

**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**

**SURREBUTTAL TESTIMONY OF**

**PATRICIA D. KRAVTIN**

**On Behalf of  
PETITIONERS**

**January 19, 2023**

1                    **SURREBUTTAL TESTIMONY OF PATRICIA D. KRAVTIN**

2            **I.        INTRODUCTION AND PURPOSE OF TESTIMONY**

3        **Q. Please state your name, position and business address.**

4        A. My name is Patricia D. Kravtin. I am principal and owner of Patricia D. Kravtin Economic  
5        Consulting, a private practice specializing in the analysis of communications and energy  
6        regulation and markets. My business address is 2100 Park Avenue, Unit 682316, Park City,  
7        Utah, 84068.

8        **Q. Did you submit prefiled direct testimony in this docket?**

9        A. Yes. My prefiled direct testimony was submitted on August 22, 2022 in support of the  
10        Petition for Resolution of Rate Dispute filed by Charter Communications, Inc., Cogeco US  
11        Finance, LLC d/b/a Breezeline, and Comcast Cable Communications, LLC (“the Petitioners”).  
12        My prefiled direct testimony contains a summary of my educational background and experience.  
13        It also provides detailed information explaining why the pole attachment rates currently charged  
14        by Consolidated Communications of Northern New England Company, LLC (“Consolidated”)  
15        are at an unjust and unreasonable level. More specifically, my prefiled direct testimony explains,  
16        with supporting narrative and numerical calculations, that Consolidated’s pole attachment rates  
17        are well in excess of rates produced using the Federal Communications Commission’s (“FCC’s”)  
18        cable rate formula. My prefiled direct testimony also demonstrates that the FCC’s cable rate  
19        formula is consistent with the rate review standards contained in the New Hampshire Public  
20        Utilities Commission’s (“the Commission’s”) rate review standards. In addition, my prefiled  
21        direct testimony explains why Consolidated’s Joint Use (“JU”) charges are unjust and  
22        unreasonable, and therefore should be eliminated.

1 **Q. What is the purpose of this surrebuttal testimony?**

2 A. The purpose of my surrebuttal testimony is to address certain inaccurate and/or misleading  
3 information and/or statements relative to the calculation of just and reasonable pole attachment  
4 rates contained in Section III and Attachment SD-1 of the Rebuttal Testimony of Sarah Davis  
5 filed on behalf of Consolidated on December 15, 2022 (“Davis Rebuttal Testimony”). My  
6 surrebuttal testimony also addresses Section IV of the Davis Rebuttal Testimony regarding Joint  
7 Use charges Consolidated imposes with respect to poles it does not own.<sup>1</sup>

8 **II. JUST AND REASONABLE POLE ATTACHMENT RATES**

9 **Q. Ms. Davis asserts that “the New Hampshire Rules are clear that the FCC’s rates are**  
10 **only one factor to consider in determining a just and reasonable pole attachment rate.”<sup>2</sup>**  
11 **Do you agree with that statement?**

12 A. Yes. As explained in my prefiled direct testimony, the Commission’s pole attachment rate  
13 review standards contain six criteria, all of which must be considered when the Commission  
14 determines just and reasonable pole attachment rates. My prefiled direct testimony, at pages 6  
15 through 20 explains in detail why the FCC’s cable rate formula set forth in 47 C.F.R.  
16 §1.1406(d)(1) is consistent with effective pole rate regulation, and satisfies the six criteria (both  
17 individually and collectively).

18 At the time my prefiled direct testimony was submitted, the above-referenced rules were  
19 codified as N.H. Admin. R. Puc 1304.06 (a)(1)-(6). Subsequently, the rules were readopted with

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<sup>1</sup> Petitioners’ will address the other sections of the Davis Rebuttal Testimony (which consist largely of legal arguments or contract interpretation) at hearing and in their post-hearing brief.

<sup>2</sup> Davis Rebuttal Testimony at 8.

1 amendments and codified as N.H. Admin. R. Puc 1303.06 (a)(1)-(6). The readopted rules are  
2 identical to the prior version with one notable exception: Puc 1304.06 (5) referenced “formulae  
3 adopted by the FCC in 47 C.F.R. §1.1409 (b) through (g) in effect on October 2017”, and the  
4 readopted version of that rule references “formulae adopted by the FCC in in 47 C.F.R. §1.1406  
5 (d) in effect on October 1, 2022”. This is significant as 47 C.F.R. §1.1406 (d) (1) contains the  
6 FCC’s cable rate formula which produces the maximum rate allowed by the federal rules for  
7 attachments of cable operators such as the Petitioners.

8 **Q. The Davis Rebuttal Testimony asserts that the FCC cable rate is not a just and**  
9 **reasonable formula to apply to attachments to Consolidated’s poles.<sup>3</sup> Do you agree?**

10 A. No. Ms. Davis asserts that because the FCC cable rate only allocates a small percentage of  
11 Consolidated’s total annual pole costs to the attaching entity, it fails to reflect the attacher’s full  
12 use of the pole, or the value of pole access to the attacher. Ms. Davis further asserts that  
13 allocating pole costs in this manner unfairly burdens Consolidated.<sup>4</sup> However, what Ms. Davis  
14 fails to mention is that these arguments have been considered and rejected by the Courts. As  
15 noted in paragraph 49 of the Petition for Rate Dispute, the United States Supreme Court has held  
16 in *Federal Communications Commission v. Florida Power Corp.*, 480 U.S. 245, 253-54 (1987)  
17 that the FCC’s cable formula provides just compensation to pole owners. In addition, the United  
18 States Court of Appeals for the District of Columbia Circuit has recognized that the federal  
19 Telecommunications Act “sets forth fairly general rules regarding allocations of the cost of  
20 usable *and unusable space* for attachments.” *Southern Company Services, Inc. v. Federal*

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<sup>3</sup> Davis Rebuttal Testimony at 9.

