

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 16-872**

**CONSOLIDATED COMMUNICATIONS HOLDINGS, INC.**

**Joint Petition for Findings in Furtherance of the Acquisition of  
FairPoint Communications, Inc. and its New Hampshire Operating Subsidiaries  
by Consolidated Communications Holdings, Inc.**

**Order Approving Settlement Agreement and Making Findings Under RSA 374:30, II**

**ORDER NO. 26,022**

**May 31, 2017**

**APPEARANCES:** Orr & Reno, by Susan S. Geiger, Esq., on behalf of Consolidated Communications Holdings, Inc.; Primmer Piper Eggleston & Cramer PC, by Paul J. Phillips, Esq., on behalf of FairPoint Communications, Inc.; Scott J. Rubin, Esq., on behalf of the Communications Workers of America (CWA) Local 1400 and the International Brotherhood of Electrical Workers (IBEW) Locals 2320, 2326, and 2327, that form the IBEW System Council T-9; and David K. Wiesner, Esq., on behalf of Commission Staff.

In this Order, the Commission approves a settlement agreement regarding the proposed merger transaction between Consolidated Communications Holdings, Inc. (CCHI) and FairPoint Communications, Inc. (FairPoint). Subject to the terms and conditions of the settlement, CCHI is technically, managerially, and financially capable of maintaining (1) FairPoint's obligations to provide basic telephone service throughout its franchise territory at rates that are generally capped for a defined period of time, and (2) FairPoint's wholesale obligations arising under federal and state law. The settlement terms approved herein require that the merged companies will seek to retain key personnel in wholesale operations, maintain agreements and service offerings to competitive carriers, make both strategic and incremental capital investments in New Hampshire, provide the Commission with additional detailed information regarding synergies and transition planning, maintain or establish an executive management presence in the State and

region, and confirm that the Commission has the authority to approve any future creditor sale of pledged assets used to provide basic or wholesale services.

## **I. PROCEDURAL BACKGROUND**

On December 29, 2016, CCHI and FairPoint filed a *Joint Petition for Findings in Furtherance of the Acquisition of FairPoint Communications, Inc., and its New Hampshire Operating Subsidiaries by Consolidated Communications Holdings, Inc.* (Joint Petition). The Joint Petition requested that the Commission make the required findings under RSA 374:30, II, and any other applicable statutory provisions, to permit CCHI and FairPoint to consummate their merger and acquisition transaction.

As a result of that proposed merger transaction, Consolidated Communications, Inc. (Consolidated), a wholly-owned subsidiary of CCHI, would become the 100% owner of FairPoint, which in turn is the owner of Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (FairPoint-NNE) and Northland Telephone Company of Maine, Inc. (Northland). Both FairPoint-NNE and Northland are incumbent local exchange carriers (ILECs) in New Hampshire, and both are deemed to be “excepted local exchange carriers” under RSA 362:7, I(c) (ELECs). FairPoint-NNE also retains certain obligations under federal and state law as a Regional Bell Operating Company (RBOC).

The Commission issued an Order of Notice on January 17, 2017, scheduling a prehearing conference and technical session for February 1 and setting a deadline for petitions to intervene in the proceeding. The Commission granted the timely-filed petition to intervene of the Communications Workers of America (CWA) Local 1400 and the International Brotherhood of Electrical Workers (IBEW) Locals 2320, 2326, and 2327, that form the IBEW System Council T-9 (collectively, Labor Intervenors).

Following the prehearing conference, an accelerated procedural schedule for the proceeding was approved, and the parties engaged in extensive discovery which involved a number of disputed issues. Direct testimony was filed by witnesses for CCHI and FairPoint on January 17, 2017; by witnesses for the Labor Intervenors on April 11 and 20, 2017, and by witnesses for Commission Staff (Staff) on April 19, 2017.<sup>1</sup> On April 26, 2017 CCHI, and FairPoint filed motions for protective order and confidential treatment and for waivers of Puc Rules 201.04(b) and (c). Rebuttal testimony was filed by witnesses for CCHI and FairPoint on May 18, 2017. CCHI also filed a motion for protective order and confidential treatment with respect to specified portions of its witnesses' rebuttal testimony and attachments. A first day of hearing was held on April 27, 2017, at which witnesses for CCHI and FairPoint provided direct testimony and Labor Intervenors' witness Barber testified and was subject to cross-examination.

On May 24, 2017, a Stipulation and Settlement Agreement executed by CCHI, FairPoint, and Staff (Settling Parties) was filed, as well as a Stipulation Concerning Hearing Procedures signed by counsel for CCHI, FairPoint, the Labor Intervenors, and Staff. A second day of hearing was held on May 25, 2017, at which a panel of witnesses focused their testimony on the terms of the filed Stipulation and Settlement Agreement. During the hearing, counsel for CCHI made an oral motion for confidential treatment of Exhibit 38, which is the unredacted version of a FairPoint-NNE New Hampshire Intrastate Revenue Summary.

Following the hearing, the Settling Parties filed a Revised Stipulation and Settlement Agreement to replace the original Stipulation and Settlement Agreement filed prior to the hearing. The Revised Stipulation and Settlement Agreement is identical in substance to the

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<sup>1</sup> A revision of the pre-filed direct testimony of Staff witness Randall Vickroy was filed on May 12, 2017.

original Stipulation and Settlement Agreement, except for the removal of certain specific language from Section II, Paragraph 19, regarding the necessity to obtain Commission approval of any future creditor sale of pledged assets used to provide basic or wholesale services. We accept the Revised Stipulation and Settlement Agreement under N.H. Code Admin. Rules Puc 203.20(f). In this Order, we will hereafter refer to the Revised Stipulation and Settlement Agreement as the “Settlement Agreement.”

