

STATE OF NEW HAMPSHIRE

Before the

PUBLIC UTILITIES COMMISSION

Docket No. DT 22-047

**CHARTER COMMUNICATIONS, INC., COGECO US FINANCE, LLC
d/b/a BREEZELINE, AND COMCAST CABLE COMMUNICATIONS, LLC**

Petition for Resolution of Rate Dispute

**PETITIONERS' RESPONSE TO
PROCEDURAL ORDER RE: ADDITIONAL BRIEFING**

NOW COME Charter Communications, Inc. (“Charter”), Cogeco US Finance, LLC d/b/a Breezeline (“Breezeline”), and Comcast Cable Communications, LLC (“Comcast”) (collectively, “the Petitioners”), and respectfully submit this response to the Commission’s March 31, 2023 Procedural Order Re: Additional Briefing (“the Procedural Order”) by stating as follows.

1. Petitioners address below the information requested in the Procedural Order, but note as a threshold matter that this information is provided in light of the Commission’s decision not to recognize that the FCC’s cable rate formula meets all six of the Commission’s pole attachment rate review standards, and should therefore be adopted to set just and reasonable rates for Consolidated. In other words, adoption of the FCC’s cable rate formula dispenses with the need to consider the new evidence.

2. The Procedural Order references Petitioners’ Motion for Rehearing/Reconsideration and Request for Oral Hearing (“Motion for Rehearing”) in which Petitioners, among other things, assert that good reason for rehearing of this matter exists due to “new evidence that could not have been presented at the hearing.” Motion at 2.

3. The new evidence discussed in the Motion is as follows:

On February 22, 2023, Consolidated announced that it has received a \$40 million grant for broadband deployment in New Hampshire.¹ Consolidated's receipt of these substantial grant amounts undercuts the Commission's statement that Consolidated "must recover its pole costs through its competitive offerings." Order at 10. These grant funds demonstrate, contrary to the Commission's findings, that Consolidated's competitive efforts are not solely funded by Consolidated and its customers. Because the \$40 million broadband deployment grant was awarded to Consolidated after the hearing in this matter, this information could not have been presented at the hearing. Accordingly, good reason exists for rehearing. *Eversource Energy and Consolidated Communications*, DE 21-020, Order No. 26,772 (Feb. 8, 2023) at 3 (citations omitted).

As noted elsewhere herein, Consolidated announced on February 22, 2023 that it was awarded \$40 million in American Rescue Plan Act ("ARPA") funding to build fiber to nearly 25,000 unserved homes throughout New Hampshire.² The ARPA grant provides Consolidated with a significant competitive advantage over Petitioners who must invest their own funds to deploy broadband, and who must also pay Consolidated excessive pole attachment rates. Because the newly-awarded \$40 million grant to Consolidated bears directly on the issues of broadband deployment, competition, and ultimately on Consolidated's pole rates, the Commission's determination that it cannot find that the broadband deployment factor supports any reduction in Consolidated's current rates must be reconsidered. Good reason, therefore, exists for rehearing.

Motion at 29 and 32.

4. The Procedural Order states that the Petitioners did not clearly indicate what evidence they intend to submit should the Commission grant the Motion and schedule this matter for rehearing. Procedural Order at 1. The Procedural Order requests that "the Petitioners clearly identify proposed newly discovered evidence they seek to introduce, including any proposed exhibits," and "...inform the Commission concerning the evidence they wish to introduce, the

¹ <https://www.consolidated.com/about-us/news/article-detail/id/893/consolidated-communications-awarded-40-million-in-grants-to-aid-in-building-fiber-to-57000-homes-in-new-hampshire>

² *Id.*

relevance and probative value of the proposed evidence, and why this specific evidence could not have been introduced prior to the Commission’s final order.” Procedural Order at 2.

