

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

April 27, 2017 - 10:06 A.M.
Concord, New Hampshire

DAY 1

25 MAY '17 09:17

**RE: DT 16-872 JOINT PETITION
FOR FINDINGS IN FURTHERANCE
OF THE ACQUISITION OF
FAIRPOINT COMMUNICATIONS,
INC. AND ITS NEW HAMPSHIRE
OPERATING SUBSIDIARIES BY
CONSOLIDATED COMMUNICATIONS
HOLDINGS, INC.**

HEARING ON THE MERITS

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott
Commissioner Kathryn M. Bailey
Sandy Deno, Clerk

APPEARANCES:

**Reptg. Consolidated Communications
Holdings, Inc.:**
Susan S. Geiger, Esq. (Orr & Reno)

Reptg. FairPoint Communications, Inc.:
Paul J. Phillips, Esq. (Primmer, Piper)

Reptg. Labor Intervenors:
Scott J. Rubin, Esq.

Reptg. Commission Staff:
David K. Wiesner, Esq.
Michael Ladam, RI&S Division
Lisa M. Cleveland, RI&S Division

COURT REPORTER: SUSAN J. ROBIDAS, N.H. LCR NO. 44

I N D E X

WITNESS PANEL: Michael J. Shultz
Gage Waggoner
Steven Childers
Michael C. Reed

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P R O C E E D I N G S

CHAIRMAN HONIGBERG: We're here in Docket DT 16-872, which is the Petition by Consolidated Communications Holdings, Inc. regarding FairPoint. We're here for the beginning of what will be a multi-day hearing on the merits. Before we do anything else, let's take appearances.

MS. GEIGER: Good morning, Mr. Chairman and Commissioners. I'm Susan Geiger from the law firm of Orr & Reno, and I'm representing Consolidated Communications Holdings, Inc.

MR. PHILLIPS: Good morning, Mr. Chairman and members of the Commission. My name is Paul Phillips. I'm an attorney with Primmer, Piper, Eggleston & Cramer in Manchester, here on behalf of FairPoint Communications. And I'm joined by Michael Reed, who is the State President in Maine and Vermont, and Robert Meehan, who's the Director of Regulatory Affairs.

MR. RUBIN: Good morning, Mr. Chair, Commissioners. My name is Scott Rubin. I

1 represent the International Brotherhood of
2 Electrical Workers and Communications Workers
3 of America. Seated to my left is Randy Barber,
4 who is our witness this morning.

5 MR. WIESNER: Good morning, Mr.
6 Chairman and Commissioners. I'm David Wiesner,
7 representing Commission Staff. And with me are
8 Mike Ladam, Director of the Regulatory
9 Innovation and Strategy Division at the
10 Commission, and also with that division is Lisa
11 Cleveland.

12 CHAIRMAN HONIGBERG: How are we
13 proceeding this morning, Mr. Wiesner?

14 MR. WIESNER: Well, as you know, this
15 is opening day of a multi-day hearing. And
16 today we are primarily going to hear from Labor
17 Witness Randy Barber, in large part because of
18 his unavailability in May when we have two
19 further days of hearing scheduled.

20 The panel of witnesses
21 representing the Joint Petitioners will also
22 take the stand as an initial matter and swear
23 in their direct testimony. But per agreement
24 of the parties, there will be no

1 cross-examination of those witnesses and,
2 with your indulgence, no questions from the
3 Bench today. Please hold those questions
4 until we resume the hearings in about a
5 month.

6 CHAIRMAN HONIGBERG: All right.

7 MR. WIESNER: I asked nicely.

8 CHAIRMAN HONIGBERG: I don't know
9 what you expected us really to do. But all
10 right. All right, if that's what you want.

11 Are there any preliminary
12 matters we need to deal with before we -- I
13 guess the panel goes first? Yes, Ms. Geiger.

14 MS. GEIGER: Yes, Mr. Chairman. On
15 behalf of Consolidated, I filed a Motion for
16 Protective Order yesterday, along with a couple
17 of other motions relating to the requirements
18 for redacting and presenting confidential
19 information in a particular format, as well as
20 a partial waiver of the Commission's earlier
21 order on the same issue. And that's the only
22 preliminary matter of which I'm aware.

23 CHAIRMAN HONIGBERG: Yeah, we're
24 aware of the motions that were filed. I don't

1 think we need to rule on them this morning.
2 Under the Commission's rules, matters are
3 deemed confidential and will continue to be
4 confidential until the issue is finally
5 adjudicated regarding confidentiality.

6 With respect to the waiver, it
7 is what it is at this point. I understand
8 the parties have agreed that if documents are
9 going to be used that contain confidential
10 information, they will have appropriate
11 redactions, so how we deal with it down the
12 road will resolve. But we don't need to do
13 anything today. Is that the agreement? Is
14 everybody agreed on that? I see lots of
15 nodding heads. I like to see nodding heads.

16 All right. So if there is
17 nothing else, then I guess the panel can take
18 the stand to do their business, and then
19 we'll move on from there.

20 MS. GEIGER: Thank you.

21 So, for Consolidated
22 Communications Holdings, Inc. we've called to
23 the stand, Mr. Steve Childers, Mr. Mike
24 Shultz and Mr. Gabe Waggoner.

1 MR. PHILLIPS: And on behalf of
2 FairPoint Communications, I call to the stand
3 Michael C. Reed.

4 CHAIRMAN HONIGBERG: Off the record.
5 (Discussion off the record.)

6 (WHEREUPON, MICHAEL J. SHULTZ, GABE
7 WAGGONER, STEVEN CHILDERS, MICHAEL C.
8 REED were duly sworn and cautioned by
9 the Court Reporter.)

10 CHAIRMAN HONIGBERG: Ms. Geiger, you
11 may proceed.

12 DIRECT EXAMINATION

13 BY MS. GEIGER:

14 Q. Please state your name and spell your last
15 name for the record.

16 A. (Shultz) Michael Shultz, S-H-U-L-T-Z.

17 Q. And where are you employed, and what position
18 do you hold?

19 A. I am Vice-president of Regulatory and Public
20 Policy for Consolidated Communications
21 Holdings, and I'm located in Conroe, Texas.

22 Q. How long have you had held your current
23 position?

24 A. (Shultz) About 13 years.

1 Q. Could you please briefly describe your
2 responsibilities as Vice-president of
3 Regulatory and Public Policy Consolidated
4 Communications.

5 A. (Shultz) Yes, I am responsible for state and
6 federal regulatory advocacy; legislative
7 strategy; regulatory compliance, including
8 tariffs, interconnection, industry relations,
9 settlements and billing operations.

10 Q. Could you please briefly describe your
11 telecommunications experience.

12 A. (Shultz) Yes. I have over 30 years in the
13 telecommunications industry, primarily
14 regulatory affairs. Prior to joining
15 Consolidated Communications in 2014 [sic], I
16 was with TXU Communications, and prior to
17 that with varying degrees and various
18 positions with increasing responsibility at
19 Citizens Communications, and then prior to
20 that with John Staurulakis, Incorporated.

21 Q. I believe, Mr. Shultz, you may have said that
22 you were working -- or prior to working at
23 Consolidated in 2014? Is that date correct?

24 A. I started working with Consolidated in 2004

1 when we were acquired.

2 Q. Okay. I thought I heard you say 2014. I
3 just wanted to make sure that 2004 was the
4 correct year.

5 Could you please briefly describe
6 Consolidated's history and experience owning
7 and managing telecommunications companies.

8 A. (Shultz) Yes. Consolidated Communications
9 started over 120 years ago in Mattoon,
10 Illinois, as Mattoon Telephone Company. It
11 grew through a series of acquisitions of
12 nearby telephone companies in the 1920s and
13 1930s and became Illinois Consolidated
14 Telephone Company. In 1984, Consolidated
15 Communications, Inc., or CCI, was formed, and
16 with the bedrock of ICTC it expanded its line
17 of businesses into business systems,
18 directories, long distance and operator
19 services, and what we call public services
20 and telemarketing. In 1997, the Lumpkin
21 family sold Consolidated to McLeodUSA, and in
22 2002 the Lumpkin family and two private
23 equity firms purchased CCI back from
24 McLeodUSA. During the 2004 to 2016 time

1 frame, Consolidated has completed an IPO and
2 grown with multiple acquisitions.

3 In 2004, it acquired TXU Communications;
4 2007, North Pittsburgh Systems, Inc; in 2012,
5 SureWest Communications; 2014, Enventis, Inc.
6 So we expanded from one state into now 11
7 states.

8 Q. Was there an acquisition in 2016?

9 A. (Shultz) Yes, there was. Champaign Telephone
10 Company, in Champaign, Illinois, about
11 50 miles north of our corporate headquarters.

12 Q. And in what states does Consolidated
13 concurrently operate?

14 A. (Shultz) It operates in California, Kansas,
15 Missouri, Illinois, Pennsylvania, Texas,
16 North Dakota, South Dakota, Minnesota, Iowa
17 and Wisconsin.

18 Q. And what services does Consolidated provide?

19 A. (Shultz) It provides voice services, both
20 POTs and Voice Over Internet Protocol;
21 unbundled network elements; broadband; cloud
22 computing; data centers; fiber services;
23 Internet; video; both IPTV, as well as cable
24 in Kansas. We also have long distance,

1 directory, home automation and security. And
2 we have a couple of private -- or partnership
3 with East Texas Fiber Line, which is part of
4 our fiber product, as well as five minority
5 interests in Verizon Wireless, both in Texas
6 and Pennsylvania.

7 Q. Mr. Shultz, I'm going to show you a document
8 that we premarked for identification as
9 Exhibit 1, and it's entitled "Joint Petition
10 for Findings in Furtherance of the
11 Acquisition of FairPoint Communications, Inc.
12 and its New Hampshire Operating Subsidiaries
13 by Consolidated Communications Holdings,
14 Inc." Did you assist in the preparation of
15 that petition?

16 A. (Shultz) Yes, I did.

17 Q. And could you please briefly describe what
18 the transaction that is the subject of that
19 petition will entail?

20 A. (Shultz) Mr. Childers' prefiled testimony
21 will provide the details of the transaction,
22 but I can briefly summarize it.

23 Consolidated will acquire all the
24 outstanding equity interests in FairPoint in

1 exchange for Consolidated stock valued at
2 approximately \$1.5 billion. Post-close,
3 Consolidated shareholders will own
4 71.3 percent of the combined company, and
5 FairPoint shareholders will own 28.7 percent.
6 One director from the FairPoint Board of
7 Directors will join the Board of Directors of
8 Consolidated, which will expand from eight to
9 nine directors.

10 Under the Merger Agreement, which was
11 submitted with the Joint Petition as
12 Attachment 2, Falcon Merger Sub, Inc, a
13 corporation wholly owned by Consolidated and
14 formed for the purposes of this transaction,
15 will merge into -- with and into FairPoint,
16 whereupon Merger [Sub] will cease to exist,
17 and FairPoint will remain as the surviving
18 corporation. Upon completion of the
19 transaction, Consolidated will contribute all
20 of the equity interest in FairPoint to CCI,
21 so that FairPoint will be a direct,
22 wholly-owned subsidiary of CCI.

23 Q. And Mr. Shultz, did you submit prefiled
24 testimony in support of the Petition that's

1 been marked as Exhibit 1?

2 A. (Shultz) Yes, I did.

3 Q. And do you recognize what's been marked as
4 Exhibit 2 as that prefiled testimony?

5 A. (Shultz) Yes.

6 Q. Do you have any updates or corrections to
7 your compiled testimony?

8 A. (Shultz) I do. Two. On Page 4, Line 16 and
9 17, we talked about the states requiring
10 approvals. Four states have approved the
11 merger transaction. They are Colorado,
12 Georgia, Ohio and Pennsylvania.

13 And then on Page 5 there's a correction
14 on Line 20, where it says "approximately
15 \$4 million," it should say "3.1 million."

16 Q. And Mr. Shultz, with those corrections and
17 updates that you just provided, do you
18 have -- do you adopt your prefiled testimony
19 today under oath?

20 A. (Shultz) Yes, I do.

21 Q. And what topics are covered in that prefiled
22 testimony?

23 A. (Shultz) It covers technical, managerial and
24 financial. My focus is more on the

1 managerial.

2 Q. Do you -- could you please briefly summarize
3 your prefiled testimony.

4 A. (Shultz) Yes. Mr. Childers will be providing
5 testimony on the financial capabilities of
6 Consolidated, and Mr. Waggoner will be
7 providing testimony on the technical
8 capabilities, and I will focus primarily on
9 managerial.

10 Consolidated's experienced management
11 team averages 25 years of industry experience
12 and has a wide variety of experiences not
13 only with Consolidated, but also working in
14 larger -- with working in larger local
15 exchange carriers like Bell of Pennsylvania,
16 Frontier, and CLECs like Integra.

17 Consolidated company management has
18 significant experience in operating ILECs in
19 rural and small urban areas. It has
20 successfully served customers in such
21 markets, bringing innovative broadband and
22 video services, while running a financially
23 sound company with the ability to invest and
24 maintain the network and foster growth.

1 Consolidated is familiar with
2 FairPoint's obligations as a successor to a
3 regional Bell operating company, including
4 interconnection obligations, pole attachments
5 and local access and transport area tandem
6 provider obligations, what's known as LATA
7 tandem provider obligations. We are very
8 experienced in those areas and work with
9 other CLECs and carriers. New Hampshire
10 wholesale performance assurance plan is one
11 item that Consolidated as an ILEC has not
12 been required to implement; however, with
13 this transaction, FairPoint's wholesale
14 carrier group does that have experience and
15 will continue to provide that service
16 post-close. In short, Consolidated's
17 management will ensure that all FairPoint's
18 existing ILEC obligations will continue to be
19 met.

20 Consolidated will also honor FairPoint's
21 collective bargaining agreements with
22 FairPoint's union employees. Consolidated
23 will evaluate the potential for realizing
24 efficiencies through the elimination of

1 overlapping executive and corporate functions
2 of the combined companies as we get closer to
3 the closing dated.

4 In addition to myself, Consolidated's
5 senior management personnel who will be
6 primarily responsible for managing the
7 proposed transition and for overseeing
8 FairPoint's continued operations after close
9 include: Robert Udell, President and Chief
10 Executive Officer; Steve Childers, Chief
11 Financial Officer; Steve Shirar, Chief
12 Information Officer; Michael Smith, Chief
13 Marketing Officer; Gabe Waggoner,
14 Vice-president of Operations; Tom White,
15 Chief Technology Officer; Ryan Whitlock,
16 Vice-president of Human Resources, and Carol
17 Wirsbinski, Chief Sales Officer. Attachment
18 MJS-1, which was submitted with my prefiled
19 testimony, contains biographies of these key
20 Consolidated management team members.