<sup>4</sup> *Id.* at 9-10.

1 *Communications Commission*, 313 F.3d 574, 580 (2002) (emphasis added). Thus, Ms. Davis is  
2 essentially asking this Commission to ignore long-standing legal precedent that upholds the  
3 FCC’s cable rate formula.

4 In addition, Ms. Davis’s testimony that the allocation of pole costs under the FCC cable  
5 formula unfairly burdens Consolidated<sup>5</sup> reflects a common misunderstanding of the way the FCC  
6 cable formula works. Specifically, Ms. Davis’s assertion confuses the specific allocator used to  
7 assign pole costs to attaching entities with the costs to be assigned. The defining feature of the  
8 FCC cable rate formula is that it allocates the entire cost of the pole (for *both* “usable” and  
9 “unusable” space on the pole) based on each attacher’s direct occupancy of space in proportion  
10 to the total space on the pole which is available for attachments. This type of direct cost-based  
11 allocator is very commonly applied to leasing arrangements in other sectors of the economy, for  
12 example, in the commercial and residential real estate sectors. By allocating the costs of the  
13 entire pole in direct proportion to the share of usable space occupied by each attacher (over and  
14 above any make-ready and other direct reimbursement fees the attacher already pays up front),  
15 the FCC cable rate assures full compensation for the costs associated with *both* the usable and  
16 unusable space on the pole attributable to the attacher.<sup>6</sup> The proportionate allocator embodied in  
17 the FCC cable formula is both economically fair and efficient, a feature that underlies its  
18 widespread adoption in setting pole attachment rates nationwide historically.

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<sup>5</sup> *Id.*

<sup>6</sup> Again, this is not different conceptually than how an owner of an office building would allocate the costs of the common space (e.g., lobby, elevator, parking garage, open space) to itself or other tenants directly occupying varying amounts of square footage. The owner charges a tenant occupying one floor of space a much smaller, proportional share of common overhead than it allocates to another tenant with a larger, multi-floor footprint.

1 **Q. Ms. Davis is asked to describe how Consolidated’s rates are consistent with the criteria**  
2 **set for in PUC Rule 1303.06.<sup>7</sup> Do you agree with Ms. Davis’s response to that question?**

3 A. No. At the outset it is important to note that Ms. Davis’s response to the question lacks any  
4 discussion of or reference to the six specific rate setting criteria that I discuss at length at pages  
5 10 to 20 of my prefiled direct testimony. Ms. Davis asserts that Consolidated’s rates are just and  
6 reasonable because they were arrived at through negotiation with large, sophisticated cable  
7 companies as anticipated by New Hampshire law. Ms. Davis also points to the fact that  
8 Consolidated’s rates have been in effect for over nine years and were only recently challenged in  
9 DE 21-020.<sup>8</sup> However, Ms. Davis has not provided any evidence of the supposed negotiations.  
10 Given the economic holdup power of the pole owner over access to the essential pole facility,  
11 pole attachers, including the Petitioners’ predecessors, regardless of their sizes, do not enjoy  
12 equal bargaining power at the negotiation table. Given this economic reality, the cost and time-  
13 consuming nature of protracted negotiations and/or litigation, and their business need to  
14 concentrate on constructing their networks in a timely manner, many attachers make expedient  
15 decisions to simply accept the pole rates set by the pole owner, in this case, Consolidated’s  
16 predecessors. The same would apply to any rate increases by Consolidated’s predecessors. Just  
17 because an attacher accepts a pole rate at one point in time does not reflect agreement that the  
18 rate is just and reasonable at that point in time or any point in the future, much less forever in the  
19 “free market context,” which is effectively Consolidated’s position as I understand it.<sup>9</sup>

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<sup>7</sup> Davis Rebuttal Testimony at 10.

<sup>8</sup> *Id.*

<sup>9</sup>Ms. Davis’s assertion overlooks the fact that none of the Petitioners negotiated with Consolidated regarding the current pole attachment rates. As indicated in Attachment PDK-2 to my prefiled direct testimony, Consolidated’s pole attachment rates were inherited by Consolidated as part of its acquisition of FairPoint Communications in 2017.

1 Moreover, the size and sophistication of pole attachers is irrelevant where the pole owner has an  
2 inordinate amount of leverage over the essential pole facilities needed by the attaching entity to  
3 provide services (e.g., broadband), and has the opportunity to use that leverage to impose  
4 excessively high monopoly rates. Indeed, this market power is exemplified by my understanding  
5 that Consolidated has refused to negotiate with the Petitioners regarding the non-cost based rates  
6 Consolidated inherited from its predecessor, FairPoint.

