

STATE OF NEW HAMPSHIRE

Before the

PUBLIC UTILITIES COMMISSION

DE 21-020

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

Joint Petition to Approve Pole Asset Transfer

PREFILED DIRECT TESTIMONY OF

JAMES G. WHITE, JR.

On Behalf of

NEW ENGLAND CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC.

January 31, 2022

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

2 **A.** My name is James G. White, Jr. My position is Senior Director of Regulatory Affairs at
3 Comcast Cable (“Comcast”). My business address is 95 Wexford Street, Needham, MA 02494.

4 **Q. Please provide a brief summary of your educational background and experience.**

5 **A.** I hold an A.B. in Engineering Science from Dartmouth College, a B.S. in Engineering from
6 Thayer School of Engineering at Dartmouth, and a J.D. and an LLM in Taxation degrees from
7 Boston University School of Law. After law school, I clerked at the Supreme Court of Rhode
8 Island. Before joining Continental Cable’s law department in 1994, I worked in private law firms
9 in Washington, D.C., and Boston, served as the General Counsel of the Energy Facilities Siting
10 Council (now part of the Department of Public Utilities) in Massachusetts, and as an Assistant
11 Attorney General in the Utilities Division of the Massachusetts Attorney General’s Office. As a
12 result of cable company mergers, after my employment with Continental Cable, I worked in the
13 law departments of MediaOne and AT&T Broadband before joining Comcast in 2002. I have been
14 involved in regulatory matters my entire career.

15 **Q. On whose behalf are you testifying?**

16 **A.** I am testifying on behalf of the New England Cable and Telecommunications Association,
17 Inc. (“NECTA”) which was granted full intervenor status by the Commission in this docket.

18 **Q. Please describe NECTA.**

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

1 A. NECTA is a non-profit corporation and trade association that represents the interests of
2 most communications companies and their affiliates (“NECTA members”) in New England,
3 including New Hampshire. NECTA members offer communications services in New Hampshire
4 by attaching facilities and associated equipment to utility poles owned by Consolidated
5 Communications of Northern New England Company, LLC d/b/a Consolidated Communications
6 (“Consolidated”) and Public Service Company of New Hampshire d/b/a Eversource Energy
7 (“Eversource”) and other entities. Comcast is a NECTA member.

8 **Q. Please describe NECTA’s interests in this docket.**

9 A. NECTA has substantial interests in this docket because NECTA members own facilities
10 that are attached to the poles that Consolidated proposes to transfer to Eversource. These facilities
11 are used to deploy broadband and other advanced communications services to New Hampshire
12 residential and business customers. NECTA members hold licenses from Consolidated for their
13 pole attachments, have applications for pole attachment licenses pending with both Consolidated
14 and Eversource, and make rental payments for their attachments to both companies. Thus, NECTA
15 members’ interests that will be directly affected by the instant proceeding include ensuring that:
16 the proposed transaction does not result in increased or inaccurate bills for NECTA members’
17 attachments on the transferred poles, does not result in any confusion or delay in processing
18 NECTA members’ pole attachment license applications, and that all pole attachment licenses
19 issued by Consolidated for these poles are transferred to Eversource. NECTA members’ interests
20 also include ensuring that the purchase price paid for these pole assets does not result in increased
21 pole attachment rates paid by NECTA members, and that the pole attachment rates paid by NECTA
22 members to Eversource post transfer are nondiscriminatory, just, and reasonable.

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

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

2 A. My testimony addresses the issues regarding accurate invoicing for pole attachments by
3 Eversource and Consolidated after the transaction, the transfer of NECTA members' pole
4 attachment licenses to Eversource, as well as the need for timely processing of NECTA members'
5 pole attachment license applications and related activities after the subject poles are transferred.
6 Ms. Kravtin's testimony addresses issues related to pole attachment rates, including the
7 appropriate net book value to assign to the transferred poles, and the issue of whether the rates
8 paid by NECTA members for their attachments to the transferred poles are nondiscriminatory, just,
9 and reasonable.