21 Consolidated has had substantial success
22 in integrating acquired companies.
23 Consolidated employs a highly-structured
24 project management approach to each

1 acquisition, which includes collaboration
2 with its counterparties. Senior manager will
3 continue to work closely with FairPoint
4 management before and after closing to ensure
5 employees and customers are kept informed.
6 Consolidated will ensure that it has
7 management personnel with responsibilities
8 for New Hampshire and available to work
9 collaboratively with New Hampshire
10 stakeholders, regulators, communities and
11 customers.

12 As Mr. Reed's prefiled testimony
13 indicates, FairPoint is currently meeting all
14 the ILEC obligations listed in RSA 362:8 and
15 RSA 372:22.

16 Because the transaction involves a stock
17 purchase, FairPoint and its New Hampshire
18 operating subsidiaries will remain intact and
19 continue with their current operations after
20 the transaction closes. Therefore,
21 FairPoint's existing ILEC to ELEC obligations
22 will continue to be fulfilled in a seamless
23 fashion. Also, because there are no systems
24 or billing conversions required in connection

1 with this transaction, the transaction will
2 be seamless to FairPoint's wholesale and
3 retail customers.

4 Q. Mr. Shultz, do you wish to add anything
5 further to your prefiled testimony at this
6 time?

7 A. (Shultz) Not at this time. However, I do
8 expect to file rebuttal testimony on or
9 before May 18th in accordance with the
10 procedural schedule for this docket.

11 Q. Thank you.

12 We'll go to Mr. Waggoner next.

13 A. (Waggoner) Good morning.

14 Q. Good morning. Could you state your name and
15 please spell your last name for the record.

16 A. (Waggoner) Gabe Waggoner, W-A-G-G-O-N-E-R.

17 Q. Mr. Waggoner, where are you employed, and
18 what position do you hold?

19 A. (Waggoner) Consolidated Communications,
20 Incorporated, and I hold the role of
21 Vice-president of Operations.

22 Q. How long have you held that position?

23 A. (Waggoner) I've been employed with
24 Consolidated Communications since 2000 --

1 since 1996. I have held my current role
2 since 2013.

3 Q. Could you please describe your
4 responsibilities as Vice-president of
5 Operations at Consolidated.

6 A. (Waggoner) Overall service, delivery,
7 strategy and execution, which includes
8 installation, management, maintenance of
9 CCI's physical assets, as well as managing
10 our overall call center strategy, repair and
11 technical support and customer service,
12 network, central office technicians and our
13 field technicians, and installation and
14 repair for the entire organization.

15 Q. Could you please briefly describe your
16 professional and educational background.

17 A. (Waggoner) I have 20 years of
18 telecommunications experience, including
19 leadership roles in customer service,
20 engineering, network operations and field
21 operations. I've also held primary
22 responsibilities for integration strategy and
23 implementation in Consolidated's previous
24 acquisitions. I hold a bachelor of science

1 in business and a master's in business
2 administration from Eastern Illinois
3 University.

4 Q. And Mr. Waggoner, did you prefile testimony
5 in this docket in support of the Petition
6 that is the subject of this docket?

7 A. (Waggoner) Yes.

8 Q. And I'd like to show you what's been marked
9 for identification as Exhibit 3. Do you
10 recognize this as your prefiled testimony
11 that you just referred to?

12 A. (Waggoner) Yes.

13 Q. Mr. Waggoner, do you have any updates or
14 corrections to that prefiled testimony?

15 A. (Waggoner) Updates. On Page 5 of my prefiled
16 direct testimony, submitted back on
17 January 17th, in Lines 9 through 14 I
18 describe some of the review and analysis of
19 FairPoint engineering and operations
20 processes with their leadership. Since that
21 time, significantly more analysis and
22 collaboration has been taking place.

23 Tom White, our Chief Technology Officer,
24 has had multiple discussions, face-to-face

1 meetings and technical sessions with various
2 engineering and NOC functional leaders,
3 including detailed discussions between CCI
4 and FairPoint's functional managers this week
5 in person in Manchester, as well as
6 face-to-face sessions there two weeks ago.

7 Steve Shirar, our Chief Information
8 Officer, is doing the same, including this
9 week with IT functional leads.

10 Ryan Whitlock, Our vice-president of
11 Human Resources, has not only began recurring
12 meetings with FairPoint staff to get more
13 detailed assessments of employer relations,
14 he's also met with union leadership
15 representatives here in Northern New England
16 last week face-to-face, as well as this week,
17 face-to-face.

18 As for myself, I've held additional
19 discussions on operation strategy with
20 FairPoint management in 10 different sessions
21 in the weeks since we filed the testimony.
22 This level of activity, this uptick at this
23 juncture is very consistent with how
24 Consolidated has operated in the previous

1 five acquisitions.

2 Q. And Mr. Waggoner, subject to the changes that
3 you just mentioned, do you adopt your
4 prefiled testimony today under oath?

5 A. (Waggoner) Yes.

6 Q. Could you please briefly summarize that
7 testimony.

8 A. (Waggoner) My testimony demonstrates
9 Consolidated's technical capabilities of
10 maintaining FairPoint's ILEC obligations. My
11 testimony describes Consolidated's network
12 and its comprehensive review of FairPoint's
13 network, as well as Consolidated's technical
14 capabilities, knowledge and experience with
15 successfully transitioning network and
16 service operations of acquired companies. In
17 addition, I discussed Consolidated's plans to
18 make the proposed integration of FairPoint's
19 operations with those of Consolidated's
20 seamless from the point of view of
21 FairPoint's current New Hampshire wholesale
22 and retail customers.

23 Q. Could you please briefly summarize -- I
24 believe you mentioned that your testimony

1 talks about Consolidated's current network
2 and experience. Could you briefly summarize
3 that aspect of your testimony.

4 A. (Waggoner) As Mr. Shultz mentioned earlier,
5 Consolidated's network extends over an
6 11-state footprint with both local exchange
7 carrier, or LEC, and competitive local
8 exchange carrier, or CLEC, networks. The
9 network infrastructure includes time division
10 multiplexing, TDM, equipment providing
11 traditional switch services, as well as
12 advanced Internet protocol, IP-based
13 components. The core network include
14 next-generation wave division multiplexing,
15 or WDM, and multi-protocol layer switching,
16 MPLS, IP core supporting traditional services
17 and advanced broadband services. The last
18 mile networks include copper, coax and fiber
19 to the node, fiber to the house and fiber to
20 the building. Consolidated has deep
21 experience operating as a local access and
22 transport area, LATA, provider, a TM
23 provider, and E911 provider, as well as
24 partnering with telecommunications to provide

1 these services in some scenarios.

2 Consolidated has connected all 11 state
3 markets with a multi-state mesh, MPLS,
4 network to provide further geographic
5 redundancy for operational and subscriber
6 services.

7 Q. Mr. Waggoner, do you have anything further to
8 add to your testimony?

9 A. (Waggoner) Consolidated has spent a
10 significant amount of time with the
11 engineering and operations leadership of
12 FairPoint reviewing the New England network.
13 A comprehensive review of network diagrams,
14 equipment deployments and last-mile
15 deployments in fiber and copper was
16 conducted. Physical inspections of portions
17 of the network were conducted. In addition,
18 an evaluation of network design within core
19 and last mile was conducted, as well as how
20 FairPoint delivers and supports the services
21 within the state.

22 The purpose of the review was to
23 understand the current capabilities and state
24 of the FairPoint deployed network. This

1 understanding led to the valuation of the
2 network and provided insight and guidance as
3 to how Consolidated would manage the network
4 once owned. Consolidated has performed
5 similar reviews in the five other
6 acquisitions I mentioned earlier. Through
7 these reviews we've refined our inspection
8 points to assure we understand what the
9 current network deployment status is and what
10 Consolidated will need to do to advance that
11 network to support next-generation services.

12 Beyond the network, Consolidated also
13 reviews and analyzes the processes,
14 procedures and personnel within the company
15 to be acquired to determine how Consolidated
16 will integrate these into a combined company.

17 Q. Mr. Waggoner, could you briefly summarize the
18 portion of your prefiled testimony that
19 discusses Consolidated's proposed integration
20 plan.

21 A. (Waggoner) So, as with previous acquisitions,
22 Consolidated will establish an Integration
23 Management Office, or IMO, that monitors all
24 integration projects for every functional

1 area and ensures that no transitional
2 initiatives adversely affect any other
3 effort. This methodical approach has proven
4 very successful for Consolidated as we have
5 sought to balance expedient, efficient
6 transition with minimal disruption to
7 employees or to customers. This process is
8 typically an 18- to 24-month incremental
9 process, beginning with such functions as
10 ERP, or financial systems, and the network
11 inventory systems.

12 Consolidated will approach the New
13 Hampshire network and the customer base it
14 supports, as it does all networks within the
15 company, by focusing on continued evolution
16 to support the next generation of services,
17 while diligently working to improve the
18 customer experience. Since FairPoint is an
19 independent operating company already
20 servicing customers on systems which will
21 remain in place with the entity Consolidated
22 is acquiring, there is no cutover necessary
23 as was experienced in the asset sale of the
24 New Hampshire network from Verizon to

1 FairPoint. As a result, any future billing
2 or operation support system integrations will
3 only occur when it's necessary for supporting
4 new services or efficiency gains.

5 From a network perspective, FairPoint's
6 retail and wholesale customers will
7 experience no changes following the closing
8 of the deal. All of the existing tariffs and
9 wholesale agreements, pricing and processes
10 and systems in place with FairPoint today
11 will continue post-close.

12 Q. Mr. Waggoner, is there anything else from
13 your prefiled testimony that you wish to
14 summarize?

15 A. (Waggoner) Regarding our technical
16 capabilities, we've got a long history and
17 extensive experience in providing
18 telecommunication services, and therefore we
19 have the technical capability of maintaining
20 the ILEC obligations that FairPoint is
21 currently meeting. That capability will be
22 enhanced by the fact that the combined
23 company will include FairPoint's existing
24 operating entities and systems which will

1 remain in place post-closing.

2 Q. Thank you. Does that conclude your summary?

3 A. (Waggoner) Not at this -- yes, at this time.

4 However, I do expect to file rebuttal

5 testimony on or before May 18 in accordance

6 with the procedural schedule for this docket.

7 Q. Thank you.

8 And now we'll proceed with Mr. Childers.

9 Could you please state your name and spell
10 your last name for the record.

11 A. (Childers) Steve Childers, C-H-I-L-D-E-R-S.

12 Q. Mr. Childers, where are you employed and what
13 position do you hold?

14 A. (Childers) I am based in Mattoon, Illinois.
15 I'm employed by Consolidated Communications,
16 Inc., a wholly-owned subsidiary of
17 Consolidated Communications Holdings, Inc.
18 And I hold the position as Chief Financial
19 Officer.

20 Q. How long have you held the position of CFO at
21 Consolidated?

22 A. (Childers) I've been with Consolidated since
23 1986, and I've held the CFO title since 2004.

24 Q. And could you please briefly describe your

1 responsibilities as CFO at Consolidated.

2 A. (Childers) Sure. My primary responsibilities
3 are to manage all the external financial
4 reporting, including SOX compliance, or
5 Sarbanes-Oxley requirements, and lead
6 investor communications --

7 (Court Reporter inquiry)

8 A. -- also lead the treasury, insurance, tax and
9 financial planning functions for the company.
10 Anytime we're looking at an acquisition
11 opportunity, I'm very involved in that, as
12 well as doing any diligence or integration
13 activities. I manage our capital structure,
14 lead the effort for financing equity or debt,
15 whether it's on a stand-alone basis or
16 acquisition-related.

17 Q. Could you please briefly describe your
18 background and experience.

19 A. (Childers) Yeah, I think I have a pretty
20 diversified background in finance and
21 accounting and operations, not to mention I
22 started with Consolidated in 1986, and
23 currently am CFO. Through that time I've
24 held a variety of positions on the finance

1 side of the business. Also ran our
2 telemarketing division and served as the
3 president of Consolidated Marketing Response.
4 When we were part of McLeodUSA, I held a
5 variety of executive and operational roles
6 with McLeod. That time period was 1997 to --
7 or I'm sorry -- 2002. I ran customer
8 service. I was involved in sales. Also ran
9 business process teams to implement revenue
10 assurance processes and controls.

11 Q. And did you submit prefiled testimony in this
12 docket?

13 A. (Childers) I did.

14 Q. And I'd like to show you a document that's
15 been premarked for identification as
16 Exhibit 4. Is that the confidential version
17 of your prefiled testimony?

18 A. (Childers) Yes.

19 Q. And I'd also like to show you a document
20 that's been premarked for identification as
21 Exhibit 5 in this docket. And is this a copy
22 of your redacted version of your prefiled
23 testimony?

24 A. (Childers) Yes, it is.

1 Q. Do you have any updates or corrections to
2 your prefiled testimony?

3 A. (Childers) I do. Similar to Mr. Shultz, on
4 Page 8, Line 2 of my testimony, I need to
5 correct the \$4 million number. It should be
6 \$3.1 million.

7 Q. Do you have any other updates or changes to
8 your testimony?

9 A. (Childers) I do not.

10 Q. And subject to the changes that you've just
11 discussed, do you adopt your prefiled
12 testimony today under oath?

13 A. (Childers) Yes.

14 Q. And could you please briefly summarize your
15 prefiled testimony.

16 A. (Childers) My prefiled testimony provides a
17 description of the proposed transaction
18 between Consolidated and FairPoint, the
19 company's financial soundness, the
20 transaction's financial impact on
21 Consolidated, and our capabilities to
22 maintain FairPoint's New Hampshire ILEC
23 responsibilities that Mr. Shultz described.

24 Mr. Shultz already provided an overview

1 of the transaction, so I won't go into that
2 part, other than to say that when we
3 announced the deal back in December, we
4 estimated a transaction value of
5 \$1.5 billion, including \$916 million of
6 FairPoint's debt that we needed to refinance.
7 We did refinance that debt in December -- or
8 had commitments for the refinancing under a
9 secured term loan at rates of one half of
10 what FairPoint is currently carrying that
11 debt at. FairPoint will also have access to
12 a \$110 million revolver as part of our
13 overall capital structure. The financing
14 does involve a pledge of assets, as well as
15 the FairPoint stock. However, by pledging
16 both, we believe that, in part, it
17 contributes to the favorable rate we got
18 compared to what FairPoint's cost of debt is.
19 It also provides a much stronger balance
20 sheet for the combined company.

21 The transaction obviously provides a
22 scale for both companies. Again, at the time
23 of the transaction, we estimated our
24 capitalization or enterprise value to be

1 about \$2.5 billion pro forma for the
2 transactions, on a combined basis enterprise
3 value approached \$4 billion.

4 The business combination with FairPoint
5 consolidated provides a scale for both
6 companies demonstrated by the pro forma
7 metrics for the new company. We'll have over
8 35,000 route miles of fiber, making us a top
9 ten fiber provider on a national basis.
10 We'll be doing business in over 24 states.
11 We'll support 8500 on-net buildings, 2400
12 connected towers. We'll serve over
13 1.6 million customer connections, with 4400
14 employees.

