

Public Service of New Hampshire d/b/a Eversource Energy
Docket No. DE 21-020

Date Request Received: 04/12/2021

Request No. NECTA 1-045

Request from: New England Cable and Telecommunications

Date of Response: 04/26/2021

Page 1 of 1

Witness:

Request:

Please provide copies of Consolidated's ARMIS report for NH for the years 2020, 2019 and 2018.

Response:

Consolidated Communications has not filed ARMIS reports for these years. Consolidated is not required to file these reports for its New Hampshire study area.

Public Service of New Hampshire d/b/a Eversource Energy
Docket No. DE 21-020

Date Request Received: 05/17/2021

Date of Response: 05/27/2021

Request No. NECTA TS 1-005

Page 1 of 1

Request from: New England Cable and Telecommunications

Witness: Lee G. Lajoie, Sarah Davis

Request:

Re: NECTA 1-045: Please provide the information on the transferred poles for the years 2018 to 2020, in the same format that is reported by communications carriers to the FCC in Docket 86-182, FCC Report 43-01, Table III – Pole and Conduit Rental Calculation Information,” and provided in response to Staff-1-031-RV01.

Response:

Consolidated Communications does not possess the requested information. Consolidated Communications, as an Excepted Local Exchange Carrier, is not subject to rate regulation in New Hampshire and has no need for such regulatory accounting. In addition, Consolidated Communications' rates for telecommunications and data transmission services are not dependent on any regulatory accounting for purposes of establishing rates or a related rate base.



New England Cable & Telecommunications Association, Inc.

New England Cable & Telecommunications Association, Inc.

● 53 State Street ● 5th Floor ● Boston, MA 02109

Tel: 781.843.3418

October 18, 2021

Via Electronic Mail

Sarah Davis

5 Davis Farm Road

Portland, ME 04013

sarah.davis@consolidated.com

Re: Consolidated Communications / New Hampshire / Pole Invoices Second Half 2021

Dear Ms. Davis:

I am reaching out on behalf of the New England Cable and Telecommunications Association (NECTA) whose member companies Comcast, Charter Communications and Atlantic Broadband (collectively, the “NECTA Members”) are in receipt of invoices from Consolidated Communications (CCI) for pole attachments in New Hampshire covering July – December of 2021. The invoices reflect annual per attachment rates of \$11.67 on solely owned poles and \$6.84 for jointly owned poles. By this letter and on behalf of its members, NECTA hereby disputes these rates and the jointly owned rate for “JU” attachments for poles for which CCI has no ownership interest.

NECTA respectfully requests that CCI provide all supporting documentation for the rates in the referenced invoices including CCI’s calculation of the applicable rate under NH PUC Rule 1304.06(a)(5) and 47 C.F.R. §1.1409(b) in effect as of October 1, 2017. Please provide CCI’s ARMIS reports for New Hampshire for 2018, 2019 and 2020. In addition, please indicate whether, and if so when, CCI has adopted GAAP accounting in New Hampshire, and provide the calculation of the Implementation Rate Differential under 47 C.F.R. §1.1409(g).

The NECTA Members will process the referenced invoices, but payment is subject to refund or offset against further invoice amounts. NECTA and its members reserve the right to file a complaint at the NH PUC in the event agreement on a just and reasonable rate cannot be reached.

Please provide the above information at your earliest convenience. If you have provided this information to NECTA in NH PUC Docket DE 21-020, kindly direct us to that information. Thank you for your cooperation in this matter, and please feel free to contact me with any questions.

Sincerely,

/s/ David Soutter

David Soutter

dsoutter@necta.info



New England Cable & Telecommunications Association, Inc.

