

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

**PREFILED REBUTTAL TESTIMONY OF
TERRENCE O'BRIEN**

**On behalf of
Comcast of Maine/New Hampshire, Inc.**

November 23, 2020

PREFILED REBUTTAL TESTIMONY OF TERRENCE O'BRIEN

1 **Q. Please state your name and business address.**

2 A. My name is Terrence O'Brien and my business address is 55 Executive Drive,
3 Hudson, New Hampshire 03051.

4 **Q. By whom are you employed and what position do you currently hold?**

5 A. I am employed by Comcast Communications Cable, LLC and hold the position of
6 Director of Construction, Planning and Design for the Greater Boston Region, which covers
7 New Hampshire as well as Massachusetts and Maine.

8 **Q. Please describe your background and work experience.**

9 A. I have worked for communications companies since 1992, primarily in
10 construction-related positions. I began my career as a cable television lineman and was
11 promoted to construction supervisor for Continental Cablevision and thereafter for its
12 successors, MediaOne and AT&T Broadband. I also worked as a construction manager for
13 Waveguide, Inc. from 2001 to 2005. I joined Comcast in 2005 as a Project Coordinator with
14 responsibility for construction, maintenance, restoration, and documentation of all outside
15 plant activity within the Greater Boston area. This area consists of 203 Massachusetts
16 communities, 80 New Hampshire communities, and 15 Maine communities. In 2006, I was
17 promoted to Construction Supervisor, with responsibility for all construction-related
18 activity in several management areas within the Metropolitan Boston footprint. In 2012, I
19 was promoted to Manager, and in 2016, I assumed my current position as Director of
20 Construction for Comcast's Greater Boston Region.

1 I served in the United States Marine Corps for five years and took undergraduate
2 courses at Framingham State College. I am a member of the Society of Cable Television
3 Engineers.

4 **Q. Please describe your responsibilities at Comcast, including those that relate**
5 **specifically to the issues presented in this docket.**

6 A. As Director of Construction, Planning and Design at Comcast, I have supervisory
7 responsibility for all commercial and residential network construction projects within the
8 Greater Boston Region. I manage a staff of 81 construction, planning, and design
9 employees, as well as a contractor workforce of 22 Project Coordinators, all of whom
10 support the Greater Boston Region. I partner with sales and business leadership to support
11 all construction and expansion initiatives, including site discovery, business case
12 preparation, and acceleration and completion of construction. I am responsible for
13 approximately \$30 million in capital expenses annually across multiple budget lines.

14 My responsibilities specifically relating to the issues presented in this docket
15 include supervising and assisting Comcast's employees and contractors with issues
16 concerning the construction, installation, and maintenance of aerial pole attachments,
17 risers, and conduit, as well as issues relating to pole attachment licensing.

18 **Q. Have you previously testified before the New Hampshire Public Utilities**
19 **Commission ("the Commission")?**

1 A. No, I have not formally testified before the Commission. However, I have
2 participated in technical sessions and answered data requests in Docket IR 18-062,
3 Investigation of Utility Poles and Attachments, Storm Damage and Response.

4 **Q. On whose behalf are you testifying in this proceeding?**

5 A. I am testifying on behalf of the Petitioner, Comcast of Maine/New Hampshire, Inc.

6 **Q. What is the purpose of your testimony?**

7 A. The purpose of my testimony is to support the Petition for Resolution of Dispute and
8 Declaratory Ruling (“the Petition”) which seeks resolution of a pole attachment dispute
9 with Consolidated Communications of Northern New England Company, LLC
10 (“Consolidated”) and a declaratory ruling invalidating a policy that Consolidated invoked to
11 deny licenses for Comcast-owned risers on two poles in Belmont, New Hampshire. In
12 addition, my testimony rebuts the Pre-filed Direct Testimony of Glen Fournier submitted
13 on behalf of Consolidated.

14 **Q. Are you familiar with the contents of Comcast’s Petition filed in this docket?**

15 A. Yes. I am familiar with the Petition, and I attested to the facts contained therein
16 which are incorporated by reference into this Rebuttal Testimony.

17 **Q. Are you familiar with the Stipulation of Facts filed in this docket on October**
18 **13, 2020, and if so, do you agree with those facts?**

1 A. I reviewed the Stipulation of Facts prior to its submission and agree with those
2 factual statements. However, there are additional facts as set forth in the Petition and
3 presented below in this Rebuttal Testimony that Comcast would like the Commission to
4 consider.

