against electric companies, or, and  
24 I should add to that, or they are dated, in the

[WITNESS: Davis]

1 nature that they are related to rate of return  
2 telecommunications companies that were not in the  
3 same competitive market.

4 Q Thank you. And I also heard that -- I thought I  
5 heard you testify that, generally speaking, that  
6 "electric companies are not engaged in the  
7 deployment of broadband." Is that your  
8 testimony?

9 A Largely, they are not.

10 Q Are you aware that, in New Hampshire, the New  
11 Hampshire Electric Cooperative is, in fact,  
12 engaged in the deployment of broadband?

13 A I have aware that they have received a lot of  
14 state funding to expand broadband.

15 Q Okay. Thank you. And, to your point or your  
16 testimony regarding "leverage", I believe you  
17 were saying that you did not believe that pole  
18 owners, such as Consolidated, who were in direct  
19 competition with the cable companies, necessarily  
20 had any leverage with respect to companies, in  
21 the way that Ms. Kravtin testified. Is that your  
22 testimony?

23 A I testified that, in fact, that, because the  
24 Commission can be involved in disputes regarding

[WITNESS: Davis]

1 the major terms in which you negotiate, that you  
2 can come to the Commission and seek relief, if  
3 you, in fact, think that they are exercising  
4 excessive leverage. So, you have an avenue. And  
5 we've been here twice when you've done just that.

6 Q And isn't it true that we're here today because  
7 Consolidated has refused to negotiate with my  
8 clients?

9 A We are here today because your client has refused  
10 to exercise what are appropriate rights under a  
11 contract, and to terminate the contract. And I,  
12 in fact, told you and your clients that there was  
13 a method, a legal and appropriate method, in  
14 which we could renegotiate all the pieces, to  
15 update them for all the rules, not selectively  
16 picking the pieces you like and don't like.

17 Q Shifting gears a little bit, Ms. Davis, isn't it  
18 true that safety space on a jointly-owned pole is  
19 used by the electric company?

20 A Not largely, but --

21 Q And why isn't that so?

22 A Because it creates a danger.

23 Q But isn't it available for street lighting?

24 A It can be available for street lighting.

[WITNESS: Davis]

1 Q Okay.

2 A I wouldn't call that "used by the electric  
3 companies", since then don't actually get any  
4 money for that type of thing.

5 Q And could the electric companies also use that  
6 safety space for their own fiber?

7 A We would say "no." That that's not an  
8 appropriate or safe attachment, because of the  
9 danger it creates to workers. And any time we've  
10 been asked to place fiber in that space, we have  
11 indicated that we think that's an unsafe  
12 practice.

13 Q And isn't it true that the courts have found that  
14 the FCC's formula is compensatory and fairly  
15 compensates pole owners?

16 A That's a legal question for you, Ms. Geiger.

17 Q Okay. I think we've covered that sufficiently in  
18 our testimony. We'll address it in our  
19 post-hearing brief.

20 A I would note that this Commission chose to take  
21 from the FCC regulation over pole attachments,  
22 and they had the opportunity to simply allow the  
23 FCC and all of that jurisprudence to govern New  
24 Hampshire pole attachments. They also had the

[WITNESS: Davis]

1 opportunity to adopt strictly all of the FCC  
2 accounting and jurisprudence, and they chose not  
3 to do that.

4 Q Certainly. And I know -- I understand your  
5 argument. And I believe you've indicated that,  
6 obviously, the Commission knows that there are  
7 six factors that the Commission must utilize to  
8 set pole attachment rates. And I believe you  
9 testified that the FCC's cable rate is just one  
10 of those factors, correct?

11 A Yes.

12 Q Okay. But your testimony doesn't go into the  
13 other six factors, does it?

14 A It, in fact, does. I thought it was interesting  
15 your witness said it did not. It talks about  
16 deployment of broadband and impact on consumers.

17 Q Uh-huh. How about the other factors? How about  
18 relevant state and federal precedent, laws? How  
19 about that one?

20 A I didn't think that there were any that were  
21 relevant in this case.

22 Q Okay. Okay, thank you. Could you please turn to  
23 Exhibit 3, which is Ms. Kravtin's prefiled direct  
24 testimony. And I'm going to direct you to Bates

[WITNESS: Davis]

1 Page 024, where there's a table that's labeled  
2 "Table 1".

3 A Sorry, I have the rebuttal, but I did not bring  
4 the --

5 MR. MCHUGH: I can provide it, Attorney  
6 Geiger.

7 MS. GEIGER: Okay.

8 MR. MCHUGH: If I may approach?

9 MS. GEIGER: Thank you.

10 CHAIRMAN GOLDNER: Thank you.

11 *[Atty. McHugh handing document to*  
12 *Witness Davis.]*

13 MR. MCHUGH: Excuse me.

14 MS. GEIGER: It's Table 1 of Exhibit 3.

15 WITNESS DAVIS: Yes. Thank you.

16 Thanks, Pat.

17 BY MS. GEIGER:

18 Q And, on that Page 24, do you see 22 rows of  
19 information?

20 A They are, yes, 22 rows of numbers.

21 Q Correct.

22 A There's more like 25 rows.

23 Q Okay. Would you agree that this table reflects  
24 the steps that are needed to calculate pole

[WITNESS: Davis]

1 attachment rates under the FCC's cable rate  
2 formula?

3 A I would agree that, yes, it has the elements that  
4 are required for the cable rate formula.

5 Q Okay. And you filed rebuttal testimony in this  
6 docket, correct?

7 A Yes, ma'am.

8 Q But your rebuttal testimony does not contain a  
9 table that contains those 22 rows of information,  
10 similar to what Ms. Kravtin filed, did it?

