

**STATE OF NEW HAMPSHIRE**  
**Before the**  
**PUBLIC UTILITIES COMMISSION**  
**DT 20-111**  
**COMCAST OF MAINE/NEW HAMPSHIRE, INC.**

**Petition for Resolution of Dispute and Declaratory Ruling**

**STIPULATION OF FACTS**

NOW COME Comcast of Maine/New Hampshire, Inc. (“Comcast”) and Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications-NNE (“Consolidated”), by and through their undersigned attorneys, and pursuant to N.H. Admin. R. 203.20 (c), hereby stipulate and agree that the facts set forth below are undisputed. Comcast and Consolidated further agree that the facts contained in Comcast’s Petition for Resolution of Dispute and Declaratory Ruling and in all Attachments to said Petition shall be admitted as evidence in this proceeding, and that both parties intend to introduce additional facts into evidence in this proceeding.<sup>1</sup>

1. Comcast is a cable television operator that, along with its affiliates, provides various communications services over its cable systems to residential, commercial and governmental subscribers in New Hampshire, including traditional cable television service, broadband, and state-of-the-art services such as high-definition video, video-on-demand, and interconnected Voice over Internet Protocol.

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<sup>1</sup> The parties will endeavor to have additional exhibits introduced into the evidentiary record via an agreement reached prior to the date of the hearing.

2. Consolidated is an incumbent local exchange company (“ILEC”) within the meaning of 47 U.S.C. § 251(h) that provides communications services to its customers within New Hampshire. Consolidated is also a public utility as defined in N.H. RSA 362:2 that owns and controls utility poles throughout the state that are used by Consolidated to support its communications network and to transmit services to its customers.

3. Comcast competes with Consolidated and its affiliates for customers of voice, video, and internet service in numerous New Hampshire cities and towns.

4. Comcast is an “attaching entity” within the meaning of N.H. Admin. R. Puc 1302.01, and has attachments on multiple poles solely owned by Consolidated or jointly owned by Consolidated and Eversource in several areas in New Hampshire.

5. Comcast and Consolidated are successors to a pole attachment agreement dated April 15, 2003 between Verizon New England Inc. and Public Service Company of New Hampshire and MediaOne of New England, Inc. (“MediaOne New England”), as amended on June 13, 2003 to change the name from MediaOne New England to Comcast of Maine/New Hampshire, Inc. (hereinafter the “Pole Attachment Agreement”). The parties intend that the entirety of the pole attachment agreement will be introduced into the evidentiary record in this proceeding, understanding the parties currently are working to identify and agree upon this exhibit.

6. Under Section 2.1 of the Pole Attachment Agreement, Consolidated (“Licensor”) has agreed, “subject to the provisions” of the Pole Attachment Agreement, to issue to Comcast (“Licensee”) “for any lawful purpose, revocable, non-exclusive licenses” authorizing the attachment of Licensee’s facilities to Licensor’s poles.

7. Section 2.6 of the Pole Attachment Agreement provides as follows:

Nothing in the Pole Attachment Agreement requires Consolidated to provide a License where Consolidated believes installation of Licensee facilities would interfere with Consolidated's service requirements or the use of Consolidated's facilities by other parties.

8. Section 5.3 of the Pole Attachment Agreement provides as follows:

Within forty-five (45) days of receipt of written notification in the form of a complete license application and the correct Survey Fee payment, Licensor shall perform or have performed a Pre-construction Survey and present the Survey results. The Survey results will contain one of the following statements:

If no Make-ready Work is required, a license shall be issued for the attachment.

If Licensor determines that the pole or anchor to which Licensee desires to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the Licensee's Facilities, in accordance with the specifications set forth in Article VI, Licensor will provide Licensee with an itemized invoice for such anticipated Make-ready Work. The Make-ready Work will be performed following receipt by Licensor of advance payment. Upon receipt of the advance payment, Licensor will provide the Licensee with the estimated start and estimated construction completion date of the Make-ready Work.

If Licensor determines that the pole may not reasonably be rearranged or replaced to accommodate Licensee's Facilities for reasons of capacity, safety, reliability or engineering, the Licensor may refuse to grant a license for attachment. Licensor shall provide the specific reason(s) for such denial. Licensor shall not unreasonably exercise the right reserved hereunder.

9. Comcast and Consolidated are parties to a conduit agreement.

10. Comcast has facilities in Consolidated's conduit in New Hampshire in numerous locations.

11. A "riser" is a facility that Comcast can request to install on Consolidated's poles, pursuant to the Pole Attachment Agreement.

12. A "riser" connects an overhead line to an underground line. A riser includes the cable conduit that runs up the pole and a metallic or plastic encasement material placed vertically

on the pole and other infrastructure to guide and protect wires and cables when transitioning from underground to overhead or overhead to underground.

13. On or about August 16, 2019, Comcast submitted an application to Consolidated for aerial pole attachment licenses (LAG Application # A-2019-1036) for three consecutive poles in Belmont, New Hampshire owned jointly by Consolidated and Eversource.

