

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
Objection to Petitioners' Motion for Rehearing/Reconsideration and Request for Oral
Argument**

NOW COMES, Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications – NNE (“Consolidated”) and hereby respectfully objects to the Petitioners (hereinafter defined) above captioned Motion for Rehearing/Reconsideration. In support hereof, Consolidated hereby states as follows:

I. Introduction & Procedural History

The procedural history of this Docket is well known and well documented in several motions and the Commission’s Order No. 26,775, Order Resolving Pole Attachment Rate Dispute, dated February 27, 2023 (the “Order”). In summary, this Docket was initiated by a Petition for Resolution of Rate Dispute (the “Petition”) dated August 22, 2022, filed by Charter Communications, Inc. (“Charter”), Cogeco US Finance, LLC d/b/a Breezeline (“Breezeline”), and Comcast Cable Communications, LLC (“Comcast”, and collectively all three entities being the “Petitioners”). On November 16, 2022, Consolidated moved to dismiss the Petition. The Petitioners objected on November 28, 2022, and supplemented their objection on December 12,

2022. On January 23, 2023, the Commission denied Consolidated's motion to dismiss (*see* Order No. 26.764). The Commission then held an evidentiary hearing in this matter on January 26, 2023, and Petitioners and Consolidated each filed post-hearing briefs on February 9, 2023.

Throughout the Order, the Commission weighed in detail the evidence presented by the parties against the six factors required by Puc 1303.06(a). *See* Order, Section C, ps. 6-13. That administrative rule requires the Commission when determining just and reasonable rates for the pole attachments of cable television service providers to consider:

- (1) Relevant federal, state, or local laws, rules, and decisions;
- (2) The impact on competitive alternatives;
- (3) The potential impact on the pole owner and its customers;
- (4) The potential impact on the deployment of broadband services;
- (5) The formulae adopted by the FCC in 47 C.F.R. §1.1406(d) in effect on October 1, 2022; and
- (6) Any other interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.

After analyzing the above requirements of the Rule and weighing the evidence presented during the hearing, the Commission held that: “[b]alancing the interests of Petitioners and Consolidated in light of the six factors the Commission shall consider under Puc 1303.06, we find that the Petitioners have not met their burden of proof to demonstrate that the existing pole attachment rates charged by Consolidated under pre-existing agreements are either unjust or unreasonable.” Order, Section D, page 13. The Commission further held as unreasonable Consolidated's charging pole attachment fees for attachments on joint use poles and the Commission ordered Consolidated to stop issuing such charges as of the effective date of the Order. *Id.*, ps. 13-14.

The Petitioners now seek rehearing of the Order citing six (6) broad Commission errors within the decision and they also cite to “new, relevant information” related to Consolidated's

announcement of it being awarded a grant for Broadband deployment in New Hampshire. Motion for Rehearing, p. 4. The Petitioners' six (6) broad reasons for rehearing are:

- (i) the Order overlooks or mistakenly conceives of record evidence;
- (ii) the parties were not given notice as required by RSA 541-A:33, V that the Commission would be relying on information from the Pole Transfer Docket in making its decision in the instant docket;
- (iii) the Order imposes evidentiary requirements that are not contained in the Commission's rules;
- (iv) the Order relies on improper speculation rather than record evidence;
- (v) the Order ignores the requirement in N.H. Code Admin. R. Puc 1303.06(a) that electric distribution company pole owners may not be treated differently than competitive telecommunications company pole owners for pole attachment rate purposes; and
- (vi) the Order does not require that Consolidated cease billing JU charges as of the date the Petition was filed and order refunds paid by Petitioners to Consolidated as of the date the Petition was filed.

As explained in detail below, the Commission should deny the Petitioners' Motion. None of the Petitioners' arguments warrant a rehearing or reconsideration, and oral argument is not necessary to dispose of the Petitioners' Motion.