11 A No. My testimony, in fact, asserts that that  
12 isn't the appropriate analysis to use.

13 Q Okay. And, so, you have not done a formal FCC  
14 rate calculation, correct?

15 A No.

16 Q Okay. Who prepared your Attachment SD-1?

17 A I prepared my Attachment SD-1.

18 Q Did anyone assist you with that?

19 A I don't believe so, no.

20 Q And is it true then that, in SD-1, isn't it true  
21 that the accumulated depreciation figure was  
22 adjusted, but the associated gross plant value  
23 was not adjusted?

24 A Are you talking about "gross pole investment"? I

[WITNESS: Davis]

1           just want to make sure I know what you're talking  
2           about.

3   Q       The accumulated depreciation figure --

4   A       Yes, I heard that part, the second part.

5   Q       -- was adjusted, but the associated gross plant  
6           value was not adjusted?

7   A       You're talking about "pole plant" or "total plant  
8           in service"? I just want to make sure.

9   Q       I believe it was gross investment of poles.

10  A       Poles? It was not, no.

11  Q       It wasn't.

12  A       Yes, I took that from Ms. Kravtin.

13  Q       So, you just made that one adjustment?

14  A       Yes. It was demonstrative of the changes in  
15           regulatory depreciation, since these are all  
16           regulatory concepts.

17                   MS. GEIGER: Thank you. Thank you, Ms.  
18           Davis. I don't have any further questions.

19                   WITNESS DAVIS: Thank you, Attorney  
20           Geiger.

21                   CHAIRMAN GOLDNER: All right. Thank  
22           you. We'll move to Commissioner questions,  
23           beginning with Commissioner Simpson.

24                   CMSR. SIMPSON: Thank you.

[WITNESS: Davis]

1 BY CMSR. SIMPSON:

2 Q I'd like to return to the topic of "worker safety  
3 space".

4 A Sure.

5 Q That worker safety space is considered part of  
6 the usable space of the pole, correct?

7 A In the FCC cable formula, yes.

8 Q And each attacher is allocated a cost based on  
9 the usable space, correct?

10 A The total usable space.

11 Q And what --

12 A Well, so, there is -- I should correct that,  
13 because each attacher probably carries more than  
14 it should. So, with respect to a third party  
15 attacher, they are allocated one foot of that  
16 usable space. So, in this case, the Joint  
17 Petitioners are -- it's a one, you know, divided  
18 by the usable space. That's not probably the  
19 same for the electric company and the telephone  
20 utility.

21 Q And, in your view, can you explain how that  
22 methodology impacts fairness, --

23 A Yes.

24 Q -- or challenges and benefits?

[WITNESS: Davis]

1 A Yes. So, to the respect -- so, I'll take  
2 Ms. Kravtin's \$86 pole cost, right? So, by the  
3 time you go through the calculations that she  
4 goes through, you end up with a net cost of a  
5 bare pole, minus depreciation and all the things,  
6 of \$86. And a fair allocation of that \$86, in my  
7 mind, is to allocate it between each person with  
8 respect to the space they use on a pole.

9 And, so, if a electric utility is using  
10 five feet, they should be allocated five feet.  
11 And, if a telecom attacher, such as ourself, is  
12 using two feet, then we should be allocated two  
13 feet. And the third party should be allocated  
14 one foot. And then, that should divide the  
15 entire total cost of the pole, because we're all  
16 getting the same use and benefit out of that.

17 The only difference comes when  
18 ratepayers have paid for that. And, as a  
19 nonregulated utility, our ratepayers are not  
20 picking up that cost. There's no method for  
21 recovery, because we're not in a monopoly market.

22 And, so, I demonstrate in my testimony  
23 that we average one attacher per pole. So, a  
24 fair allocation is, you know, the electric

[WITNESS: Davis]

1           company and Consolidated, I show that us bearing  
2           85 percent of that cost is more than fair, that  
3           more than represents our proportion of those  
4           costs, since we're all achieving the same benefit  
5           from that pole.

6                         And, of course, I should say, this is  
7           all before a ton of other costs that we have with  
8           respect to poles. This is just, you know, bare  
9           pole costs. There are tons of other costs with  
10          operating and maintaining poles.

11    Q       And you note, in your rebuttal, that the worker  
12          safety space is not usable to Consolidated. Is  
13          that -- am I understanding that correctly?

14    A       It is not usable. It is to maintain separation  
15          from the electric attachments, so our workers are  
16          safe.

17    Q       Okay. And, if we were to compare the cable rate  
18          and the telecom formula, is there a more fair  
19          rate that would equitably allocate costs between  
20          the attachers on a pole, in your view?

21    A       I think, if you take the true cost of the pole,  
22          and take the space that's actually used based on  
23          the actual number of attachers to those poles,  
24          that would more equitably allocate the cost of

[WITNESS: Davis]

1 that pole.

2 The problem with both FCC formulas, and  
3 the telecom formula here today, I just have to  
4 say, was very simplified. There are a ton of  
5 assumptions, and urban and nonurban and rural  
6 attachments, and there's a lot of things that go  
7 into that. It was made to sound like you could  
8 produce a number like this *[indicating]*. That's  
9 not exactly how it works.

10 But neither one, because what they did  
11 to make the telecom formula line up with the  
12 cable formula is to cut off at the end a ton of  
13 administrative costs, such that they reduce it  
14 down. And, looking at the telecom formula, which  
15 can be found in the federal regs, you can see  
16 right where it does that, and it makes my point  
17 perfectly. That you have to take a big reduction  
18 on cost to get to this formula that they indicate  
19 is so fair and equitable.