New England Cable & Telecommunications Association, Inc.
● 53 State Street ● 5th Floor ● Boston, MA 02109
Tel: 781.843.3418

March 15, 2022

Via Electronic Mail

Sarah Davis
5 Davis Farm Road
Portland, ME 04013
sarah.davis@consolidated.com

Re: New Hampshire / Consolidated Communications Pole Attachment Rates

Dear Ms. Davis:

By letter dated October 18, 2021 and on behalf of its members, the New England Cable and Telecommunications Association (NECTA)¹ disputed Consolidated Communications' ("CCI") New Hampshire pole attachment rates of \$11.67 and \$6.84 for solely and jointly owned poles, respectively. NECTA disputed the rates with respect to CCI's invoices for the second half (July – December) of 2021 and continues to dispute the same rates for CCI invoices issued for any subsequent period.²

In its letter, NECTA respectfully requested that CCI provide all supporting documentation for the rates in the referenced invoices including CCI's calculation of the applicable rate under NH PUC Rule 1304.06(a)(5) and 47 C.F.R. §1.1409(b) in effect as of October 1, 2017. NECTA requested CCI's ARMIS reports for New Hampshire for 2018, 2019 and 2020. NECTA also requested that CCI indicate when it adopted GAAP accounting in New Hampshire, and that CCI provide the calculation of the Implementation Rate Differential under 47 C.F.R. §1.1409(g). NECTA requested that CCI indicate if the requested information was provided in Docket DE21-020.

CCI has not responded to NECTA's letter or any subsequent follow up. However, pursuant to NECTA's Motion to Compel in NH Docket DE21-020 CCI provided the FCC Paper Report,

¹ NECTA's letter was sent on behalf of its members Comcast, Charter Communications and Breezeline (formerly Atlantic Broadband).

² See Section 15.10 (Dispute Resolution) of the Pole Attachment Agreements between CCI and NECTA members. E.g., Pole Attachment Agreement between Verizon New England, Inc. (Licensor), Public Service Company of New Hampshire (Licensor) and MediaOne of New England, Inc. (Licensee) dated April 15, 2003, amended on June 13, 2003 to substitute Comcast of Maine/New Hampshire, Inc for MediaOne.

ARMIS Annual Summary Report for Consolidated Communications of Northern New England Company, LLC for 2020 (2020 ARMIS Report).³

NECTA and its members wish to resolve the dispute concerning CCI's New Hampshire pole attachment rates. Based on the 2020 ARMIS Report, NECTA has estimated that CCI's just and reasonable annual pole rates would range between \$6.31 to \$6.51, and \$3.16 to \$3.26 for solely and jointly owned poles, respectively.⁴ NECTA submits that these rates would be even lower if the rates were calculated using a pole height greater than 37.5 feet, which NECTA maintains would more accurately reflect the actual height of CCI's poles. Nevertheless, in an effort to resolve the dispute between NECTA and CCI, and without addressing any of the other formula inputs, NECTA requests that CCI accept rates within the range indicated above as the just and reasonable pole rates under NH PUC 1304.06 for NECTA members for the second half of 2021 and future periods.⁵ NECTA respectfully requests that CCI provide a response no later than March 18, 2022. NECTA reserves the right to advocate for lower rates calculated using the FCC Cable Formula and actual pole height information. In the event the dispute cannot be promptly resolved, NECTA reserves the right to expeditiously bring the dispute to the NH PUC.⁶

Please respond no later than **March 25, 2022**. NECTA looks forward to CCI's response and is available to discuss this matter with you or others at CCI at your earliest convenience.

Sincerely,

David Soutter

dsoutter@necta.info

³ CCI provided the subject 2020 ARMIS Report in Docket DE21-020 on December 6, 2021.

⁴ See Pre-Filed Direct Testimony of Patricia D. Kravtin, Table 4 on page 16 (January 31, 2022) in Docket DE21-020.

⁵ These rates were calculated using the NH Unified Pole Rent Formula approved in the Settlement in Docket DT12-084 and using a presumed pole height of 37.5 feet. CCI's predecessor was not a party to that Settlement. NECTA notes applying the FCC's "Cable Formula" would likely result in even lower rates.

⁶ Section 15.10 of the Pole Attachment Agreement.