II. Standard of Review

RSA 541:3 allows for rehearing of a Commission order:

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

The standard governing the Commission's review of a motion for rehearing pursuant to RSA 541:3 is well established. "The Commission may grant rehearing or reconsideration for 'good reason' if the moving party shows that an order is unlawful or unreasonable." *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,087 at 3-4 (Dec. 18, 2017) (citations omitted). "A successful motion must establish 'good reason' by showing that there are matters

that the Commission ‘overlooked or mistakenly conceived in the original decision,’ or by presenting new evidence that was ‘unavailable prior to the issuance of the underlying decision.’” *Id.* “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Id.*

When reviewing the Order in comparison to the Motion, it must be remembered that an integral part of the process of decision-making includes resolving conflicts in the testimony, measuring the credibility of witnesses, and determining the weight to be given to testimony. The Supreme Court defers to the trial court's judgment on such issues. *McCabe v. Arcidy*, 138 N.H. 20, 24 (1993). “[C]onflicts in the evidence were to be resolved by the trial judge, who could accept or reject such portions of the evidence presented as he found proper, including that of the expert witnesses[.]” *N. New Eng. Tel. Operations, LLC v. Town of Acworth*, 173 N.H. 660, 676-77 (2020). “The trial court's discretion necessarily extends to matters such as assigning weight to evidence and assessing the credibility and demeanor of witnesses.” *In re Kurowski & Kurowski*, 161 N.H. 578, 585 (2011).

III. Material Facts

The Petitioners devote considerable effort to restating only certain facts related to its case-in-chief and arguing that Ms. Kravtin and her expertise¹ necessarily lead to the conclusion that the Petitioners not only have met their burden of proof in the case, but also necessarily must prevail. *See* Motion, Sec. III at ps. 5-8, and p. 9-12, and ftnt. 3. The Petitioners fail to acknowledge that the Commission, as the finder of fact, determined the material facts (Order at Section B, ps. 5-6)

¹ The Petitioners’ Motion refers to Ms. Kravtin sixty-one (61) times, while failing to mention/name a single member of Comcast, Charter or Breezeline. Not a single member of these companies provided any evidence related to any of the issues in this Docket and no company witness, other than Consolidated’s witness Sarah Davis, addressed the requirements of Puc 1303.06 as applied to their respective companies.

and applied the witnesses' testimony to the requirements of Puc 1303.06(a) (Id., Section C, ps. 6-13).

Several facts are not in dispute in this Docket. The relevant undisputed facts for purposes of this motion practice are:

(1) Consolidated's pole attachment agreements, including the current attachment rates, have been in effect since before Consolidated acquired the poles from FairPoint Communications, Inc., in 2017

(2) The rates charged under the existing agreements are \$11.67 per year for attachments to poles solely owned by Consolidated, \$6.84 per year for jointly owned poles, and \$6.84 per year for poles under joint use agreements in which Consolidated has no ownership interest.

(3) Collectively, the Petitioners pay Consolidated for approximately 350,000 attachments. Comcast is billed for 220,083 attachments and the balance of attachments is split between Charter, billed for 57,010 attachments, and Breezeline billed for 61,407 attachments.

(4) The Petitioners are direct competitors with Consolidated in the provision of communications services. Petitioners are purely competitive entities and are not carriers of last resort. As a result, Petitioners have no duty to serve and may choose to offer their services only to customers they deem economic to serve. Petitioners and Consolidated both depend on attachments to poles in order to offer a range of communications services to customers in New Hampshire, including broadband.

Order at ps. 5-6.

There were many facts disputed in the Docket, however, for purposes of this motion practice the important facts established by record evidence as determined by the Commission are:

(5) In Consolidated's service territory, there is an average of one third-party attachment per pole.

(6) Under Consolidated's current pole attachment rates, the Petitioners pay roughly 15 percent of the bare pole costs shown in the 2020 ARMIS Report. This means that Consolidated must pay the balance of 85 percent of the pole costs on most of its poles.