7 Ms. Davis also asserts that Consolidated's rates are just and reasonable because they  
8 represent only 15% of the total \$86.38 annualized cost of a bare pole, leaving the remaining  
9 approximately 85% to be borne by the joint owners.<sup>10</sup> This is an economically nonsensical  
10 argument based on the false assumption that the regulatory just and reasonable rate that the pole  
11 owning utility is lawfully permitted to charge any *one* attacher is intended to cover more than the  
12 attacher's proportionate share of total pole costs. As explained in Attachment PDK-3, page 5 of  
13 my prefiled direct testimony, the just and reasonable percentage of total pole costs assigned to  
14 any one attacher based on the attacher's occupancy of the pole as determined by the FCC is  
15 presumptively 7.41%. It would be economically unreasonable for a single third-party pole  
16 attacher to bear a proportionately higher share of total pole costs per foot of attachment vis-à-vis  
17 the two pole owners who have ownership privileges and rights of access to the pole that far  
18 exceed that of the mere lessee. Ms. Davis's calculated 85/15% split also incorrectly assumes  
19 that the number of attachers on Consolidated's poles is static, and includes only the cable  
20 company and two co-owners, Consolidated and the electric company. This assumption ignores

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<sup>10</sup> Ms. Davis calculates the 15% as follows:  $\$11.64$  [Consolidated Pole Attachment Rate] / ( $\$86.38$  [Net Bare Pole Cost] x  $92.54\%$  [(Carry Charge Factor) ], i.e.,  $\$11.64 / (.9254 \times \$86.38) = 15\%$ .

1 the fact that the pole owner charges annual pole rent for both existing and new attachments, and  
2 therefore pole attachment revenues increase when the number of attachments increases.

3 **Q. Please respond to the allegations in the Davis Rebuttal Testimony, that you have**  
4 **inappropriately reflected the rate that results from applying the cable rate formula.<sup>11</sup>**

5 A. As to Ms. Davis’s first point that my rate calculation should be based on the most current  
6 cost data available, i.e., 2021 currently, and 2022 by the end of the case, Ms. Davis herself uses  
7 2020 information in her calculations, and Consolidated has not provided any information for  
8 2021. Ms. Davis also misunderstands the way the regulated rate formula is intended to apply.  
9 The rate formula calculation is based on the most recently publicly reported figures (like a test  
10 year), but can be updated annually using the next year’s publicly reported figures. In this  
11 instance, the most recent publicly reported figures are those reported by the Joint Petitioners in  
12 DE 21-020 for end of year 2020. Costs for any given year cannot be known until the books for  
13 that year are closed. Given the lag in cost reporting, it is typical for rates to be set based on year-  
14 end reported costs for the year or two prior. For example, Eversource sets its pole attachment  
15 rates with a 2-year lag based on its FERC reporting cycle.<sup>12</sup> It is curious that Ms. Davis argues  
16 my rate calculation should be based on more current cost data, yet Consolidated itself has chosen  
17 not to provide that data, citing the pending pole sale transaction with Eversource. *See* Davis  
18 Rebuttal Testimony at 11. But again, Ms. Davis’s argument seems to reflect a misunderstanding  
19 that the Commission’s application of the cable rate for Consolidated pole attachments would be

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<sup>11</sup> Davis Rebuttal Testimony at 11.

<sup>12</sup> *See* Exhibit 14, Attachment PDK Surrebuttal -2, Response to NECTA 1-040, DE 21-020: (“Eversource’s third party pole attachment rates are calculated using the most recently available FERC Form 1 data. They are typically calculated in Q4 of each year. The earliest the transaction would appear in the Company’s FERC Form 1 data is for rates in effect for 2023 (2021 FERC Form 1, rates calculated Q4 2022, assuming the transaction is approved and closes in 2021).”)



1 solely based on the 2020 data provided by the Joint Petitioners in the pole transfer docket (DE  
2 21-020). However, the FCC’s methodology allows the pole owner to update the regulated rate  
3 annually to reflect current reported cost data, and updated pole counts and current pole height,  
4 thereby ensuring the proper matching of costs with the utility’s current population of poles.

5 Ms. Davis’s second point, that the just and reasonable rate should be based on regulatory  
6 depreciation and not accelerated GAAP depreciation, also reflects a misunderstanding of how the  
7 FCC formula methodology applies under current rules and ARMIS reporting requirements. In a  
8 2017 decision, FCC 17-15 (*See* Exhibit 14, Attachment PDK Surrebuttal -1), the FCC allowed  
9 telephone carriers to switch over from regulated Part 32 Uniform System of Accounts  
10 (“USOA”) to GAAP accounting “to minimize the compliance burden on carriers while ensuring  
11 the agency retains access to the information it needs to fulfill its regulatory duties.”<sup>13</sup>  
12 Paragraphs 14, 32-39 of that decision specifically address the permitted use of GAAP accounting  
13 for purposes of calculating just and reasonable of pole attachment rates in lieu of USOA  
14 regulatory accounting including for accumulated depreciation reserves,<sup>14</sup> directly refuting Ms.  
15 Davis’s assertion that Consolidated’s poles rates must necessarily be based on USOA regulatory  
16 depreciation amounts while all the other underlying investment and accumulated depreciation  
17 reserve amounts are based on GAAP accounting figures.

18 Consolidated has clarified at a recent technical session in this docket that the ARMIS  
19 2020 data (Attachment PDK-4 to my prefiled direct testimony) provided by Consolidated on

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<sup>13</sup> *See* Exhibit 14, Attachment PDK Surrebuttal-1, FCC 17-15, para. 1.

