

**CHARTER COMMUNICATIONS, INC., COGECO US FINANCE, LLC  
d/b/a BREEZELINE, AND COMCAST CABLE COMMUNICATIONS, LLC  
Petition for Resolution of Rate Dispute**

**Consolidated Communications of Northern New England Company, LLC's Response to  
Petition dated August 22, 2022**

NOW COMES, Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications – NNE (“Consolidated”) and hereby respectfully responds to the Petition for Resolution of Rate Dispute filed on August 22, 2022 (the “Petition”), by the above referenced Petitioners (each company being a “Petitioner”) as follows:

**I. Response to Introduction**

Consolidated hereby responds to the Introduction of the Petition as follows. Consolidated is an excepted local exchange carrier (an “ELEC”) as defined in NH RSA 362:7, as the company is an incumbent local exchange carrier providing telephone services to 25,000 or more lines. Although the pole inventory changes on a daily or weekly basis, Consolidated has an ownership interest (jointly or solely) in approximately 486,000 utility poles in New Hampshire, with the large majority of those poles being jointly owned with one of the New Hampshire electric utilities. Pursuant to New Hampshire Public Utility Commission (“Commission”) Docket DE 21-020 (the “Pole Sale Docket”), Consolidated and Public Service Company of New Hampshire (“Eversource”) proposed a pole sale transaction whereby Consolidated would transfer its ownership interests to Eversource in approximately seventy-five percent (75%) of the Consolidated owed poles. The Commission has not yet rendered its decision in the Pole Sale Docket.

In addition to the poles Consolidated owns in whole or in part, Consolidated attaches as a joint user to poles owned solely by various electric utilities. The joint use arrangement is defined by the respective Joint Ownership/Use Agreement between the respective electric utility and Consolidated. Through that arrangement, Consolidated pays a yearly fee to the electric utility for the entirety of the telecommunication space on the joint use poles. In practice, however, Consolidated uses a small portion of the telecommunications space on a joint use pole with a majority of the space being used by competitive local exchange carriers (“CLECs”) such as the Petitioners.

Consolidated charges a pole attachment fee for CLEC based attachments on Consolidated owned poles and Consolidated’s joint use poles. All of Consolidated’s pole attachment rates, terms and conditions are contained in contracts. The Petitioners individually and through their respective predecessor in interests each voluntarily entered into multiple pole attachment contracts with Consolidated’s predecessor entities. Of note, none of the Petitioners have provided this Commission with the entirety of their contractual relationships with Consolidated for purposes of adjudicating the present “dispute”. For example, pursuant to the Affidavit of James G. White, of Comcast Cable Communications, LLC (“Comcast”), Comcast has provided a single Pole Attachment Agreement, dated as of September 11, 2002 (the “2002 Comcast Agreement”). *See* Attachment JGW-1.

The 2002 Comcast Agreement specifically authorized Consolidated, and its predecessors, to bill pole attachment fees on joint use poles. Section 1.7 of that agreement defines a “joint user”. JGW-1, p. 4. Section 1.20 defines “Utility Pole”, and the definition specifically includes Consolidated’s poles which are solely owned, jointly owned and jointly used. JGW-1, p. 5.

Pursuant to Section 3.2.1 of the agreement, Comcast agreed to pay an attachment fee for each of its attachments on said Utility Poles. *Id.*, p. 7.

The remainder of the Petitioners' Introduction contains conclusions of law, or other claims or statements requiring no response.

## **II. Parties<sup>1</sup>**

1. Paragraph 1 of the Petition is admitted to the extent it contains the address of Charter Communications, Inc. ("Charter").

2. Paragraph 2 of the Petition is admitted to the extent it contains the address of Cogeco US Finance, LLC d/b/a Breezeline ("Breezeline").

3. Paragraph 3 of the Petition is admitted to the extent it contains the address of Comcast.

4. Paragraph 4 of the Petition is admitted to the extent it references Consolidated as a public utility under NH RSA 362:2 and as a pole owner. Consolidated further admits that it provides communications, broadband and other services to its customers within the State of New Hampshire.

5. Paragraph 5 of the Petition is admitted to the extent it claims that each Petitioner has rights to attach to Consolidated's poles pursuant to contracts as hereinabove referenced.