15 CHAIRMAN HONIGBERG: Mr. Childers,
16 can you slow down just a hair --

17 WITNESS CHILDERS: Sure. Thank you.

18 CHAIRMAN HONIGBERG: -- so that we
19 don't set the stenographer's fingers on fire?

20 WITNESS CHILDERS: I apologize.

21 A. (Childers) Pro forma for the transaction, we
22 expect revenue to be \$1.5 billion, and
23 adjusted EBITDA, given the effect to the
24 proposed \$55 million in run rate synergy to

1 be right around \$600 million. The proposed
2 acquisition makes both companies more
3 competitive from a service and product
4 perspective, better capitalized to deploy
5 broadband and expand our network to support
6 our three customer channels, which are
7 consumer, commercial and carrier.

8 The transaction is meaningfully
9 accretive to our cash flow, given the
10 opportunity to improve revenue trends,
11 improve operating cost while enhancing the
12 quality of service, as well as minimizing, at
13 least in the short-term, cash income taxes by
14 utilizing \$300 million in federal net
15 operating losses. Also, cash flow of the
16 company will be improved due to the financing
17 efforts we did in December based on a better
18 interest rate than FairPoint is currently
19 carrying.

20 The combination better positions us to
21 continue our commitment for financial and
22 operational stability in all the markets we
23 serve. And in my professional opinion, the
24 transaction is financially positive for both

1 companies.

2 Our financial and operating results for
3 the last five years have been very consistent
4 and very solid on a stand-alone basis, and
5 especially strong as compared to our peer
6 group. We are in a period of revenue
7 transformation consistent with the industry
8 trends as we manage the erosion of our legacy
9 voice services, including network access, and
10 reduced subsidy revenues due to the
11 implementation of Connect America funding for
12 high cost support. We have continued to
13 support -- to be successful by focusing on
14 stabilizing revenues through our organic
15 growth strategy, differentiating ourselves
16 from our competition based on quality of
17 product and quality of service, while
18 continuing our disciplined approach to
19 diversifying revenue and investing in the
20 business.

21 We are focused on growing and sustaining
22 free cash flow, cash generated after
23 expenditures, to maintain expanded asset
24 base.

1 As to our financial health, we measure
2 basically looking at our revenue diversity,
3 which is 80 percent of our business comes
4 from our strategic revenues, which we define
5 as consumer, broadband, commercial and
6 carrier. And historically we've consistently
7 invested 16 to 17 percent of our revenue back
8 into the business to expand the network,
9 promote broadband services, while maintaining
10 a dividend payout ratio of roughly 65 to
11 70 percent of our free cash flow as defined
12 in our credit agreement, and improving
13 leverage. Due to some refinancing that we
14 did in December, we have no short -- no
15 current maturities, actually maturities -- no
16 debt maturities until 2022, and average cost
17 of debt is approximately 5 percent.

18 As we do with all acquisitions, we did a
19 substantial amount of due diligence on
20 FairPoint's operating and financial
21 historical results and management projections
22 of future results. We spent substantial time
23 meeting with FairPoint's senior management to
24 discuss results, IT, network infrastructure,

1 customer service, personnel and labor
2 agreements, as well as regulatory
3 environments in each state in which FairPoint
4 operates. Also as part of our diligence
5 effort, we worked closely with FairPoint's
6 management team to review and stress-test
7 their business plan and long-term model. In
8 addition, we also toured the key markets in
9 the Northern New England properties with and
10 without FairPoint management.

11 We also use Morgan Stanley as our
12 investment banking support due to the strong
13 level of involvement and expertise they have
14 in similar industry transactions.

15 Because the transaction will produce a
16 financially stronger combined company
17 post-closing, Consolidated has the financial
18 capacity of maintaining the New Hampshire
19 ILEC obligations that FairPoint is now
20 meeting.

21 Q. Mr. Childers, do you have anything further to
22 add to your testimony?

23 A. (Childers) Not at this time. However, I do
24 expect to file rebuttal testimony on or about

1 May 18th in accordance with the procedural
2 schedule for this docket.

3 Q. Thank you.

4 A. (Childers) And I apologize for talking too
5 fast.

6 CHAIRMAN HONIGBERG: Ms. Geiger,
7 before we leave Mr. Childers, if you could take
8 a look at Page 12 of the confidential version
9 and note what is marked as confidential and
10 then look at the bottom of Page 9 and the top
11 of Page 10.

12 MS. GEIGER: I'm sorry. Could you
13 please repeat? Page 4 did you say?

14 CHAIRMAN HONIGBERG: No, Page 11 --
15 I'm sorry, Page 12. Things marked as
16 confidential on Page 12 and compare some of
17 those things to what is at the bottom of 9 and
18 the top of 10. You don't have to do this on
19 the fly, but perhaps at the break you could
20 take a look at those pages and see if there's
21 anything that should be done.

22 MS. GEIGER: Sure. I see what you're
23 saying. And I will work with the witness on
24 that. I had assumed that the -- I see there is

1 some overlap there. So thank you for bringing
2 that to my attention.

3 CHAIRMAN HONIGBERG: All right. Now,
4 Mr. Phillips.

5 DIRECT EXAMINATION

6 BY MR. PHILLIPS:

7 Q. Good morning, Mr. Reed.

8 A. (Reed) Good morning.

9 Q. Could you please state your name for the
10 record and spell it, please.

11 A. (Reed) Michael C. Reed, R-E-E-D.

12 Q. By whom are you employed, and what is your
13 title?

14 A. (Reed) I'm employed by FairPoint
15 Communications, and I'm State President for
16 Maine and Vermont.

17 Q. Are you the same Michael C. Reed who
18 submitted prefiled direct testimony in this
19 docket on behalf of FairPoint on January 13,
20 2017?

21 A. (Reed) Yes.

22 Q. Was that prefiled testimony prepared by you
23 or under your direct supervision?

24 A. (Reed) Yes.

1 Q. Is your professional background set forth in
2 that initial or in that prefiled testimony?

3 A. (Reed) Yes.

4 Q. Do you have any changes or corrections you
5 wish to make to your prefiled testimony?

6 A. (Reed) Just one slight update on Page 1,
7 Line 5. Just about a month ago, on
8 March 27th, I was named as FairPoint's State
9 President of Vermont, along with keeping my
10 title as State President in Maine.

11 Q. And your prefiled direct testimony was
12 premarked as Exhibit 6; is that right, Mr.
13 Reed?

14 A. (Reed) Yes.

15 Q. Could you briefly summarize your direct
16 testimony for the Commission.

17 A. (Reed) Yes. FairPoint supports a favorable
18 Commission decision in this docket. The
19 acquisition of FairPoint stock by
20 Consolidated will give FairPoint a new
21 corporate owner, with improved financial and
22 strategic flexibility and greater operational
23 capacity and scale, while leaving FairPoint's
24 existing systems and services in place,

1 including its accounting and billing system,
2 its existing contracts and agreements, and
3 its existing wholesale agreements. No system
4 cutover is required in this transaction. The
5 transaction will be seamless to FairPoint's
6 wholesale and retail customers in New
7 Hampshire. I also point out in my testimony
8 that FairPoint has satisfied the existing
9 statutory conditions. And my testimony
10 describes Consolidated satisfies all
11 statutory requirements for a favorable
12 Commission decision.

13 Q. Thank you, Mr. Reed. Do you adopt your
14 prefiled direct testimony as amended as your
15 sworn testimony in this proceeding?

16 A. (Reed) Yes.

17 Q. Thank you.

18 MR. PHILLIPS: I have no further
19 questions.

20 CHAIRMAN HONIGBERG: All right.
21 Under the agreement, then, there's going to be
22 no further questioning of these witnesses at
23 this time; is that correct?

24 [No verbal response]

1 CHAIRMAN HONIGBERG: All right. Then
2 they can return to their seats, and I believe
3 Mr. Barber can take their place.

4 [Shultz|Childers|Waggoner Witness Panel
5 is suspended.]

6 (WHEREUPON, RANDY BARBER was duly sworn
7 and cautioned by the Court Reporter.)

8 CHAIRMAN HONIGBERG: Mr. Rubin, you
9 may proceed.

10 MR. RUBIN: Thank you, Mr. Chair.

11 DIRECT EXAMINATION

12 BY MR. RUBIN:

13 Q. Mr. Barber, could you please state your name
14 and business address and occupation for the
15 record.

16 A. My name is Randy Barber. My business address
17 is 6935 Laurel Avenue, L-A-U-R-E-L, Takoma
18 Park, Maryland, 20912.

19 (Discussion off the record.)

20 Q. Mr. Barber, did you prefile direct testimony
21 and exhibits for this case?

22 A. Yes, I did.

23 Q. Do you have those in front of you?

24 A. I do.

1 Q. Let me make sure I get my numbering right
2 here.

3 MR. RUBIN: Mr. Chair, Mr. Barber's
4 testimony and exhibits were submitted in both
5 confidential and public versions. The
6 confidential version of the testimony we're
7 marking as Exhibit 7, the public version as
8 Exhibit 8, and then separate exhibits numbers
9 for his attachments, which obviously I'll
10 identify with the witness. The confidential
11 version of the attachments is Exhibit 9, and
12 the public version of those is Exhibit 10.

13 BY MR. RUBIN:

14 Q. So, Mr. Barber, initially did you submit
15 testimony in question-and-answer form?

16 A. Yes, I did.

17 Q. And was that testimony prepared by you or
18 under your direction and supervision?

19 A. Yes, it was.

20 Q. And if I were to ask you the questions
21 contained in that testimony, would your
22 answers be the same?

23 A. Yes, they would.

24 Q. Do you have any changes or corrections in

1 those answers?

2 A. I do not.

3 Q. And did you also prepare attachments to the
4 testimony labeled "Schedule RB-1 through
5 RB-9"?

6 A. That I did.

7 Q. And were those attachments either prepared by
8 or compiled by you or under your direction
9 and supervision?

10 A. Yes, they were.

11 Q. And for those that you prepared, is that
12 information accurate, to the best of your
13 knowledge and information and belief?

14 A. Yes, it is.

15 Q. And for those that were compiled, are those
16 true copies of documents that you've
17 received?

18 A. Yes, they are.

19 Q. Thank you.

20 MR. RUBIN: With that, we would move
21 Exhibits 7 through 10 into the record and
22 tender the witness for cross-examination.

23 CHAIRMAN HONIGBERG: Before taking up
24 any of that, I just want to make sure that I

1 understand what I have in front of me as it
2 relates to the numbering.

3 I have one packet of the
4 confidential testimony with Pages 1 through
5 74. Is there a point at which that
6 becomes -- when it's no longer Exhibit 7 and
7 it becomes Exhibit 9?

8 MR. RUBIN: Well, that was something
9 I should have addressed yesterday -- or Tuesday
10 during our prehearing session, and I did not.
11 The list was prepared as having two separate
12 documents. The dividing line would be Page 51,
13 which is the beginning of the attachments. If
14 you would prefer to keep the entire document as
15 one exhibit, we can just eliminate a couple of
16 numbers.

17 CHAIRMAN HONIGBERG: I don't know
18 which, honestly, is an easier, more seamless
19 way to do it. You've done it this particular
20 way. All I need to know is where to separate
21 the document and re-attach it, and I think we
22 can work with it from that point.

23 Off the record.

24 (Discussion off the record)

1 CHAIRMAN HONIGBERG: So why don't we
2 go back on the record.

3 All right. Mr. Wiesner, how
4 are we going to work out Exhibits 7 through
5 10 then?

6 MR. WIESNER: The reason for
7 separately listing the attachments, Mr.
8 Chairman, was because a complete set of
9 redacted attachments was filed subsequent to
10 the original filing of Mr. Barber's testimony.
11 But I believe that it would make sense, if all
12 parties agree, that we consolidate for purposes
13 of exhibit numbering the direct testimony and
14 attachments of Mr. Barber in their confidential
15 form as No. 7. So, premarked for I.D. No. 7
16 would be Labor Intervenors Direct Testimony and
17 Attachments of Randy Barber, Confidential
18 Version. And then I.D. No. 8 would be Labor
19 Intervenors Direct Testimony of Randy Barber,
20 Redacted Version. No. 9 will not be used, and
21 10 will be Labor Intervenors complete
22 attachments of Randy Barber in redacted
23 version.

24 CHAIRMAN HONIGBERG: All right.

1 Without objection, that's how we'll deal with
2 that.

3 Mr. Rubin moved the exhibits.
4 I mean, typically we have held the moving of
5 exhibits until the end. I'm happy not to do
6 it. I'm happy to do it as we go, on the off
7 chance that there's problems. I assume, then
8 that, Ms. Geiger and Mr. Phillips, you would
9 want to move the direct testimonies that you
10 introduced, which would be Exhibits 1 through
11 6; is that correct?

12 MS. GEIGER: I don't think I've ever
13 done it this way before, but I think that's
14 fine. I think my preference would be to move
15 them all in at the end, as we typically do.
16 But if that's the Chair's pleasure, I can go
17 along with that.

18 MR. RUBIN: Mr. Chair, I'm happy to
19 withdraw the motion and we can do it all at the
20 end. That's fine.

21 CHAIRMAN HONIGBERG: All right. Then
22 why don't we do it in what is the more typical
23 process here.

24 All right. Mr. Rubin, I think

1 you are done and we're ready to move on to
2 the others questioning. Ms. Geiger, Mr.
3 Phillips, who's going to go first?

4 MS. GEIGER: I believe I'm going
5 first.

6 CROSS-EXAMINATION

7 BY MS. GEIGER:

8 Q. Good morning, Mr. Barber.

9 A. Good morning.

10 Q. You've been asked to review the
11 Consolidated/FairPoint transaction from a
12 financial perspective; is that correct?

13 A. That's correct.

14 Q. And you've been asked to provide analyses and
15 other information that might be useful to the
16 Commission in determining whether
17 Consolidated is technically, managerially and
18 financially capable of maintaining the
19 obligations of an incumbent local exchange
20 carrier as required by New Hampshire law; is
21 that correct?

22 A. That's correct.

23 Q. And what is your understanding of those
24 obligations?

1 A. My understanding of the obligations, in terms
2 of maintaining FairPoint's operations in an
3 adequate manner -- I mean, I could ask you to
4 repeat the exact language, but fundamentally
5 my understanding is that the Commission has
6 to determine whether or not Consolidated is
7 capable and, in fact, stepping into
8 FairPoint's shoes to maintain FairPoint's
9 operations in a safe and reliable manner.

10 Q. Is that every operation in the state, or just
11 some?

12 A. Well, the Commission, as I understand it --
13 and I'm not a lawyer -- but as I understand,
14 the Commission has direct authority over what
15 we would call the "regulated" portion of the
16 FairPoint operations and not over the
17 non-regulated portions thereof.