<sup>14</sup> Pursuant to FCC 17-15, carriers may either use GAAP for setting pole attachment rates or they may continue to utilize Part 32 for purposes of setting rates, based on the FCC’s finding “USOA accounting data are not necessary for the continued development of pole attachment rates in accordance with the statute. *See Id.* at para. 34.

1 December 6, 2021 in DE 21-020 in response to the Commission’s order granting NECTA’s  
2 Motion to Compel was based on GAAP accounting as recorded on Consolidated’s books. At the  
3 January 12, 2023 technical session in this docket, Ms. Davis clarified that Consolidated relied on  
4 GAAP recorded accounting in developing the ARMIS 2020 data, subject to adjustments to  
5 reverse accounting entries to plant and accumulated depreciation pertaining to the pending pole  
6 transfer to Eversource. Because my rate calculation is based on the GAAP accounting data  
7 recorded as Consolidated’s books of account and as provided by Joint Petitioners in their  
8 December 6, 2021 data, there is no validity to Ms. Davis’s argument that I should have relied on  
9 a different USOA depreciation accounting number in isolation from the other formula inputs  
10 which Ms. Davis did not revise for purposes of Attachment SD-1.

11 In any event, the “regulatory depreciation” number identified in Attachment SD-1 (or the  
12 revised figure identified in Consolidated’s January 16, 2023 response to Petitioners’ technical  
13 session data request TS 1-01) is not a meaningful number. As explained below, the alternative  
14 “regulatory depreciation” figure identified in Ms. Davis’ rebuttal testimony in Attachment SD-1  
15 (and revised slightly in response to Petitioners’ Technical Session Data Request 1-01) is derived  
16 from unsourced, non-verifiable numbers and subject to serious calculation errors and  
17 oversimplifications regarding retirements.<sup>15</sup> Moreover, according to information provided in

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<sup>15</sup> For example, while Ms. Davis stated at the 1/12/2023 Technical Session that the “regulatory depreciation” figure of \$10,588,000 presented in Attachment SD-1 reflected unidentified retirement adjustments, in response to Petitioners’ Data Request TS-1-01, Ms. Davis revised that figure upward to \$11,250,610, claiming no pole retirement related adjustments are warranted. *See* Exhibit 16. Because Consolidated has refused to provide the source documents underlying these figures, claiming “[t]here are no ‘source’ documents,” (*see* Exhibit 16, Response to Petitioners’ Technical Session data request TS1-05) it is not possible to validate either of these numbers. Moreover, Ms. Davis’s categorical statement in response to Petitioners’ TS 1-01 that “[t]here is no pole asset retirement related adjustment to these figures as retirement has no impact on net book value,” not only contradicts statements she made at the 1/12/2023 Technical Session, but is not true under either regulatory or GAAP accounting. Contrary to Ms. Davis’s assertion in response to Petitioners’ TS 1-01, assets are not always fully depreciated at the time they are retired due to a host of factors, and in combination with retirement related

1 response to Department of Energy (“DOE”) Staff discovery in DE 21-022, the December 6, 2021  
2 data upon which both I and DOE witness Eckberg relied, and the Commission adopted in Order  
3 No. 26,729 as the basis for the net book value of the transferred poles, already “unwound”  
4 extraordinary GAAP plant and depreciation-related adjustments made in anticipation of the  
5 pending transfer of Consolidated poles to Eversource.<sup>16</sup> Further selective adjustments to  
6 Consolidated’s GAAP accounting- based figures for depreciation-related adjustments beyond  
7 those already made by Consolidated in developing the December 6, 2021 are neither appropriate  
8 nor warranted.

9 **Q. Do you have anything further to add regarding Consolidated’s use of GAAP accounting**  
10 **as it pertains to Account 364 for poles, and as reflected in the 2020 ARMIS data you used**  
11 **to calculate a just and reasonable pole rate for Consolidated?**

12 A. One final point related to GAAP accounting I would add in response to Ms. Davis’s assertion  
13 that I inappropriately reflected the rate that results from applying the cable rate formula, is that if  
14 anything, the rate I derived based on the GAAP figures provided by the Joint Petitioners in DE  
15 21-020, is understated because it did not apply the so-called Implementation Rate Difference  
16 (“IRD”) that the FCC directed carriers switching over to GAAP accounting to apply as a credit  
17 offset to the calculated pole rate for a period of 12 years following the switchover.<sup>17</sup> The FCC  
18 adopted the IRD to minimize any potential “rate shock” to pole attachment rates resulting from  
19 the switchover from regulatory to GAAP accounting – the latter allowing for significant

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adjustments to accumulated depreciation, reserves relating to net salvage, net book value can be impacted by retirements.

<sup>16</sup> See Exhibit 14, Attachment PDK Surrebuttal-3, Consolidated’s response to DOE Data Request 6-04 in DE 21-020.

<sup>17</sup> See Exhibit 14, Attachment PDK Surrebuttal-1, FCC 17-15 para.36.