20 Q So, can I ask you about the space factor  
21 application?

22 A Sure.

23 Q I asked Ms. Kravtin about Exhibit 17, which is  
24 your revised Attachment SD-1.

[WITNESS: Davis]

1 A Uh-huh.

2 Q And the space factor that Ms. Kravtin proposed of  
3 "0.0667", --

4 A Uh-huh.

5 Q -- versus the space factor that you noted here as  
6 the "FCC rebuttable presumption space factor" of  
7 "0.074".

8 A Yes.

9 Q Can you opine on the appropriateness of either  
10 application?

11 A Sure. So, in my opinion, as I indicate in my  
12 testimony, I think the rebuttable presumption  
13 factor is what should be used. Ms. Kravtin used  
14 a subset of data from a single power company. We  
15 are joint owners with many power companies in the  
16 State of New Hampshire. She used a small sample,  
17 from one power company, that tends to operate in  
18 more urban areas, thereby needing larger poles,  
19 to come up with her presumption. And then, I  
20 think that, to move to that presumption, you  
21 would you need to look at the totality of the  
22 poles.

23 She also added today that, when looking  
24 at the spreadsheet we provided that supports it,

[WITNESS: Davis]

1 that is a small amount of additions that are more  
2 recent, and are going to be taller. But you have  
3 to look at all the plant in service, and look at  
4 the average height of a pole across all of the  
5 poles.

6 So, I think it's appropriate to stick  
7 with the presumption. I don't think that they  
8 have made their case to move away from that on a  
9 small sample size, with one electric attacher  
10 from another case.

11 And that was Eversource data, and not  
12 our data as well. So, it's not that I'm saying  
13 it's wrong, I just -- we haven't verified it.

14 Q Do you have information on those pole heights  
15 across your service territory?

16 A I think -- I mean, we do. We do. How easily it  
17 is to get at, I'm not 100 percent sure.

18 Q So, you haven't tried to perform a similar  
19 calculation based on data that you have?

20 A No.

21 Q So, then, why do you feel that the FCC rebuttable  
22 presumption would be an accurate proxy?

23 A I think that the way the FCC rebuttable  
24 presumption works is in the number, unless you

[WITNESS: Davis]

1           prove differently. And I'm testifying that they  
2           have not adequately proved differently.

3   Q       Okay. Thank you. So, you testified that you had  
4           spoken to the Petitioners here with respect to  
5           your view on how to renegotiate these rates,  
6           correct?

7   A       I wouldn't call it "my view". I would say you  
8           had a contract that is in evergreen status, that  
9           has a termination provision, that all they have  
10          to do is give notice, and then renegotiate.

11                    So, it's a little far to say it's "my  
12          view". That is written into the contract.

13   Q       And what would be the market impacts, if the  
14           contracts had been terminated and then moved to  
15           renegotiate?

16   A       There would be none. That we would renegotiate.  
17           In no instance have we ever, nor would we ever,  
18           because we would find ourselves in pretty hot  
19           water up here, I feel like, do anything that  
20           would harm their attachments on the pole.

21                    We would, you know, expect them to  
22          renegotiate in good faith. And, if they weren't,  
23          we might come seek the relief of this Commission.

24                    But we would never take down or

[WITNESS: Davis]

1 threaten to take down their attachments. That  
2 would be a nightmare, by all accounts.

3 Q Under those circumstances, if the contract were  
4 terminated, how would you bill in the interim  
5 between the successful negotiation of a new  
6 contract?

7 A Most likely -- so, first off, I should say, pole  
8 attachments are billed either annually or  
9 semiannually. So, there's six months, at least  
10 six months in between pole attachment billing.  
11 So, it's not like you have this monthly accruing  
12 liability. It's done annually or semiannually.

13 So, it might be that you don't even  
14 have a bill in the interim while you're  
15 negotiating. But, to the extent you do, we may  
16 bill at the current -- I would say likely, and  
17 I'm sort of making this up, but I would likely  
18 say we would bill at the current rate. And, to  
19 the extent a different rate were arrived at, we  
20 would go back and rebill that way.

21 But, like I said, it's six months at  
22 the most, and then there's 30 days to pay. So,  
23 you're really talking seven months before a  
24 liability sort of accrues with respect to that.

{DT 22-047} {01-26-23}

[WITNESS: Davis]

1           And the cable companies are, in all the states,  
2           have withheld, they withhold money when they feel  
3           like they shouldn't have to pay it anyway. So,  
4           they would engage in that process, thereby  
5           withholding the money that they felt like they  
6           didn't owe.

7   Q       So, I'd like to shift and ask you about  
8           depreciation.

9   A       Sure.

10   Q       Can you explain the Company's shift from GAAP to  
11           regulatory accounting, as described in your  
12           rebuttal testimony please?

13   A       Sure. So, the whole thing is a series of  
14           unfortunate events, in my opinion. So, we were  
15           forced, as part of -- we were under a motion to  
16           compel, as part of the previous docket, to  
17           prepare an ARMIS-type exhibit. And we had  
18           indicated, prior to the order of the Commission,  
19           that that is something that we really were not  
20           able to do and able to do timely. But we were  
21           compelled, so, we did.

22                   And, when we did that, we were sort of  
23           scrambling. He haven't had to do ARMIS  
24           accounting in many years. We don't follow Part

[WITNESS: Davis]

1           32, we don't have to. That's only in states  
2           where the FCC regulates pole attachments. So, we  
3           haven't had to do that. So, we don't have that  
4           expertise in-house anymore. Those people have  
5           moved onto other companies.