Id. Although these facts were disputed, the Commission's findings were supported by evidence and testimony presented through Consolidated's witness, Sarah Davis.

IV. Argument

While the Petitioners' Motion consumes thirty pages of argument as to why the Order is unjust and unreasonable, the bulk of the arguments tie back to the testimony and evidence offered through Ms. Patricia Kravtin. According to the Petitioners, Ms. Davis' testimony and evidence must be discounted for multiple reasons while Ms. Kravtin's testimony must be accepted without question. Consolidated addresses all of these arguments below in Section IV.A.1, and further addresses in Section IV.A.2 the so called lack of notice as required by RSA 541-A:33, V that the Commission would be relying on information from the Pole Transfer Docket in making its decision in the instant docket. The Petitioners further seek rehearing because the Commission ordered Consolidated to cease billing pole attachment fees on its joint use poles but did not order a refund on charges issued prior to the effective date of the Order. Consolidated addresses this claim in Section IV.B of this Objection. The Petitioners also argue that the Commission should grant rehearing (and oral argument on their Motion) because Consolidated announced that it secured a Broadband expansion grant under the American Rescue Plan Act ("ARPA"). Consolidated addresses this issue in Section IV.C.

IV.A.1 The Petitioners' arguments concerning the six requirements of Puc 1303.06(a) do not warrant rehearing or reconsideration as all of the arguments merely are a rehashing of Ms. Kravtin's testimony that does not establish that the Commission overlooked or mistakenly conceived evidence.

The Petitioners cite to Consolidated's pole attachment rates in Maine and repeatedly cite to Ms. Kravtin's testimony in support of the argument that they should prevail in this Docket. *See ex. Motion* at ps. 8-10 (Consolidated's [NH] pole attachment rates are unjust and unreasonable when compared with Consolidated's Maine pole attachment rates (which reflect rates established using the FCC's cable rate formula (p. 8); Ms. Kravtin determined that just and reasonable Consolidated rates would be \$5.33 annually for attachments to poles solely owned by

Consolidated, and \$2.67 for attachments to poles that Consolidated owns jointly with another pole owner (p. 10); and Ms. Kravtin determined the net cost of a bare pole to be \$86.38 using Consolidated's own data, including the depreciation figure of \$35,765,000 provided to the Commission in the Pole Transfer Docket, which the Commission adopted in Order No. 26,729 (Nov. 18, 2022) for purposes of valuing the net book value of Consolidated's poles (Id.) And because the Commission adopted Ms. Davis' theory regarding Consolidated's incurring 85% of the cost of the pole, the Commission simply speculated and overlooked "...the FCC's widely accepted cable rate formula apportions less than 15 percent (i.e., 7.41 percent) of pole costs to attachers and that the courts have held that this allocation provides just compensation to pole owners." (Motion, p. 27.) Therefore, according to the Petitioners, "... the weight of the evidence demonstrates that Consolidated's pole attachment rates are unjust and unreasonable when compared with its Maine rates and the rates produced using the FCC's cable rate formula which has been upheld by the courts and is used by several states." (Id. at p. 12)²

The Petitioners further rely on Ms. Kravtin's analysis of how the FCC cable rate "meets the six standards set forth in ... Puc 1303.06(a) that the Commission must consider..." (Motion, p. 13.) In this regard, the Motion is replete with Ms. Kravtin's high-level assertions as to how the FCC cable rate formula meets the six standards/requirements of Puc 1303.06(a). For example, "[a]t hearing Ms. Kravtin testified that lowering Consolidated's New Hampshire rates will allow for a more efficient provision of broadband services, both in terms of getting the service out and continually improving the quality of those services, because it will free up investment dollars that

² Not one state cited by the Petitioners' has been shown to have an administrative rule similar to Puc. 1303.06(a). Indeed, by the Petitioners' own admission the state rules relied upon by Ms. Kravtin – Maine, Vermont, Massachusetts, Connecticut, New York and New Jersey – are among the "certified states that apply the FCC cable rate methodology". Hearing Ex. 3, Bates p. 15; Motion at p. 13, fnt. 6. The New Hampshire administrative rule at issue in this Docket contains no such requirement.

