

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

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

**COMMENCEMENT OF ADJUDICATIVE PROCEEDING
AND NOTICE OF PREHEARING CONFERENCE**

On August 22, 2022, Charter Communications, Inc. (Charter), Cogeco US Finance, LLC d/b/a Breezeline (Breezeline), and Comcast Cable Communications, LLC (Comcast) (together, the Petitioners) filed a petition requesting that the Commission resolve their pole attachment rate dispute with Consolidated Communications of Northern New England Company, LLC (Consolidated). In support of their petition, the Petitioners filed the prefiled direct testimony of their consultant, Patricia D. Kravtin, affidavits from Charter, Breezeline, and Comcast representatives, and related attachments. The initial filing and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at www.puc.nh.gov/regulatory/Docketbk/2022/22-047.html.

I. BACKGROUND AND PROCEDURAL HISTORY

The facts, as alleged by Petitioners in their petition and accompanying prefiled testimony, are as follows. Consolidated provides communications services and owns and controls, in whole or in part, utility poles in New Hampshire. *Comcast of Maine/New Hampshire, Inc.*, Order No. 26,443 at 2-3 (January 11, 2021). When Consolidated acquired FairPoint Communications, Inc. (FairPoint) in 2017, it became the successor-in-interest to FairPoint's pole agreements with the Petitioners'

predecessors. See April 26, 2021 Data Response filed in Docket No. DE 21-020, contained in Attachment PDK-2 to Direct Testimony of Patricia D. Kravtin, August 22, 2022 (April 26, 2021 Data Response). Pursuant to these agreements, Consolidated charges the Petitioners -- cable operators that are members of the New England Cable and Telecommunications Association, Inc. (NECTA) -- annual pole attachment rental fees on the utility poles that it owns solely and jointly with other entities. Petition (Pet.), ¶¶ 6, 12, 20, 23. In their petition, the Petitioners stated that Consolidated also assesses joint use charges for attachments on poles in which Consolidated has no ownership interest. *Id.* ¶ 21.

Consolidated presently charges \$11.67 per attachment on poles it solely owns and joint use charges of \$6.84.¹ *Id.* These rates are the same rates previously charged by FairPoint and were not calculated using any specific formula. See April 26, 2021 Data Response. Together, the Petitioners pay fees for more than 350,000 attachments in New Hampshire. Pet. ¶ 14 and affidavit attachments.

NECTA intervened in Docket No. DE 21-020, in which Consolidated and Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) requested Commission approval of Consolidated's transfer of certain utility pole assets to Eversource (pole transfer docket). Using information NECTA obtained through data requests filed in that docket, the Petitioners' consultant and NECTA's expert witness in the pole transfer docket, Patricia D. Kravtin, determined that Consolidated's pole attachment rates would be significantly lower if based on the Federal Communications Commission's (FCC) cable rate formula², which presumes an average 37.5-foot pole height. *Id.* ¶ 30. She determined that Consolidated's rates would be \$6.31 for solely

¹ According to the Petitioners, they pay the joint use pole owner the solely owned pole rate in addition to the joint use charge. Pet. ¶ 21, n.33.

² The FCC's cable rate formula is contained in 47 C.F.R. § 1.1406(d)(1). See *id.*, ¶ 30, n.43.

owned poles, with a joint use charge of \$3.16. *Id.* Ms. Kravtin calculated these rates to be even lower based on an average pole height of 39 feet, which the Petitioners maintain is the average height of Consolidated's poles. *Id.* ¶¶ 32–33. She determined that there would be no charge for attachments on poles in which Consolidated had no ownership interest. *Id.* ¶ 33.

In a post-hearing brief filed on June 17, 2022, in Docket No. DE 21-020, NECTA disputed Consolidated's pole attachment fees. NECTA filed a notice of the rate dispute in the pole transfer docket after the Petitioners submitted their initial filing in the above-captioned action. The Petitioners stated that, although they have disputed Consolidated's invoices for the second half of 2021 and all subsequent periods, they continue to pay them. *Id.* ¶ 37.