6. Paragraph 6 of the Petition is admitted.

7. Paragraph 7 is admitted to the extent that NECTA has informed Consolidated that it disputes Consolidated's pole attachment rates.

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<sup>1</sup> To the extent Consolidated does not admit any of the statements with the Petition, those statements are denied subject to each Petitioner meeting its burden of proof. Conclusions of law require no response.

### **III. Jurisdiction**

8. Paragraph 8 of the Petition is admitted to the extent that in general the Commission has authority over pole attachment rates. *See New Hampshire Joins States That Have Certified That They Regulate Pole Attachments*, 23 FCC Rcd 2796 (released Feb. 22, 2008); *see also* RSA 374:34-a, II (Whenever a pole owner is unable to reach agreement with a party seeking pole attachments, the commission shall regulate and enforce rates, charges, terms, and conditions for such pole attachments) (emphasis added).

9. Paragraph 9 of the Petition contains conclusions of law and requires no response.

10. Paragraph 10 of the Petition contains conclusions of law and requires no response.

### **IV. Response to Petitioners' "Facts"**

11. Paragraph 11 of the Petition directs the Commission to the Petitioners' other filings in this Docket and requires no response.

12. Paragraph 12 of the Petition is admitted to the extent that the Petitioners are cable operators and each has facilities attached to some of Consolidated's poles.

13. Paragraph 13 of the Petition is admitted.

14. Paragraph 14 of the Petition is admitted, subject to Consolidated's verification of the number of pole attachments each Petitioner claims it has affixed on the Consolidated poles.

15. Paragraph 15 of the Petition is admitted.

16. Paragraph 16 of the Petition is denied.

17. Paragraph 17 of the Petition is denied.

18. Paragraph 18 of the Petition is denied.
19. Paragraph 19 of the Petition is admitted to the extent that Consolidated's Pole Attachment Agreements contain provisions regarding the rates, charges, terms and conditions for the pole attachments, including dispute resolution provisions.
20. Paragraph 20 of the Petition is admitted absent any references to the affidavits listed in footnote 32 of the Petition.
21. Paragraph 21 of the Petition is admitted.
22. Paragraph 22 of the Petition is admitted to the extent that Consolidated's pole attachment rates are not calculated pursuant to a formula and have not changed since the acquisition of FairPoint Communications, Inc. ("FairPoint"), by Consolidated Communications Holdings, Inc. ("Consolidated Parent").
23. Paragraph 23 of the Petition is not related to the relief requested in the Petition and requires no response.
24. Paragraph 24 of the Petition is not related to the relief requested in the Petition and requires no response.
25. Paragraph 25 of the Petition is not related to the relief requested in the Petition and requires no response.
26. Paragraph 26 of the Petition is not related to the relief requested in the Petition and requires no response.
27. Paragraph 27 of the Petition is not related to the relief requested in the Petition and requires no response.

28. Paragraph 28 of the Petition is admitted.
29. Paragraph 29 of the Petition is (x) admitted to the extent that the Commission ruled adverse to Consolidated in a motion to compel filed in Docket DE 21-020 and (y) denied to the extent that Consolidated thereafter filed an ARMIS report with the Commission in Docket DE 21-020.
30. Paragraph 30 of the Petition is denied to the extent it references a Consolidated FY 2020 ARMIS report. The remainder of Paragraph 30 is neither admitted nor denied.
31. Paragraph 31 is admitted in that Consolidated does not file ARMIS reports with the Federal Communications Commission as there is no requirement for Consolidated to file such a report and, therefore, there is no such data to provide.
32. Paragraph 32 of the Petition is admitted to the extent that NECTA submitted to Consolidated a letter dated March 15, 2022. Reference must be made to the letter for the contents thereof.
33. Paragraph 33 of the Petition contains legal conclusions requiring no response. To the extent Paragraph 33 contains representations proffered as facts, they are denied.
34. Paragraph 34 of the Petition is admitted to the extent that Consolidated's representative, Sarah Davis, responded via email dated March 16, 2022, to NECTA's March 15 letter. Reference must be made to the email for the contents thereof.
35. Paragraph 35 of the Petition is admitted to the extent that Consolidated has not received a notice of termination from any Petitioner related to any existing Pole Attachment Agreement. The remainder of Paragraph 35 contains conclusions of law requiring no response.

