

PUBLIC

Consolidated Communications of Northern New England
Company LLC d/b/a Consolidated Communications
Docket No. DE 21-020
Rebuttal Testimony of Michael Shultz and Sarah Davis
February 25, 2022

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DOCKET NO. DE 21-020
JOINT PETITION FOR APPROVAL OF SETTLEMENT
AND POLE ASSET PURCHASE AGREEMENT

REBUTTAL TESTIMONY OF MICHAEL SHULTZ AND SARAH DAVIS
PUBLIC

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

February 25, 2022

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STATE OF NEW HAMPSHIRE
BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
REBUTTAL TESTIMONY OF MICHAEL SHULTZ AND SARAH DAVIS
JOINT PETITION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
AND CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND
COMPANY LLC, d/b/a CONSOLIDATED COMMUNICATIONS FOR APPROVAL OF
SETTLEMENT AND POLE ASSET PURCHASE AGREEMENT

February 25, 2022

Docket No. DE 21-020

I. INTRODUCTION

Q. Mr. Shultz, please state your name and business address.

A. My name is Michael Shultz. My business address is 4008 Gibsonia Road, Gibsonia, Pennsylvania 15044.

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

A. I am employed by Consolidated Communications, Inc. ("Consolidated") as Senior Vice President, Regulatory & Public Policy.

Q. What are your principal responsibilities in this position?

A. In my position, I am responsible for Federal and State regulatory and legislative strategy, advocacy, and regulatory compliance. In addition, I have responsibility for tariffs, interconnection, industry relations, and settlements.

1 **Q. Please summarize your professional and education background.**

2 A. I have over 30 years of telecommunications experience in regulatory, external relations,
3 billing, tariffs and compliance. I have held a position of within Consolidated's Regulatory
4 & Public Policy Team since April 2004. I have been a Senior Vice President for
5 Consolidated since 2019. Prior to my employment with Consolidated, I held the role of
6 Senior Director, Regulatory and Industry Affairs with TXU Communications from
7 November 2002 to April 2004. From 1991 to 1992, I held positions of increasing
8 responsibility with Citizens Communications (now Frontier Communications). The last
9 position I held was Director, Federal Regulatory & Compliance. Prior to joining Citizens
10 Communications, I was with the consulting firm John Staurulakis, Inc., from 1985 to 1991.
11 For my education, I received a Bachelor of Arts degree in Economics from the University
12 of Pittsburgh and a Master of Business Administration from the University of Dallas.

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

14 A. Yes, I testified before this Commission in support of Consolidated's acquisition of
15 FairPoint Communications, Inc. ("FairPoint"). The Commission approved Consolidated's
16 acquisition of FairPoint in Docket DT 16-872. I also have testified before the Vermont
17 Public Utility Commission in Docket 8881 and Case Nos. 18-3231-PET, 18-4207-PET,
18 and 20-3451-PET. In addition, I have testified in various dockets in California, Maine,
19 Nebraska, Pennsylvania, and Texas

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

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

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

5 A. I am employed by Consolidated as a Senior Director, Government Affairs.

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

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

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

14 A. I have Bachelor of Arts from Clark University and have a Juris Doctorate degree from the
15 University of Maine, School of Law. I graduated from the University of Maine, School of
16 Law in 2007. I have 13 years' experience in the telecommunications industry. I have
17 handled a wide variety of telecommunications regulatory issues in Consolidated's territory
18 as well as for its predecessor, FairPoint. I have prepared and have successfully lobbied for
19 the implementation of deregulation legislation in competitive markets in Maine, and
20 assisted on implementing regulatory changes in New Hampshire. I have experience with

1 the changes in the telecommunications and data transmission regulatory landscape and
2 traditional support mechanisms for universal service.

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

4 A. I do not believe I have testified previously before this Commission; however, I have
5 participated in various technical sessions, rulemaking proceedings or informal proceedings
6 involving Commission Staff. I have testified before the Vermont Public Utility
7 Commission in Case No. 18-1543-PET, which involved a petition regarding service to
8 microcell sites. I also filed testimony in and I am a witness in Consolidated's Vermont
9 Approval for a Successor Incentive Regulation Plan, Case No. 21-4060-PET.