18 Q. Okay. So it's not your understanding that
19 the operations that are at issue in this
20 transaction in this docket relate to
21 something more particular than just
22 FairPoint's general operations in New
23 Hampshire.

24 A. My understanding is it relates to the

1 FairPoint operations over which the
2 Commission has purview.

3 Q. And again, not to belabor this point, but I
4 think your testimony on Page 4, Lines 9
5 through 13, you refer to FairPoint's
6 "obligations under New Hampshire law," and
7 you reference a statute there, RSA
8 374:30, II; correct?

9 A. Yes.

10 Q. And what is your understanding of that
11 statute?

12 A. My understanding of that statute is -- I
13 mean, if you want me to actually repeat it, I
14 would have to look it up. But I believe your
15 recitation of those obligations was what I
16 recall it would be.

17 Q. I don't recall reciting those obligations.

18 A. Well, you recited several, you know, basic
19 standards that the Commission had to
20 determine whether or not Consolidated was
21 capable of maintaining, and that's what I was
22 referring to.

23 Q. Okay. And I borrowed that from your
24 testimony.

1 A. Okay.

2 Q. So is it your testimony, with respect to
3 Consolidated's financial capabilities, that
4 the Company is not financially capable to
5 assume the statutory responsibilities that
6 FairPoint has under New Hampshire law?

7 A. My testimony is that, from my analysis, there
8 are substantial risks for which I do not
9 believe either of the parties have provided
10 sufficient information to make that judgment.

11 Q. And are you aware that Staff's financial
12 consultant in this docket, Mr. Vickroy, of
13 the Liberty Consulting Group, has concluded
14 that Consolidated has the financial
15 capability to meet the standards required by
16 New Hampshire statute?

17 A. I've read Mr. Vickroy's testimony.

18 Q. And is it fair to say --

19 A. Let me say I've read Mr. Vickroy's redacted
20 testimony, which apparently is in the process
21 of being changed, which I have not read.

22 Q. But is it fair to say that you disagree with
23 Staff's consultant on Consolidated's
24 financial capability in this docket?

1 MR. RUBIN: I object to the question,
2 Mr. Chair. Staff's testimony was filed well
3 after Mr. Barber's testimony was filed. As Mr.
4 Barber indicated, he has not yet received a
5 version of Mr. Vickroy's testimony that
6 actually contains most of the numbers in that
7 testimony and the analysis the witness did.
8 There were several issues with the way --

9 CHAIRMAN HONIGBERG: Okay, okay. I
10 understand the objection.

11 Ms. Geiger.

12 MS. GEIGER: I asked the witness
13 whether he agreed with Mr. Vickroy's
14 conclusion. I'm not asking about any specific
15 numbers. I'm asking about the statement in Mr.
16 Vickroy's --

17 CHAIRMAN HONIGBERG: Overruled. He
18 can answer.

19 A. Without having access to his reasoning, which
20 includes a significant amount of financial
21 data which has been redacted, I cannot tell
22 you whether I agree or disagree with his
23 position.

24 BY MS. GEIGER:

1 Q. Okay. So, turning to your conclusions now in
2 statements concerning Consolidated's
3 financial capabilities, I believe on Page 45,
4 Lines 9 through 10 of your prefiled
5 testimony, you say that, "The ability to
6 raise capital on reasonable terms is a key
7 indicator of a utility holding company's
8 financial capability"; is that correct?

9 A. Yes.

10 Q. And isn't it true that Consolidated has
11 already obtained financing for this
12 transaction?

13 A. Yes.

14 Q. And isn't it also true that Consolidated's
15 financing is at a more favorable rate than
16 FairPoint's current debt obligations?

17 A. Yes.

18 Q. Isn't it also true that Consolidated's credit
19 rating from Moody's and Standard & Poor's are
20 higher than FairPoint's?

21 A. Yes.

22 Q. Now shifting gears a little bit. On Page 11,
23 Lines 7 through 8 of your prefiled testimony,
24 you said --

1 A. I'm sorry. Which page?

2 Q. Page 11, Lines 7 through 8.

3 A. Yes.

4 Q. You say that FairPoint could probably
5 refinance its own debt at a much lower rate
6 than its current 7.9 percent and without
7 needing to increase the debt by \$18 million.
8 Is that your testimony?

9 A. It is.

10 Q. But you don't know for sure that FairPoint
11 could refinance its own debt at a much lower
12 rate, or even at all, do you?

13 A. As I stated in my testimony, this was a
14 hypothetical exercise designed to determine
15 the order of magnitude of a potential
16 stand-alone refinancing versus the
17 refinancing which occurred in this
18 transaction. I noted multiple times that
19 there was no way to be sure about any of
20 those numbers without testing the market.
21 But I also noted that looking at the
22 published spreads between the rating agency
23 determinations of FairPoint versus
24 Consolidated led me to believe that FairPoint

1 would achieve a rate that would be higher
2 than Consolidated achieved, but would be
3 significantly lower than the current average
4 rate that FairPoint pays on the debt that it
5 refinanced I believe in 2012 or 2013.

6 Q. But I believe you just said this was a
7 hypothetical conjecture on your part;
8 correct?

9 A. That's correct.

10 Q. Would you agree that FairPoint's bankruptcy
11 would likely affect FairPoint's ability to
12 refinance at lower rates than those it
13 currently pays on its debt service?

14 A. I would agree that certainly within the first
15 few years of the bankruptcy that it would
16 have an effect. It's less clear to me now
17 whether or not that bankruptcy would have an
18 effect on creditors' willingness to lend or
19 cooperate, particularly since we're, what,
20 seven, eight years out from the bankruptcy at
21 this point.

22 Q. Now, have you reviewed Mr. Vickroy's position
23 that FairPoint has difficulties with debt
24 financing markets due to its bankruptcy and

1 financial performance following emergence
2 from bankruptcy?

3 A. I read that that was his statement, yes.

4 Q. And isn't it also true that Mr. Vickroy said
5 that FairPoint faces real refinancing risk at
6 this point and would probably be saddled with
7 financing terms and interest rates similar to
8 its lower high-yield debt financing currently
9 in place?

10 A. I read that.

11 Q. And isn't it true that this transaction with
12 Consolidated would assist FairPoint with
13 refinancing its debt at lower interest rates?

14 A. As I indicated, it's definitely a lower rate
15 than even I believe FairPoint could have
16 refinanced on a stand-alone basis.

17 Q. Okay. On Page 46 of your prefiled
18 testimony --

19 A. Okay.

20 Q. Are you there?

21 A. Yes.

22 Q. At Lines 5 through 6, you state, "It appears
23 that the New Hampshire company, on its own,
24 would lack the ability to make capital

1 investments without the approval of
2 Consolidated at the parent company level."
3 Is that your testimony?

4 A. Yes.

5 Q. And this is a concern that you expressed with
6 respect to the merged company at the New
7 Hampshire level; correct?

8 A. That's correct.

9 Q. But isn't it true that today, FairPoint New
10 Hampshire would require the approval of its
11 parent company for material capital
12 investments?

13 A. Yes.

14 Q. Now turning to Page 46 of your testimony, at
15 Lines 8 through 11, you suggest that this
16 Commission place strictures on the amount of
17 investment funds that are diverted from
18 FairPoint New Hampshire to Consolidated, to
19 ensure that the New Hampshire operations have
20 the financial capability necessary to
21 maintain and upgrade the state's predominant
22 telecommunications network. Is that your
23 testimony?

24 A. Yes, it is.

1 Q. Do you know whether this Commission has the
2 authority to direct FairPoint's investment
3 funds in the manner that you're suggesting?

4 A. I am not a lawyer.

5 Q. So you don't know whether the suggestion
6 you're making can in fact be adopted by this
7 Commission.

8 A. I don't know whether or not it can be ordered
9 or part of some kind of stipulated agreement.
10 I don't make that distinction.

11 Q. And isn't it true that Mr. Vickroy has not
12 made this suggestion in his testimony?

13 A. He has not, as far as I can tell.

14 Q. Okay. So, turning to the issue of synergies,
15 on Page 14 of your testimony, at Lines 4 to 5
16 you state, "There is a real possibility that
17 the Petitioners cannot achieve both the level
18 of synergies they project and at the same
19 time maintain or improve FairPoint's
20 operation"; is that correct?

21 A. Yes.

22 Q. But you haven't analyzed FairPoint's own
23 ability to maintain or improve its operations
24 without this proposed transaction, have you?

1 A. That would require an answer that is
2 confidential.

3 Q. Well, perhaps I can refresh your memory.
4 With respect to a data request that
5 Consolidated posed to you -- and this would
6 be 1-10 Labor, Barber -- we asked you to
7 state whether you've analyzed FairPoint's
8 ability on a stand-alone basis to maintain or
9 improve FairPoint's operations without the
10 proposed transaction with Consolidated. And
11 in response you said, "Mr. Barber has not
12 conducted such an analysis."

13 A. Well, I get -- no, I have it right here.
14 Thank you.

15 I guess I heard your question a little
16 differently. There is an answer that I would
17 provide, as I say, confidentially. It is not
18 my direct analysis, which is what this answer
19 is. But I'm --

20 Q. Okay.

21 A. I'm privy to information that may be perhaps
22 enlightening on this count.

23 Q. So when you answered the data request, you
24 said that you have not conducted such an

1 analysis. But has your analysis been
2 conducted subsequent to that time?

3 A. No.

4 Q. So I guess I'm confused as to why the answer
5 to Data Request 1-10 from Consolidated was
6 that you had not conducted the analysis.

7 A. Well, as I said in the answer to the DR, it
8 was specifically whether "I" had conducted
9 "an analysis," and whereas at least what I
10 heard you ask was, in effect, was I aware of
11 information that would lead me to believe
12 that FairPoint could improve on a stand-alone
13 basis. To me, those are two different
14 issues.

15 Q. Well, I believe my question -- and I don't
16 think we need to stop and have it read
17 back -- but I believe my question was about
18 your specific analysis.

19 A. Well, then, my specific analysis, I have not
20 done a specific analysis.

21 Q. All right. Thank you.

22 So, with regard to Consolidated's
23 ability to achieve the anticipated synergies
24 from this transaction, have you revived the

1 synergy levels that Consolidated actually did
2 achieve from its prior acquisitions of North
3 Pittsburgh, SureWest, an Eventus.

4 A. Yes, I have.

5 Q. Now, they actually did achieve synergies with
6 those transactions; correct?

7 A. That's my understanding.

8 Q. Okay. Are you aware that Mr. Vickroy, in his
9 testimony, performed some stress tests
10 related to synergies in Consolidated's
11 finance model? Is that correct?

12 A. Yes.

13 Q. And isn't it true that Mr. Vickroy concluded
14 that realized synergies could be
15 significantly negative before causing
16 financial distress for Consolidated?

17 A. This is where I'm at a disadvantage with the
18 redactions. I would agree that it appears
19 that's what he's saying. But there are
20 significant redactions in there I would want
21 to be able to read to understand the
22 underlying rationale in that argument.

23 Q. Okay. So --

24 A. And actually, not just the rationale. There

1 appear to be some important punchlines which
2 are redacted.

3 Q. Fair enough. So did you estimate the
4 probability of each of the stress tests that
5 Mr. Vickroy performed ever actually
6 occurring?

7 A. I did not.

8 Q. Okay. And didn't Mr. Vickroy do exactly that
9 and find that it would be extreme and
10 unlikely for each of those scenarios in the
11 stress tests to occur simultaneously?

12 MR. RUBIN: Mr. Chair, I need to
13 object again at this point. She's asking this
14 witness about testimony from Mr. Vickroy. This
15 portion of that testimony was mostly marked
16 "Highly Confidential." It was an improper --

17 CHAIRMAN HONIGBERG: I want to
18 hear -- can I hear the question again, Ms.
19 Geiger?

20 MS. GEIGER: Sure. The question --
21 perhaps I don't -- I don't want to misstate
22 anything, so I would ask Ms. Robidas to read it
23 back.

24 (Record read as requested.)

1 CHAIRMAN HONIGBERG: Do you
2 understand the question, Mr. Barber?

3 WITNESS BARBER: I do.

4 CHAIRMAN HONIGBERG: Are you able to
5 answer it?

6 WITNESS BARBER: I am. I'll answer
7 it exactly as I did. I believe that he used a
8 phrase similar to that. Maybe exactly that
9 phrase. But there were significant redactions,
10 and I do not know how he qualified it or how he
11 quantified it.

12 CHAIRMAN HONIGBERG: Okay.

13 MS. GEIGER: So there's an objection.
14 I guess what --

15 CHAIRMAN HONIGBERG: I think you got
16 your answer. He doesn't know.

17 MS. GEIGER: Doesn't know. Okay.

18 BY MS. GEIGER:

19 Q. Now, on Page 42 of your prefiled testimony,
20 you indicate that Consolidated would be --
21 will be unable to achieve \$55 million in
22 synergy savings without significant
23 integration activities and that the
24 Commission should require Petitioners to

1 provide detailed integration plans; is that
2 correct?

3 A. That's what I believe.

4 Q. And isn't it true that since 2004,
5 Consolidated has been able to successfully
6 integrate acquired operations into its own
7 company?

8 A. Every integration's -- the answer is yes.
9 Every integration is different and on
10 different scales. And this particular case
11 has specific issues that we raise separately
12 that lead me to believe this.

13 Q. Are you aware of any of Consolidated's
14 acquisitions where this successful
15 integration did not occur?

16 A. I'm not aware of anything like that.

17 Q. Okay. Thank you.

18 Turning to the issue of managerial
19 capability now. I believe you indicated that
20 your testimony was primarily geared toward a
21 financial assessment; is that correct?

22 A. That is correct.

23 Q. Yet you did give some opinions about
24 managerial capability. Is that also correct?

1 A. Yes.

2 Q. Now, your testimony does not indicate that
3 Consolidated lacks technical capabilities; is
4 that correct?

5 A. It does not.

6 Q. So on Page 15, Lines 14 to 15 --

7 CHAIRMAN HONIGBERG: I'm sorry, Ms.
8 Geiger. Which page?

9 MS. GEIGER: It's Page 15, Lines 14
10 to 15.

11 CHAIRMAN HONIGBERG: Thank you.

12 BY MS. GEIGER:

13 Q. You say there that Consolidated is unprepared
14 to acquire FairPoint and manage its
15 operations. And then on the same page, at
16 Lines 10 through 12, you say that the
17 Petitioners simply have not provided
18 information, plans or commitments
19 demonstrating their financial and managerial
20 capabilities to absorb and manage an
21 operation of the size and diversity of
22 FairPoint; is that correct?

23 A. Yes, it is.

24 Q. Okay. But isn't it true that Consolidated

1 does have experience in acquiring and
2 managing companies larger than itself?

3 A. At different points in time it's acquired
4 entities that are larger, but the order of
5 magnitude of this acquisition is
6 significantly different.

