

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Martin P. Honigberg

COMMISSIONERS
Kathryn M. Bailey
Michael S. Giaimo

EXECUTIVE DIRECTOR
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX (603) 271-3878

Website:
www.puc.nh.gov

March 26, 2019

RE: DT 19-041 Consolidated Communications Petition for Approval of Modifications to the Wholesale Performance Plan

To the Parties:

Prior to becoming a Commissioner in July of 2015, I served as Commission Staff in the role of Telecom Engineer from 1989-2000, and as Director of the Telecommunications Division from January 2002 to March 2015. In that capacity, I was involved in several matters in which predecessors of Consolidated Communications initially developed wholesale performance metrics and subsequently modified them. As Director of Telecommunications, and before that, as the technical staff member for telecommunications dockets, I substantially participated in the development of the Wholesale Performance Plan at issue in the instant docket. Related dockets in which I participated as Staff include:

DT 11-061 Northern New England Telephone Operations LLC d/b/a FairPoint Communications NNE, Performance Assurance Plan and Carrier to Carrier Metrics (Development of simplified Performance Assurance Plan resulting in the Wholesale Performance Plan).

DT 10-025 FairPoint Reorganization (Negotiated regulatory settlement including provisions regarding Performance Assurance Plan).

DT 09-113 FairPoint Petition for Waiver of Incentive Payment Requirements of Performance Assurance Plan (Consolidated with DT 11-061).

DT 09-059 FairPoint Petition for Waiver of Certain Requirements Under the Performance Assurance Plan and Carrier to Carrier Guidelines (Consolidated with DT 11-061).

DT 07-011 Transfer of Verizon Assets to FairPoint (Negotiated settlement including requirement to simplify Performance Assurance Plan).

DT 05-096 Verizon New Hampshire Revision to Performance Assurance Plan Guidelines (Added two new measurements to PAP, shifting dollars at risk consistent with changes approved by NYPSC).

DT 01-006 Verizon New Hampshire Performance Metrics (Established initial Carrier-to-Carrier Guidelines and New Hampshire Performance Assurance Plan for Verizon).

As a Commissioner, I have carefully considered whether N.H. Code of Admin. Rules, Puc 202.09, *Withdrawal of Presiding Officer or Commissioner*, requires that I withdraw from this matter.

Puc 202.09 *Withdrawal of a Presiding Officer or Commissioner*, states:

- a) Upon his or her own initiative or upon the motion of any party, a presiding officer or commissioner shall, for good cause, withdraw from any adjudicative proceeding or other matter.
- b) Good cause shall exist if a presiding officer or commissioner:
 - 1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship, within the third degree of relationship, with any party;
 - 2) Has made statements or engaged in behavior which objectively demonstrates that her or she has prejudged the facts of the case;
 - 3) Personally believes that he or she cannot fairly judge the facts of the case;
 - 4) Is obligated to withdraw because his or her impartiality might reasonably be questioned; or
 - 5) Is otherwise required to withdraw pursuant to applicable law.
- c) Mere knowledge of the issues, the parties, or any witness shall not constitute good cause for withdrawal, nor shall the fact that the presiding officer or commissioner is a customer of utility that is a party to the proceeding.

See also Jus 803.02; RSA 541-A:30-a, V (essentially identical to Puc 202.09); RSA 363-12, VII; RSA 363:19; RSA 500-A:12, II; New Hampshire Code of Judicial Conduct, Rule 38 of the Rules of the Supreme Court of New Hampshire, Canon 2, Rule 2.11, *Disqualification* (cited laws describe similar standards).

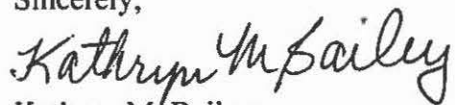
I have no direct interest in the outcome of DT 19-041; I have not made statements or engaged in behavior which objectively demonstrates that I have prejudged the facts of this case; and I personally believe I can fairly judge the facts at issue. I have concluded that I can be, and am, impartial. *See* Puc 202.09.

Nonetheless, pursuant to Puc 202.09(b)(4) and (5) and Canon 2, Rule 2.11, I am disqualified unless disqualification is waived. *See* Canon 2, Rule 2.11 A(5)(b), and C ("A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including but not limited to the following circumstances The judge ... served in governmental employment, and in such capacity participated personally and

substantially as ... a public official concerning the proceeding, or ... was a material witness concerning the matter.”).

Accordingly, I hereby disclose my prior participation in dockets DT 11-061, DT 10-025, DT 09-113, DT 09-059, DT 07-011, DT 05-096, and DT 01-006. The parties and their lawyers shall consider, outside the presence of Chairman Honigberg, Commissioner Giaimo, me, and Commission Staff, whether to waive my disqualification under Canon 2, Rule 2.11 C. If, following this disclosure, the parties and lawyers agree, without participation by the Commissioners or Commission Staff, that I should not be disqualified, I will participate in the proceeding. *Id.* If applicable, the parties' agreement shall be incorporated into the record of the proceedings in DT 19-041. *Id.*

Sincerely,

A handwritten signature in cursive script that reads "Kathryn M. Bailey".

Kathryn M. Bailey
Commissioner

cc: Service List
Docket File

Executive.Director@puc.nh.gov

amanda.noonan@puc.nh.gov

david.wiesner@puc.nh.gov

kathryn.mullholand@puc.nh.gov

Mary.Schwarzer@puc.nh.gov

ocalitigation@oca.nh.gov

robert.meehan@consolidated.com

sberlin@fh2.com

SUSAN BERLIN
FRIEND HUDAK & HARRIS LLP
3 RAVINIA DR
STE 1700
ATLANTA GA 30346
sberlin@fh2.com

NANCY S MALMQUIST
DOWNS RACHLIN MARTIN PLLC
90 PROSPECT ST
PO BOX 99
ST JOHNSBURY VT 05819

ROBERT D MEEHAN
CONSOLIDATED COMMUNICATIONS
770 ELM ST
MANCHESTER NH 03101
robert.meehan@consolidated.com

KATH MULLHOLAND
NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION
kathryn.mullholand@puc.nh.gov

OCA LITIGATION
OCA LITIGATION
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301
ocalitigation@oca.nh.gov

MARY SCHWARZER
NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION
mary.schwarzer@puc.nh.gov

DAVID K WIESNER
NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION
21 SOUTH FRUIT ST STE 10
CONCORD NH 03301
david.wiesner@puc.nh.gov