

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**

**Consolidated Communications of Northern New England Company, LLC’s Motion to
Reopen the Evidentiary Record on a Limited Basis**

NOW COMES, Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications – NNE (“Consolidated”) and hereby respectfully requests that the New Hampshire Public Utilities Commission (the “Commission”) reopen the evidentiary record, pursuant to Puc 203.30(b), for the limited basis of allowing into the evidentiary record the submission of a single response from the Petitioners to a Consolidated Data Request. In support thereof, Consolidated states as follows:

1. Puc 203.30 Reopening the Record states in relevant part:
 - (b) Any party requesting authorization to file an exhibit after the close of a hearing shall make its request:
 - (1) Orally before the close of the hearing; or
 - (2) If the hearing has concluded, by motion, pursuant to Puc 203.06.
 - (c) In determining whether to admit the late filed exhibit into the record, the commission shall consider:
 - (1) The probative value of the exhibit; and
 - (2) Whether the opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing shall adequately protect the parties’ right of cross examination pursuant to RSA 541-A:33, IV.

2. Consolidated hereby seeks to reopen the evidentiary record, pursuant to Puc 203.30(b), for the limited basis of allowing into the evidentiary record submission of a single response from the Petitioners to a Consolidated Data Request, DR 1-7. Consolidated's data request 1-7 and the response is as follows:

1-7. See Prefiled Direct Testimony of P. Kravtin, p. 5, lns 2-6. For each of the Petitioners please describe the broadband investments in both Maine and New Hampshire in years 2018-2021 and year to date 2022:

- a. provide the total capital investment in new or improved broadband service;
- b. describe the municipality where new or improved broadband service occurred; and
- c. the number of new homes passed with the broadband service.

Response: Objection. Please refer to Petitioners' objection to this data request contained in Objections to Set One Data Requests Propounded by Consolidated and the New Hampshire Department of Energy dated November 28, 2022.

Petitioners' Response to Consolidated Data Request 1-7 (Attachment One) with emphasis in original.

3. Pursuant to Puc 203.30(c), Consolidated submits the Petitioners' response, or lack of response, is directly probative on the issues the Petitioners are required to prove by a preponderance of the evidence set forth in Puc 1303.06(a). This administrative rule states in relevant part that: "In determining just and reasonable rates for the pole attachments of cable television service providers, wireless service providers, and excepted local exchange carriers that are not incumbent local exchange carriers to poles owned by electric utilities or incumbent local exchange carriers under this chapter, the commission shall consider..." six factors. Factors 2 and 4 relate to potential impacts on: (A) competitive alternatives (factor 2) and (C) deployment of Broadband services (factor 4).

4. The Petitioners' response, or lack thereof, directly relates to the above referenced factors in Puc 1303.06(a). In fact, the response of nothing more than an objection and the failure to respond on a substantive basis constitutes an admission of the Petitioners that they (i) have presented no evidence satisfying the above referenced factors and (ii) object to such evidence being considered. Puc 203.23 Evidence states in relevant part that "(i) [a] response to a data request posed pursuant to Puc 203.09(a), when offered into evidence by a party other than the party that provided the response, shall be treated as an admission of the party that provided the data response."

5. The admission into evidence of the Petitioners' response to Consolidated Data Request 1-7 will not adversely affect the Petitioners' right of cross examination pursuant to RSA 541-A:33, IV. *See* Puc 203.30(c)(2). Certainly the Petitioners could not properly cross-examine Consolidated's sole witness on the Petitioners' failure to answer a data request on the Petitioners' Broadband expansion efforts. Such cross-examination would have gone beyond the scope of Consolidated's prefiled testimony. Consolidated's witness, Ms. Sarah Davis, provided no prefiled testimony regarding any of the Petitioners' capital investments in Broadband, the number of they homes passed with Broadband service or the number of and/or names of New Hampshire communities where each Petitioner may have expanded Broadband service in their respective service territories.

6. In addition, the admission into evidence of the Petitioners' response to Consolidated Data Request 1-7 will not adversely affect the Petitioners' opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing. *See id.* Again, this response or lack thereof by the Petitioners' is an admission. The Petitioners cannot rebut that which they have admitted to in writing. To the extent the Petitioners wanted to supplement their

response to Data Request 1-7, they could have and should have offered any responsive data as a supplement to the data request prior to the hearing and during discovery. In short, the Petitioners will not suffer any prejudice by the Commission granting this motion to reopen the evidentiary record on a limited basis.

WHEREFORE, Consolidated respectfully request that this honorable Commission:

- A. Grant this motion to reopen the evidentiary record on a limited basis in this Docket for the limited purpose set forth herein¹,
- B. Admit as Exhibit 23 the Petitioners' response to Consolidated Data Request 1-7;
and
- C. Grant any other such relief as it deems appropriate.

Respectfully Submitted by

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

By its Attorneys,

February 9, 2023

/s/ Patrick C. McHugh
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¹ Consolidated will file the Petitioners' response to DR 1-7 in the required format, pursuant to page 2 of the Commission's Hearing Guidelines (dated September 28, 2022), in the event this motion is granted.

Certificate of Service

I hereby certify that on February 9, 2023, this Motion to Dismiss has been electronically provided to the service list in this docket.

/s/ Patrick C. McHugh
Patrick C. McHugh