10 In addition, I have testified before the Maine Public Utilities Commission in several
11 dockets. Briefly stated, those dockets are various Rapid Response proceedings involving
12 pole attachment access issues and two service quality proceedings. I also testified in a
13 Maine proceeding to implement a new Wholesale Performance Plan.

14 **Q. What is the purpose of your joint testimony?**

15 A. Our testimony addresses four central issues in this Docket. First, we address the list of
16 nine requirements related to any Commission approval of the Joint Petitioners' pole asset
17 sale proposed on behalf of New England Cable and Telecommunications Association, Inc.
18 ("NECTA") by Mr. James White in his prefiled testimony of January 31, 2022. Second,
19 we cover the Consolidated pole inspection process, as we do not agree with the
20 characterization of this process as contained in the prefiled direct testimony of Mr. Stephen
21 Eckberg filed on behalf of the New Hampshire Department of Energy (the "DOE") on

1 January 31, 2022. Third, we address the so-called utility pole net book value issues raised
2 by Mr. Eckberg and by Ms. Patricia Kratvin, who prefiled direct testimony on behalf of
3 NECTA. Lastly, we address the claims of discrimination related to the post-Closing pole
4 attachment rates for Consolidated's pole attachments.

5 **II. CONSOLIDATED RESPONSE TO NECTA CONDITIONS**

6 **Q. Please summarize Consolidated's response to the list of NECTA's proposed**
7 **conditions as recommended by Mr. White.**

8 A. On pages 11 and 12 of his prefiled testimony, Mr. White listed nine "requirements" that
9 NECTA wants to accompany any Commission approval of the Joint Petitioners' pole asset
10 sale. In large part, these so called requirements are items or processes that the Joint
11 Petitioners already agreed to in their Settlement and Pole Asset Purchase Agreement (or
12 the attachments thereto) (collectively, the "Purchase Agreement") or have acknowledged
13 in responses to NECTA's data requests. A few of the requested requirements are vague,
14 and Consolidated requires more information in order to fully address them. Each of these
15 NECTA items are addressed below.

16 **Q. Are any of Mr. White's recommended approval requirements agreeable to**
17 **Consolidated?**

18 A. Yes. Taking the list in order, the first two recommended requirements are agreeable to
19 Consolidated and they are required by the terms of the Purchase Agreement.

1 The first item states: “Upon transfer of the poles, Consolidated shall cease billing NECTA
2 members any amounts for their attachments to the transferred poles”. It is Consolidated’s
3 intent and Consolidated has so stated during various technical sessions in this Docket that
4 it will not bill any third party attachers for poles that transfer to Eversource as of the Closing
5 Date. The term “Closing Date” is defined in Section 4.1 of the Purchase Agreement and
6 is three business days after the Commission’s approval order becomes final and non-
7 appealable.

8 The second item states: “Post transfer, Eversource shall bill NECTA members for the same
9 number of attachments as that for which Consolidated ceased billing for the transferred
10 poles, adjusted for any new attachments made post transfer”. While this requirement
11 obviously is directed at Eversource’s billings, Consolidated has agreed to work with
12 Eversource to determine the number of attachments it needs to bill for after the Closing
13 Date.

14 The third item states: “Eversource and Consolidated shall provide NECTA members with
15 a report containing detailed backup data for their invoices showing changes resulting from
16 changed pole ownership”. All of NECTA’s members receive billing statements from
17 Consolidated according to the respective pole attachment agreements in place between the
18 parties. Each billing statement references the pole attachment agreement to which it
19 relates. Consolidated does not know what NECTA means by this requirement and the
20 reference to “detailed backup data”. As far as Consolidated is concerned, the billing
21 statements sent by Consolidated provide such detailed backup data. After the Closing, any

1 billing statement for attachments tied to a three-party contract between the third-party
2 attacher, Eversource and Consolidated will be discontinued – meaning the bills no longer
3 will be sent to the attachers, except for billing related to a very small number of
4 Consolidated solely owned poles that will remain.