From: [Davis, Sarah \(Portland, ME\)](#)
To: [Dave Soutter](#)
Cc: [Tim Wilkerson](#); [Geiger, Susan S.](#)
Subject: RE: NECTA letter to CCI - NH Pole Attachment Rates [IWOV-iManage.FID512424]
Date: Wednesday, March 16, 2022 8:58:22 AM
Attachments: [image002.png](#)

David:

As you are aware from our litigation in NH, Consolidated does not have or file ARMIS reports. Additionally, as you are aware, the rates are set by contracts entered into by your members. Each contract has a process for termination and renegotiation if your members no longer agree with the terms they agreed to when they entered into the contracts including the clear indication that Joint Use, clearly defined as a situation where Consolidated does not own a portion of the pole would be charged at the Joint Owned rates, they should exercise their rights under the contract.

Thanks,

Sarah Davis | *Senior Director Government Relations and Wholesale Strategies*
Consolidated Communications | 5 Davis Farm Rd, Portland, ME 04103 |
sarah.davis@consolidated.com
207.535.4188 office | 207.272.7541 cell | 207.797.5022 fax
Consolidated.com | NASDAQ: CNSL |

PLEASE NOTE NEW ADDRESS

From: Dave Soutter [mailto:dsoutter@necta.info]
Sent: Tuesday, March 15, 2022 7:01 PM
To: Davis, Sarah (Portland, ME) <Sarah.Davis@consolidated.com>
Cc: Tim Wilkerson <twilkerson@necta.info>; Geiger, Susan S. <SGeiger@orr-reno.com>
Subject: RE: NECTA letter to CCI - NH Pole Attachment Rates [IWOV-iManage.FID512424]

[This email comes from outside of your organization. Please be cautious opening or clicking on any attachments or links.]

Good afternoon Sarah,

It was nice to see you during today's hearing in Docket No. DE21-020. Please find attached a letter from NECTA, sent on behalf of its members, following up on the letter we sent on October 18, 2021 disputing CCI's pole attachment rates in which we requested certain information justifying that rate. This letter renews those requests and asks for the data to be provided by March 25, 2022.

Please contact me if you have any questions or concerns.

Thank you,
Dave



New England Cable & Telecommunications Association, Inc.
● 53 State Street ● 5th Floor ● Boston, MA 02109
Tel: 781.843.3418

New England Cable & Telecommunications Association, Inc.

May 19, 2022

Via Electronic Mail

Sarah Davis
5 Davis Farm Road
Portland, ME 04013
sarah.davis@consolidated.com

Re: New Hampshire / Consolidated Communications Pole Attachment Rates

Dear Ms. Davis:

By letter dated October 18, 2021, and on behalf of its members, the New England Cable and Telecommunications Association (“NECTA”)¹ disputed Consolidated Communications’ (“CCI”) New Hampshire pole attachment rates of \$11.67 and \$6.84 for solely and jointly owned poles, respectively. After receiving no response from CCI, NECTA sent another letter, dated March 15, 2022, again on behalf of its members, in which NECTA invoked Section 15.10 of its members’ Pole Attachment Agreements (“PAA”) with CCI.² Per the terms of Section 15.10, CCI was required to provide a written response within 10 business days addressing all contentions made by the NECTA members. CCI failed to provide the required response.³

On May 6, 2022, Comcast, a NECTA member, sent a letter to CCI again invoking Section 15.10 of its PAA with CCI. Comcast maintained that it was entirely appropriate for NECTA to dispute

¹ NECTA’s letter was sent on behalf of its members Comcast, Charter Communications and Breezeline (formerly Atlantic Broadband).

² See Section 15.10 (Dispute Resolution) of the Pole Attachment Agreements between CCI and NECTA members. E.g., Pole Attachment Agreement between Verizon New England, Inc. (Licensor), Public Service Company of New Hampshire (Licensor) and MediaOne of New England, Inc. (Licensee) dated April 15, 2003, amended on June 13, 2003 to substitute Comcast of Maine/New Hampshire, Inc for MediaOne; Pole Attachment Agreement between Verizon New England, Inc. (Licensor), Public Service Company of New Hampshire (Licensor) and Metrocast Cablevision of New Hampshire, LLC (Licensee) dated September 30, 2003 (Breezeline acquired Metrocast Cablevision of New Hampshire, LLC in 2018); Verizon New England, Inc. (Licensor), Public Service Company of New Hampshire (Licensor) and Time Warner Entertainment Co. L.P. (Licensee) dated February 6, 2004 (Charter Communications acquired Time Warner Entertainment Co. L.P. in 2016).