7 Q. Well, isn't it true that with the acquisition
8 of TXU in 2004, Consolidated tripled its
9 size?

10 A. It is.

11 Q. Isn't it also true that since 2004,
12 Consolidated has acquired other telecom
13 companies in various parts of the United
14 States and is currently managing their
15 operations?

16 A. That's correct.

17 Q. Okay. Now, on Page 16 of your prefiled
18 testimony, at Lines 1 through 2, you say that
19 Consolidated witnesses evinced a startling
20 lack of knowledge about FairPoint's varied
21 operations, not to mention a lack of concrete
22 plans, actions, or even intentions with
23 respect to the company they propose to
24 acquire? Is that your testimony?

1 A. Yes, it is.

2 Q. But isn't it true that Mr. Waggoner's
3 prefiled testimony contains a section
4 describing Consolidated's review of
5 FairPoint's network and a section discussing
6 Consolidated's integration plan?

7 A. Yes.

8 Q. And isn't it also true that Consolidated's
9 answers to several data requests from Staff
10 provided information about Consolidated's due
11 diligence?

12 A. They provided information.

13 Q. Okay. Now I'd like to show you what we've
14 marked, or premarked for identification as
15 Exhibits 17 through 22. And I believe you
16 have copies of these, but I'll give you the
17 ones with the stickers on them, and I'll give
18 them to the Bench as well.

19 (Pause in proceedings)

20 BY MS. GEIGER:

21 Q. Now, would you agree that Consolidated's
22 responses to those data requests indicate
23 that they did in fact perform substantial due
24 diligence with respect to FairPoint's New

1 Hampshire operations?

2 A. No. I believe that what it indicates is that
3 they performed an examination. That, to me,
4 that is not a due diligence and -- anyway,
5 I'll leave it at that.

6 Q. Okay. So would you not agree that -- I guess
7 it's your testimony that these responses
8 demonstrate some sort of, did you say an
9 examination?

10 A. Overview.

11 Q. But that, in your mind, that's not the same
12 thing as doing due diligence.

13 A. Well, we're talking about 17 now; right?

14 Q. I think we're talking about all of --

15 A. You want me to read them all?

16 Q. -- all of them together. Well, I believe in
17 response to a data request I asked you, you
18 said you have read them all.

19 A. I read them all, but I didn't memorize them.

20 Q. Okay.

21 A. If you want me to go through, I can quickly
22 scan them.

23 Q. Sure. Why don't we do that.

24 A. All right.

1 (Witness reviews document.)

2 CHAIRMAN HONIGBERG: Let's go off the
3 record while Mr. Barber's reviewing the
4 request.

5 (Discussion off the record)

6 CHAIRMAN HONIGBERG: Ms. Geiger, you
7 may proceed.

8 BY MS. GEIGER:

9 Q. The question I have, Mr. Barber, is wouldn't
10 you agree that those responses describe at
11 least some of Consolidated's due diligence
12 with respect to FairPoint's New Hampshire
13 assets?

14 A. Certainly describes specific activities.

15 Q. Okay. Yet, you've stated at Page 47, Lines
16 14 through 15 of your testimony, that
17 Consolidated appears to be singularly
18 uninformed about the actual operations of
19 FairPoint in New Hampshire. Is that your
20 testimony?

21 A. Yes, it is.

22 Q. And on Page 33, Lines 6 through 7, you speak
23 of Consolidated's failure to meet with union
24 officials.

1 A. Yes.

2 Q. And you heard Mr. Waggoner's updates to his
3 testimony this morning; is that correct?

4 A. Hmm-hmm. Yes.

5 Q. So does that give you any reason to change
6 that portion of your testimony regarding the
7 failure to meet with union officials?

8 A. Uh-huh. No.

9 Q. No? So is it your position that Consolidated
10 has still failed to meet with union
11 officials?

12 A. On any substantive basis. That's correct.

13 Q. On any substantive basis. Okay.

14 Turning now to Page 8 of your prefiled
15 testimony. On Lines 14 through 15, you say
16 that you will analyze key financial risks
17 associated with this transaction; correct?

18 A. Yes.

19 Q. But your testimony did not identify as a key
20 financial risk the fact that Consolidated
21 will pledge its assets as security for the
22 financing associated with this transaction,
23 did it?

24 A. No.

1 Q. On Page 10, Lines 20 through 21, you state
2 that the Petitioners have identified very few
3 verifiable benefits for FairPoint's
4 customers, communities or employees in New
5 Hampshire. Is that your testimony?

6 A. Yes, it is.

7 Q. But verifiable benefits are not among the
8 findings that the Commission must make in
9 this docket, is it?

10 A. Again, I'm not a lawyer. I was observing
11 what they actually provided.

12 Q. And on Page 48 to the top of 49 of your
13 testimony, you say that the Commission should
14 not approve the proposed transaction until
15 Consolidated makes certain commitments, and
16 you also propose that the Commission impose
17 certain requirements on Consolidated; is that
18 correct?

19 A. Yes, it is.

20 Q. What is the Commission's legal authority to
21 do as you suggest?

22 A. Again, I am --

23 MR. RUBIN: Excuse me. I object if
24 she's asking the witness for a legal

1 conclusion.

2 CHAIRMAN HONIGBERG: Ms. Geiger.

3 MS. GEIGER: I'll withdraw the
4 question.

5 BY MS. GEIGER:

6 Q. Do you know whether this Commission regulates
7 telecommunications companies in the same
8 manner that it did prior to 2012?

9 A. No, it's changed.

10 Q. It has changed. Would you characterize that
11 change as "significant"?

12 A. Certainly important.

13 Q. Thank you.

14 MS. GEIGER: I have no further
15 questions.

16 CHAIRMAN HONIGBERG: All right. Why
17 don't we give everybody ten minutes or so, and
18 we'll be back here at twenty minutes to twelve.

19 (Brief recess taken.)

20 CROSS-EXAMINATION

21 BY MR. PHILLIPS:

22 A. Good morning.

23 Q. I just have a few questions for you this
24 morning. I do have a small amount of inquiry

1 into confidential information, but I will
2 leave that to the end so we only have to
3 change transcripts once. I do want to note
4 that my questions in the confidential record
5 delve into the same area that Ms. Geiger was
6 talking about, which is Mr. Vickroy's
7 testimony about the stress tests. And I just
8 wanted to note that the entire section that
9 Mr. Vickroy uses to describe those stress
10 tests, which is Pages 31 to 34 of his
11 prefiled testimony, there is a significant
12 amount of confidential material. There is
13 no -- nothing that's designated as highly
14 confidential in that section.

15 Mr. Barber, I understand that you are
16 allowed access to the confidential
17 information, but not to the highly
18 confidential information; is that right?

19 MR. RUBIN: Excuse me.

20 CHAIRMAN HONIGBERG: Mr. Rubin, yes.

21 MR. RUBIN: Because of the way Staff
22 had filed Mr. Vickroy's testimony initially,
23 there were not separate confidential and highly
24 confidential versions. So the only document

1 Mr. Barber has seen is the public version of
2 that testimony, so he has not -- even though he
3 has access to confidential information, there
4 was not a confidential-only version of Mr.
5 Vickroy's testimony that could be made
6 available to him. So he has not seen that part
7 of the testimony.

8 CHAIRMAN HONIGBERG: Okay.

9 MR. PHILLIPS: Understood. I will
10 see if I can avoid references to the
11 confidential information that Mr. Barber has
12 not seen.

13 CHAIRMAN HONIGBERG: Okay. This is
14 all hypothetical for me at this point. We'll
15 see how it goes.

16 MR. PHILLIPS: Understood.

17 BY MR. PHILLIPS:

18 Q. All right. Mr. Barber, would you please turn
19 to Page 47 of your testimony. I'm looking at
20 the section called Conclusions and
21 Recommendations.

22 A. I'm there.

23 Q. And in Lines 11 through 13, the question is,
24 "What are your recommendations?" And your

1 answer there is, "The Commission has not been
2 provided with sufficient information to
3 permit it to make an informed decision." Is
4 that your testimony?

5 A. Yes, it is.

6 Q. But as you testified earlier this morning,
7 you've not actually reviewed all the
8 information that the Petitioners provided to
9 the Staff; is that right?

10 A. I didn't testify to that. Only to the extent
11 that it was designated highly confidential
12 and I was not permitted to review it. I've
13 read every DR that either FairPoint or
14 Consolidated responded to, both to Labor and
15 to the Staff in this case.

16 Q. Except for those portions marked --

17 A. Highly confidential.

18 Q. And the reason for that is that you have an
19 ongoing role in collective bargaining on
20 behalf of your clients with FairPoint?

21 A. That's my understanding that's the rationale.

22 Q. Now, just staying with the public portions of
23 the record, would you please turn to Page 11
24 of your testimony. I'm looking at Lines 10

1 and 11. Are you there?

2 A. Yes.

3 Q. So you say there, "Other than agreeing to
4 follow the law, they" -- the Petitioners --
5 "have failed to provide any tangible
6 commitments."

7 A. Yes.

8 Q. Have I quoted that accurately?

9 A. You did.

10 Q. Okay. Now, the way that I read that second
11 sentence is that the Petitioners have only
12 agreed to follow the law. They have not
13 agreed to go beyond what the law requires and
14 provide any tangible commitments. Is that a
15 fair reading of that sentence?

16 A. I wouldn't quite read it that way. What I
17 said or what I wrote and what I meant was
18 that the tangible commitments that I'm aware
19 of were effectively ones that are already
20 requirements.

21 Q. So when you say "other than agreeing to
22 follow the law," what do you mean by that?

23 A. What I mean is that, at least to my
24 knowledge, Consolidated has not made any

1 specific commitments with respect to whether
2 it is improved service or even with respect
3 to level of capital investments in New
4 Hampshire, with respect to employment levels
5 in New Hampshire. Those are all tangible or
6 concrete commitments that I don't believe
7 they've made.

8 Q. But in your view, under the statement you
9 made here, are those inside the law or
10 outside the law, the tangible commitments?

11 A. Well, one would hope they're not outside the
12 law.

13 Q. Well, I would hope so, too.

14 And later on Page 48 of your
15 testimony --

16 A. Forty which? What was the page?

17 Q. Page 48 of your testimony?

18 A. Okay.

19 CHAIRMAN HONIGBERG: Off the record.

20 (Discussion off the record)

21 Q. So, Mr. Barber, turning to Page 48 of your
22 testimony, Lines 6 through 11, you again talk
23 there about the Commission not approving the
24 proposed transaction until Consolidated

1 agrees to concrete, enforceable commitments
2 to improve operations and service in New
3 Hampshire and to increase capital investments
4 in New Hampshire similar to those which were
5 required by the Commission in the
6 FairPoint/Verizon transaction. Is that your
7 testimony?

8 A. Yes, it is.

9 Q. And are those the sorts of commitments that
10 you would characterize as requiring doing
11 something other than following the law?

12 A. I'm not particularly comfortable with your
13 "following the law" or "outside the law" or
14 whatever. What I will say is that, in my
15 experience, and it's my understanding, that
16 nothing precludes the parties from agreeing
17 to or committing to commitments that are
18 either enforceable in the first case or
19 specifically tied to capital investments in
20 New Hampshire.

21 Q. Mr. Barber, do you have on the stand there
22 with you premarked Exhibit No. 24? I can --

23 A. I doubt it.

24 Q. I can give you a copy.

1 A. What is it?

2 Q. So, Mr. Barber, this is an exhibit that's
3 been premarked as Exhibit No. 24, and it is
4 Labor's answer to FairPoint's Data Request
5 No. 6.

6 CHAIRMAN HONIGBERG: Mr. Phillips,
7 I'm fairly certain that we don't.

8 MR. PHILLIPS: I did provide copies
9 to the clerk.

10 CHAIRMAN HONIGBERG: All right. It's
11 coming.

12 (Discussion off the record)

13 CHAIRMAN HONIGBERG: Sorry, Mr.
14 Phillips. We do have 24.

15 MR. PHILLIPS: Thank you, Mr.
16 Chairman.

17 BY MR. PHILLIPS:

18 Q. In this data request, Mr. Barber, you were
19 asked to identify the legal and statutory
20 authority or authorities for each and every
21 recommendation made in your testimony and --
22 is that right?

23 A. That is correct.

24 Q. And your answer there is a recitation of the

1 terms and provisions of RSA 374:30, II; is
2 that right?

3 MR. RUBIN: Excuse me. Mr. Chair, I
4 object to that characterization. The question
5 did not ask Mr. Barber for his understanding.
6 They asked for the legal and statutory
7 authority. The response was provided by me, as
8 noted at the bottom. Frankly, I think it was
9 an objectionable question. But as a courtesy
10 we provided FairPoint with some insight into
11 our legal theory and rationale. I have no
12 problem with their questioning Mr. Barber
13 about, you know, the basis for his professional
14 judgment, but this should not be characterized
15 as his legal opinion. It is mine.

16 MR. PHILLIPS: Mr. Chairman, Mr.
17 Barber is the Labor's witness. There was no
18 objection made to the data request.

19 CHAIRMAN HONIGBERG: And I'm not even
20 sure what your question is about it. I think
21 Mr. Rubin was mainly challenging your
22 characterization of it as Mr. Barber's answer.
23 I think Mr. Rubin has clarified that it is his
24 answer. I'm sure there are questions you can

1 ask Mr. Barber about it that will not draw an
2 objection.

3 BY MR. PHILLIPS:

4 Q. Mr. Barber, is it your understanding that the
5 answer to FairPoint Labor 6 is the labor
6 union's understanding of the current state of
7 the law in New Hampshire?

8 A. That is correct.

9 Q. All right. Thank you.

10 Now, one of the areas you talk about in
11 your testimony is customer service. You have
12 two things to say about that, and I want to
13 be sure I understand what it is you're
14 saying. So on Page 3 of your written
15 testimony, if you could turn there, please,
16 on Line 16 -- do you see that?

17 A. Yes.

18 Q. You talk about events that have happened
19 since 2008. And one of those things that has
20 happened, according to you, is that the
21 Company's customer service has deteriorated.
22 That's your testimony?

23 A. Yes, it is.

24 Q. And then turning to Page 43 of your

1 testimony, starting on Line 12 -- are you
2 there?

3 A. Yes.

4 Q. -- you say, "As Labor Witness Soule will
5 explain, there is a risk that serious" --
6 "there is a serious risk that further cuts
7 would result in deteriorating network
8 conditions and poor customer service." Have
9 I quoted your testimony accurately there?

10 A. You have.

11 Q. Now, Mr. Barber, you don't have any personal
12 knowledge about any deteriorations in
13 FairPoint's customer service since 2008, do
14 you?

15 A. If by "personal knowledge" you mean that I
16 actually performed customer service tasks and
17 so forth, the answer would be no.

18 Q. You're not aware --

19 A. However -- sorry. However, I have been
20 engaged in continual conversations with many
21 FairPoint employees, including union
22 representatives over that time frame, up to
23 and including now, about their direct
24 experiences and observation about everything

1 from customer services to the state of the
2 network and so forth. I would consider that
3 a personal observation; it's just not direct
4 experience.