6                         So, it was something that we knew we  
7           were unable to do, and we scrambled and put  
8           something together. And it is not reflective of  
9           anything resembling an ARMIS. It doesn't follow  
10          Part 32. It uses GAAP principles, but it also  
11          uses regulatory principles. Deferred income tax  
12          is not a GAAP principle. So, we sort of cobbled  
13          that together, admittedly, trying to figure out  
14          how to be responsive to the request. And, so,  
15          that resulted in these numbers.

16                        And, so, then, as part of my  
17          spreadsheet, I am just demonstrating, if you use  
18          something more reasonable, 17 and a half years,  
19          for instance, we all learned that Eversource used  
20          30 years, so something sort of in between the  
21          five years we use in GAAP, and the 30 years that  
22          have been allowed other utilities, you come up  
23          with a much different number on depreciation.  
24          And so, that was -- the shift to that was to be

{DT 22-047} {01-26-23}

[WITNESS: Davis]

1 demonstrative of how shifting from five years, to  
2 17 and a half years, which is more in line with  
3 the useful life of a pole, that changes that  
4 calculation drastically.

5 The problem is, we're trying to apply  
6 regulatory principles to a company that has long  
7 since not been in a regulatory regime, and has no  
8 guidance from this Commission, who regulates pole  
9 attachment rates, on what sort of accounting  
10 they're supposed to use.

11 Q So, I wanted to ask you about the 17-year  
12 profile.

13 A Yes.

14 Q So, it's as simple as you use five, you saw that  
15 one of the power companies uses 30, so, you  
16 developed a proxy --

17 A Well, not exactly.

18 Q Okay.

19 A And I'm sorry I interrupted you. I do that, and  
20 I didn't mean to.

21 Q That's okay. I was just going to say that, you  
22 know, 30 minus 5, is 25, divide that by 2, you  
23 get 12 and a half, add that to 5. Is that how  
24 you got to the 17?

[WITNESS: Davis]

1 A Yes -- No. No.

2 Q Okay.

3 A So, the 17 and a half was the last FairPoint  
4 approved regulatory depreciation rate. Since we  
5 are a successor to FairPoint, it seemed  
6 reasonable. That's the last sort of  
7 regulatory number --

8 Q Okay.

9 A -- we have. I was just pointing out that that's  
10 clearly not unreasonable, when you look at other  
11 utilities being approved at 30 years.

12 Q Okay. So, then, looking at Exhibit 13 [17?], in  
13 your revised Attachment SD-1, you made a minor  
14 change in accumulated depreciation, due to  
15 updated net pole additions, is that correct?

16 A That's right.

17 Q So, could you explain if the 11.2 million in  
18 accumulated depreciation is sourced to book  
19 accounts, like FERC accounts? And, if so, which  
20 accounts?

21 A It's not. We don't -- ARMIS is the  
22 telecommunications equivalent to FERC. It's the  
23 FCC's system of accounting. But, in recognition  
24 of the fact that telecommunications companies are

[WITNESS: Davis]

1 in competitive markets, and not rate of return  
2 monopoly-regulated, they have stopped doing that  
3 kind of accounting. And, so, there is not --  
4 there's not an account that's kept like that.  
5 But that is how it would be calculated, if we had  
6 to produce a similar account using that  
7 depreciation rate.

8 MR. MCHUGH: Mr. -- I'm sorry,  
9 Commissioner Simpson, I apologize, I think, if I  
10 misheard, I apologize. But I thought you  
11 referenced "Exhibit 13". Exhibit 13 is the  
12 Surrebuttal Testimony of Ms. Kravtin. So, I just  
13 want to make sure, for the record, we know what  
14 exhibit.

15 And, again, if I misheard you, I  
16 apologize.

17 WITNESS DAVIS: Yes. And I was looking  
18 at mine. So, I apologize, if I was wrong.

19 MR. MCHUGH: And, for the record, Ms.  
20 Davis, what were you looking at?

21 WITNESS DAVIS: Oh, sorry. I was  
22 looking at SD-1. I thought he meant mine. I  
23 apologize.

24 CMSR. SIMPSON: I think I was referring

[WITNESS: Davis]

1 to "Exhibit 17", is what I'm looking at,  
2 Attachment SD-1.

3 WITNESS DAVIS: Okay. That's what I  
4 was speaking to.

5 CMSR. SIMPSON: If I misspoke, my  
6 apologies.

7 BY CMSR. SIMPSON:

8 Q So, then, can you, Ms. Davis, just provide a  
9 breakdown of the mathematical changes that enable  
10 going from 35, or approximately 36 million, to  
11 approximately 11 million in accumulated  
12 depreciation?

13 A Yes. I mean, it's essentially taking the book  
14 value of the assets in that account, plus  
15 additions, and multiplying it times 0.058. If  
16 you look into the cells, you can see that  
17 happened. That's a 17 and a half year. Versus  
18 the GAAP numbers, which come from our books and  
19 records, which is based on a 5-year, which  
20 results in much higher -- a much higher amount of  
21 depreciation.

22 Q Okay. And that demonstration of changing  
23 methodology, would that change the carrying  
24 charge factor?

{DT 22-047} {01-26-23}

[WITNESS: Davis]

1 A It could, yes.

2 Q Can you explain that for us please?

3 A Yes. So that the carrying charge factor takes a  
4 lot of things into account. And, so, you would  
5 have to run them all. But there can absolutely  
6 be changes with respect to that. There's a lot  
7 of pieces to that. You'd have to run all the  
8 accounts.