5. In response to the Procedural Order, Petitioners respectfully identify the following new evidence and exhibits they seek to introduce:

- a. The Press Release found at the following website, a printed copy of which is attached to this Response as Attachment 1:

<https://www.consolidated.com/about-us/news/article-detail/id/893/consolidated-communications-awarded-40-million-in-grants-to-aid-in-building-fiber-to-57000-homes-in-new-hampshire>

- b. The documents submitted to the Governor and Executive Council in connection with the \$40 million grant award they approved on February 22, 2022 found at the following website, a printed copy of which is attached to this Response as Attachment 2:

<https://www.sos.nh.gov/february-22-2023-gc-agenda> (item #47)

6. The above-described proposed evidence and exhibits are relevant to four of the criteria that the Commission must consider when determining just and reasonable pole attachment rates for Consolidated, *i.e.*, the rates’ impacts on competitive alternatives, the potential impact on the pole owner and its customers, the potential impact on the deployment of broadband services, and formulae adopted by the FCC in 47 C.F.R. section 1.1406(d). N.H. Code Admin. R. Puc 1303.06(a)(2)-(5). This evidence is relevant as it is contrary to determinations made in Order No. 26, 775 that: (1) the apportionment of pole costs between Petitioners and Consolidated “could hamper competition.” Order No. 26,775 at 9; (2) “[s]uch a disparity in pole costs creates a greater burden on Consolidated in offering competitive services.” *Id.* at 10; (3) “given the lack of evidence concerning broadband deployment, we cannot find that

this factor supports any reduction in the current Consolidated pole attachment rates.” *Id.* at 11; and (4) the FCC formulae should not be given the same weight as the other rate review standards. *Id.* at 13.

7. The probative value of this evidence goes directly to the question of whether Consolidated’s non-cost-based rates are just and reasonable, and how this grant award, coupled with excessive pole attachment rates, impacts competition, Consolidated and its customers, and broadband deployment in New Hampshire. More specifically, this evidence undercuts Consolidated’s testimony during the January 26, 2023 hearing that lowering Petitioners’ pole attachment rates would unfairly shift costs onto Consolidated’s ratepayers, which would impair competition and not help broadband expansion in the state. Transcript (Jan. 26, 2023), p. 73. The new evidence shows that Consolidated has the ability to recover broadband deployment costs aside from the pole attachment rent it charges Petitioners, or rates charged to Consolidated customers, and therefore Consolidated can effectively compete in the broadband market. Simply put, this significant grant award to Consolidated mitigates any claim that Consolidated must continue to recover excessive pole attachment rates from Petitioners in order for Consolidated to compete in the broadband market.

8. The new evidence could not have been provided before the issuance of the Commission’s final order in this docket because the 40 million grant award to Consolidated was finalized after the order was issued. The Commission’s final order in this matter was issued on February 17, 2023, and the grant award was approved by the Governor and Executive Council on February 22, 2023. Attachment 2 at 1. The new evidence in Attachments 1 and 2 speaks for itself and no further evidentiary hearing is required.

9. Finally, Petitioners note that Consolidated's receipt of this significant grant award highlights the need for using the FCC's cable rate formula to set Consolidated's pole attachment rates. Sound regulatory policy favoring competitive neutrality or a level playing field dictates that all competitors be treated fairly and similarly. The best way to achieve that is to apply the FCC's cable rate formula which is cost-based, fully compensatory, and does not involve examination of external factors such as grant awards.

WHEREFORE, the Petitioners respectfully request that the Commission:

- A. Consider the above-described evidence and exhibits in connection with consideration of Petitioners' Motion for Rehearing/Reconsideration; and
- B. Grant such additional relief as is just and appropriate.

**Charter Communications, Inc.,
Cogeco US Finance, LLC d/b/a
Breezeline, and Comcast Cable
Communications, LLC**

By their Attorneys,
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Dated: April 11, 2023

Certificate of Service

I hereby certify that on the date set forth above a copy of the foregoing Response was sent electronically to the Service List for this docket.

A handwritten signature in blue ink that reads "Susan S. Geiger". The signature is written in a cursive style with a large initial 'S'.

Susan S. Geiger