The Petitioners allege that their attempts to resolve their attachment fee dispute with Consolidated have been unsuccessful. *See id.* ¶¶ 36, 44–45. In their petition, they request the appointment of a Commission staff member to conduct mediation and, in the alternative, the establishment of a procedural schedule that will allow the Commission to issue an order on their petition within 180 days from the date of filing pursuant to 47 U.S.C. section 244(c)(3).

II. ISSUES PRESENTED

The filing presents, *inter alia*, the following issues: whether Consolidated and any pole co-owners meet the definition of a “public utility” under RSA 362:2, I such that they are subject to pole attachment rate regulation by the Commission under New Hampshire law; whether, assuming that Consolidated is subject to pole attachment rate regulation under New Hampshire law, the Petitioners' requests for relief are barred by their agreements with Consolidated; and whether, assuming that Consolidated is subject to pole attachment rate regulation under New Hampshire law

and the Petitioners' requests for relief are not contractually barred, the Petitioners are entitled to the relief requested in their petition, including mediation, under New Hampshire law, including RSA 374:34-a, and the New Hampshire Code of Administrative Rules, including Puc 1304.06. Accordingly, an adjudicative proceeding will be convened to address these issues.

The Commission will conduct the prehearing conference and any hearings scheduled in this matter in person. The Commission will consider requests to conduct hearings using a hybrid format to permit remote participation by a specific individual only if the Commission has determined that a sufficient reason has been provided for why that individual would be unable to attend in person. Any party requesting that a specific individual be permitted to participate remotely should file a written request with the Commission's Clerk's Office no later than fifteen (15) days prior to the prehearing conference or hearing date. If the Commission determines that one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues pursuant to RSA chapter 541-A, RSA 374:34-a, and the Commission's procedural rules; and it is

FURTHER ORDERED, that in order to be considered by the Commission in this matter, Consolidated and the New Hampshire Department of Energy shall file responses to the Petitioners' petition on or before October 14, 2022; and it is

FURTHER ORDERED, that the Commission will hold a prehearing conference, pursuant to N.H. Admin. R., Puc 203.15, at its offices located at 21 S. Fruit St., Suite

10, Concord, New Hampshire, on November 1, 2022, at 1:30 p.m., at which each party should be prepared to address any of the issues set forth in N.H. Admin. R., Puc 203.15; and it is

FURTHER ORDERED, that during the prehearing conference, the Commission will consider the matters listed in Puc 203.15(c) and (d), including the establishment of a procedural schedule governing the remainder of the proceeding. Parties and potential parties are encouraged to facilitate the development of a procedural schedule by conferring prior to the prehearing conference, so that the presiding officer can address any matters on which there is disagreement during the prehearing conference. Any procedural schedule, however, will not be approved until after the prehearing conference and after consulting the Commission's calendar; and it is

FURTHER ORDERED, that, immediately following the prehearing conference, the Petitioners shall make appropriate personnel available for the parties to hold a technical session to review the filing; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to the Petitioners and any other parties on the service list, on or before October 14, 2022. The petition shall state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before October 24, 2022; and it is

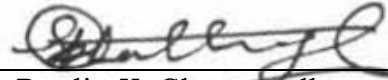
FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Commission's Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

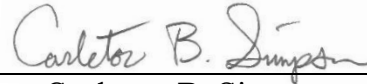
FURTHER ORDERED, that pursuant to N.H. Admin. R., Puc 203.12, the Petitioners shall notify all entities and individuals desiring to be heard at this hearing by publishing a copy of this order of notice on their websites no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before October 11, 2022. In addition, the Clerk shall publish this order of notice on the Commission's website no later than two business days after the date of issue; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the attached hearing guidelines.

So ordered, this twenty-eighth day of September, 2022.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

Service List - Docket Related

Docket# : 22-047

Printed: 9/28/2022

Email Addresses

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