5 The fourth item states: “Consolidated shall cease billing a Joint Use charge for the
6 transferred poles, and Eversource shall not impose a Joint Use charge for any transferred
7 pole or for any pole solely owned by Eversource”. Again, Consolidated has stated during
8 various technical sessions that it shall no longer bill attachments for any of the poles that
9 transfer to Eversource as of the Closing Date. Since the poles will no longer be in joint
10 use, there will be no joint use charge to bill.

11 Item five states: “Eversource’s and Consolidated’s pole attachment invoices must be
12 prorated to reflect the date of the transfer”. This item is covered by Section 3.2 of the
13 Purchase Agreement and is a requirement of the Joint Petitioners’ proposed transaction.

14 Item six states: “All pole attachment licenses issued by Consolidated for the transferred
15 poles must be transferred to Eversource, both companies must maintain all documents
16 relating to the transferred licenses, and both companies must provide NECTA members
17 with access to those documents upon request”. The Purchase Agreement addresses the
18 first two elements of this item. Within Sections 4.4(f) and 4.4(g) of the Purchase
19 Agreement, along with the Joint Petitioners’ Assignment Agreement (filed with the
20 Commission May 6, 2021), the Joint Petitioners contemplated the transfer of the third party
21 attachment agreements, the accompanying licenses issued by Consolidated as well as the

1 right to bill and collect for third party pole attachments.¹ As for the last portion of item six
2 – providing NECTA members with access to documents upon request – Consolidated has
3 no issue with addressing reasonable requests. We note that NECTA is seeking the
4 Commission to order Consolidated to provide access to NECTA members’ with unlimited
5 access to their own documents currently in their possession. This certainly is not
6 reasonable.

7 Items seven and eight are directed to Eversource and we do not comment upon those items.

8 Lastly, for item nine, Mr. White attached his exhibit Attachment JGW-10 and requested
9 the Joint Petitioners use that document as the basis for a similar process related to the
10 transfer of make ready work among the Joint Petitioners. Mr. White’s exhibit is a notice
11 issued by Consolidated in Vermont related to the transfer of Consolidated’s interest in its
12 utility poles to Green Mountain Power. The Joint Petitioners contemplate using a
13 substantially similar process in New Hampshire related to the transfer of make ready work
14 in the event the Commission approves of the pole asset transfer.

15 **III. CONSOLIDATED’S POLE INSPECTION PROCESSES**

16 **Q. Turning now to Consolidated’s pole inspections, please summarize for the**
17 **Commission how Consolidated went about inspecting the poles?**

¹ “Transfer” is meant in a legal sense, not a literal packing of decades worth of agreements and licenses Consolidated and its predecessors collected over an extended period of time and shipping them to Eversource.

1 A. Consolidated hired Osmose Utility Services, Inc. ("Osmose") to conduct independent
2 inspections of the utility poles. Osmose is a leading inspection company and has been in
3 business since 1934. We note that Eversource utilizes the same company for its
4 independent pole inspections as well.

5 Consolidated Communications' inspection procedures required a visual inspection of all
6 wood poles was made from ground line to the top of the pole. The following defects visible
7 from the ground with a naked eye were reviewed: woodpecker holes, split tops, decayed
8 tops, broken insulators, rotten/broken crossarms, broken ground wires, and slack/broken
9 guy wires. If the pole was not suited for continued service due to readily identifiable
10 serious defects, it was either: (i) not be tested further and simply be reported as a reported
11 reject; or (ii) sounded and bored to determine whether or not it is a priority pole and be
12 reported as a sound and bore reject. As applicable, poles were sounded from as high as the
13 inspector can reach to the exposed ground line area in order to locate interior pockets of
14 decay. Also if applicable, poles were bored with a 3/8" bit. Bore hole(s) were to be located
15 at ground line and drilled at a 45° angle to a depth of the center line of the pole. Bored
16 holes were plugged with tight-fitting treated wood dowels or plastic plugs.