10 **Q. Please describe NECTA's concerns about accurate pole attachment billing after**
11 **Consolidated transfers the poles to Eversource.**

12 A. Some of NECTA's invoicing concerns stem from Comcast's experience after Consolidated
13 sold a large number of its pole interests in Vermont to Green Mountain Power ("GMP"). After
14 the Vermont pole transfer, GMP invoiced Comcast at the same rate for pole attachments as
15 Consolidated previously invoiced Comcast. However, after the transfer, the number of Comcast
16 attachments reflected on GMP's invoices was greater than the number of attachments for which
17 Consolidated had billed Comcast before the transfer (for the transferred poles). The result is that,
18 after the pole transfer from Consolidated to GMP, Comcast paid for more attachments in total than
19 it paid prior to the transfer, and thus paid more in total pole rent for the transferred poles, which is
20 improper.

21 NECTA is also concerned about billing for "Joint Use" or "JU" poles. Joint Use poles are
22 those that are solely owned by one company, and upon which the other company has equipment,

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

1 but is not a joint owner. Both Eversource and Consolidated own a number of JU poles, and they
2 bill each other on a net basis, i.e., the company with more JU poles bills the other for the net
3 difference. *See* Attachment JGW-1. Discovery in this docket revealed that Eversource fully owns
4 approximately 4,800 poles that are categorized as “Joint Use”, *see* Attachment JGW-2, and that
5 Consolidated imposes “JU” charges on poles solely owned by Eversource. *See* Attachment JGW-
6 3. This means that in addition to paying Eversource’s rate for a solely owned pole, NECTA
7 members have been paying Consolidated an additional “JU” charge, (which is the equivalent of a
8 “joint owned” attachment charge) even though Consolidated has no ownership interest in the poles.
9 NECTA submits that these JU charges are improper, and Consolidated has indicated that it will
10 cease billing for JU poles in Eversource’s territory with the closing of the transaction. *Id.*
11 Eversource has indicated it does not currently impose a JU charge on its solely owned poles, and
12 has confirmed that after the transfer it will only charge its solely owned pole rate for attachments
13 on transferred poles for which Consolidated was invoicing a joint use charge. *Id.*

14 **Q. Does NECTA have a recommendation to address its concerns regarding proper**
15 **invoicing after Consolidated’s New Hampshire pole assets are transferred to Eversource?**

16 A. Yes. To ensure that NECTA members do not face the same result in New Hampshire that
17 Comcast faced in Vermont after Consolidated transferred its poles to GMP, NECTA requests that
18 if the Commission approves the pole transfer, it should require that the number of each NECTA
19 member’s pole attachments on Eversource’s invoices after the transfer be matched by a
20 corresponding decrease in the number of that member’s pole attachments billed by Consolidated,
21 and that Eversource and Consolidated provide NECTA members with a separate report containing
22 detailed backup data for the invoices showing the changes resulting from changed pole ownership.

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

1 NECTA also requests that commitments regarding the cessation of JU billing set forth in
2 Attachment JGW-3 be memorialized. Specifically, NECTA requests that the Commission direct
3 Consolidated to cease invoicing NECTA members for any pole attachment charges, including JU
4 charges, for the transferred poles, and direct Eversource not to add any JU charge to the rates
5 charged to NECTA members for the transferred poles. In addition, after the transaction, NECTA
6 requests that Eversource's and Consolidated's invoices be prorated to reflect the date of the
7 transfer.

8 **Q. What is NECTA's concern regarding NECTA members' existing pole attachment**
9 **licenses for the transferred poles?**

10 A. It is unclear whether existing pole attachment licenses that were issued by Consolidated to
11 NECTA members will be transferred to Eversource in this transaction. For jointly owned poles,
12 NECTA members hold pole attachment licenses issued by both Eversource and Consolidated.
13 For poles solely owned by Consolidated, third-party attachers like NECTA members have licenses
14 issued only by Consolidated. While the "Assignment of Pole Attachment Agreements, Licenses
15 and Property Rights" filed by Consolidated on May 6, 2021 in this docket purports to assign
16 Consolidated's rights to license attachments and receive revenues from pole attachers, that
17 document does not clearly indicate that existing pole attachment licenses issued by Consolidated
18 to third-party attachers such as NECTA members will be transferred to Eversource.