9 Ms. Kravtin assumes a roll-forward in  
10 her attachment of FairPoint numbers. We  
11 purchased FairPoint, they no longer exist. We  
12 did not continue to roll forward their numbers.  
13 We had a revaluation, which would include the  
14 depreciation already on those poles, because the  
15 revaluation, by its very nature, takes that into  
16 account. And, so, you would not -- you would not  
17 just keep rolling forward FairPoint numbers, to  
18 which we have no visibility and we cannot back  
19 up. We would start with the accounting and the  
20 revaluation of those pole assets, which, by its  
21 very nature, is going to adequately represent the  
22 value, minus depreciation, of those poles.

23 Q Okay. Thank you. And then, you had testified  
24 that you have been involved in various

{DT 22-047} {01-26-23}

[WITNESS: Davis]

1 rulemakings before this Commission that might  
2 have impacted the 1300 rules, correct?

3 A I have been involved in every one before this  
4 Commission. When I first started at FairPoint,  
5 doing the original 1300 rulemaking, and I  
6 participated on behalf of FairPoint.

7 Q Okay. And, if we set aside the appropriateness  
8 of the FCC cable rate formula, and just look at  
9 our rules, can you explain, within all of the  
10 remaining 1300 rules, what would be necessary  
11 conditions in order to determine whether rates  
12 are just and reasonable?

13 A In all of the 1300 rules? Well, as I read the  
14 rules, there are six factors to be considered,  
15 with respect to what's an appropriate rule.

16 Q Yes.

17 A In each and every rulemaking, there were some  
18 parties that argued to adopt the FCC formula as  
19 their formula. And, for the most part, utilities  
20 who came in and argued that there should be more  
21 things considered than just that. And that was  
22 the result, as I understand it of the rules. Is  
23 that it's not strict adherence to just one  
24 factor, all of the factors matter.

[WITNESS: Davis]

1           And, importantly, to both these  
2           companies, in my opinion, is the expansion of  
3           broadband, and allowing for a competitive market.  
4           And, with respect to Consolidated and the cable  
5           companies, we're both in that market, we're both  
6           competing in that market. And we should sit on a  
7           fair playing field, with respect to utilization  
8           of those utilities for that purpose.

9           CMSR. SIMPSON: Okay. Thank you, Ms.  
10          Davis. I don't have any further questions.

11          CHAIRMAN GOLDNER: Thank you. We'll  
12          move to Commissioner Chattopadhyay.

13          CMSR. CHATTOPADHYAY: Thank you.

14          BY CMSR. CHATTOPADHYAY:

15          Q        So, let's go back to the question of the  
16                  termination of the contract, --

17          A        Sure.

18          Q        -- if the Petitioners decided to go ahead and do  
19                  that. Were you saying that, even if that  
20                  happens, you will let them continue attaching  
21                  their whatever they do, the devices on the poles,  
22                  and continue with their business like that, and  
23                  then you would like to have sort of a negotiation  
24                  with them, right, during that period?

[WITNESS: Davis]

1 A Absolutely. The contract allows for timeframes  
2 of renegotiation and input of a contract. And  
3 Consolidated would be even more liberal, because,  
4 to the extent that we indicated that we were  
5 going to take their attachments off the pole,  
6 they would immediately come in here, and we would  
7 be prohibited from doing that. We totally  
8 appreciate that. So, we would be very, very  
9 liberal.

10 We have had parties not pay us for  
11 years, and we still haven't taken down their  
12 attachments without Commission approval. Because  
13 we know the risk of doing that, and how it could  
14 be a harm to consumers in the state.

15 Q So, you are confirming that, if the Petitioners  
16 decided to terminate the contract, they can still  
17 sort of continue using their attachments on the  
18 poles, and have a dialogue with you, using my  
19 words here, and figure out what, you know, the  
20 second -- what you may agree the new contracts,  
21 the new rates would be?

22 A Yes. Absolutely. Both the statute and the rules  
23 anticipate negotiated contracts, and we know  
24 that's what the Legislature and the Commission

[WITNESS: Davis]

1 favors, and we would absolutely. We actually  
2 have an affirmative obligation to negotiate in  
3 good faith on those contracts.

4 Q So, I guess, you know, because I don't have the  
5 contract in front of me, --

6 A Sure.

7 Q -- I keep asking this. Does that mean that  
8 you're not even allowed to say "okay, if you're  
9 not" -- "you no longer have the contract, then  
10 you have to remove the attachments"?

11 A We could send Notice of Termination of the  
12 attachments. You have to send 30 days notice of  
13 taking down their attachments. We could do that.  
14 But that would give them 30 days to come in here  
15 and seek an injunction, if, in fact, they were  
16 not being treated fairly with respect to those  
17 attachments. And it's an action we have never  
18 taken, because of the ripple effect on what could  
19 happen, if we were unfair or treating them  
20 wrongly in that case.

21 But, in theory, we could, yes. You  
22 need some leverage, so that people aren't  
23 completely ignoring your contract. But it would  
24 only be used in a very extreme case.

[WITNESS: Davis]

1 Q Has it happened before? Like, some party that  
2 said "we want to terminate the contract", and  
3 then you took some steps, --

4 A Yes. Frequently, people -- I'm sorry.

5 Q -- and that you didn't decide to remove the  
6 attachments, and, you know, sort of give them  
7 only 30 days?

8 A Yes. Yes, we have renegotiated attachment  
9 agreements with many parties, including some of  
10 these parties. I can think, specifically, of a  
11 New York agreement with Charter that we've  
12 renegotiated with them, and not taken down their  
13 facilities during renegotiation.

14 Q But have you done the other? Did you go the  
15 other direction as well, in some examples?

16 A We have never taken down attachments without  
17 explicit approval of any commission.

18 Q Okay. In the Petitioners' direct, I think there  
19 was some discussion about, I may have used the  
20 Exhibit Number 12, and the question of  
21 depreciation, you know, came up. And there was  
22 some discussion about "why did you divide the  
23 number by four, instead of two?" Do you have a  
24 comment on that?