17 **Q. When did Osmose conduct its inspections of the poles and what were the inspection**
18 **results.**

19 A. From April through December of 2019, Osmose inspected 77,098 poles owned by
20 Consolidated in 32 different communities within the State of New Hampshire. Of those
21 inspected poles, 2,440 poles failed inspection leading to a failure rate of 3.16%. During

1 calendar year 2020, Osmose inspected another 103,461 of Consolidated owned poles in
2 another 48 communities within New Hampshire. Of those inspected poles, 3,100 failed
3 inspection leading to a failure rate of exactly 3.00 percent.

4 **Q. Were all of the inspected poles referenced above among the Transferred Poles, as that**
5 **term is defined in the Purchase Agreement – that is the poles being transferred to**
6 **Eversource?**

7 A. No. Consolidated directed Osmose to inspect all poles in each of the communities where
8 inspections were conducted. As is well known, electric utilities respective service
9 territories typically do not cover the entirety of a community boundary. The Commission's
10 website documents by municipality which electric utility serves each community and that
11 web page may be found at: <https://www.puc.nh.gov/Consumer/communitiesserved.pdf>.
12 Clearly several electric utilities' electric service territories overlap many municipal
13 boundaries. It was more efficient for Osmose to inspect all poles in the communities than
14 only try to select Eversource based poles in the first instance. Osmose would have had to
15 return to inspect the balance of the poles in any event as Consolidated is in the process of
16 inspecting all of its poles in New Hampshire.

17 **What were the inspection results related to the Transferred Poles?**

18 From the inspections conducted in 2019, it appears Osmose inspected approximately
19 55,800 poles jointly owned with Eversource. Of those inspected poles, 1,660 failed the
20 inspection leading to an inspection failure rate of 2.97%. From the inspections conducted

1 in 2020, it appears Osmose inspected approximately 35,500 poles jointly owned with
2 Eversource. Of those inspected poles, 649 failed inspection leading to a failure rate of
3 1.83%. Combining these 2019-20 inspections results yields the following: (i) 91,300 poles
4 inspected, (ii) 2,309 poles failed inspection for (iii) a failure rate of 2.53%.

5 **Q. Do you agree with the prefiled testimony of Mr. Stephen Eckberg, of the DOE,**
6 **regarding his characterization of Consolidated's inspection processes?**

7 A. No. Mr. Eckberg, at pages 8 and 9, claims that the Consolidated poles experienced an
8 abnormally high failure rate compared to other poles within Consolidated's presumably
9 non-Eversource based service areas. Mr. Eckberg does not explain how the Eversource
10 joint owned poles fail at some abnormally high rate compared to other Consolidated owned
11 poles. We also note that Mr. Eckberg does not define either a "normal failure rate" nor
12 does he define what rate of failure is "abnormally high". Nonetheless, as demonstrated
13 above, we believe his claims are not correct. In addition, we understand that the 2.53%
14 failure rate for Eversource based poles is less than the failure rate Eversource modeled in
15 its cost recovery proposal.

16 Moreover, while pole inventories are never exact, it appears Consolidated's maintenance
17 areas encompass approximately 176,000 of Eversource's joint owned poles. With Osmose
18 inspecting 91,300 of those poles, that equates to nearly 52% of the poles in the
19 Consolidated maintenance areas being inspected. With Osmose being an independent
20 inspection company and with Eversource relying on that same company for its pole
21 inspections, we believe that Consolidated's inspections are robust and more than

1 sufficiently reliable for the Commission to approve the Joint Petitioners' requests in this
2 Docket.

3 We also note that Eversource conducted its own visual inspections on its jointly owned
4 poles within the Consolidated maintenance areas. In response to data request DOE 3-
5 005(c), Eversource stated: "... Eversource does ground line inspection on poles in its
6 maintenance area on a 10 year basis but also does visual inspections on poles in
7 Consolidated's maintenance area looking for above ground defects on those poles and
8 obvious NESC [National Electric Safety Code] issues. The inspection reports include both
9 ground line inspections and visual inspections, hence the larger number of total
10 inspections."² This should provide the Commission with additional comfort that the
11 Transferred Poles have been maintained in a satisfactory, workman like manner and are
12 not subject to an undefined, "abnormally high" failure rate.