5 **Q. When did you first become aware of Consolidated's policy stated in paragraph**
6 **19 of the Stipulation of Facts?**

7 A. The first time I learned about the nature of this policy was when Consolidated
8 verbally invoked it to deny the two Belmont pole licenses and conduit that are the subject
9 of this docket. The first time I saw the policy expressed in writing was in Consolidated's
10 response to a Commission Staff Data Request during the discovery phase of this docket. In
11 my many years of experience with constructing pole attachments and risers, and applying
12 for pole attachment licenses on behalf of Comcast, I am not aware of any situation where
13 Consolidated or its predecessor, FairPoint, had ever used this policy to prevent Comcast
14 from owning conduit between two Consolidated poles, and connecting that conduit to
15 Comcast-owned risers located at either end of the conduit.

16 **Q. What is your understanding of Consolidated's above-referenced policy?**

17 A. I find the wording of the policy confusing and therefore I am unclear as to what the
18 policy actually means. However, my understanding is that it is Consolidated's position that
19 the policy prevents Consolidated from licensing Comcast-owned risers on Consolidated
20 poles that are on either end of a Comcast-owned conduit.

1 **Q. In your experience, is it typical for a pole owner such as Consolidated to deny**
2 **Comcast a pole attachment license based on a policy of the pole owner instead of on**
3 **the factual circumstances related to a specific pole and the denial criteria contained**
4 **in the Commission's rules?**

5 A. No. In my experience, a decision on whether to grant or deny a pole attachment
6 license is made based upon the specific facts and circumstances of the particular poles to
7 which Comcast seeks to attach its facilities. Section 6.1 of the parties' Pole Attachment
8 Agreement (see Petition, Attachment 2, p. 16) identifies the technical specifications
9 applicable to Comcast's pole attachments, including the Telcordia Bluebook-Manual of
10 Construction Procedures ("the Blue Book"), and the National Electrical Safety Code
11 ("NESC"). Pole attachment denials are governed by the criteria listed in the Commission's
12 pole attachment rule PUC §1303.01 (b) and Section 5.3 of the parties' Pole Attachment
13 Agreement (see Petition, Attachment 2, p. 16), *i.e.*, whether the particular pole in question
14 has capacity for the attachment, and can accommodate the attachment without presenting
15 safety, reliability, or engineering concerns.

16 Section 5.3 of the Pole Attachment Agreement and Commission Rule PUC §1303.04
17 (c) both require Consolidated to provide specific reasons in writing for denying a pole
18 attachment license. In addition, the above-cited section of the Pole Attachment Agreement
19 also provides that Consolidated cannot unreasonably exercise the right to deny a license.

1 Other than the denial that is the subject of this docket, I cannot recall an instance
2 where a pole owner has denied a pole attachment license to Comcast based on a policy. In
3 this case, Consolidated did not deny the requested riser licenses based on the particular
4 condition or attributes of the two poles in question, *i.e.*, Consolidated pole numbers 1100/2
5 and 110/47, which Consolidated jointly owns with Eversource (“the Belmont Poles”).
6 Instead, Consolidated invoked a blanket policy that is not contained in the Pole Attachment
7 Agreement to deny Comcast’s application for riser licenses.

8 **Q. Did Eversource, which jointly owns the poles with Consolidated, take any**
9 **action with respect to Comcast’s application for risers on the Belmont Poles?**

10 A. Yes. Unlike Consolidated, Eversource granted Comcast a license to install its risers
11 on the Belmont Poles. See Attachment TOB -1. In so doing, Eversource expressed no safety
12 or engineering concerns regarding the requested risers, nor did Eversource insist on
13 owning the risers or the conduit between them.

14 **Q. Are you aware of any instance where Consolidated has granted Comcast riser**
15 **licenses for poles on either end of a Comcast-owned conduit?**

16 A. Yes. In April of 2019, Consolidated granted Comcast a license for two risers
17 attached to Consolidated poles at either end of Comcast’s conduit located between poles 43
18 and 44 in Rochester, New Hampshire. A copy of this license is attached to this Rebuttal
19 Testimony as Attachment TOB-2.