would otherwise...go to pay high monopoly-level rates,...to actually get service out to the consuming public.” (Motion, ps. 16-17, fnnt 7 citing to Transcript, ps 37-38.) And “... Ms. Kravtin testified that a cost-based rate will allow the most efficient investment and decisions to get services to the market.” (Motion, p. 15 citing to Transcript, p. 37.) She also quotes language from an FCC decision supporting the position that the lower and more uniform pole attachment rates produced by the FCC’s cable rate formula serve to eliminate barriers to Broadband deployment, and promote broadband competition. (Id., p.16.)

What the Petitioners fail to consider and fail to acknowledge is that they offered no direct evidence regarding how their respective companies’ New Hampshire based business is impacted by Consolidated’s pole attachment rates when analyzed under the rubric of Puc 1303.06(a). Not one of the Petitioners offered any direct evidence regarding how Consolidated’s current pole attachment rates impact in any way their respective company’s competition for Broadband, data transmission or voice customers. Comcast offered no direct evidence that Consolidated’s current pole attachment rates inhibited deployment of Broadband services in the past or currently inhibit its Broadband deployment efforts. Breezeline offered no direct evidence that Consolidated’s current pole attachment rates inhibited deployment of Broadband services in the past or currently inhibit its Broadband deployment efforts. Charter also offered no direct evidence that Consolidated’s current pole attachment rates inhibited deployment of Broadband services in the past or currently inhibit its Broadband deployment efforts.

The same lack of evidence applies to the Petitioners other product offerings, such as business data transmission services and voice services. The Petitioners offered no evidence that lower attachment rates would lead directly to increased services to New Hampshire residents and business, or would lead to increases in Broadband or other product penetration levels within their

respective service territories. Petitioners' hearing Exhibits 5 through 7, which are affidavits from employees Yann Querre (Charter), Nadine Heinen (Breezeline) and James White (Comcast), contain no reference to, data or other forms of evidence addressing the six factors in Puc 1303.06(a).

Similarly, Ms. Kravtin offers no direct evidence as to how or whether (for example) her artificially low pole attachments rates would increase Broadband investment in each of the Petitioners' service territories. Ms. Kravtin offers no evidence how or whether her artificially low pole attachments rates would increase voice or data transmission competition between Consolidated and the respective Petitioners. Absent such direct evidence, claims that the FCC's cable rate formula eliminates barriers to Broadband deployment and promote Broadband competition ring as hollow goals, unsupported by actual facts as to past or current events related to New Hampshire's residential and business consumers of these services. The Commission therefore was free to exercise its discretion to resolve conflicts in the testimony between Ms. Kravtin and Ms. Davis, and determine the weight to be given to such testimony. Finding that the Petitioners failed to meet their burden of proof was soundly supported by the lack of evidence offered by the Petitioners. *See McCabe*, 138 N.H. at p. 24.

The Petitioners' failure to provide such evidence is documented by their unwillingness to even try to provide such data. The Petitioners were unwilling to answer direct questions on these subjects. Consolidated propounded a data request directly on point related to the factors in Puc 1303.06(a) and the Petitioners failed to answer. Consolidated's data request 1-7 and the Petitioners' 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 data 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.

Given the Petitioners' lack of actual evidence related to requirements of Puc 1303.06(a), the Commission was justified in holding that they failed to meet their burden of proving Consolidated's pole attachment rates were unjust and unreasonable. Rehashing of Ms. Kravtin's testimony and her recitation of FCC decisions and decisions of other State regulatory bodies which are legally bound to apply the FCC cable rate formula³ do not warrant rehearing/reconsideration. This aspect of the Motion should be rejected.