13 **Q. Does the Joint Petitioners' Purchase Agreement contain an adjustment to the**
14 **purchase price related to poles which failed the Consolidated based inspections?**

15 A. Yes. From the gross purchase price there is a credit of **Begin Confidential** [
16 **End Confidential** which is deducted to arrive at the net purchase
17 price for the Transferred Poles. During the negotiations, the credit contemplated

² See Exhibit MS/SD – 01. The request within DOE 3-005(c) related to why the number of inspections reported by Eversource vastly exceeded Eversource's annual inspection cycle of 10.0% per year of the poles within its maintenance areas. The Eversource response clearly documents that Eversource conducts its own diligence on poles not within its maintenance areas.

Eversource needing to replace approximately 2,300 poles due to failed inspections and the actual 2019-20 inspection results justify the contemplated credit as sufficient.

IV. NET BOOK VALUE OF THE TRANSFERRED POLES

Q. Both Mr. Eckberg and NECTA witness Patricia Kratvin filed testimony offering opinions regarding the maximum amount that Eversource should be allowed to use as the net book value of the pole assets for purposes of the Joint Petitioners' asset pole transfer transaction. Do you agree with either of their positions in this regard?

A. No. Both Ms. Kratvin's proposed pole valuation and Mr. Eckberg's proposed pole valuation artificially reduce the value of the poles based upon GAAP data placed in an ARMIS format adjusted by purchase accounting. In our opinion, their analyses do not reflect a fair accounting treatment of the poles. Consolidated is not a rate regulated utility and is not required to file ARMIS reports. Consolidated indicated it did not have the ability to perform this reporting in a manner similar to the 2017 data FairPoint had filed.

From a pure economic viewpoint, their valuations also make no economic sense if you consider that Eversource jointly owns the great majority of the Transferred Poles. Currently, on Eversource's accounting books and records, the joint owned Transferred Poles have a net book value of \$67,424,764.³ Yet both Ms. Kratvin and Mr. Eckberg place a net book value on Consolidated's joint ownership interests at a value over 35% and 53% (respectively) below the Joint Petitioners' contemplated net purchase price as set forth in

³ See *Exhibit MS/SD – 02* (Joint Petitioners' Response to DOE DR 1-031)

1 the Purchase Agreement. On page 20 of her testimony (line 20), Ms. Kratvin labels any
2 increase above her calculated value as an “acquisition premium”.

3 **Q. Other than a comparison of the Purchase Agreement net purchase price to**
4 **Eversource’s accounting data, can you provide a justification for the net purchase**
5 **price Eversource would pay to Consolidated at the Closing?**

6 A. Yes. We have two responses to this question. First, Ms. Kratvin relies heavily on
7 Consolidated’s data included within the Joint Petitioners’ response to DOE DR 1-031. As
8 clearly noted within that response, however, Consolidated explained that (i) the net book
9 value of Consolidated’s ownership interest in the Transferred Poles exceeded the net book
10 value of the poles (i.e., the net purchase price as set forth in the Purchase Agreement) at
11 the time the Joint Petitioners started their negotiations and (ii) it changed its GAAP
12 accounting method related to pole depreciation from the prior FairPoint useful life of
13 fifteen years to an extraordinarily low useful life of five years. The change in accounting
14 method purely was for GAAP accounting purposes and has the effect of minimizing
15 accounting losses related to any sale of poles in Northern New England. By using this
16 change in GAAP accounting against Consolidated in this proceeding, Mr. Eckberg and Ms.
17 Kratvin artificially have reduced the value of the poles to an exceedingly low number for
18 the benefit of their organization’s respective interests.

19 Ms. Kratvin further reduced her pole valuation by relying on the Joint Petitioners’ initial
20 response to DOE DR 1-031, intentionally dismissing the corrected response in DOE DR
21 1-031-RV01. For context, this data request sought information regarding (among other

1 things) the net book value of the Transferred Poles at the time Consolidated acquired
2 FairPoint. *See* MS/SD – 02 (DOE 1-031(b)). In our answer, we explained Consolidated
3 did not have such granular data. However, we produced Consolidated’s total New
4 Hampshire pole investment (i.e., the net book value). Since the Transferred Poles
5 constitute 75% of Consolidated’s total number of poles, we meant to multiply the total New
6 Hampshire value by 75%. The original response to the data request inadvertently used a
7 68% multiplier instead of the 75%. This was nothing more than a typographical error. We
8 explained this during the parties’ first technical session held in this Docket on May 13,
9 2021. Consolidated therefore revised the answer prior to that technical session and
10 provided the correct multiplier. *See* MS/SD – 02 (DOE 1-031-RV01(b)).