[WITNESS: Davis]

1 A Sure. So, the first column in -- the first row  
2 in that spreadsheet which relates to that is  
3 based on six months of depreciation. And there  
4 is an assumption that not all additions are put  
5 in in month one. And, so, to come to an average  
6 of when the additions are put into service, if  
7 you're using a full year, you would divide it by  
8 two, you know, assuming sort of some come early,  
9 some come late, you divide by two to come into  
10 the half. Since this was only six months of  
11 depreciation, you divided it by four, to  
12 recognize it came in halfway, half of those six  
13 months.

14 Q Okay. Does Consolidated have any relationship  
15 with these Petitioners in Maine?

16 A Yes.

17 Q And you may have provided this information, or  
18 the Petitioners may have provided that  
19 information. What are the rates in Maine,  
20 relative to what the rates are in New Hampshire?

21 A So, in Maine, the rates are lower. And there's a  
22 number of reasons for that. First of all, pole  
23 attachment rates in Maine are strictly related to  
24 the FCC formula. When they implemented their

[WITNESS: Davis]

1 rules, they specifically cited the FCC formula  
2 with respect to those rules. And, so, we had  
3 requests, after those rules changed, to sort of  
4 update that, and we did that.

5 But, also, everything is different in  
6 Maine, right? So, largely now, power companies  
7 are setting all of the poles going forward, and  
8 they're becoming solely-owned poles. So, our  
9 additions are much lower in Maine, because of our  
10 changed relationships with our power companies,  
11 which has not happened in New Hampshire.

12 Additionally, by rule, in Maine, all  
13 power companies pay for all trimming. So,  
14 there's significantly less costs in Maine that  
15 are put on the telecommunications providers, as  
16 opposed to the electric providers. So, it's a  
17 different state.

18 And we operate in 22 states. We  
19 operate in Vermont as well, and there's no  
20 discussion of that. So, you know, I find it  
21 inappropriate to pull out one example in a state  
22 that has a whole different set of circumstances,  
23 and say that's relevant to this state, which has  
24 a different regulatory scheme with respect to

[WITNESS: Davis]

1 regulating pole attachments.

2 Q Do you apply, other than the FCC method, you  
3 mentioned that you have relationship with others  
4 in 22 states, is that correct?

5 A Twenty-two (22) states, yes.

6 Q Do you apply anything other than the FCC method  
7 in other states as well? And, if so, can you  
8 tell me which states?

9 A "Yes", is the short answer. I don't -- I don't  
10 know the specifics. So, and in the states where  
11 the FCC formula is the law of the land, if you  
12 will, we would apply that. And, in ones where  
13 they're not, we would not.

14 But I don't -- I couldn't tell you  
15 right here the specifics of each of those.

16 Q Is there any state in New England that has that  
17 situation?

18 A Yes. Our Vermont rate is not, it's a tariffed  
19 rate that is not strictly tied to the FCC  
20 formula.

21 Q I understand that different states have  
22 different, you know, compulsions.

23 A Yes.

24 Q Can you still tell me how the Vermont rate

[WITNESS: Davis]

1 compared to the New Hampshire rate?

2 A I don't have it in front of me. I think it's  
3 slightly lower. It's somewhere between the New  
4 Hampshire rate and the Maine rate.

5 CMSR. CHATTOPADHYAY: That's all I  
6 have.

7 CHAIRMAN GOLDNER: Okay. The Chair has  
8 no further questions.

9 We can move to redirect, and Attorney  
10 McHugh.

11 MR. MCHUGH: No redirect, Mr. Chairman.

12 CHAIRMAN GOLDNER: Okay. Very good.

13 Okay. All right. Thank you. Okay.

14 As stated earlier, we'll issue an order and  
15 address the issues raised today on or before  
16 February 17th, 2023.

17 Do the Parties prefer written or oral  
18 closings today?

19 MS. GEIGER: Mr. Chairman, I'm prepared  
20 to give a brief closing statement. But the  
21 schedule, obviously, does call for post-hearing  
22 briefs that are due on February 6th.

23 So, it's really up to the Commission as  
24 to whether or not they want to hear an oral

1 closing statement or just wait for the briefs.

2 CHAIRMAN GOLDNER: Okay.

3 MS. GEIGER: I could do both, but it's  
4 up to you. Thank you.

5 CHAIRMAN GOLDNER: Okay. I think a  
6 brief oral statement would be helpful, to kind of  
7 round out the issues. And then, obviously, the  
8 briefs will come after.

9 So, is that okay?

10 *[Atty. Young indicating in the*  
11 *affirmative.]*

12 CHAIRMAN GOLDNER: Is that acceptable  
13 to you, Mr. McHugh?

14 MR. McHUGH: It sure is, Mr. Chairman.

15 CHAIRMAN GOLDNER: All right. Thank  
16 you.

17 Okay. So, we will strike -- well, let  
18 me first go to Exhibits 8, 9, and 10.

19 So, we won't mark 8, 9, and 10 as  
20 exhibits, because this is not consistent with the  
21 Commission prior practice. And we didn't hear a  
22 compelling reason given. And it's already in the  
23 docket. So, there's no -- no problem with the  
24 information, it's just not customary for us to

1 put it in an exhibit.

2 So, we'll strike ID on the rest of the  
3 exhibits, including Exhibit 20, which is Record  
4 Request 1, Exhibit 21, which is Record Request 2.  
5 And Exhibit 22, which is the record request made  
6 by Commissioner Chattopadhyay, related to the  
7 rates using the telecom formula.