1 **Q. Do you agree with Mr. Fournier's testimony that during discovery in this**
2 **docket, Comcast provided no examples of where Comcast has attached risers on**
3 **Consolidated poles?**

4 A. No, I do not agree with that testimony. In response to Consolidated data request #2,
5 Comcast provided a copy of the Rochester, New Hampshire license referenced above.
6 Comcast's response to that data request is attached to this Rebuttal Testimony as
7 Attachment TOB-3.

8 **Q. Did you or others under your supervision personally inspect the two Belmont**
9 **Poles to which Comcast sought to attach its risers?**

10 A. The Belmont Poles were inspected in person by Comcast's Senior Manager of
11 Construction, Mark Carter, who reports directly to me. They were also inspected in person
12 by Comcast Project Coordinator, David Tessier, who is supervised indirectly by Mr. Carter.
13 Mr. Carter and Mr. Tessier communicated with me about the condition of these poles and
14 provided photographs of the poles. In addition, I used the surveillance tools Google Earth
15 and Google Maps to gather more information about the poles.

16 **Q. Based on your knowledge of the two Belmont Poles, and your experience with**
17 **pole attachments, are there any capacity, safety, reliability, or engineering reasons**
18 **why Comcast's risers could not be attached to the two Belmont poles in question?**

19 A. No. As indicated in the Stipulation of Facts at paragraph 25, the Belmont Poles have
20 no risers installed on them, and there is sufficient capacity on those poles for the

1 installation of Comcast's risers. In addition, based on my years of experience with pole
2 attachments, my discussions with Mr. Carter and Mr. Tessier about these particular poles,
3 and my review of the information generated from the surveillance tools, I concluded that
4 there were no safety, reliability or engineering reasons why the two Belmont Poles could
5 not accommodate the installation of Comcast's risers.

6 **Q. If Comcast had installed its risers on the two Belmont Poles, would those**
7 **risers have inhibited or prevented Consolidated or other attachers from accessing**
8 **their facilities?**

9 A. No. These poles are easily accessible from the street via an aerial lift (commonly
10 known as a "bucket" truck), or via ladder, which are the preferred methods of accessing
11 utility poles. Therefore, there would be no need for a worker to climb these particular
12 poles. However, even it became necessary to climb these poles, the installation of a
13 Comcast riser would not inhibit or prevent Consolidated or other attachers from accessing
14 their facilities, as there would be adequate space for a worker to climb these poles.

15 **Q. If Comcast had installed its risers on the two Belmont Poles, what if any safety**
16 **issues would those risers pose to employees who need to work on the poles?**

17 A. I am not aware of any safety issues that would be presented by installing one riser
18 on each of the two Belmont Poles. As indicated above, these poles are easily accessible via
19 aerial lift /bucket trucks or ladders, and therefore any potential safety issues associated
20 with climbing do not exist in this case. Moreover, because Consolidated offered to provide

1 Comcast with access to the Belmont Poles so long as Consolidated owned the risers on
2 those poles (and the conduit between them), Consolidated's purported safety concerns
3 about risers on these poles make no sense. If there is a safety issue with Comcast installing
4 its own risers on the Belmont Poles, then the same safety issue would also exist if Comcast
5 installed the risers and turned ownership of them over to Consolidated (as Consolidated
6 has requested).

7 **Q. Have you ever personally observed any Consolidated poles that have more**
8 **than one riser installed on them?**

9 A. Yes. I have seen many Consolidated poles throughout New Hampshire that have
10 more than one riser installed on them. One example is a pole located on Temple Street in
11 Nashua, New Hampshire that has 7 risers on it. This pole is jointly owned by Consolidated
12 and Eversource (Consolidated #23-1 and Eversource #114-1). Photographs of this pole are
13 attached to this Rebuttal Testimony as Attachments TOB- 4-1, 4-2, 4-3 and 4-4.

14 Although I understand that not all utility poles have 7 risers attached to them, in my
15 experience it is not unusual to encounter utility poles with more than one riser attached to
16 them. The existence of poles like the one described above calls into question the validity of
17 the safety concerns expressed by Consolidated in this docket regarding a single Comcast
18 riser on poles that have no other risers on them.