5 Q. You're not aware of any customer complaints
6 about FairPoint's customer service that have
7 been filed in New Hampshire, are you?

8 A. I have not tracked them.

9 Q. You're not aware of any docket proceedings
10 that have been opened in this state to
11 investigate FairPoint's customer service?

12 A. I'm not aware of any.

13 Q. Do you know whether this Commission even
14 regulates FairPoint's customer service?

15 A. I do not.

16 Q. And you're not aware of any cases in any
17 other court or agency in New Hampshire
18 involving complaints about FairPoint's
19 customer service, are you?

20 A. Not aware.

21 Q. Now I'm going to get into some financial
22 questions, and I'll try to stay within the
23 information in the public record.

24 First, you characterize the proposed

1 transaction from a financial perspective as a
2 "one-way street"; is that correct?

3 A. Yes.

4 Q. And you go on to say, and this is on Page 13
5 of your testimony, at Line 13, "As I
6 discussed below, there are essentially no
7 benefits to FairPoint's financial condition."
8 Is that your testimony?

9 A. Yes, it is.

10 Q. Now, Mr. Barber, you have reviewed the
11 prefiled direct testimony of Randall Vickroy;
12 have you not?

13 A. Yes, I have. Well, the --

14 Q. Public.

15 A. -- public version, yes.

16 Q. All right. That's the version that's been
17 premarked as Exhibit 16, I believe.

18 A. I'll take your word.

19 CHAIRMAN HONIGBERG: The list I'm
20 looking at, I think it says 15.

21 MR. PHILLIPS: Fifteen is the
22 confidential version.

23 CHAIRMAN HONIGBERG: I have 14 as the
24 confidential version of Vickroy.

1 MR. PHILLIPS: Is this the revised
2 list here that David distributed?

3 CHAIRMAN HONIGBERG: Let's go off the
4 record and get this sorted out.

5 (Discussion off the record)

6 CHAIRMAN HONIGBERG: Back on the
7 record.

8 BY MR. PHILLIPS:

9 Q. So, excuse my misreference there, Mr. Barber.
10 So this is the redacted version of Mr.
11 Vickroy's testimony which has been premarked
12 as Exhibit 15. Have you got that testimony
13 with you on the stand?

14 A. I do not.

15 MR. PHILLIPS: Is it possible, Scott,
16 we can get him a copy?

17 MR. RUBIN: The only copy, the only
18 hard copy I have with me is the highly
19 confidential version that was originally filed.
20 We can give Mr. Barber his computer. I should
21 ask if he has it on there.

22 WITNESS BARBER: No, I don't have a
23 printout. I have it on the computer.

24 CHAIRMAN HONIGBERG: Let's go off the

1 record.

2 (Discussion off the record)

3 CHAIRMAN HONIGBERG: We are back on
4 the record, Mr. Phillips.

5 MR. PHILLIPS: Thank you.

6 BY MR. PHILLIPS:

7 Q. Now, you're aware, Mr. Barber, are you not,
8 that Mr. Vickroy reached several opposite
9 conclusions to the conclusions that you've
10 reached; is that right?

11 A. Yes.

12 Q. Okay. I'll take you through these. The
13 first one is FairPoint's debt financing. So
14 let's turn first to your testimony on
15 Page 36, and we'll start at Lines 6 through 9
16 there. And you acknowledge there, do you
17 not, that Consolidated is refinancing
18 FairPoint's debt at a much lower interest
19 rate than FairPoint currently pays?

20 A. Yes.

21 Q. And Consolidated has obtained debt
22 financing -- debt refinancing at a 4 percent
23 interest rate compared to the 7.9 percent
24 interest rate that FairPoint currently pays;

1 right?

2 A. Correct.

3 Q. But then you go on to question whether that's
4 a real financial benefit to FairPoint
5 because, as you say, interest rates today are
6 much lower overall than they were when
7 FairPoint first financed its debt; is that
8 right?

9 A. That's correct.

10 Q. And in your testimony -- this is starting at
11 Lines 11 through 14 -- you say, "If FairPoint
12 had sought to refinance its debt on its own,
13 making it fully secured on similar terms to
14 those obtained by Consolidated, with the
15 exception that the interest rate would be
16 somewhat higher, it certainly would have been
17 able to obtain a much lower rate." Is that
18 your testimony?

19 A. Yes.

20 Q. And what you mean by that I think is
21 explained a little bit later on Page 37, the
22 next page, Lines 3 to 5, where you offer your
23 view that FairPoint could have obtained debt
24 financing at an interest rate no more than

1 0.75 percent to 1.5 percent higher than
2 Consolidated obtained.

3 A. Yes.

4 Q. All right. So let's turn to Mr. Vickroy's
5 testimony. We'll start on Page 11 --

6 A. Bear with me.

7 Q. -- at the bottom.

8 A. Which line?

9 Q. Line 21.

10 A. Okay.

11 Q. As of December 31st, 2016, FairPoint had a
12 total outstanding debt -- and this is now
13 turning onto Page 12 -- of about \$916
14 million, the term loan and the senior notes,
15 over \$900 million, maturing in February 2019,
16 and the revolving credit matures in
17 February 2018. Is that an accurate
18 reflection of his testimony?

19 A. Yes.

20 Q. And you don't have any reason to doubt the
21 accuracy of his figures there, do you?

22 A. Of his description of the current FairPoint
23 debt or the pre-refinanced FairPoint debt?

24 Q. Right.

1 A. No.

2 Q. That's consistent with your understanding.

3 A. Yes.

4 Q. Okay. So then, turning to Page 16 of the
5 Vickroy testimony, at Line 14 -- do you see
6 that?

7 A. Yes.

8 Q. He's saying that FairPoint's financials
9 improved in 2015 and 2016, but its debt
10 covenant coverages have not improved. And in
11 fact, FairPoint has experienced slight
12 increases in net leverage and slight
13 decreases in interest coverages. And he
14 describes that as quote -- this is at Line
15 20 -- "painting a less optimistic picture,"
16 unquote. Do you see that?

17 (Witness reviews document.)

18 A. I think you need to read the full sentence.
19 He notes that the covenant calculations are
20 different than the calculations used by
21 Moody's and Standard & Poor's. And actually,
22 I read that in the context of him observing
23 that there were significant differences
24 between some of these metrics. And the

1 difference between the fourth quarter --
2 sorry -- the third quarter 2016 and the
3 fourth quarter 2016, indeed the leverage
4 ratio went up a little bit, interest coverage
5 ratio went down a little bit, and that in
6 itself certainly would paint a negative
7 picture.

8 Q. Thank you.

9 A. A more negative picture.

10 Q. Right, or "a less optimistic picture."

11 A. You could say the same.

12 Q. Okay. So then, on Page 17, starting at
13 Line 1, Mr. Vickroy's testimony is,
14 "FairPoint may be able to refinance its debt
15 on a stand-alone basis, but appears unlikely
16 to improve on its 'deep junk category'
17 interest rates, which currently include very
18 expensive term loan interest rates of
19 7.50 percent and senior notes interest rate
20 of rates of 8.75 percent." Do you see that
21 testimony?

22 A. Yes, I do.

23 Q. All right. Do you have any reason to dispute
24 his calculations there?

1 A. Only that the timing of the notes and loans
2 that he describes was 4-1/2, 5 years ago, and
3 that I believe there is significant reason to
4 project a lower interest rate even at the
5 level of rating that FairPoint has in
6 certain --

7 (Court Reporter inquiry)

8 A. So what I was say is these numbers were
9 derived from 2013, I believe, in terms of the
10 interest rates. Interest rates I believe
11 that would be available to a similarly rated
12 company as FairPoint today would be lower.
13 That's actually one of the main thrusts of my
14 analysis. I'm sorry I couldn't remember
15 exactly the words I said.

16 Q. But Mr. Barber, when Mr. Vickroy talks about
17 FairPoint appearing "unlikely to improve on
18 it's 'deep junk category' interest rates,"
19 he's not talking about 2008. He's talking
20 about today; isn't that right?

21 A. Yes.

22 Q. Okay. Thank you.

23 So, turning to Page 36 -- this is the
24 conclusion to Mr. Vickroy's point here.

1 Lines 12 through 14 --

2 A. Hold on. Line 12 through 13?

3 Q. Twelve to 14. He says, "As noted above,
4 Consolidated Term Loan B financing for the
5 FairPoint acquisition takes 2019 refinancing
6 risk off the table and provides substantially
7 lower financing costs that strengthen legacy
8 FairPoint's post-acquisition financial
9 health."

10 A. That's what he says.

11 Q. That's what he says. And do you have any
12 reason to doubt Mr. Vickroy's facts and
13 conclusions there?

14 A. I think it's a question of analysis. I view
15 post-transaction FairPoint as both a
16 subsidiary of Consolidated and financially
17 intermingled with Consolidated. And I don't
18 think you can look at FairPoint on a
19 stand-alone basis at that point, from the
20 perspective that he made this argument.

21 Q. But wouldn't you agree, and this goes back to
22 your testimony, that Mr. Vickroy's analysis
23 of Consolidated's debt refinancing represents
24 a tangible financial benefit to FairPoint?

1 A. I would agree with that. It's better terms.

2 Q. Okay. Another area where you and Mr. Vickroy
3 reach opposite conclusions concerns the
4 synergies that may result from this
5 transaction. And I do want to be careful
6 here. So as Ms. Geiger discussed with you --
7 well, let me strike that and go back to your
8 testimony.

9 So in your written testimony, let's turn
10 to Page 43. And I'm looking at the testimony
11 that begins on Line 7. Are you there?

12 A. Yes.

13 Q. So you say, "It is important to understand
14 that if the synergies target is not achieved,
15 there could be serious financial problems for
16 Consolidated. Consolidated's ability to
17 improve its financial condition, meet its
18 debt service obligations and continue to pay
19 its dividend to stockholders will depend on
20 achieving synergies." Is that your
21 testimony?

22 A. Yes. Absolutely.

23 Q. But you're aware that in Mr. Vickroy's stress
24 test which Ms. Geiger described to you, he

1 actually reached the conclusion that
2 Consolidated could not only fail to achieve
3 its synergies, but actually have negative
4 synergies, and it would still not -- it would
5 still have, I think he described it as "lots
6 of space" to meet its debt covenants. Do you
7 remember that?

8 A. We were analyzing different things. He was
9 analyzing the ability of Consolidated to meet
10 various covenant restrictions. That is
11 different than failing to achieve the level
12 of savings that they're projecting in their
13 synergies.

14 Q. In the language I quoted to you from your
15 testimony on Page 43, you said that
16 Consolidated's ability to meet its debt
17 service obligations will depend on achieving
18 synergies.

19 A. Meeting debt service obligations is a cash
20 issue. It's not a financial covenant issue.

21 Q. All right. Fair enough.

22 You didn't independently run any stress
23 tests on Consolidated's pro forma financials,
24 did you?

1 A. No, although I did use a combination of
2 stress test results that originated in
3 Vermont and were replicated here. But I did
4 not -- first of all, I did not have access to
5 his testimony when I was writing mine;
6 secondly, I used a combination of events that
7 were part of a stress test that I think
8 probably was the progenitor of the one that
9 was asked for in this state. But did I
10 independently run them? No.

11 Q. No. Okay. And after you reviewed Mr.
12 Vickroy's testimony, you didn't go back and
13 rerun his stress tests to verify their
14 accuracy, did you?

15 MR. RUBIN: Objection. Mr. Barber
16 does not yet have access to Mr. Vickroy's
17 stress test.

18 MR. PHILLIPS: I'll withdraw the
19 question.

20 BY MR. PHILLIPS:

21 Q. Mr. Barber, could you turn to Page 10 of your
22 testimony.

23 A. Okay.

24 Q. Starting on Line 12, there's a Q & A there

1 that says, "Based on your review and
2 analysis, are you able to render an opinion
3 about the reasonableness of the companies'
4 financial assumptions and analyses, and
5 Consolidated's financial capability to own
6 and operate FairPoint's operations in New
7 Hampshire?"

8 And your answer is, "Yes, I address
9 these issues throughout my testimony"; is
10 that right?

11 A. Yes.

12 Q. But in fact, in response to Ms. Geiger's
13 question this morning when she asked you if
14 you have reached a conclusion about
15 Consolidated's financial capability, you
16 didn't say "Yes" or "No." You talked about
17 certain risks and certain commitments and
18 conditions. Have you in fact reached a
19 conclusion about Consolidated's financial
20 capability?

21 A. Based on the information that I have
22 available to date, yes.

23 Q. And what is that conclusion?

24 A. And that is that they in fact have not

1 provided sufficient information to determine
2 that they are capable.

3 Q. And you're aware that Mr. Vickroy's
4 conclusion is exactly the opposite; right?
5 He said -- and this is Page 6 of his
6 testimony, Lines 11 and 12 -- "Consolidated
7 has the financial capability to meet the
8 standards required by New Hampshire
9 statutes."

10 A. Yes, that's what he says.

11 Q. But you do acknowledge that Consolidated has
12 refinanced FairPoint's existing debt; do you
13 not?

14 A. I do.

15 Q. And they've done so at more favorable rates?

16 A. Yes.

17 Q. And they've extended the maturity by a period
18 of three or four years?

19 A. Yes.

20 Q. Okay. And you said on Page 45 of your
21 testimony, Lines 9 and 10, "The ability to
22 raise capital on reasonable terms is a key
23 indicator of a utility holding company's
24 financial capability." Is that your

1 testimony?

2 A. Yes.

3 Q. Thank you.

4 MR. PHILLIPS: I have no further
5 questions.

6 CHAIRMAN HONIGBERG: Mr. Wiesner.

7 MR. WIESNER: Mr. Chairman, every
8 issue that I might have explored with Mr.
9 Barber has been covered by or through the
10 questioning of Attorney Geiger or Attorney
11 Phillips. We have no questions.

12 CHAIRMAN HONIGBERG: Then
13 Commissioner Scott.

14 INTERROGATORIES BY CMSR. SCOTT:

15 Q. Good afternoon, Mr. Barber. How are you?

16 A. I'm fine. How are you?

17 Q. Good. Better every day.

18 I want to explore a couple quick things
19 with you. You were talking with Mr.
20 Phillips, and in some of your back and forth
21 he brought up Moody's and Standard & Poor's
22 ratings.

23 A. Yes.

24 Q. So when I looked at the original filing for

1 the acquisition, I see that both ratings for
2 Consolidated are higher than FairPoint;
3 correct?

4 A. Yes, they are.

5 Q. All right. So help me with that. That
6 sounds like a good thing, right, for
7 financial capability? It sounds like --
8 should I not conclude, based on that, that
9 Consolidated has better financial capability?