14. The three consecutive poles referenced above are identified by the following Consolidated and Eversource pole numbers:

- Consolidated pole # 1100/2 (Eversource # 187/2);
- Consolidated pole # 1100/1 (Eversource # 187/1); and
- Consolidated pole # 110/47 (Eversource # 18/49).

15. Although Comcast applied to attach its overhead facilities to each of these poles in sequence, during a joint field survey conducted with Consolidated on or about October 17, 2019, Comcast learned that Consolidated pole # 1100/1 (“the Intervening Pole”) had insufficient space to accommodate Comcast’s aerial attachment, and could not be replaced with a taller pole that would allow Comcast’s attachment because of overhead high-tension electrical facilities that crossed over the pole line.

16. During the October 17, 2019 field survey, representatives of Comcast and Consolidated discussed alternatives to replacing the Intervening Pole with a taller pole. Comcast’s representatives suggested that Comcast could bypass the Intervening Pole by: installing its own conduit in the span between Consolidated poles 1100/2 and 110/47 (the “Poles”); accessing the Poles via a riser on both ends of the conduit owned and constructed by Comcast; and continuing to connect to the pole line aurally. During the field survey, Comcast’s



representatives orally asked Consolidated representatives if Comcast could add riser requests for the Poles.

17. Consolidated did not accept Comcast's proposed solution to the problem created by the Intervening Pole in Belmont. Consolidated indicated to Comcast that if Comcast required connection between two Consolidated poles, Consolidated must place a conduit (at Comcast's expense) and then lease it to Comcast pursuant to a Conduit Agreement, or Comcast could install the conduit, but must convey it to Consolidated and then lease the conduit directly from Consolidated.

18. By email dated October 30, 2019, Glen Fournier of Consolidated's License Administration Group ("LAG") notified Comcast as follows: "Hi Dave and Todd, Please follow the rules John explained to you regarding conduit. If you opt to not follow the rules we will not be licensing LBFT-05 [*i.e.*, Comcast's internal number associated with LAG Application # A-2019-1036]. Even if that license were issued, Comcast is not licensed for the risers on each pole. Comcast needs to submit a conduit request between 1100/2 to 110/47 on Mile Hill Rd. Please follow the rules. Thanks, Glen".

19. The "rules" referenced in Mr. Fournier's above-described email refer to a Consolidated policy that prohibits Comcast from owning conduit between Consolidated poles and connecting to the Poles via Comcast-owned risers. That policy is as follows: Consolidated will only allow one point of access from its asset to a third party asset. Consolidated will also not allow a second access point to an existing third party asset which already has access to a Consolidated asset. If the third party has a pull box/manhole to which it needs service, then an additional conduit would come from either the pole or the manhole, but not both, and only that additional conduit may be placed by the third party.

20. The Pole Attachment Agreement does not detail the Consolidated policy described above.

21. Where at all possible, Comcast prefers to own and control all of its network facilities. For these reasons, Comcast does not wish to lease conduit from Consolidated given that Consolidated would be obligated to lease ducts in the same conduit to third parties.

22. The path between the Poles where Comcast proposes to install conduit is in the Belmont public right-of-way.

23. Comcast has obtained a permit from the Town of Belmont to install its conduit in the public right-of-way between the Poles.

24. There is no other conduit or other equipment installed in the right-of-way between the Poles that would be disturbed or impacted if Comcast installed the conduit.

25. Neither of the Poles has another riser installed on it, and there is sufficient capacity on the Poles for the installation of risers.

26. On January 23, 2020, Comcast submitted a written application to Consolidated to install risers on the Poles to be used to connect with Comcast-owned conduit.

27. The reasons for Consolidated's denial of Comcast's request for riser access to the Poles are contained in, among other communications, Attachment 9 to Comcast's Petition for Resolution of Dispute and Declaratory Ruling.

28. Consolidated stated that Comcast needed to abide by Consolidated's policy requirement that Comcast either pay make-ready for Consolidated to install the conduit or Comcast could install the conduit itself, convey ownership to Consolidated, and then lease space in the new conduit from Consolidated.

29. It is likely that there are Consolidated poles in New Hampshire with more than one riser, and it is likely that those risers are owned by different entities.

30. Comcast is currently engaged in a construction project in Salem, New Hampshire which involves installation of Comcast-owned conduit and risers, with the conduit connecting to Consolidated-owned poles.

31. The 2017 Edition of the Telcordia Blue Book lists "vertical conduit or cable runs or multiple unauthorized signs" as examples of potential pole climbing hazards, and further states that "[n]ot all conditions listed here deem a pole unsafe to perform aerial work. This list helps bring awareness to possible hazards."

32. The 2017 Edition of the NESC Section 36, Sub-section 362 provides:

(1) Risers should be located on the pole in the safest available position with respect to climbing space and exposure to traffic damage.

(2) The number, size and location of riser ducts or guards should be limited to allow adequate access for climbing.

Comcast of Maine/New Hampshire, Inc.

By: Asa Digen

Date: 10/13/20

Consolidated Communication of Northern  
New England Company, LLC d/b/a  
Consolidated Communications-NNE

By: John L. Mugh

Date: October 13, 2020