19 **Q. Would the above-described pole on Temple Street in Nashua violate the**
20 **Consolidated policy stated in paragraph 19 of the Stipulation of Facts?**

1 A. No. As I understand the policy, although there are 7 risers on the Nashua pole, the
2 pole would not violate Consolidated's policy because the conduit attached to the risers on
3 the Nashua pole runs to a building, not another Consolidated pole.

4 **Q. Are there different safety concerns that apply to poles with risers that connect**
5 **conduit to a building rather than to another utility pole?**

6 A. No.

7 **Q. Are you aware of any situation similar to Belmont where a third party has**
8 **attached its risers to a Consolidated pole, and owns underground conduit that is**
9 **connected to those risers?**

10 A. Yes. I am personally familiar with a location on Route 102/Nashua Road in
11 Londonderry, New Hampshire that is very similar to the Belmont situation. A map showing
12 this location is attached to this Rebuttal Testimony as TOB -5-1. At this location, FirstLight
13 (formerly segTEL) has underground conduit (shown in red) running between and
14 connected to FirstLight/segTEL risers attached to two poles jointly owned by Consolidated
15 and Eversource (pole #11/24-196) and (pole #35-11/18A). As indicated on the map,
16 FirstLight/segTEL's risers are attached to Consolidated/Eversource poles on either side of
17 high-voltage power lines, and the conduit is buried in the public right-of-way below those
18 lines. This is very similar to Comcast's proposal for avoiding the high-voltage lines in
19 Belmont, which was rejected by Consolidated.

1 Photographs of the above-referenced Londonderry location are attached to this
2 Rebuttal Testimony as Attachments TOB-5-2 through TOB-5-9. Attachment TOB -5-2
3 shows the “tag” identifying pole # 35-11-18A located on the southwest end of Nashua Road,
4 and Attachment TOB-5-3 shows a segTEL riser on that pole. Attachment TOB-5-4 shows
5 the other pole (#11/24-196), and Attachment TOB-5-5 shows two segTEL risers on that
6 pole. The numerical markings identifying pole #11/24-196 are shown in Attachment TOB-
7 5-6. Attachment TOB-5-7 is a photo taken from pole#11/24-196 which shows the south
8 westerly path in the public right-of-way along Route 102/Nashua Road where the
9 FirstLight/segTEL conduit is buried. An orange segTEL marker located in this right-of-way
10 is shown in the foreground beneath the power lines, and is also shown in Attachment TOB-
11 5-8. Attachment TOB-5-9 is a photo of pole #35-11/18 taken from the other side of Nashua
12 Road, showing a riser and aerial lines going in four different directions.

13 **Q. Are you aware of any industry standards that recognize that third party**
14 **attachers such as Comcast can install risers on utility poles?**

15 A. Yes. The Blue Book specifically recognizes that both the pole owner and third party
16 attachers such as Comcast can have risers on the same utility pole. Section 26.1 of the Blue
17 Book states “U-type cable guards...are used to provide mechanical protection for the cable
18 that is placed in a communications company-owned conduit *or a licensee-owned conduit*
19 installed vertically on poles....” (Emphasis added).

20 **Q. Are you familiar with the public right-of-way between the two Belmont Poles?**

1 A. Yes. I am familiar with this right-of-way through information provided by Mr.
2 Carter and Mr. Tessier, as well as my own review of surveillance tools depicting that area.

3 **Q. If Comcast were to install its conduit between the two Belmont Poles, would**
4 **there be enough room for a second conduit?**

5 A. Yes. In fact, Comcast offered to install a second conduit in that right-of-way for
6 Consolidated's use. However, Consolidated did not accept this offer.

7 **Q. If Comcast were to install its conduit between the two Belmont Poles, would**
8 **Comcast be willing to install a manhole for access to the conduit?**

9 A. Yes. Comcast offered to install a manhole or vault in the public right-of-way for
10 access to the conduit proposed in Belmont, but Consolidated did not accept that offer.
11 Instead, Consolidated insisted that under its policy, Consolidated must own the conduit and
12 the risers on the Belmont Poles.