10 A. It's better if you look at the details of the
11 ratings. FairPoint and Consolidated are both
12 basically towards the bottom of their various
13 risk profiles, but it's better.

14 Q. Okay. On Page 14, you make reference to
15 service quality. I think you use the word
16 "violations" in Kansas and Texas for
17 Consolidated; is that correct?

18 A. That's correct.

19 Q. What conclusions would you expect the
20 Commission to draw from that, those --

21 A. No, no, I understood the question. You know,
22 Consolidated has acquired and operated
23 companies in the past with which there had
24 been service quality issues or other related

1 types of issues, which are documented in
2 those footnotes. And therefore, the
3 Commission should at least take notice of
4 what I guess I would argue is not, you know,
5 an unspotted history. Therefore, look at
6 their ability to operate FairPoint in a way
7 that perhaps avoids these kinds of issues in
8 New Hampshire.

9 Q. Thank you for that.

10 On Page 48, on your recommendations you
11 talk about basically that -- and I'm
12 paraphrasing because I haven't opened it
13 up -- but that Consolidated should be in a
14 position to improve operations and increase
15 capital investments at FairPoint. And then
16 on Page 43 you seem to call into question
17 the -- you mention the depleted state of
18 employees and, you know, the Company should
19 take into the account the current state of
20 operations.

21 So am I to conclude from that, that your
22 position is that the current operation of
23 FairPoint is unsustainable as far as the
24 service quality requirements being met?

1 A. I don't think there's been enough time lapse
2 since FairPoint reduced employment in
3 December of 2016, which, by the way, was not
4 contained in Consolidated's synergies or
5 other projections which were based on third
6 quarter 2016. And from conversations with,
7 in this state, Steve Soule, but also others
8 in New Hampshire and Vermont, you know, there
9 is a serious concern that this already cut to
10 the bone. But I will say there's -- I don't
11 think there's been enough time lapse to
12 understand the impact of that, much less
13 than -- and I'm not going to use the
14 number -- a significantly greater number of
15 employee reductions that are part of the
16 synergies projections. That's a long way I
17 think of saying yes.

18 Q. So help me with that. So on the synergies
19 projection, reading your testimony, I would
20 presume that part of the synergies would be
21 cut to the operational force, linemen, people
22 actually directly impacting service quality.
23 Is that --

24 A. There is a confidential document, and I

1 couldn't give you the number off my head,
2 which details the union-represented employees
3 being impacted, at least projected within the
4 synergies projections. And those are --
5 there's a list of seven or eight different
6 job categories, and I believe they are all
7 service-impacting, and most of them are
8 customer-facing.

9 Q. And again, your characterization. So those
10 type of potential cuts are not duplicative,
11 assuming there's another layer now --
12 assuming Consolidated takes ownership, these
13 aren't cuts made because there's, you know,
14 back-office duplication. You're suggesting
15 again these are not backed up by some new --

16 A. In the same document that I was referencing,
17 there is a separate category of what is
18 called "management," but it really is more
19 than that. But a lot of it is headquarters
20 in Charlotte, and I believe, without getting
21 into anything confidential, that that would
22 be what you were describing.

23 Q. Correct. I think that's all I have.

24 CHAIRMAN HONIGBERG: Commissioner

1 Bailey.

2 CMSR. BAILEY: Thank you, Mr.

3 Chairman.

4 INTERROGATORIES BY CMSR. BAILEY:

5 Q. Good afternoon, Mr. Barber.

6 A. Good afternoon.

7 Q. Can you look at Page 34 of your testimony,
8 please?

9 A. Hmm-hmm. Yes.

10 Q. You define, I think it's Lines 5 through 7,
11 "customer-facing personnel."

12 A. Yes.

13 Q. And you list broadband technical support,
14 call centers, field operations, I & R. Is
15 that field operations, installation and
16 repair, all in one category?

17 A. Field operations, those are subcategories,
18 last three.

19 Q. Oh, okay. All right. So my question is
20 which of these categories are primarily
21 union?

22 A. All.

23 Q. All of them? Broadband tech support is run
24 by union --

1 A. It's my understanding.

2 Q. I don't know. I just --

3 A. This is definitely my understanding.

4 Q. Okay. And wholesale services?

5 A. Yes.

6 Q. Okay. On Page 35 you talk about the level
7 expected by Consolidated in Table 6. And
8 some of this is confidential, and I don't
9 want you to --

10 A. It's all confidential.

11 Q. Yes.

12 A. The numbers are confidential.

13 Q. The numbers are confidential. And I hope we
14 don't have to answer or put confidential
15 numbers on the record, but my question is:
16 Did you look at FairPoint's capital
17 expenditures as a percent of revenue, say
18 over the last five years, what they've been
19 investing?

20 A. No, I have looked at them in the past for the
21 purposes of this. I relied on this table,
22 which I did not -- this is derived from, it's
23 1-7, either Staff 1-7 or Labor 1-7. It's a
24 confidential document. It's the underlying

1 transaction model. It has FairPoint
2 stand-alone, Consolidated stand-alone,
3 combined, and a whole bunch of other tabs.
4 This has historic data that goes back before
5 2016. I didn't reproduce it because I was
6 only basically wanting to use '16 going
7 forward. My understanding is that
8 FairPoint's capital intensity was a little
9 higher in the earlier years. But again, what
10 I was focused on was what the plans were
11 going forward for FairPoint's capital
12 intensity versus Consolidated's capital
13 intensity.

14 Q. And this table shows what FairPoint would be
15 expected to spend as a result of the merger
16 or even without the merger?

17 A. This is, again, my understanding. They're
18 better able to tell you what this is. But my
19 understanding is that this is what's called
20 the "FairPoint stand-alone model," which was
21 developed by FairPoint management. I do not
22 know whether it was developed prior to
23 engagement in conversations that led to this
24 transaction or whether it was done in

1 conjunction with that. But what I do know,
2 based on what I've read in both -- in public
3 testimony as well, is they have adopted those
4 projections without making any additional
5 adjustments. We don't know what they
6 actually planned. But this is what FairPoint
7 was planning and they've adopted it.

8 Q. Okay. So they were planning this before the
9 merger, and they're going to continue this
10 level. That's what you think?

11 A. They certainly -- no. They certainly created
12 these projections prior to the consummation
13 of the transaction because this data was
14 shared at least as of December 3rd. But I
15 don't know whether it was created independent
16 of this transaction. All I can tell you is
17 that it was created by FairPoint management.

18 Q. Okay. And do you recall from the data
19 request that you got this from how it
20 compares to the investments that were made
21 over the last five years on the same
22 percentage basis?

23 A. I would have to go back and look. As I say,
24 I believe the investments were a little bit

1 higher as capital intensity, but I
2 wouldn't -- I don't believe they were
3 materially higher.

4 Q. Okay. Thank you.

5 MR. RUBIN: Excuse me, Commissioner
6 Bailey. If I may just -- I'm not sure what
7 information you have with you there. I believe
8 attached to Mr. Childers' testimony is an
9 exhibit or Attachment SLC-2. That has some
10 historic capital expenditure and capital
11 intensity information for FairPoint.

12 CMSR. BAILEY: I don't have any
13 attachments to Mr. Childers' testimony.

14 MR. RUBIN: Oh, sorry.

15 MS. GEIGER: If you look at the
16 confidential version --

17 CMSR. BAILEY: I do have the
18 confidential version. I don't have any
19 attachments. I'll get them and look at them
20 before the next hearing. Thank you.

21 MS. GEIGER: I mean, I don't know if
22 this is helpful, but I actually have the data
23 request, and it is labeled "Exhibit SLC-2."
24 And it's been redacted. I did this in response

1 to your request yesterday to make a redacted
2 copy. I don't know if that's helpful or not.

3 MR. RUBIN: All right. I'm just
4 saying there is information kind of in the
5 public record about FairPoint's historic
6 capital spending.

7 MS. GEIGER: And if it would help
8 you, I can give it to you right now.

9 CMSR. BAILEY: No, I'll look at the
10 attachments to Mr. Childers' testimony. And if
11 you want to do something on redirect, you can
12 do that.

13 MR. RUBIN: Okay.

14 CMSR. BAILEY: Thanks.

15 BY CMSR. BAILEY:

16 Q. Okay. So, on Page 48 of your testimony, you
17 recommend that the Commission require
18 Consolidated to increase capital expenditure
19 in New Hampshire. Can you tell me by how
20 much you think they should increase it and
21 what they should use it on specifically?

22 A. No. No. If I could explain --

23 Q. No, I'm interested.

24 A. We have been asking for New

1 Hampshire-specific capital expenditures,
2 operating expenditures and so forth data and
3 have not received it, or don't have it. I
4 cannot tell you what CAPEX in New Hampshire
5 has been or what, in terms of the projections
6 you were just referring me to, would be in
7 New Hampshire in the future. So, without at
8 least looking at that and looking at some
9 detail below that, I couldn't tell you what
10 it should be. That's why I basically made a
11 broad statement that they should be required
12 to increase their capital expenditures in New
13 Hampshire, based on my understanding of some
14 of the issues with the plant itself. But I
15 don't have access to the underlying details,
16 so therefore I couldn't tell you.

17 Q. So the issues with the plant itself, I mean,
18 do you have an understanding of what needs to
19 be done to improve that plant, or just that
20 it's --

21 A. After I wrote -- first of all, I had
22 conversations not just with the union
23 representatives in New Hampshire, but also in
24 Maine and Vermont, about specific issues

1 regarding the plant. And that had everything
2 to do from batteries to truck, maintenance of
3 trucks, through cable splices and, you know,
4 section throws and the like. And again, it's
5 my understanding that the technicians in the
6 field run into significant problems which
7 they're instructed to work around as opposed
8 to repair.

9 Q. Okay. Thank you.

10 And then on Page 49 and 50 you give us
11 some advice about if we don't defer action,
12 that you would recommend that we require
13 Consolidated to return a fair portion of New
14 Hampshire-generated operating cash flows to
15 the state?

16 A. Yes.

17 Q. Do you have any advice on how much is fair?

18 A. I mean, yes, although I -- since this was
19 basically advice to the Commission if it
20 determined to take actions other than what we
21 recommended. It was in some ways putting it
22 back on the Commission to think through what
23 "fair" would be.

24 I would say a fairly simple metric would

1 be, to the extent that cash flows are being
2 generated in New Hampshire, that those cash
3 flows ought to be available in New Hampshire
4 for, again, capital expenditures, you know,
5 operating expenditures and the like. But
6 again, adjustments would almost certainly
7 need to be made. You know, I can think of
8 some specific adjustments, but I don't think
9 we need to get into that.

10 Q. Here's your opportunity give me advice.

11 A. Well, no -- well, this is probably what
12 counsel tells me not to do. I'm sure you're
13 going to hear the argument that, "Well, we've
14 got a dividend to pay." So, some of the
15 money coming from New Hampshire has to go pay
16 for the dividend. That would be something
17 you'd have to judge. But, you know, start
18 out with what's generated in New Hampshire
19 ought to be used for the benefit of New
20 Hampshire and have discussions from there.

21 Q. Okay. You were discussing with Ms. Geiger an
22 analysis of FairPoint's ability to improve
23 operations. And you said there was some,
24 perhaps, confidential -- she asked you if

1 you'd done an analysis, and you said you
2 hadn't personally done an analysis, but you
3 had information.

4 A. I think I can stay away from confidential --

5 Q. Okay.

6 A. -- and simply point, actually, to one of the
7 tabs in the same document that was I
8 referring to earlier that you were asking me
9 to look at which had to do with capital
10 intensity. There's a lot of information in
11 that document. One of the sets data in that
12 document for FairPoint on a stand-alone basis
13 reveals projected improvements in key
14 measures. I'll leave it at that. If you
15 want to go confidential, I can get to the
16 line and show it to you.

17 CMSR. BAILEY: I don't know. Maybe
18 we should have this marked as an exhibit.

19 CHAIRMAN HONIGBERG: If you're
20 interested in hearing about it, then that's
21 what we should do.

22 CMSR. BAILEY: Is it different than
23 what's attached to Mr. Childers' testimony?

24 MS. GEIGER: I think it's the same

1 thing. If you look at the confidential version
2 of Mr. Childers' testimony that I think has
3 been premarked --

4 MR. RUBIN: Susan, we can't hear you.

5 MS. GEIGER: I think if you look at
6 what's been premarked as Exhibit 4, hopefully
7 there should be an attachment that's Mr.
8 Childers's confidential information. I believe
9 that's the document to which Mr. Barber is
10 referring, but I don't know for sure.

11 WITNESS BARBER: I don't have what
12 you're talking about.

13 CMSR. BAILEY: Is he allowed to see
14 that?

15 MS. GEIGER: Yes. That is just
16 confidential. It's not highly confidential.
17 So he is able to see that.

18 CMSR. BAILEY: Mr. Rubin, can you
19 give him a copy of that, do you know?

20 MR. RUBIN: I can show it to him
21 on -- well, actually, can we go off the record
22 a minute?

23 CHAIRMAN HONIGBERG: Yeah, sure.

24 (Discussion off the record.)

1 CHAIRMAN HONIGBERG: Where we are is
2 that the unredacted version of attachment to
3 Mr. Childers's testimony has been given to the
4 witness, and Commissioner Bailey has one, and
5 now everybody has one. My understanding is
6 that Commissioner Bailey has some questions
7 that may or may not call for reference to what
8 is confidential. So we will be prepared to
9 mark this confidential if necessary.

10 Commissioner Bailey.

11 CMSR. BAILEY: Thank you.

12 BY CMSR. BAILEY:

13 Q. So, Mr. Barber, is this the confidential
14 exhibit that you were discussing with Ms.
15 Geiger?

16 A. This appears to be derived from the data that
17 I was referring to, at least some of it, not
18 all of it. But there's some data in here
19 that I believe is the same that I was
20 referring to.

21 Q. Okay. And do you want to tell me what you
22 were thinking about that?

23 A. Sure. What I was thinking about
24 specifically -- and are we -- we are

1 confidential now; right?

2 Q. If you're going to say something that's
3 confidential --

4 A. Okay. Well, I --

5 CHAIRMAN HONIGBERG: Feel free.

6 A. In other words, growing and shrinking --

7 CHAIRMAN HONIGBERG: You're asking
8 the wrong person. It's not my decision about
9 what they think is confidential.

10 MS. GEIGER: I'd ask that we go on
11 the confidential record because it seems to me
12 there could be a combination of statements that
13 go back and forth between confidential and
14 public, and I think we should err on the side
15 of caution and --

16 CHAIRMAN HONIGBERG: Yeah, why don't
17 you assume that everything you're about to say
18 is confidential. And it will be for at least a
19 while until everybody has a chance to think
20 about it. That way, you are not -- you should
21 not feel restricted in how you respond to the
22 questions.

23 WITNESS BARBER: Good.

24

(Pages 119 through 128 of the
transcript are contained under separate
cover designated as "Confidential and
Proprietary.")