³ CCI responded via email on March 16 that the members of NECTA should exercise their rights under their respective PAAs, despite it being clear from the March 15, 2022 letter that the members had exercised their rights under their respective PAAs and had designated NECTA to negotiate on their behalf.

CCI's annual pole attachment rates on its behalf and restated the objections that NECTA had already raised.

Per the terms of Comcast's PAA with CCI, CCI is obligated to provide a written response within 10 business days, specifically addressing all of the contentions made by Comcast. Should CCI decide to abide by Section 15.10, CCI's written response is due on May 20, 2022.

It is NECTA's and its members' hope that CCI's response will resolve the pole attachment rate dispute. The members still prefer to resolve these issues informally; however, per Section 15.10, and on behalf of its members, NECTA reserves the right to expeditiously bring the dispute to the New Hampshire Public Utilities Commission.⁴

Because NECTA's March 15, 2022 letter already invoked Section 15.10, on behalf of its members, should there continue to be issues following receipt of CCI's written response, and an additional meeting with the Manager-License Administration is requested, Charter and Breezeline will join with Comcast in attending that meeting. Comcast, Charter and Breezeline have authorized NECTA to coordinate scheduling of that meeting with CCI should one be necessary.

NECTA looks forward to CCI's written response to Comcast. Please contact me if you have any questions.

Sincerely,

David Soutter

dsoutter@necta.info

⁴ See Section 15.10 of each Pole Attachment Agreement.



2/8/2022

Licensee in Maine

Attention: Accounts Payable

This letter provides the required notice of a pole rental attachment rate change (eff 1/1/2022). For the January 2022 pole attachment billing, CCI has updated our pole attachment rates to the following:

Solely Owned CMP poles: Previous rate- \$12.60, New Rate - \$3.56/pole

Jointly Owned poles: Previous Rate - \$6.30, New Rate - \$1.78/pole

Feel free to reach out to LAG Joint Use of Plant with any questions about this change. I may be reached at 207-272-2469 or E-mail - LAG.mailbox@consolidated.com .

Sincerely,

A handwritten signature in cursive script that reads 'Harry Loring'.

Harry Loring
Team Leader CCI LAG



Sheppard, Mullin, Richter & Hampton LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, D.C. 20006-6801
202.747.1900 main
202.747.1901 fax
www.sheppardmullin.com

John Davidson Thomas
Abram Shanedling
202.747.1916 direct
dthomas@sheppardmullin.com
ashanedling@sheppardmullin.com

October 20, 2020

VIA ELECTRONIC & U.S. MAIL

Sarah A. Davis
Consolidated Communications
5 Davis Farm Rd.
Portland, Maine 04103
Sarah.Davis@consolidated.com

Re: Consolidated Pole Attachment Rate Compliance with Chapter 880

Dear Sarah:

We are writing again on behalf of Atlantic Broadband, Bee-Line Cable, Charter Communications, and Comcast, to follow up on our repeated offers to work with Consolidated to implement the Chapter 880 rates. Despite Consolidated's promises over the past year, Consolidated still has not provided its Year End 2019 ARMIS data that is necessary to calculate 2020 pole rents under the FCC cable formula, as required by Chapter 880.

Recall that on June 1, 2020, we wrote to you on behalf of the cable operators requesting Consolidated's 2019 ARMIS data (Form 43-01 data). In the same letter, we notified you that, based on the Chapter 880 rate calculations and using Consolidated's most recent information (*i.e.*, YE 2018 ARMIS data), the maximum rate for 2020 for attachments on a solely-owned pole is \$3.56. We also offered to discuss the matter further at your convenience.¹

While you and your colleagues apparently indicated to our clients that you responded to the June 1st letter,² that does not appear to be the case. Neither we nor our clients have received any response to our June 1st letter, nor has Consolidated produced its YE 2019 data to date.