1 revaluations of pole plant and accumulated depreciation reserves the combined effect of which  
2 typically increases the net per pole investment component of the rate formula.<sup>18</sup> This  
3 phenomenon, whereby the GAAP-stated net book values are higher than the regulatory  
4 accounting values, is borne out by the ARMIS data provided by Consolidated in the instant  
5 docket and DE 21-020, and is further corroborated by additional ARMIS data submitted to the  
6 FCC by Consolidated on behalf of FairPoint.<sup>19</sup> Thus, the underlying rationale and need for an  
7 IRD credit applies to the Consolidated pole attachment rates I calculated using the December 6,  
8 2021 data provided by the Joint Petitioners in DE 21-020, and further refutes Ms. Davis’s claim  
9 the cable rates I calculated using the December 6, 2021 data are too low since they are gross of  
10 the IRD credit which due to data limitations I was not able to calculate.<sup>20</sup>

11 **Q. Ms. Davis asserts that your rate calculation uses a presumed pole height of 39 feet**  
12 **instead of the FCC’s 37.5 foot rebuttable presumption. What is your response?**

13 A. I did not presume that Consolidated’s average pole height in New Hampshire is 39 feet, nor  
14 did I use a “limited subset” of poles in my calculation. Rather, I relied on actual Eversource  
15 2020 pole inspection data (Exhibit 15 in the instant docket) provided in a response to a data

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<sup>18</sup> See *Id.*

<sup>19</sup> See Tables 1 and 2, *infra*. As another data point, while it cannot be independently verified (*see* Exhibit 16, response to Petitioners’ TS 1-03), the workpapers provided by Consolidated in response to Petitioners’ DR 1-01, (Attachment .01.05.2022) identify a starting net book value for the acquired Fair Point poles of \$40.5 million as of the 7/3/2017 acquisition date. This is roughly double the regulatory value as reported in the FairPoint ARMIS submitted to the FCC. See Table 1, *infra*.

<sup>20</sup> In DE 21-020, NECTA asked Joint Petitioners a number of data requests concerning the IRD, but Consolidated took the position “it would have no need to apply an Implementation Rate Difference” and hence did not provide the calculation of such as described in FCC 17-15. See Exhibit 14, Attachment PDK Surrebuttal-4, Response to NECTA 4-07 in DE 21-020. For the poles in question, the last ARMIS pole attachment data filed with the FCC using regulatory accounting data was for year-end 2018, so that under the FCC methodology directed in FCC 17-15, the IRD would be calculated by the difference in the pole attachment rate for year end 2018 calculated under USOA regulatory accounting figures as compared with those calculated with GAAP accounting figures on the same basis as the ARMIS data provided by Joint Petitioners in DE 21-020 for year-end 2020. In my experience, these credits could be expected to fall within the general range of \$1 to \$2 off the calculated pole rate.

1 request in DE 21-020, to calculate the average pole height of approximately 30, 219 poles,<sup>21</sup> the  
2 vast majority being jointly owned by Consolidated and Eversource. In 1979, the FCC  
3 established as presumed 37.5 foot pole height, which presumption can be rebutted by  
4 determining the average height of a statistically valid sample of poles. Ms. Davis's statement  
5 that the 37.5 foot presumption can only be rebutted with data associated with all of  
6 Consolidated's New Hampshire poles is uninformed. The FCC rules do not require a total  
7 inventory of poles, but rather approve the use of a statistically valid sample. By any reasonable  
8 measure, the 39 foot average based on 30,219 poles is statistically valid and more than sufficient  
9 to rebut the FCC's presumed height.

10 As explained in my prefiled direct testimony, the FCC's rebuttable pole height  
11 presumption was set decades ago based on historical and joint use pole heights of 35 and 40 feet.  
12 As with any presumptive value, to the extent there is more current actual or statistically  
13 significant pole data to support the use of alternative space presumptions, those values can, and  
14 indeed, should be used in lieu of the FCC's presumptions to derive a more accurate, just and  
15 reasonable pole rate. In this case, I reviewed actual pole height data provided by Eversource on  
16 poles it jointly owns with Consolidated.<sup>22</sup> I consider this data to be reliable, current and  
17 statistically significant, and also consistent with widely acknowledged utility construction  
18 practices in recent decades that routinely include installation of new 40 to 45- foot poles to  
19 replace older, shorter poles.

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<sup>21</sup> This figure is derived from the pole data appearing in the Excel spreadsheet marked as Exhibit 15 in this docket, in cell BC30220 of the worksheet (far right side).

<sup>22</sup> The Eversource inspection data also contains poles solely owned by Consolidated. See Exhibit 15, Column (P).

1 **Q. Ms. Davis states that Attachment SD-1 to the Davis Rebuttal shows Consolidated’s**  
2 **recalculation of the net cost of a bare pole using regulatory depreciation v. the accelerated**  
3 **depreciation on a GAAP basis.<sup>23</sup> She further states that based on this, the net cost of a bare**  
4 **pole goes from \$86.38 based on GAAP depreciation to \$181.35 based on a 17-year**  
5 **regulatory based depreciation schedule, and that Consolidated’s pole attachment rate is**  
6 **below the rate produced using this methodology. Do you agree with the methodology and**  
7 **information contained in Attachment SD-1?**

8 A. No. The analysis presented in Attachment SD-1, and in the incomplete workpaper provided  
9 in response to the Petitioners’ Data Request 1-01 that purport to support the higher revised net  
10 cost of a bare pole of \$181.35 are based on unsupported and undocumented figures and are  
11 replete with inconsistencies and errors, thus rendering the \$181.35 figure a meaningless  
12 number.<sup>24</sup> Because Ms. Davis’s figures for the net cost of a bare pole are meaningless, the rate  
13 calculations she presents are similarly meaningless. In addition, Ms. Davis failed to recalculate  
14 the carrying charge factor required in a proper calculation of the cable rate, since the carrying  
15 charge elements are a function of net investment.<sup>25</sup>

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<sup>23</sup> Davis Rebuttal Testimony at 12.