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1 (Hearing now resumes in the public
2 portion of the record.)

3 MR. RUBIN: Thank you, Mr. Chairman.

4 REDIRECT EXAMINATION

5 BY MR. RUBIN:

6 Q. Mr. Barber, under questioning from Ms.
7 Geiger, at least according to my notes, you
8 indicated that Consolidated still has failed
9 to meet with union officials on any
10 substantive basis. Can you tell us what you
11 mean by "substantive basis"?
12 A. "Substantive" would be more than, Hello, how
13 are you? We're going to be one, big, happy
14 family, or something along those lines. My
15 understanding -- again, I was not in these
16 meetings, but I've had them reported to me --
17 is the substance of the meetings were what
18 was characterized most recently as "meet and
19 greet." There are many, many, many things
20 that are on the minds of, you know, not just
21 the union leadership, but all FairPoint
22 employees about what Consolidated has planned
23 for them, assuming this transaction is
24 closed. And to my knowledge, there have been

1 a number of "invitations to engage" is the
2 best way I would put it. And to this point,
3 that has not occurred.

4 Q. Okay. And have you been involved in a
5 similar role in other telecommunications
6 mergers and acquisitions?

7 A. Yes.

8 Q. How does Consolidated's treatment of the
9 unions in this transaction compare to what
10 you have observed in other telecommunications
11 mergers and acquisitions?

12 A. They're by far the most stand-off-ish I've
13 observed. And I've observed the interactions
14 with, well, FairPoint, when Verizon was the
15 seller; with Frontier Communications when
16 Verizon was the seller to actually 14 states,
17 and that was in 2009; Verizon's purchase of,
18 or sale of additional assets in California,
19 Texas and Florida to Frontier, 2014; of
20 CenturyTel's acquisition of Embarq;
21 CenturyLink's acquisition of Qwest; and
22 Frontier's acquisition of AT&T's Southern New
23 England Telephone in Connecticut. And in
24 each of those cases, there were significant

1 conversations between the Labor
2 representatives and the acquirers well before
3 any approval was reached or any transaction
4 was closed, and again including at FairPoint,
5 where it's my recollection we started
6 discussions with FairPoint about five or six
7 months before closing. They were not
8 negotiations. You can't negotiate with a
9 non-employer. But they did lead to what
10 became, the day after the closing, a new
11 collective bargaining agreement. There was
12 significant engagement. Verizon was well
13 aware and encouraged those -- at least I
14 can't put myself in their mind. They
15 permitted those engagements. Same most
16 recently with Frontier and SNET in
17 Connecticut. There were significant
18 conversations between, in this case it was
19 CWA and Frontier well before there was any
20 final termination made by the regulators in
21 that state, much less closing.

22 Q. Mr. Barber, Mr. Phillips asked you some
23 questions. One of them -- or excuse me. For
24 one of them he referred you to Page 3 in your

1 testimony. If you could let me know when you
2 have that.

3 A. I'm there.

4 Q. And on Lines 13 through 16 you have a
5 statement about what changed at FairPoint
6 since 2008. And he specifically asked you
7 about deterioration and customer service
8 since 2008. On what did you base that
9 statement?

10 A. Extensive conversation with both union
11 leaders representing FairPoint employees and
12 specific conversations with FairPoint
13 employees who, from my recollection, were at
14 everything from retail up to wholesale call
15 centers, to people who were working out in
16 the field in a number of different ways, to
17 people working the NOC.

18 Q. And I believe you said in your list of
19 experience with the unions here and
20 FairPoint, that you were involved with the
21 unions in FairPoint's bankruptcy proceeding?

22 A. That is correct.

23 Q. To your understanding, were some of the
24 issues that led to FairPoint's bankruptcy

1 related to deterioration of customer service?

2 A. Yes.

3 Q. Mr. Phillips also asked you about some
4 differences between your conclusions and Mr.
5 Vickroy's conclusions. Do you recall that?

6 A. I do.

7 Q. Do I recall correctly that when Mr. Phillips
8 questioned you about that, he said that Mr.
9 Vickroy was looking at -- basically, his task
10 was: Would Consolidated's financial
11 covenants be violated? Do you recall that
12 correctly?

13 A. That's what I recall, too.

14 Q. Okay. And when you were looking at
15 Consolidated's financial capability, was that
16 the same test you were using?

17 A. It was not.

18 Q. What test did you use?

19 A. Again, I used -- I looked at it through a
20 number of different lenses. But what I used
21 in the case of a stress test was what I guess
22 one could consider to be four elements of
23 variance from plan, negative variance from
24 plan, and then I combined them to approximate

1 what I think I probably too informally
2 described as "the perfect storm" that
3 FairPoint encountered subsequent to acquiring
4 the Northern New England properties. I'm not
5 predicting that that's occurring. I'm not
6 putting a probability on it. But I am
7 observing that in fact there are elements in
8 those four stress test numbers that combine
9 to provide and produce -- can't say this
10 in -- produce unhappy results. And they are
11 consistent broadly with what FairPoint
12 experienced just at the time that they
13 acquired the Northern New England properties
14 and through the next year with interest rate
15 changes and the like.

16 Q. I appreciate your reluctance to characterize
17 it further on the public record. Is what
18 you're talking about the testimony in the
19 table you have on Page 40 of your testimony
20 that's marked "confidential"?

21 A. Yes.

22 Q. Thank you. Just so we have that in some
23 context.

24 In your opinion, is there more to

1 assessing a company's financial capability
2 than just looking at whether it would violate
3 its financial covenants?

4 A. Absolutely.

5 Q. And I assume that's what you did?

6 A. Yeah.

7 Q. Okay. Now, not including any effects from
8 synergies for the moment, just in -- I'm
9 sorry.

10 Mr. Phillips asked you on page --
11 referring to Page 36 in your testimony,
12 whether there was a financial benefit to
13 FairPoint with Consolidated's refinancing of
14 the debt. Now, in terms of cash flow
15 available to FairPoint to make investments or
16 pay employees and that type of thing,
17 excluding synergies, is there any difference
18 in the cash available to FairPoint under
19 Consolidated's ownership compared to
20 FairPoint stand-alone?

21 A. Yes.

22 Q. And what would that difference be?

23 A. Well, among others, there would be the
24 dividend obligations that would be presumably

1 attributable to former FairPoint shareholders
2 who were then being paid a dividend by
3 Consolidated.

4 Q. Okay. Again, in rough numbers, without
5 getting into anything confidential, how does
6 the effect of FairPoint dividend obligation
7 compare to the amount that Consolidated is
8 saving FairPoint by refinancing the debt?

9 A. Roughly comparable.

10 Q. And again, just for some clarity in the
11 record, Commissioner Scott I believe asked
12 you about areas that Consolidated was looking
13 to reduce the FairPoint work force. And
14 again you were understandably reluctant to
15 discuss that on the public record. Are those
16 categories listed on Page 31 of your
17 testimony, again, in a confidential section?

18 A. That they are.

19 Q. Thank you.

20 MR. RUBIN: And that's all I have on
21 redirect, Mr. Chair. Thank you.

22 CHAIRMAN HONIGBERG: Ms. Geiger,
23 you're grabbing the microphone.

24 MS. GEIGER: Yes, I did. I was

1 wondering, Mr. Chairman, if I could ask a brief
2 question on recross. It would be limited to
3 what Mr. Rubin asked on redirect.

4 CHAIRMAN HONIGBERG: And if you were
5 permitted to ask that question, what would it
6 sound like?

7 MS. GEIGER: It would sound like
8 this: The witness testified about certain
9 acquisitions with which he was familiar in the
10 telecommunications industry where the acquiring
11 company engaged in significant conversations
12 with the acquired company's employees.
13 Correct?

14 WITNESS BARBER: Yes.

15 MS. GEIGER: And the question I would
16 have, if I were allowed to ask it, would be:
17 Weren't all of the transactions that you
18 mentioned situations where the acquiring
19 company was buying assets, not a stock
20 transaction such as this one; and in those
21 instances, weren't new collective bargaining
22 agreements going to be necessary?

23 CHAIRMAN HONIGBERG: Mr. Rubin.

24 MR. RUBIN: I have no objection to

1 the question. It's obviously testing the
2 witness's memory a bit. But if he can answer
3 it, that's fine.

4 CHAIRMAN HONIGBERG: He has an
5 excellent memory I think. But we'll see.

6 WITNESS BARBER: The answer is no.
7 Both of these involved CenturyTel or
8 CenturyLink. CenturyLink [sic] bought Embarq,
9 hundred percent of the company. CenturyLink
10 bought -- CenturyTel then became CenturyLink,
11 and they bought Qwest.

12 RECROSS-EXAMINATION

13 BY MS. GEIGER:

14 Q. How about FairPoint, the FairPoint situation?

15 A. Well, that wasn't what you asked. The
16 FairPoint situation was an asset sale, yes.

17 Q. Great. How about Frontier?

18 A. Frontier/Verizon were asset sales.

19 Q. Okay.

20 A. Frontier/Southern New England Tel -- again,
21 even though it was more recent, I'd have to
22 test my memory. I believe they bought the
23 stock of a whole, separate operating company.

24 Q. So at least some of the companies you

1 mentioned were situations in which the
2 acquiring company was, by necessity, because
3 it was buying assets, in a position of
4 needing to negotiate a collective bargaining
5 agreement pretty soon after the acquisition;
6 is that true?

7 A. That is correct. But these conversations
8 occurred before the acquisition closed.

9 Q. I understand that. Thank you.

10 MR. PHILLIPS: Mr. Chairman?

11 CHAIRMAN HONIGBERG: Mr. Phillips.

12 MR. PHILLIPS: If I were allowed to
13 recross the witness --

14 CHAIRMAN HONIGBERG: Okay.

15 MR. PHILLIPS: -- I would have only
16 one question.

17 CHAIRMAN HONIGBERG: And it would
18 sound like what?

19 MR. PHILLIPS: It would reference the
20 interchange Mr. Rubin just had with Mr. Barber
21 about the basis for his statement about the
22 deteriorated customer service of FairPoint, and
23 would refer to the premarked Exhibit 23, which
24 was a discovery request we asked of Labor to

1 identify all facts that supported the statement
2 and any and all documents or analyses that
3 supported the statement. And nowhere in the
4 answer did Mr. Barber include any of the
5 conversations that he supposedly had with
6 FairPoint employees who told him of these
7 problems.

8 CHAIRMAN HONIGBERG: Okay. I've
9 heard an argument so far. And the question
10 associated with that argument is what?

11 MR. PHILLIPS: The question is
12 whether his discovery response is true and
13 accurate and complete.

14 CHAIRMAN HONIGBERG: Mr. Rubin?
15 My sense, Mr. Phillips, is
16 that you asked him questions about that
17 topic, and he made reference to his
18 conversations, I've forgotten with whom, but
19 with representatives. And then Mr. Rubin
20 reiterated in a lot of ways that answer. So
21 I'm a little -- I don't quite know why, if
22 this was significant to you, you didn't ask
23 him about in round one.

24 MR. PHILLIPS: Well, I don't recall

1 him talking about the conversations he had with
2 respect to that particular issue. But
3 Mr. Rubin certainly felt it was important to
4 rehabilitate him on that matter, and now we
5 have an issue of his credibility.

6 CHAIRMAN HONIGBERG: Mr. Rubin.

7 MR. RUBIN: Mr. Chair, if I may,
8 what's been marked as Exhibit 23 is a response
9 to a FairPoint Data Request 1-5 in which Mr.
10 Barber referred to his response to a
11 Consolidated Data Request 1-9 which asked
12 essentially the identical question. And in the
13 response to 1-9, he specifically talks about
14 conversations with Labor Witness Steve Soule,
15 obviously in New Hampshire, as well as
16 testimony filed by Labor witnesses in Vermont
17 and Maine. So it's exactly what he was talking
18 about with me on redirect.

19 CHAIRMAN HONIGBERG: Yeah, it seems
20 to me, Mr. Phillips, you're going to be able to
21 make whatever arguments you want to make based
22 on that answer, the written answer to the data
23 request and work it from there.

24 MR. PHILLIPS: I will do so, Mr.

1 Chairman. My recollection of his answer was
2 that he described his conversations with the
3 witnesses, but he went further than that and
4 said he had additional conversations with
5 FairPoint employees.

6 CHAIRMAN HONIGBERG: I recall the
7 same answer. And so your argument is that when
8 he gave the written answer, it was less
9 complete than what he just gave orally, and
10 you're questioning the sincerity of the oral
11 answer that he gave?

12 MR. PHILLIPS: Yes. Well, I have to
13 figure out which one is true, I suppose.

14 CHAIRMAN HONIGBERG: Yes. So were
15 you lying then or are you lying now, right, the
16 one we would see on TV? I think you have what
17 you need.

18 MR. PHILLIPS: Thank you, Mr.
19 Chairman.

20 CHAIRMAN HONIGBERG: Is there
21 anything else we need to do with Mr. Barber
22 today?

23 MR. RUBIN: I don't believe so, Mr.
24 Chair.

1 CHAIRMAN HONIGBERG: All right.

2 Thank you very much, Mr. Barber.

3 WITNESS BARBER: Thank you.

4 CHAIRMAN HONIGBERG: Anything else we
5 need to do today before we adjourn?

6 MS. GEIGER: The only thing I can
7 think of, Mr. Chairman, is that you did raise
8 with me an issue about the prefiled testimony
9 of Mr. Childers, both in redacted and
10 confidential forms. I think there may be a
11 number or two on the public version that may
12 need to be confidential. And so I will -- in
13 lieu of refiling both pieces of testimony, I
14 will refile just the pages of both the public
15 and confidential versions to redact a number
16 that has been redacted prior.

17 CHAIRMAN HONIGBERG: Why don't you
18 work with Staff and the parties as to how to
19 deal with the issue.

20 MS. GEIGER: Okay. Thank you.

21 CHAIRMAN HONIGBERG: All right. Off
22 the record.

23 (Discussion off the record)

24 CHAIRMAN HONIGBERG: So we're back on

1 the record. So the next time we'll be together
2 with you all is on May 24th. At that point,
3 the expectation is that we'll resume with the
4 first panel. All decisions are final until
5 changed. If something happens in between that
6 we need to do something different on that day,
7 you'll let us know. We also understand that
8 there are deadlines and dates between now and
9 then where work will be continuing. There's
10 rebuttal testimony coming and other things.

11 Understanding that, is there
12 anything else we need to deal with before we
13 adjourn for the day?

14 MR. WIESNER: Is this the point where
15 we address the admission of exhibits --

16 CHAIRMAN HONIGBERG: No, I think --

17 MR. WIESNER: -- or will we defer
18 them until --

19 CHAIRMAN HONIGBERG: I think the idea
20 is we'll defer that until the end-end, not just
21 the end of today.

22 All right. Seeing nothing
23 else, thank you very much. We will adjourn.

24 (Whereupon the hearing was adjourned at 1:31 p.m.)

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