If you believe we are mistaken, please forward the response to our June 1st letter Consolidated claims to have provided.

In any case, it is not clear why Consolidated has refused to provide what should be readily-available YE 2019 ARMIS data:

¹ Letter from D. Thomas & A. Shanedling to S. Davis (June 1, 2020) (attached as Exh. 1).

² Email from G. Fournier to Charter (P. Patterson-Holmes) (Oct. 5, 2020 at 7:14 AM EST); Email from S. Davis to Comcast (J. White & S. Parker) (Sept. 16, 2020 at 11:58 AM EST).



October 20, 2020

Page 2

- On November 27, 2019, almost as soon as the new Chapter 880 rules went into effect,³ we requested Consolidated's updated Chapter 880 rate calculations and its ARMIS data. We explained that once we received the rate and supporting information, the cable operators would be interested in exploring a multi-year rate agreement with Consolidated.⁴
- Not having received a response, we followed up on January 15, 2020.⁵ On January 31, 2020, you responded to our November 27, 2019, letter saying that Consolidated's 2019 financial information is "reported in April 2020" and "[w]e will be in touch with that information in late April or early May timeframe."⁶
- On February 24, 2020, we followed up with you, explaining that pole-rate data found on ARMIS Form 43-01 is no longer filed with/publicly available at the FCC or the MPUC. You responded that Consolidated's "final data is not yet ready, we file our annual reports in April and prepare data for that date," but that you would be "[h]appy to share when we have completed it."⁷
- On March 25, 2020, not having received the 2019 data, we reached out to you again, noting that Central Maine Power had no problem providing *its* calculations.⁸
- On April 17, 2020, you provided Consolidated's 2018 ARMIS data. And in response to Charter's request to provide the 2019 data, you replied "Yes" and that Consolidated "intend[s] to rerun the calculations using 2019 for 2020 rates."⁹

Because you did not provide Consolidated's 2019 data by May – as you indicated you would – we notified you on June 1, 2020, that based on Consolidated's 2018 data, the cable operators would pay at the rate of \$3.56 for solely-owned poles.¹⁰ If Consolidated was able to provide us

³ *Order Amending Rule and Statement of Factual and Policy Basis*, Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles: Determination and Allocation of Costs; Procedure, MPUC Dkt. No. 2019-00028 (Nov. 6, 2019); *id.* Order No. 2019-203 (Nov. 21, 2019).

⁴ See Letter from D. Thomas & A. Shanedling to S. Davis (Nov. 27, 2019) (attached as Exh. B to Exh. 1).

⁵ Email from D. Thomas to S. Davis (Jan. 15, 2020 at 2:51 PM EST) (attached as Exh. 2).

⁶ Letter from S. Davis to D. Thomas & A. Shanedling (Jan. 31, 2020) (attached as Exh. 3).

⁷ Exh. 2 (Email from D. Thomas to S. Davis (Feb. 24, 2020 at 9:40 AM EST); Email from S. Davis to D. Thomas (Feb. 24, 2020 at 9:44 AM EST)).

⁸ Exh. 2 (Email from A. Shanedling to S. Davis (Mar. 25, 2020 at 10:13 AM EST))

⁹ Exh. 4 (Email from S. Davis to J. Valenstein & M. Kinney (Apr. 17, 2020 at 8:56 AM EST); Email from J. Valenstein to S. Davis (Apr. 17, 2020 at 9:30 AM EST); Email from S. Davis to J. Valenstein & M. Kinney (Apr. 17, 2020 at 9:36 AM EST)).

¹⁰ This rate was actually *higher* than what Consolidated calculated under the FCC cable rate formula in its August 9, 2018, filing with the MPUC. See Consolidated's Response to Procedural Order, Dkt. No. 2018-00010 (Aug. 9, 2018) (calculating annual rates between \$3.25 and \$3.27).