IV.A.2 The Petitioners' arguments that rehearing or reconsideration must be granted due to a lack of notice that the Commission would be relying on information from the Pole Transfer Docket in making its decision in the instant docket is frivolous and should be denied.

The Petitioners claim "...rehearing/reconsideration is required because...the parties were not given notice as required by RSA 541-A:33, V that the Commission would be relying on information from the Pole Transfer Docket in making its decision in the instant docket..." (motion at p. 4) and therefore "...violates the official notice requirements of RSA 541-A:33" (*id.* at p. 21.) Allegedly, "Petitioners were not notified during the hearing or given an opportunity to contest that the Commission would be relying on material from the Pole Transfer Docket not otherwise in this record to make its decision in the instant docket... Petitioners note that the Commission did not

³ Puc 1303.06(a)(5) references "[t]he formulae adopted by the FCC..." and the word "formulae" is plural. This section of the rule is not specific to and does require the Commission to adopt the FCC cable rate formula.

give the Joint Petitioners in the Pole Transfer Docket a deadline for determining whether they would move forward with the pole asset transfer under the terms and conditions imposed by the Commission in that docket.” (Motion at p. 25.) As demonstrated below, such arguments are frivolous.

The Petitioners’ framed their Petition for Resolution of Rate Dispute and their underlying case-in-chief based upon data from the Pole Transfer Docket, DE 21-020. As stated in their Petition:

The Petitioners began examining the justness and reasonableness of Consolidated’s rates in Docket DE 21-020 (“the Pole Transfer Docket”) through their membership organization, the New England Cable and Telecommunications Association, Inc. (“NECTA”), which intervened and actively participated in that docket. NECTA conducted discovery in the Pole Transfer Docket in an effort to understand how Consolidated’s pole rates are calculated, because Eversource Energy (“Eversource”) proposed to “grandfather” Consolidated’s rates if the Commission approves the transfer of Consolidated’s pole ownership interests to Eversource.

Petition at ps. 2-3.

The Petition further describes how the Petitioners and Ms. Kravtin used data from DE 21-020 to calculate new pole attachment rates and how the data generated the instant dispute. (*See* Petition, paras. 24-30 (ps. 12-14), and para. 33 (p. 15.)) Similarly, Ms. Kravtin explains in detail how her “...testimony also calculates the just and reasonable pole attachment rates for Consolidated using the FCC’s cable rate formula and data provided by Consolidated and Eversource Energy in the Pole Transfer Docket.” (Exh. 3, Prefiled Direct Testimony of Patricia Kravtin, Bates p. 07, Ins. 11-13 (emphasis added.)) Indeed, Ms. Kravtin’s Attachment PDK-2 is from DE 21-020, Exhibit 53-Response to Staff Data Request 1-28. (*Id.*, Bates p. 08, Ins. 16-17.)

Such flawed data in the Petitioners’ case led Consolidated to argue and to provide evidence in this Docket proving that Ms. Kravtin’s analysis relied on so-called ARMIS data filed in DE 21-

020 based on Generally Accepted Accounting Principles (“GAAP”), which she mistook for regulatory accounting based information. *Compare* DE 21-020 Hearing Trans., March 15, 2022, at ps. 177-178 (Mr. Michael Shultz explaining ARMIS data based upon GAAP depreciation) versus DE 21-020 Hearing Exh 39, bates p 006, ln. 18 (Ms. Kravtin testifying that “... As described further below, regulatory accounting data concerning the regulatory net book value of Consolidated’s pole assets which Consolidated provided in response to the Commission’s order on NECTA’s Motion to Compel...”) Without further question or investigation, and in the Petitioners’ rush to judgement in the present Docket, the Petitioners generated through Ms. Kravtin proposed pole attachment rates based upon GAAP depreciation provided in DE 21-020 under the mistaken belief the underlying data was provided using regulatory accounting principles.