<sup>24</sup> In a response to Petitioners’ data request TS-1-01 submitted a few days before this filing, Ms. Davis has revised the net cost of a bare pole figure slightly higher to \$183.20. *See* Exhibit 17. This latest revision incorporates the same flaws as the original calculation of \$181.35, and if anything, highlights the unreliability of the analysis presented in Attachment SD-1.

<sup>25</sup> In calculating the pole rate under the FCC formula, the net cost of a bare pole is multiplied by the carrying charge factor and the usable space factor. However, Consolidated continues to insist it “did not use a carrying charge rate in the original version of Attachment SD-1,” and that its addition of a carrying charge to the revised version of Attachment SD-1 is “for demonstrative purposes only.” *See* Exhibit 16, Response to Petitioners’ TS 1-02. Given both the original and revised versions of Attachment SD-1 derive a pole rate that purports to show the reasonableness of Consolidated’s current high pole rate, it is simply not true that Consolidated did not use a carrying charge rate. In fact, as clarified in Response to TS-1-02, Ms. Davis incorrectly applied the carrying charge factor that I calculated based on the investment and depreciation data in the December 6, 2021 data without the revisions needed to reflect her revised figures.

1           In addition to the numerous flaws in her analysis, the most salient of which I describe  
2 below, as a threshold matter, the \$86.38 net cost of a bare pole that I relied on in calculating for  
3 purposes of the pole rate calculation for Consolidated is based on the very same data provided by  
4 the Joint Petitioners in DE 21-020 (i.e., Attachment PDK-4 to my prefiled direct testimony), and  
5 that the Commission adopted in Order No. 26, 729 for purposes of valuing the net book value of  
6 Consolidated's poles in the pending transfer to Eversource. While in their response to the  
7 NECTA Motion for Rehearing in DE 21-020, the Joint Petitioners objected to the percent of  
8 Consolidated poles being transferred that the Commission adopted, the Joint Petitioners did not  
9 provide any evidence in DE 21-020 to challenge the underlying net cost of a bare pole figure of  
10 \$86.38 which the Commission effectively adopted when it agreed with NECTA's valuation of  
11 the transferred poles. Under utility ratemaking principles, and the standards of transparency,  
12 uniformity, and just and reasonableness underlying effective pole rate regulation, the net book  
13 value for these poles used in the setting of regulated pole rates cannot be higher than the  
14 regulatory net book value adopted by the Commission for transfer valuation purposes in setting  
15 the rates of a regulated electric utility.

16 **Q. Please comment on Ms. Davis's revised figures in Attachment SD-1.**

17 A. At the highest level, the revised net cost of a bare pole figure that Ms. Davis presents in  
18 Attachment SD-1 reflects a selective mix and match of GAAP and purported USOA regulatory  
19 accounting figures. Table 1 below shows a side -by -side comparison of the derivation of the  
20 \$86.38 net cost of a bare pole amount I computed and used in my rate calculation with the  
21 derivation of Ms. Davis's revised figure of \$181.35. The \$86.38 figure is computed using  
22 Consolidated's gross pole plant and associated accumulated depreciation numbers rolled forward

1 by Consolidated on a GAAP accounting basis to year-end 2020 (starting with the values on  
2 Consolidated's books when it acquired FairPoint in 2017). Ms. Davis's revised net book cost  
3 figure apparently is based on the same starting point values, but substitutes a revised  
4 accumulated depreciation amount (purportedly "regulatory depreciation") derived using a series  
5 of entries not sourced to actual booked amounts.

6 As shown in Table 1, the only figure Ms. Davis altered from the data Consolidated  
7 provided pursuant to Order No. 26,534 in DE 21-020 is the figure for accumulated depreciation.  
8 However, it makes no sense from a regulatory accounting perspective to restate accumulated  
9 depreciation in isolation from the gross investment in the associated fixed asset account, in this  
10 case, Account 364 for poles. The last ARMIS data for the Consolidated poles acquired from  
11 FairPoint was submitted to the FCC by Consolidated for year-end 2018. *See* Exhibit 14,  
12 Attachment PDK Surrebuttal - 5. That data as compared to the comparable FairPoint ARMIS  
13 data for year-end 2017, *see* Exhibit 14, Attachment PDK Surrebuttal - 6, show the roll-forward  
14 of true regulatory accounting figures for the poles acquired from FairPoint – the majority of  
15 which are now pending transfer to Eversource.