SheppardMullin

October 20, 2020
Page 3

its 2018 ARMIS Form 43-01 data without difficulty, it should be able to do the same with its 2019 data, which to our knowledge have not been filed with the FCC.¹¹

We remain willing to speak with you about implementing the Chapter 880 rates. But if you do not provide the materials that we have been seeking, and substantively engage with us on this issue **before November 6, 2020**, we will have no choice but to consider more formal remedies, for which our clients reserve all rights.¹²

Finally, because we represent the cable operators appearing in the first paragraph of this letter, we ask that you and your colleagues (including Glen Fournier) direct their communications regarding these issues to us directly, instead of our clients.

Sincerely,



J. D. Thomas
Abraham J. Shanedling
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Enclosures: Exhibits 1-4.

¹¹ Consolidated appears only to have filed its ARMIS Form 43-08 data for 2019. See FCC Dkt. No. 86-182.

¹² Again while we hope not to have to involve the MPUC here in determining Consolidated's proper rates for the 2020 period, should that occur, we remind you that "the Commission will employ the FCC Cable Rate Formula." 65-407 C.M.R. ch. 880, Rule 4.



Sheppard, Mullin, Richter & Hampton LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, D.C. 20006-6801
202.747.1900 main
202.747.1901 fax
www.sheppardmullin.com

John Davidson Thomas
Abram Shanedling
202.747.1916 direct
dthomas@sheppardmullin.com
ashanedling@sheppardmullin.com

June 1, 2020

VIA ELECTRONIC MAIL

Sarah A. Davis
Consolidated Communications
5 Davis Farm Rd.
Portland, Maine 04103
Sarah.Davis@consolidated.com

Re: Revision of Consolidated Pole Attachment Rates

Dear Sarah:

We hope you are doing well. We are writing on behalf of Atlantic Broadband, Bee-Line Cable, Charter Communications, and Comcast, in continuation of our long-running correspondence dating back to November 27, 2019 regarding implementation of the new Chapter 880 rates (see attached).¹

While we appreciate that you provided Consolidated's 2018 ARMIS data, we are still waiting for you to provide the YE 2019 data. In the meantime, the purpose of this letter is to notify Consolidated that, effective January 1, 2020, and based on the Chapter 880 rate calculations and using Consolidated's 2018 data (see attached), the maximum rate that Consolidated may charge for a solely-owned pole is \$3.56. Please be advised, therefore, that when Consolidated's invoices covering the rental period commencing January 1, 2020 arrive, the cable operators will be paying the \$3.56 rate for solely-owned poles.²

As demonstrated in the calculations, and as is the case with other pole-owning telephone companies, Consolidated's pole asset base is negative. This is because the accumulated depreciation for the pole investment is larger than the gross pole investment. The FCC pole-rate formula addresses this issue by using *gross* investment values instead of net values, as we are

¹ See *Order Amending Rule and Statement of Factual and Policy Basis, Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles: Determination and Allocation of Costs; Procedure*, MPUC Docket No. 2019-00028 (Nov. 6, 2019); *id.* Order No. 2019-203 (final Commission certification and approval of rule revisions (Nov. 21, 2019)).

² The new Chapter 880 rules are clear that while pole owners and attaching entities may negotiate rates and terms for pole attachments, "the Commission will apply the provisions of [Chapter 880] in any dispute regarding the rates . . . for attachment to joint-use utility poles." 65-407 C.M.R. ch. 880, Rule 9. And in the event such dispute, "the Commission will employ the FCC Cable Rate Formula." *Id.* Rule 4.

SheppardMullin

June 1, 2020
Page 2

sure you are aware.³ The attached spreadsheet, therefore, contains an all-gross version of the FCC (and Maine) formula. We have also included a tab with the “net calculations” showing that use of net numbers produces a *negative* pole rate.

If you have any questions, we are available to discuss this matter at your convenience.

Sincerely,



J. D. Thomas
Abraham J. Shanedling
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Enclosures

³ *Amendment of Rules and Policies Regarding Pole Attachments*, 16 FCC Rcd. 12103, 12125-26, ¶¶ 39-42 (2001) (“[I]n the unusual situations where net pole investment is zero or negative, we find application of the formula using gross figures . . . to be appropriate.”).