As Ms. Davis testified during the hearing in this Docket:

Ms. Kravtin assumes a roll-forward in her attachment of FairPoint numbers. We purchased FairPoint, they no longer exist. We did not continue to roll forward their numbers. We had a revaluation, which would include the depreciation already on those poles, because the revaluation, by its very nature, takes that into account. And, so, you would not -- you would not just keep rolling forward FairPoint numbers, to which we have no visibility and we cannot back up. We would start with the accounting and the revaluation of those pole assets, which, by its very nature, is going to adequately represent the value, minus depreciation, of those poles.

Tr. p. 96, lns. 9-22. Such testimony and other evidence clearly supports the Commission’s determination that “[t]he accounting and reporting uncertainties in this case ... cause us to give the FCC formulae factor less weight when considering Consolidated’s current pole attachment rates, in light of the other factors listed in Puc 1303.06.”

Given all of this evidence from DE 21-020 introduced in this Docket, it is absurd for the Petitioners to now argue that they had no notice and were not notified during the hearing or given an opportunity to contest that the Commission would be relying on material from the Pole Transfer Docket not otherwise in this record to make its decision in the instant docket. Having themselves

utilized at will data and exhibits from Docket DE 21-020 as their basis for the requested relief in the present Docket, there can be no surprise that the Commission also assessed DE 21-020 when considering relevant federal, state, or local laws, rules, and decisions as required by Puc 1303.06(a)(1). Arguments to the contrary are frivolous and should be disregarded. Such arguments do not warrant rehearing or reconsideration.

Nor does it matter that the Pole Transfer Docket contains no deadline to move forward with a closing on the sale of the poles. (*See* Motion at p. 25.) That a closing of the pole asset sale has not yet occurred did not “lawfully prevent Petitioners from exercising their right to obtain an adjudication of Consolidated’s just and reasonable rates in the instant docket...” (*Id.*) In fact the Petitioners exercised such rights. But through their own fault of (i) advancing faulty data and calculations, and (ii) an overreliance on (x) a single FCC pole attachment rate formula (the cable rate) and (y) testimony from a third party, expert witness with no direct knowledge related to any of the Petitioners’ circumstances vis-à-vis the requirements of Puc 1303.06(a), they failed to meet their burden of proving the unjustness and unreasonableness of Consolidated’s pole attachment rates. The Order cited to the potential pole transfer and the economic uncertainties related to its effect on Consolidated’s pole attachment rates (Order, p. 8) when assessing a single factor of the six required factors of Puc 1303.06(a). The full analysis of the record evidence contained in the Order supports the Commission’s decision and its determination that the Petitioners failed to meet their burden of proof.

IV.B The Petitioners’ arguments concerning the Commission failing to require the issuance of a refund (pursuant to Puc 1307) for pole attachment fees charged in the past for attachments to Consolidated’s joint use poles does not warrant rehearing or reconsideration.

According to the Petitioners, “... Puc 1303.07 requires that upon determining an unjust and unreasonable rate, the Commission shall order a refund representing the difference of the amount

actually paid and the amount that would have been paid under the rate established by the Commission, plus interest, as of the date of the Petition. In view of the foregoing, the Commission must rehear/reconsider the Order and require Consolidated to cease billing the JU charges for poles it does not own as of the date the Petition was filed, and include a refund provision consistent with the above-cited rule.” (Motion, p. 36.) It should not be lost on the Commission that the Petitioners failed to cite to the entire portion of the relevant rule when making this argument.

Puc 1307 actually states in relevant part (emphasis added): “When the [C]ommission determines just and reasonable rates under this part that differ from the rates paid by the petitioner, the commission shall order a payment or refund, as appropriate.” There is no evidence in the record and the Motion is devoid of any claim related to why the Petitioners are entitled to retroactive relief. As with the requirements of Puc 1303.06(a), each Petitioner failed to introduce any direct evidence related to (i) how many of their respective attachments are on Consolidated’s joint use poles, (ii) how many joint use poles each individual Petitioner attached its facilities to (iii) for what period of time must Consolidated refund such attachment fees⁴ and (iv) how much of a refund each Petitioner sought when initiating this Docket through the filing of the Petition in August 2022. The Petitioners’ hearing Exhibits 5 through 7, affidavits from employees of Charter, Breezeline and Comcast, contain no such data and not a single fact witness testified on behalf of a Petitioner. Ms. Kravtin also provided no such data. Consolidated therefore submits it is not appropriate to require it to pay any refund to any of the Petitioners. Rehearing or reconsideration of this claim also should be denied.