8 *(Exhibit 22 reserved for record*  
9 *request)*

10 CHAIRMAN GOLDNER: Are there any  
11 concerns with the exhibits, or should we move to  
12 closing?

13 *[Multiple parties indicating in the*  
14 *negative.]*

15 CHAIRMAN GOLDNER: Everybody is okay?  
16 All right. Very good.

17 So, let's move to -- let's move to  
18 closing. And I think we should begin Petitioner.

19 MS. GEIGER: Thanks very much, Mr.  
20 Chairman. But --

21 CHAIRMAN GOLDNER: I'm sorry. Let's  
22 reverse the order, my apologies. We'll begin  
23 with Mr. McHugh.

24 MR. McHUGH: No. No problem, Mr.

1 Chairman. I'm typically used to going last. So,  
2 I was gearing up, until I heard the name  
3 "Geiger". So, I was --

4 CHAIRMAN GOLDNER: My apologies. It's  
5 been a long day.

6 MR. MCHUGH: No. No, no. And I'll be  
7 very brief, because I reserve the right to  
8 address, really, everything in sort of a  
9 post-closing brief, closing statement-type  
10 pleading.

11 But, in the present case, I submit the  
12 Petitioners have not met their burden of proof  
13 that the rates are unjust and unreasonable, by  
14 simply taking some selective data that was  
15 provided in another docket, and providing an  
16 analysis or some sort of analysis to try and  
17 demonstrate a point that new rates should be  
18 adopted, and applied only to a single  
19 telephone/telecom provider.

20 I think, taking that, a limited subset  
21 of data, and then basically turning it around and  
22 saying that this is, you know, that "this is what  
23 the rates should be." Really, I think, when  
24 you look -- if you look at the evidence, what I

1 would submit is that the six factors in the  
2 Commission's rules, they really paid lip service  
3 to it, and said "Okay, really what we want to do  
4 is just adopt the FCC cable formula, and here's  
5 what the rates should be."

6 As Ms. Davis testified, broadband is  
7 one of the biggest, the single most important  
8 issues, probably, and the access to it, right now  
9 in the United States. It's clear, it's in the  
10 public record, between various federal agencies,  
11 the federal government has allocated quite a bit  
12 of money to expanding broadband. It's one of the  
13 number one desires of the State of New Hampshire,  
14 and probably, indeed, most all states, and  
15 certainly northern New England, is to expand  
16 broadband much, much more than it is.

17 And, yet, the Petitioners, if you look  
18 at the affidavits that they file in support of  
19 the Petition, there's really no evidence in there  
20 that they're actually expanding broadband. So,  
21 you know, they have an initial burden to prove  
22 the facts that are in their Petition. And I  
23 submit that they -- they really have not.

24 In terms of the calculations that we've

1           gone through, and we've been criticized by the  
2           Petitioners about the data that has been  
3           provided, and yet we have been providing data in  
4           response to data requests. Everything has been  
5           updated, as Ms. Davis testified, in the  
6           Commissions' request for Record Request 2. That  
7           ARMIS exhibit, SD-1, has been updated with  
8           current data. And, as can be seen in the  
9           regulatory rate, and how it all flows through,  
10          the backup is there for it, in terms of various  
11          pole data for each of the years at issue. And,  
12          yet, we're still criticized as providing, you  
13          know, inaccurate data, it's not supported by  
14          anything.

15                    It's as though the only way I can come  
16          in with any sort of credible data is if I, I  
17          don't know, give you about 15,000 boxes of pole  
18          records and pole data, that, you know, to support  
19          it. It doesn't -- it really doesn't make a lot  
20          of sense.

21                    But, in terms of they have the burden  
22          of proof, I submit they didn't meet it, in terms  
23          of changing what should be a just and reasonable  
24          rate.

1           I understand the Commission's denial of  
2           the Motion for -- Motion to Dismiss. So, I won't  
3           belabor that here any further. But I do reserve  
4           the right to raise that in the brief.

5           So, anyway, I do thank you, and  
6           appreciate your time.

7           CHAIRMAN GOLDNER: Thank you. We'll  
8           move to Attorney Young.

9           MR. YOUNG: Thank you, Mr.  
10          Commissioner. The Department just has a few  
11          brief remarks.

12          The Department is interested in  
13          ensuring fair and reasonable pole attachment fees  
14          that allow for the further development of a  
15          competitive broadband market, to support robust  
16          high-speed internet access throughout New  
17          Hampshire, including those unserved and  
18          underserved areas.

19          The Department's roll in this  
20          proceeding is to ensure a complete record is  
21          developed per RSA 12-P, Section 2. Here, the  
22          Department feels that the well-versed and expert  
23          parties actively participating in this docket  
24          have sufficiently developed the record. And, as

1           such, the Department does not feel as though we  
2           are in a position to add anything to the analysis  
3           before you today.

4                     CHAIRMAN GOLDNER: Thank you, Attorney  
5           Young. And, finally, Attorney Geiger.

6                     MS. GEIGER: Thank you, Mr. Chairman.

7                     The Petitioners have, in fact, met  
8           their burden of proving that Consolidated's  
9           current pole attachment rates, which were not set  
10          according to any particular cost-based formula,  
11          and its joint-use charges for poles that  
12          Consolidated doesn't own, are unjust and  
13          unreasonable.

14                    The Commission has the authority and  
15          the responsibility to set just and reasonable  
16          pole attachment rates and charges. The weight of  
17          the evidence in this docket demonstrates that  
18          Consolidated's pole attachment rates are  
19          excessive, and should be reduced to the figures  
20          provided by Ms. Kravtin, which are \$5.33 for a  
21          solely-owned pole, and \$2.67 for a jointly-owned  
22          pole. And that the joint-use charges should be  
23          eliminated, because, again, Consolidated doesn't  
24          own the poles that they're charging my clients

1 for.