19 **Q. Does NECTA have a recommendation to address its concerns regarding the transfer**
20 **of existing pole attachment licenses?**

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

1 A. Yes. If the Commission approves the pole transfer, it should require that all licenses issued
2 by Consolidated to pole attachers for the transferred poles be transferred or assigned to Eversource,
3 and that both companies maintain all documents relevant to the transferred licenses. In addition,
4 the Commission should require that both companies provide NECTA members with access to the
5 above-described documents upon request.

6 **Q. Will Eversource's sole ownership of the poles that it previously owned jointly with**
7 **Consolidated result in efficiencies or faster access to poles by third parties like NECTA**
8 **members?**

9 A. The Joint Petition asserts, at paragraph 15, that transfer of the poles to the sole ownership
10 of Eversource will result in operational benefits. But neither the Joint Petition, nor Eversource's
11 prefiled direct testimony filed February 10, 2021, discusses how the pole transfer will result in
12 operational or other benefits for pole attachers. However, in response to a data request, Eversource
13 indicated that no change in the pole attachment license application process is anticipated, that field
14 surveys should be easier to schedule as surveys will not require the presence of both joint owners,
15 and that make ready work will follow the existing practice except that Eversource will set all poles.
16 *See* Attachment JGW-4. Eversource has also indicated that if this transaction is approved, delays
17 in make ready work should be reduced and benefit NECTA members. *See* Attachment JGW-5.
18 Notwithstanding these representations, Eversource could not quantify any efficiency gains that
19 would result from its being the sole owner of poles that it previously owned jointly with
20 Consolidated. *See* Attachment JGW-6.

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

1 While NECTA is hopeful that the transaction will result in expedited surveys, and a faster
2 review of pole applications and performance of make ready, the current reality is that, in general,
3 there are surveys and make ready work that are behind. *See* Attachment JGW-7. Eversource
4 provided a schedule showing the status of each outstanding pole attachment license application as
5 of June 24, 2021. *Id.* This schedule showed that the number of days that surveys or makeready
6 were delayed went far beyond the prescribed timeline by up to 143 days. *Id.* In addition, when
7 asked to discuss whether it will commit to the timelines in Commission rules for processing pole
8 attachment license applications, Eversource failed to give an affirmative response and instead
9 simply stated that “[a]s with all aspects of Eversource’s business, the Company will evaluate
10 resource needs to ensure all of our customers’ expectations and regulatory requirements are met.”
11 *See* Attachment JGW-8.

12 **Q. Does NECTA have a recommendation to address its concerns regarding the**
13 **processing of pole attachment license applications by Eversource after the poles are**
14 **transferred?**

15 A. NECTA requests that in any order approving this transaction, the Commission should
16 direct Eversource to comply with the timelines in the Commission’s pole attachment rules, Puc
17 1303.04 and Puc 1303.12 with respect to the processing of pole attachment license applications,
18 and performing survey and make ready work.

19 **Q. Please describe NECTA’s concerns about pole attachment license applications**
20 **pending at Consolidated when the transaction closes.**

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

1 A. To avoid any confusion or delays regarding the processing of pending pole attachment
2 license applications, NECTA believes that there should be a clear set of principles about how to
3 handle applications pending at Consolidated when the transaction closes. NECTA believes that
4 when an applicant has paid the requisite fees before the transaction closes, Consolidated should
5 complete the application review, perform the survey, and prepare the makeready estimate in
6 accordance with the timelines in the Commission's rules even if this work is done after the
7 transaction closes. Similarly, where an applicant has paid Consolidated the makeready estimate
8 amount before the transaction closes, Consolidated should proceed with completing the makeready
9 work.