16 Two key observations: First, the net bare cost of a pole expressed on a true regulatory  
17 accounting basis based on the data submitted by FairPoint (pre-acquisition) for year-end 2017  
18 and Consolidated (post-acquisition) for year-end 2018 are far closer to the 2020 GAAP based  
19 accounting figures provided to the Commission by Joint Petitioners in DE 21-020 (and that I  
20 used in my pole rate calculation) than the revised "hybrid" GAAP/regulatory accounting net bare  
21 cost of a pole calculated by Ms. Davis. In principle, and as recognized by the FCC in its 2017



1 accounting order,<sup>26</sup> there should not be a huge variation between net book value under GAAP  
2 versus regulatory accounting. As illustrated in Tables 1 and 2 below, GAAP accounting write  
3 downs apply to both the fixed asset gross plant amount and the associated accumulated  
4 depreciation reserve.

5 Second, accumulated depreciation reserves under regulatory depreciation accumulate in  
6 proportion to the underlying gross investment in the fixed asset.<sup>27</sup> Here, Consolidated's gross  
7 pole plant is orders of magnitude greater on a regulatory basis (\$220 to 230 million) versus (\$63  
8 to \$64 million) on a restated GAAP basis. Similarly, accumulated depreciation is orders of  
9 magnitude greater (\$201 to \$212 million on a regulatory basis vs. \$36 million on a GAAP basis).  
10 Ms. Davis's restated regulatory depreciation reserve of \$10.588 million makes no sense under  
11 regulatory accounting,<sup>28</sup> as it appears from her workpapers to have been rolled forward by Ms.  
12 Davis from a base 2017 *revalued GAAP net book value* of \$40.5 million<sup>29</sup> versus the 2017  
13 *regulatory gross book value* shown in Table 2 of \$221 million.

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<sup>26</sup>See Exhibit 14, Attachment PDK Surrebuttal-1, FCC 17-51 at para. 38.

<sup>27</sup> The stated accrual rate under regulatory accounting is typically lower than the effective GAAP rate, but applies to a larger base of gross plant. The effective GAAP accrual rate allows for more repaid recovery to meet a company's business and tax objectives but typically applies to a much lower base of gross plant as is the case for the Consolidated poles. The FCC rules require the use of the last regulatory approved depreciation rate for purposes of calculating the depreciation carrying charge element, but pursuant to FCC 17-15, permit the use of GAAP values for gross plant and accumulated depreciation reserves.

<sup>28</sup> The same critique applies to Ms. Davis's January 16, 2023 revised amount of \$11,250,620. As explained above, neither of Ms. Davis's accumulated depreciation figures are a proper statement of either regulatory or GAAP depreciation applicable to Account 364 for poles.

<sup>29</sup> See Exhibit 12, Response to Petitioners' DR 1-01, Tab "Pole Investment Analysis".

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Table 1			
<b>Comparison of Net Bare Cost of a Pole for Consolidated Based on GAAP Accounting Data provided by Consolidated in Docket 21-020 and the Revised Data Presented in Attachment SD-1</b>			
Based on Year-End 2020 ARMIS Annual Summary Report Table III	Just & Reasonable Input Values, Based on Data Provided by Consolidated Per Order No. 26,534, DE 21-020	Revised Input Values, Based on Data Provided in Attachment SD-1, DE 22-047 (See Note)	ARMIS ROW/ Calculation
1   Gross Investment in Pole Plant	\$63,530,000	\$63,530,000	Row 101
2   - Accumulated depreciation for poles	\$35,765,000	\$10,588,000	Row 201
3   - Accumulated deferred income taxes for poles	\$4,865,000	\$4,865,000	Rows 401,404
4   = Net Pole Investment	\$22,900,000	\$48,076,000	Ln 1 – Ln 2- Ln 3
5   x (1- Appurtenances Factor)	.95	.95	FCC Presumption
6   = Net Bare Pole Investment	\$21,755,000	\$45,673,000	Ln 4 x L5
7   / Total Number of Poles	251,845	251,845	Row 601
8   = <b>Net Bare Cost/Pole</b>	\$86.38	\$181.35	Ln 6 / Ln 7

4 Note: The Revised Input Values per SD-1 with the exception of Accumulated Depreciation for Poles can be sourced to Order No. 26,534 Data

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Table 2			
<b>Just and Reasonable Net Bare Cost of a Pole Based on Regulatory Accounting Data for Poles Acquired by Consolidated from FairPoint</b>			
Based on Year-End 2017 and 2018 ARMIS Annual Summary Report Table III, Submitted to the FCC	Just and Reasonable Input Values 2017 Regulatory Values	Just and Reasonable Input Values 2018 Regulatory Values	ARMIS ROW/ Calculation
1   Gross Investment in Pole Plant	\$220,791,000	\$230,007,000	Row 101
2   - Accumulated depreciation for poles	\$200,831,000	\$211,658,000	Row 201
3   - Accumulated deferred income taxes for poles	-\$1,047,000	\$1,070,000	Rows 401,404
4   = Net Pole Investment	\$21,007,000	\$17,279,000	Ln 1 - Ln 2- Ln 3
5   x (1- Appurtenances Factor)	.95	.95	FCC Presumption
6   = Net Bare Pole Investment	\$19,956,650	\$16,415,050	Ln 4 x L5
7   / Total Number of Poles	251,720	253,998	Row 601
8   = <b>Net Bare Cost/Pole</b>	\$79.28	\$64.63	Ln 6 / Ln 7

1 Finally, Ms. Davis’s analysis presented in Attachment SD-1 cannot be relied on due to its  
2 lack of transparency and source documentation – both defining features of the FCC pole rate  
3 regulation methodology as applied by the FCC and nationwide states certified by the FCC to  
4 regulate pole rates. Despite a series of initial and follow up written data requests and oral  
5 questioning at the January 12, 2023 Technical Session, Consolidated has not identified or  
6 provided in a transparent manner the sources of the various data inputs relied on by Ms. Davis in  
7 Attachment SD-1.<sup>30</sup> Accordingly, her findings cannot be independently verified and do not  
8 provide meaningful or reliable data points for the setting of just and reasonable pole rates.