2 On behalf of the Petitioners, Ms.  
3 Kravtin, who is a leading expert in pole  
4 attachment rates, has calculated just and  
5 reasonable pole rates for Consolidated by  
6 applying the widely accepted FCC cable rate  
7 formula and using input data that Consolidated  
8 provides.

9 The Petition and Ms. Kravtin's prefiled  
10 testimony comprehensively explained why the FCC's  
11 cable formula, which has been upheld by the  
12 courts as fully compensatory to pole owners, is  
13 consistent with all six of this Commission's  
14 rate-setting criteria.

15 Ms. Kravtin has also provided  
16 statistically valid data regarding pole height to  
17 rebut the FCC's presumption of 37.5 feet. And I  
18 would remind the Commission that this data is  
19 contained I believe it's Exhibit 15, over 30,000  
20 poles, many of which are jointly-owned between  
21 Consolidated and Eversource. So, we submit  
22 that's a statistically valid sample of data that  
23 supports using a 39-foot pole height.

24 Ms. Kravtin has provided detailed

1 narrative numerical descriptions, and work  
2 papers, live Excel spreadsheets, to support her  
3 rate calculations, and to tie data back to source  
4 data that she used. And she provided not only  
5 that, not just numbers, but sound reasoning to  
6 support her positions. She's also explained why  
7 it is neither just, nor reasonable, for  
8 Consolidated to impose joint-use charges, again,  
9 for poles that it doesn't own.

10 Consolidated, on the other hand, has  
11 provided no such explanation, or even discussed  
12 why its current rates meets all six of the  
13 Commissioners rate -- Commission's rate review  
14 standards.

15 Instead, what Consolidated did, in its  
16 written submissions, and, again, Ms. Davis  
17 repeated them on the stand today, is argue that  
18 "Petitioners have to continue to pay these rates,  
19 because they're in the contracts." And we have  
20 to continue to pay joint-use charges on poles  
21 that Consolidated doesn't own, simply because  
22 those rates appear in pole attachment agreements  
23 that were signed many, many years ago.

24 However, the Commission correctly

1 rejected that argument in its recent order  
2 denying Consolidated's Motion to Dismiss, and has  
3 rightfully asserted its authority to determine  
4 whether the rates provided in those pole  
5 attachment agreements by Consolidated are just  
6 and reasonable.

7 The Commission has ample record  
8 evidence in this docket to find in favor of the  
9 Petitioners. Again, Ms. Kravtin has provided  
10 comprehensive evidence to support her  
11 calculations and her positions, and to rebut  
12 those of Ms. Davis.

13 A couple of points. First, it's  
14 important to note that this Commission has  
15 already adjudicated the regulatory net book value  
16 calculation of Consolidated poles in Docket DE  
17 21-020. The Commission relied on Ms. Kravtin's  
18 calculations and methodology in that docket,  
19 using Consolidated's 2020 ARMIS data.

20 We see no reason to depart from that  
21 reasoning here. The same valuation of  
22 Consolidated's pole assets in DE 21-020, for  
23 purposes of transfer value to Eversource, should  
24 also be used in calculating Consolidated's rates

1 in this docket.

2 Second, Ms. Kravtin has explained that  
3 the FCC's cable rate formula allocates the entire  
4 costs of the pole based on each attacher's direct  
5 occupancy of space in proportion to the total  
6 space on the pole that is available for  
7 attachments.

8 We understand that Consolidated doesn't  
9 like what the FCC's cable rate formula does, in  
10 terms of its calculation and its allocation.  
11 But, again, the cable rate formula has been  
12 upheld by the courts as fully compensatory.

13 Third, Ms. Kravtin has explained that  
14 the 2020 ARMIS data are the most recent available  
15 figures upon which to base pole attachment rates.  
16 Because Consolidated hasn't updated the 2020  
17 ARMIS data, or otherwise provided proper rate  
18 calculations in the same way that Ms. Kravtin  
19 did, those 22 rows of information that Ms. Davis  
20 conceded represent a proper FCC pole rate  
21 calculation, Consolidated didn't do that. In  
22 light of that, Ms. Kravtin's position must  
23 prevail.

24 Fourth, Ms. Kravtin has explained that

1 Ms. Davis's net bare pole cost figure reflects a  
2 selective mix and match of GAAP and purported  
3 Uniform Statement of Accounts regulatory  
4 accounting figures, which is not proper. For  
5 example, Ms. Davis's Attachment SD-1  
6 inappropriately restates only accumulated  
7 depreciation in isolation from the gross  
8 investment in the associated fixed asset account,  
9 and Ms. Davis admitted that on the stand today.

10 In conclusion, Petitioners, Charter,  
11 Breezeline, and Comcast, very much appreciate the  
12 Commissioners' time and attention to this very  
13 important rate case. The Petitioners  
14 respectfully request that the Commission grant  
15 the relief requested in their Petition, at  
16 Paragraphs C through K. And, as the Chairman  
17 noted earlier, issue an order by the date  
18 contemplated in the federal law that authorized  
19 this Commission to adjudicate this rate dispute.

20 Thank you very much for the opportunity  
21 to provide these comments.

22 CHAIRMAN GOLDNER: Thank you. Is there  
23 anything else that we need to cover today?

24 *[No verbal response.]*

1                   CHAIRMAN GOLDNER: Okay. Seeing none,  
2 I'll thank everyone. And we are adjourned.

3                   ***(Whereupon the hearing was adjourned***  
4                   ***at 1:42 p.m.)***

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24