36. Paragraph 36 of the Petition is denied to the extent it is claimed that a Consolidated Pole Attachment Agreement authorizes NECTA to speak for or take any action on behalf of any party to said agreement. Consolidated admits that it (x) attended a meeting on June 7, 2022, with a representative of each Petitioner and (y) during said meeting rejected changes to the contracted for pole attachment rates.

37. Paragraph 37 of the Petition is denied in part and admitted in part. Upon information and belief, as of September 19, 2022, (i) Comcast owes Consolidated \$868,347.26 for pole attachment fees and (ii) Charter owes Consolidated \$247,563.21 for pole attachment fees. It appears Breezeline, formerly known as MetroCast Cablevision of NH, LLC, has paid its pole attachment fees in full.

38. Paragraph 38 of the Petition contains conclusion of law requiring no response.

39. Paragraphs 39 – 42 of the Petition contain conclusions of law and fact regarding a legal proceeding that occurred over an extended period of time in another state and require no response, in addition to being irrelevant to a Commission proceeding.

40. Paragraph 43 of the Petition is admitted to the extent that Consolidated Parent acquired FairPoint during fiscal year 2017. As a result of that transaction, Consolidated (formerly known as Northern New England Telephone Operations, LLC) became an indirect wholly owned subsidiary of Consolidated Parent. Please refer to the Introduction for reference to Consolidated's pole ownership. The remainder of the Paragraph 43 is denied.

41. Paragraph 44 of the Petition is denied, and Consolidated remains willing to honor its contracts with each of the Petitioners.

42. Paragraph 45 of the Petition contains conclusions of law requiring no response. To the extent Paragraph 45 contains factual assertions, they are denied.

**V. Response to Petitioners' Discussion**

43. Paragraphs 46 – 47 of the Petition contain conclusions of law and require no response.

44. Paragraphs 48 – 52 of the Petition contain conclusions of law and require no response.

45. Paragraphs 53 – 56 of the Petition contain conclusions of law and require no response.

46. Paragraphs 57 – 61 of the Petition contain conclusions of law and require no response.

47. Paragraphs 62 – 65 of the Petition contain conclusions of law and require no response.

48. Paragraphs 66 – 71 of the Petition contain conclusions of law and require no response.

49. Paragraphs 72 – 75 of the Petition contain conclusions of law and require no response.

50. Paragraphs 76 – 77 of the Petition contain conclusions of law and require no response. In addition, the claims stated in these paragraphs ignore the express terms of the Pole Attachment Agreements each Petitioner has entered into over the years.

51. Paragraphs 78 – 85 of the Petition contain conclusions of law and require no response.

52. Paragraph 86 of the Petition contains no conclusion or factual statements, requires no response and is devoid of any proposed terms for a so called mediation.

**VI. Response to Petitioners' Requested Relief under "Counts"**

53. The balance of the Petitioners' Petition, including Counts I and II, paragraphs 87 – 93, contain conclusions of law requiring no response.



**VII. Response to Petitioners' Requested Relief**

54. Petitioners' requests for relief, listed under Section VII as paragraphs A – K of the Petition, require not response. The requests for relief, among other things, fail to state claims upon which relief may be granted.

55. The Commission lacks jurisdiction over Paragraph G of the Petitioners' Requests for Relief. *See Petition for Resolution of Dispute with Public Service of New Hampshire*, Docket DT 12-084, Order No. 25,387, at p. 14.

56. The Commission should dismiss the Petitioners' Petition.

**Respectfully submitted as of October 14, 2022, by**

**CONSOLIDATED COMMUNICATIONS OF  
NORTHERN NEW ENGLAND COMPANY,  
LLC D/B/A CONSOLIDATED  
COMMUNICATIONS**

By its Attorneys,

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**Certificate of Service**

I hereby certify that on October 14, 2022, a copy of this Response has been electronically forwarded to the service list in this docket.

/s/ Patrick C. McHugh  
Patrick C. McHugh