11 Yet in her prefiled testimony, at page 12 (lines 13 through 19), Ms. Kratvin calculates the
12 Consolidated based pole value initially on a state wide basis. She then reduces the state
13 wide value using a multiplier of 69% versus a 75% multiplier as contained within the Joint
14 Petitioners’ corrected response to DOE 1-031. When explaining her disregard for the
15 higher percentage, Ms. Kratvin stated: “ Petitioners have not provided any substantive
16 explanation for the revised percentage relative to the number of poles...” and she went on
17 to cite a separate response to a different data request taking that response out of context.
18 Yet it was clearly explained to Ms. Kratvin and the parties to this docket during the first
19 technical session that the 68% in the initial version of the response to DOE 1-031 simply
20 was a typographical error.

1 **Q. Please explain the second part of your response.**

2 A. Confidential Exhibit MS/SD – 03 provides the Commission with an analysis of the
3 Consolidated pole plant additions from its accounting records during the period 2016
4 through 2021 depreciated over a fifteen year life. Note this analysis *intentionally excludes*
5 any Transferred Poles that are on Consolidated’s books and records for poles set prior to
6 fiscal year 2016. We provide this exhibit to further demonstrate that (i) Consolidated’s
7 interest in the joint owned Transferred Poles is greater than that set forth in the Purchase
8 Agreement as the net purchase price and (ii) Consolidated’s pole plant additions from
9 2016-2021 alone depreciated over a 15 year period vastly exceeds the values put forth by
10 Ms. Kratvin and Mr. Eckberg.

11 **Q. If the Commission adopted either Ms. Kratvin’s pole valuation or Mr. Eckberg’s**
12 **valuation, would the transactions contemplated within the Purchase Agreement move**
13 **forward to Closing?**

14 A. Likely no. From Consolidated’s perspective, any Commission issued order in this Docket
15 would be evaluated by Consolidated’s senior executives in comparison to the deal struck
16 with Eversource as contained in the Purchase Agreement. Section 4.4(c) of that agreement
17 makes clear the Joint Petitioners need a final order from the Commission “... free and clear
18 of all contingencies or conditions” the Joint Petitioners and Consolidated’s secured
19 creditors find unacceptable, as well as the granting of all necessary, final and non-
20 appealable asset transfer and cost recovery approvals acceptable to Eversource, related to
21 the sale of the Transferred Poles.

1 The Purchase Agreement contains the financial terms of the Joint Petitioners' transactions
2 Consolidated finds acceptable. We note that any cash consideration Eversource pays over
3 to Consolidated at the Closing is nearly repaid to Eversource in the first 2 years following
4 the Closing in the form of pole attachment fees. Mr. Eckberg's proposed pole value would
5 leave Consolidated with almost no cash at Closing. Ms. Kratvin's proposed pole value
6 would entail a small cash transfer at Closing, which Consolidated then would return to
7 Eversource in the form of attachment fees paid over a short amount of time. Thus, their
8 values if adopted by the Commission likely would lead to Consolidated's termination of
9 the Purchase Agreement. We fail to see how that would be in the public interest.

10 **V. POLE ATTACHMENT RATES**

11 **Q. Through her testimony, at pages 18-20, Ms. Kratvin argues that the pole attachment**
12 **rates proposed to be charged by Eversource to Consolidated post-Closing are**
13 **discriminatory. Do you agree with her characterization?**

14 A. No. As a first matter, there has always been a distinction between ILECs and cable
15 companies with respect to pole attachments. Refer to 47 U.S.C. sec. 224:

16 (4) The term "pole attachment" means any attachment by a cable television system or
17 provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or
18 controlled by a utility.