⁴ It does not necessarily follow, without actual evidence, that each Petitioner had one or more attachments on each of Consolidated’s joint use poles since the inception of this Docket.

IV.C The Petitioners' arguments related to Consolidated being awarded a Broadband expansion grant pursuant to ARPA do not warrant rehearing or reconsideration.

The Petitioners argue that "...good reason exists for rehearing on this issue as there is new information concerning broadband deployment that could not have been provided at hearing, and that contradicts the [Commission's] finding..." that no party provided evidence of the penetration of Broadband service deployment across the Consolidated service territory. "Given the lack of evidence concerning broadband deployment, [the Commission could not] find that this factor supports any reduction in the current Consolidated pole attachment rates." (Order, p. 11.)

Consolidated's announcement that it was awarded ARPA funds to expand Broadband does not warrant rehearing or reconsideration of the Order. Being awarded ARPA funds does not immediately equate to Broadband penetration. It also comes with significant, expensive long term requirements to expand Broadband to residents and business beyond the 25,000 homes cited by the Petitioners. (*See* Motion, p. 32.) The time and expense related to the construction and installation of the facilities that ultimately lead to new Broadband passings has no bearing on pole attachment rates. In fact the Petitioners do not cite how or why the issuance of a grant in the future to Consolidated necessarily leads to a need to alter Consolidated's current pole attachment rates. As noted in the Consolidated press release relied on by the Petitioners for this argument, but as the Petitioners fail to recognize in their Motion, Consolidated's construction of the Broadband expansion project is expected to begin at the end of 2023 and be largely completed by the end of 2024. (*Id.* at fnnt. 13 (these dates are referenced in the press release per the Petitioners' link.)) Announcement of a grant to be paid in the future for a project expected to be completed 22 months from now is irrelevant to the issues in dispute in this Docket. This new information does not warrant rehearing or reconsideration of the Order.

V. Conclusion

The Petitioners have not identified good reason or presented new evidence justifying the Commission's granting a rehearing in this Docket or the Commission's reconsideration of its Order. The Petitioners simply rehash the evidence presented and repeatedly cite to Ms. Kravtin's testimony, all of which they have done during the course of this proceeding. Each Petitioner failed to present direct evidence of how Consolidated's pole attachment rates negatively impacted their respective companies vis-à-vis the requirements of Puc 1303.06(a) thereby justifying reduced rates. Ms. Kravtin's analysis was flawed from the beginning and her attempts to recover from such flaws was not persuasive. The Commission's decision to allow Consolidated's pole attachment rates to stand "as is" for the Petitioners' attachments on Consolidated's solely owned and jointly owned poles is supported by the record evidence (and the lack thereof from the Petitioners). The Commission's decision to not order retroactive relief related to Consolidated's past joint use pole attachment charges also is reasonable in light of the Petitioners' failure to offer any evidence that retroactive relief is justified. The Order comports with Puc 1303.07 in this regard. The Motion should be denied in its entirety and no reason good exists to grant oral argument.

WHEREFORE, Consolidated respectfully request that this honorable Commission:

- A. Deny the Petitioners' Motion for Rehearing/Reconsideration filed in this docket;
- B. Deny the Petitioners' request for oral argument; 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,

March 27, 2023

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Certificate of Service

I hereby certify that on March 27, 2023, this Objection has been electronically provided to the service list in this docket.

/s/ Patrick C. McHugh
Patrick C. McHugh