13 **Q. Do you agree with Mr. Fournier's testimony that "[w]hen pole attachments are**
14 **installed in a manner contrary to [Consolidated's] policy, the multiple conduit and**
15 **excess attachments inhibit Consolidated Communications' ability to access its assets**
16 **on the poles, as well as inhibit other attachers from accessing their attachments on**
17 **the poles. This creates safety issues for employees working on the poles."?**

18 A. I do not agree that pole attachments installed in a manner contrary to
19 Consolidated's policy will necessarily result in "excess" attachments or multiple conduit, or

1 that such attachments and conduit will necessarily prevent safe access to the poles, or to
2 the facilities installed on or between the poles. While it may be the case that in some
3 instances excessive pole attachments could inhibit Consolidated and other attachers from
4 easily accessing their assets and attachments, it does not necessarily follow that all
5 attachments installed in a manner contrary to Consolidated's policy will create accessibility
6 issues. In particular, and as noted above, if Comcast were to install risers and conduit as
7 proposed in Belmont, those installations would create no safety or accessibility issues even
8 though the installations would be contrary to Consolidated's policy.

9 **Q. Are you familiar with any industry standards that prohibit the placement of a**
10 **riser on a utility pole that does not have any existing risers on it?**

11 A. No. In fact, the Blue Book specifically contemplates the installation of multiple
12 risers on a pole by attachers. Section 26.2 of the Blue Book states "[t]ransition cables
13 between aerial plant and underground/direct-buried plant can be attached directly to the
14 pole or be protected inside conduits. If there are several of these vertical riser cables on a
15 single pole, the cables can be consolidated under a U-Guard...".

16 **Q. Are you familiar with any industry standards that prescribe the amount of**
17 **space on a utility pole that is needed for safely climbing the pole?**

18 A. Under Section 3.9 of the Blue Book, 30 inches of climbing space should be
19 maintained on a utility pole. Climbing space is an unobstructed, vertical space along the
20 side or corner of the pole. In general, it consists of an imaginary box, 30 inches square,

1 extending at least 40 inches above the highest communications cable or other facility and
2 40 inches below the lowest communications cable or other facility, but may be shifted from
3 any side or corner to any other side or corner.

4 **Q. Would the installation of the risers that Comcast requested to be installed on**
5 **Consolidated poles in Belmont interfere with the 30-inch climbing space required**
6 **under the Blue Book?**

7 A. No. If Comcast were to install risers on the Belmont Poles, I believe there would be
8 ample space for a worker to climb those poles, as the Belmont Poles currently have no
9 risers on them.

10 **Q. Would the installation of Comcast risers on the Belmont Poles prevent or**
11 **block another attacher from installing a riser on those poles?**

12 A. No. Based on my experience and observations of other poles with multiple risers on
13 them, I believe that there would be room for at least 4 to 5 risers on the Belmont Poles
14 without violating the above-described climbing space specifications, or preventing workers
15 from accessing either pole.

16 **Q. Are there other locations in New Hampshire where Comcast will need to lay**
17 **conduit in the public right-of-way between two Consolidated poles and attach risers**
18 **to the poles on either side of that conduit? If so, please identify those locations.**

1 A. Yes. New Hampshire municipalities frequently ask Comcast to relocate its
2 overhead/aerial lines to underground conduit in publicly-owned right-of-way as part of
3 municipal programs. Each year, Comcast receives many requests for these “forced
4 relocations” of its New Hampshire facilities, which typically require installing Comcast
5 risers on poles and running Comcast conduit underground between the riser poles. As
6 indicated in paragraph 30 of the Stipulation of Facts, Comcast is currently engaged in a
7 construction project in Salem, New Hampshire which involves installation of Comcast-
8 owned conduit and risers, with conduit connecting to Consolidated-owned poles.

9 **Q. If Consolidated were to apply its policy to prevent Comcast from obtaining**
10 **riser licenses similar to those requested for the Belmont Poles, what if any effect**
11 **would that have on Comcast’s broadband construction projects and business?**

12 A. Consolidated’s policy creates an obstacle that inhibits Comcast’s ability to rapidly
13 deploy broadband and other advanced services to New Hampshire customers.
14 As the pole owner, Consolidated does not face the same obstacle. Unlike Comcast,
15 Consolidated can install risers and conduit whenever it encounters a situation
16 like the one in Belmont, where overhead attachments are not feasible. Also, this obstacle to
17 Comcast’s network deployment disrupts and delays Comcast’s network construction while
18 imposing additional costs that Consolidated does not incur. In my opinion, Consolidated’s
19 policy provides Consolidated with an unfair competitive advantage.

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

1 A. Yes.

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