10 With respect to pending NECTA member applications for licenses on Consolidated poles
11 to be transferred, Eversource indicated that it will employ the following process: Eversource will:
12 (1) receive a list from Consolidated of all open applications which are still pending including
13 attaching company, pole number, location and the status of Consolidated's review; (2) compare
14 this list against open applications currently with Eversource; (3) process any application which
15 appears on both lists under the existing Eversource process exclusively; and (4) notify applicants
16 who have submitted a Consolidated application but not an Eversource application to submit an
17 Eversource application along with the required survey fee. *See Attachment JGW-9.*

18 While NECTA appreciates Eversource's proposal, it has concerns about a few issues. First,
19 Eversource's proposal does not address how the processing of applications that do not appear on
20 the lists of both Consolidated and Eversource would be handled. In addition, for license
21 applications for attachments on solely owned poles pending with Consolidated at the time of the
22 transfer, a requirement that NECTA members reapply and pay a second fee to Eversource could

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

1 delay the attachment process. NECTA is further concerned that all make ready payments for
2 pending applications are properly accounted for, such that its members will not be required to
3 make duplicate payments.

4 **Q. Does NECTA have any recommendations regarding the handling of pole attachment**
5 **license applications for the transferred poles that are pending when the transaction closes?**

6 A. Yes. NECTA believes that clear guidelines for the handling of pole applications in the
7 pipeline at Consolidated at the time of closing can be developed and conveyed to third-party
8 attachers before the transaction closes. NECTA recommends that a process similar to that
9 followed by Consolidated and GMP as set forth in Attachment JGW-10 (“Official Notice to Pole
10 Attachers” dated June 12, 2019), be followed by Consolidated and Eversource in this transaction.
11 Basically, Consolidated notified all third-party attachers before the transaction closing in Vermont
12 that Consolidated would complete the make ready process. The same principle should apply to
13 applications, surveys and the preparation of makeready estimates that are pending with
14 Consolidated for the transferred poles.

15 **Q. What is NECTA’s position regarding the proposed transaction that is the subject of**
16 **this docket?**

17 A. NECTA does not oppose the transfer of ownership of the poles from Consolidated to
18 Eversource, but believes that if the Commission approves the transfer of pole ownership, its order
19 should adopt NECTA’s recommendations to address the issues raised by NECTA in this docket.
20 As the Joint Petition at paragraph 13 indicates, the public good determination that the Commission

1 must make in approving an asset transfer such as this one involves a question of what is reasonable
2 taking all interests into consideration, including those of NECTA.

3 **Q. What steps does NECTA believe the Commission should take regarding the**
4 **proposed pole transfer to protect the interests of pole attachers such as NECTA members?**

5 A. NECTA respectfully requests that if the Commission decides to approve the pole transfer,
6 it should require the following: 1) Upon transfer of the poles, Consolidated shall cease billing
7 NECTA members any amounts for their attachments to the transferred poles; 2) Post transfer,
8 Eversource shall bill NECTA members for the same number of attachments as that for which
9 Consolidated ceased billing for the transferred poles, adjusted for any new attachments made post
10 transfer; 3) Eversource and Consolidated shall provide NECTA members with a report containing
11 detailed backup data for their invoices showing changes resulting from changed pole ownership;
12 4) Consolidated shall cease billing a Joint Use charge for the transferred poles, and Eversource
13 shall not impose a Joint Use charge for any transferred pole or for any pole solely owned by
14 Eversource; 5) Eversource's and Consolidated's pole attachment invoices must be prorated to
15 reflect the date of the transfer; 6) All pole attachment licenses issued by Consolidated for the
16 transferred poles must be transferred to Eversource, both companies must maintain all documents
17 relating to the transferred licenses, and both companies must provide NECTA members with
18 access to those documents upon request; 7) Eversource shall adhere to the pole attachment
19 licensing, survey and makeready work timelines contained in the Commission's pole attachment
20 rules at Puc 1303.04 and 1303.12; 8) Eversource shall not impose a new application fee or make
21 ready charge upon pole attachment license applicants who had made those payments to
22 Consolidated in connection with applications for attachments to transferred poles that were solely

DE 21-020
Prefiled Direct Testimony of James G. White, Jr.
January 31, 2022

1 owned by Consolidated; and 9) Eversource and Consolidated shall follow the process set forth in
2 Attachment JGW-10 or a substantially similar process for pole attachment license applications
3 pending at the time of transfer for the transferred poles.

4 In addition, NECTA recommends that the Commission adopt the recommendations set
5 forth in Ms. Kravtin's testimony relative to ensuring that the pole attachment rates for the
6 transferred poles are nondiscriminatory, just and reasonable.

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

8 A. Yes.

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