9 **Q. Please respond to Ms. Davis’s allegation that the Petitioners’ references to a change in**  
10 **Consolidated’s Maine pole attachment rates are irrelevant to the instant docket.**

11 A. Ms. Davis’s relevance argument is based solely on her observations that Maine is a different  
12 state, and that the Maine pole attachment rules are different than New Hampshire’s pole  
13 attachment rules. For the reasons explained in my prefiled direct testimony at pages 13 to 14,  
14 Consolidated’s Maine pole attachment rates are very relevant to the instant proceeding.

15 First, Consolidated has owned and operated its Maine poles along with its New  
16 Hampshire poles<sup>31</sup> since acquiring them from FairPoint Communications in 2017 as part of an  
17 integrated system. In these circumstances (i.e., common pole ownership and operation in  
18 adjacent states), one would not expect the inputs for calculating pole attachment rates for each  
19 set of poles to be vastly different, and therefore pole attachment rates in both states calculated

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<sup>30</sup> See Exhibit 16, Responses to Petitioners’ TS 1-02, 1-03, 1-05.

<sup>31</sup> Consolidated’s predecessors, FairPoint and Verizon, also owned and operated Maine and New Hampshire poles as part of a common system.

1 using the same rate formula methodology should be somewhat comparable. However,  
2 Consolidated's Maine solely owned pole rate is \$3.56 and its jointly owned pole rate is \$1.78,  
3 which are well in excess of Consolidated's New Hampshire pole solely owned rate of \$11.67 and  
4 its jointly owned rate of \$6.84. Consolidated's Maine rates are therefore relevant in  
5 underscoring the unjustness and unreasonableness of Consolidated's excessive New Hampshire  
6 rates.

7 Second, the Maine Public Utilities Commission uses the FCC cable formula,<sup>32</sup> so the  
8 Maine rates provide a useful benchmark against which to compare the New Hampshire pole  
9 attachment rates that I have calculated using the FCC's cable rate formula. As indicated in my  
10 prefiled direct testimony, Consolidated's New Hampshire pole attachment rates should be a  
11 maximum of \$5.33 for its solely owned poles, and \$2.67 for its jointly owned poles.<sup>33</sup> While  
12 these rates are significantly lower than Consolidated's current non-cost based rates, in fact, these  
13 rates are higher than Consolidated's Maine rates, providing further basis for this Commission to  
14 find the rates I have calculated for Consolidated in New Hampshire to be just and reasonable.

15 Lastly, as indicated in the Petition for Resolution of Rate Dispute at paragraphs 39  
16 through 45, it is my understanding that Consolidated voluntarily lowered its pole attachment  
17 rates in Maine to levels produced using the FCC's cable rate formula after the Maine Public  
18 Utilities Commission adopted that formula, and after being notified by counsel for the Maine  
19 Cable Operators of the maximum lawful pole attachment rates chargeable in Maine. However,  
20 Consolidated remains unwilling to lower its New Hampshire rates to levels consistent with rates

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<sup>32</sup> See Maine PUC Docket No. 2019-00028, Order No. 2019-203 (Nov. 21, 2019) and Maine PUC Rules Ch. 880, Section 4.

<sup>33</sup> Prefiled Direct Testimony of Patricia D. Kravtin at 21.

1 produced using the FCC's cable rate formula. This is relevant to the instant proceeding because it  
2 demonstrates the unjustness and unreasonableness of Consolidated's position in New Hampshire.

3 **Q. Regarding Consolidated's Joint Use ("JU") charges, the Davis Rebuttal Testimony at**  
4 **page 13 asserts that it is not unjust nor unreasonable for Consolidated to bill JU charges**  
5 **because those charges are included in the Petitioners' pole attachment agreements and**  
6 **their annual bills. Do you agree?**

7 A. No. Ms. Davis is arguing that the JU charges are just and reasonable simply because they  
8 appear in the Petitioner's pole attachment agreements and in their annual pole attachment bills.  
9 These are not substantive reasons why these charges are just and reasonable. Importantly, she  
10 fails to explain what, if any, services or costs these charges are intended to cover. In contrast, on  
11 page 24 of my prefiled direct testimony, I provide the bases for my position that the JU charges  
12 are unjust and unreasonable, as follows: 1) Consolidated imposes the JU charge with respect to  
13 poles that Consolidated does not actually own; 2) Consolidated is not providing any services to  
14 pole attachers in exchange for the JU charges; 3) the JU charge results in pole attachers double  
15 paying for these poles in that they pay the JU pole owner its solely owned pole rate, and in  
16 addition to that, pay a JU charge to Consolidated. For all of these reasons, I believe that the JU  
17 charge is unjust, unreasonable, and should be eliminated.

18 **Q. Does this conclude your surrebuttal testimony?**

19 A. Yes. But I respectfully reserve the right to update or supplement this testimony if necessary.