19 (5) For purposes of this section, the term "telecommunications carrier" (as defined in
20 section 153 of this title) does not include any incumbent local exchange carrier as defined
21 in section 251(h) of this title.

22
23 The FCC pole attachment formula referenced in the New Hampshire Administrative Rules
24 as one method for determining just and reasonable rates, distinguishes between
25 telecommunications carriers and cable carriers. As noted above, Consolidated does not

1 qualify as either. For years, cable companies have enjoyed a preference with respect to
2 pole attachment rates, so it is novel that they are now complaining about alleged unfair
3 treatment.

4 Secondly, both the New Hampshire pole attachment rules and the Federal rules allow for
5 negotiated agreements for pole attachments. RSA 374:34(a) states: “[n]othing in this
6 subdivision shall prevent parties from entering into pole attachment agreements
7 voluntarily, without commission approval.” This is exactly what Consolidated and
8 Eversource have done in this case – we have entered into a pole attachment agreement as
9 part of an overall settlement and asset purchase deal. From our perspective, the
10 Commission should review the Purchase Agreement and its related transactions as a whole
11 and determine that there is no discriminatory treatment taking place related to pole
12 attachments.

13 **Q. Are there other factors the Commission should consider when reviewing this issue?**

14 A. Yes. By definition, discrimination occurs where similarly situated companies are not
15 treated equally. Consolidated is not similarly situated to its cable competitors. By virtue
16 of being an ILEC, Consolidated is required to provide what is labeled in the industry as
17 “basic service” within its entire service territory. Consolidated cannot make decisions to
18 only serve densely populated areas of New Hampshire, to the exclusion of rural areas, in
19 the same manner as a cable company. Oppositely, the cable companies get to make
20 business decisions about service and deployment; they can chose where to serve and how,
21 and where not to serve.

22 Moreover, because of its universal service regulatory requirements, Consolidated is

1 required to pay much larger assessments to the Department of Energy compared with cable
2 companies.⁴ Both of these regulatory burdens create an unfair advantage to cable
3 competitors, yet they are not deemed “discriminatory”. To look at a single piece of a
4 negotiated settlement in the manner Ms. Kratvin advocates and exclude the regulatory
5 context distorts the accuracy of the Joint Petitioners’ proposed transactions.

6 The pole attachment settlement amount that was negotiated is for a limited period of time
7 and lawfully compensates Eversource for Consolidated’s attachments. It allows
8 Consolidated time to evaluate its attachments and try to effectuate reductions. It allows
9 time for Eversource to conduct a survey to determine the exact number of attachments on
10 the poles for all third-party attachers. Importantly, the Purchase Agreement when taken as
11 a whole provides both Joint Petitioners with stability and certainty in their future business
12 relationship thereby eliminating distractions caused by contentious operating issues. At
13 the time the Purchase Agreement was negotiated, the Eversource pole attachment rate was
14 lower than it is today. That alone does not make the negotiated pole attachment agreement
15 unreasonable. Nor does it qualify as so-called discriminatory treatment. No one can
16 predict the exact pole attachment rate until the Eversource data is compiled and its FERC
17 forms completed.

⁴ See <https://www.puc.nh.gov/home/AboutUs/Assessments/2020-assessment-booklet.pdf>. During fiscal year 2020, Consolidated (f/k/a Northern New England Telephone Operations LLC) was assessed \$196,905 (at p. 20) and its affiliate entity (Enhanced Communications of Northern New England, Inc.) was assessed \$50,027 (at p. 3) versus Comcast Phone of New Hampshire’s assessment of \$100,385 (at p. 27).

VI. CONCLUSION

Q. Do you have any concluding remarks to your testimony?

A. Yes. We believe the Joint Petitioners worked hard to resolve all of their differences and come to a fair purchase price for the Transferred Poles. As stated more fully in the Prefiled Direct Testimony of Eversource's witnesses, there are many reasons that this pole transfer is in the best interest of electric ratepayers in the State of New Hampshire. The Commission should approve the transactions contemplated by the Purchase Agreement since they are in the public interest and meet the Commission's no net harm test.

Q. Does this conclude your testimony?

A. Yes.