## **II. POSITIONS OF THE PARTIES**

### **A. CCHI and FairPoint**

In their Joint Petition, CCHI and FairPoint (Joint Petitioners) stated that their proposed merger would create a more financially sound entity that would pool the management resources of two companies with long histories of telephone service, and also emphasized that the transaction would not involve any technical cutover of any kind at closing and would not reduce competition in any market. Hearing Exhibit (Exh.) 1 at 1; Exh. 2 at 6-7; Exh. 3 at 8; Exh. 6 at 2, 5. According to CCHI witness Shultz, CCHI has over 120 years of experience in the telecommunications industry, expanding from a small family-owned and -operated telephone company to an enterprise that includes business systems, directory services, long distance, operator services, telemarketing, and multiple acquisitions. Exh. 2 at 10.

The Joint Petitioners maintained that CCHI has significant experience operating ILECs in rural and small urban markets and has successfully served customers in such markets, providing innovative broadband and video services while running a financially sound company with the ability to invest and maintain networks and foster growth, and that CCHI has had substantial success integrating acquired companies and collaborating with its counterparts in those companies. Exh. 1 at 10. According to CCHI witness Waggoner, in 2015 alone Consolidated

invested \$134 million in capital projects and extended its fiber network by over 1,300 route miles while adding broadband capacity for its residential and commercial customers, and by December 31, 2015, Consolidated had 1,224 cell sites under contract with 1,065 connected, and 152 under construction as of December 31, 2016. Exh. 3 at 3-4. He stated that, as of September 30, 2016, Consolidated's operating subsidiaries served approximately 462,000 voice connections, 470,000 data connections, and 109,000 video connections. *Id.*

The Joint Petitioners represented that CCHI has already secured financing to complete the merger transaction, including loans to refinance FairPoint's existing debt, and for transaction-related fees and expenses, at a much better interest rate than FairPoint has or could expect to have secured, due primarily to CCHI's more favorable credit rating and business reputation. Exh. 1 at 11-12; Exh. 5 at 5. In addition, CCHI witnesses claimed that it is committed to reinvesting in its businesses and has continually invested 16-17 percent of its revenues back into the business, focusing on providing residential customers with faster broadband, enhanced streaming capabilities for video, and building fiber directly to the home. CCHI also maintained that it strives to provide enhanced services, such as cloud offerings and fiber extensions of its network, to major customers. According to CCHI, it focuses on stabilizing revenues, providing quality products and services, and growing its businesses by diversifying its revenue streams through acquisitions. Exh. 2 at 20; Exh. 5 at 3-4. CCHI witness Shultz asserted that Consolidated has been a financially solid company for over a century and has a track record of successfully integrating its prior acquisitions. Exh. 2 at 22.

The Joint Petitioners maintained that the proposed merger would be seamless to all current FairPoint-NNE retail and wholesale customers in New Hampshire and in all other states in which FairPoint conducts business, as well as to all carriers with which FairPoint

interconnects, including both competitive local exchange carriers (CLECs) and rural local exchange carriers (RLECs). According to the Joint Petitioners, because the merger transaction would involve only a change of ownership at the holding company level, it would not affect any of the operations or obligations of FairPoint or its operating subsidiaries. They asserted that FairPoint and its subsidiaries would remain intact and would continue to adhere to their contractual and other obligations. Exh. 1 at 5, 9, 15; Exh. 6 at 2, 4; Exh. 2 at 6, 15.

The Joint Petitioners also stated that no existing retail or wholesale services, or any interconnection-based services with other carriers, would be discontinued or interrupted as a result of the proposed merger. Customers would not experience any change in services, rates, or terms and conditions of service, nor would changes in any billing or operational support systems be necessary. Existing tariffs, interconnection agreements, retail catalogs, and customer agreements would remain in effect. Future changes, if any, in rates, terms, and conditions of service would be made in accordance with applicable rules and notice requirements. Exh. 1 at 6, 9, 15; Exh. 6 at 4; Exh. 2 at 6-7, 15; Exh. 3 at 9.

The Joint Petitioners claimed that a significant majority of FairPoint's existing employees would be retained, all current collective bargaining agreements with FairPoint's union employees would be honored, and management employees would be offered benefits comparable to those they currently enjoy. Exh. 1 at 6; Exh. 2 at 14-15. CCHI witness Shultz represented that CCHI has approximately 1,800 employees, averaging 12 years of experience each. Exh. 2 at 14. The Joint Petitioners stated that CCHI has acquired three ILECs since 2007, and with each acquisition, it has upgraded the broadband capacity of the acquired networks, producing immediate positive impacts by improving availability and quality of broadband services offered to customers. Exh. 1 at 13.

As a result of the proposed merger transaction, CCHI would acquire control of FairPoint's operations in all 17 states in which it currently operates, including New Hampshire. In addition to the findings required under RSA 374:30, II, CCHI indicated that approvals are required by the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC), as well as the States of Colorado, Georgia, Illinois, Kansas, Maine, New York, Ohio, Pennsylvania, Vermont, and Virginia; no formal approvals are necessary in Alabama, Florida, Massachusetts, Missouri, Oklahoma, or Washington. Exh. 2 at 4. The proposed merger does not require the issuance of certificates of authority to new operating entities, because FairPoint will be the surviving subsidiary of Consolidated, nor are any designations of new eligible telecommunications carriers required under federal or state law. Exh. 2 at 5.

The Joint Petitioners concluded that CCHI possesses the technical, managerial, and financial capabilities to ensure that FairPoint continues to maintain all of the obligations of an ILEC set forth in RSA 362:8 and RSA 374:22-p. Exh. 1 at 2, 8; Exh. 6 at 10-12; Exh. 2 at 2, 8, 18; Exh. 5 at 15.

#### **B. Labor Intervenors**

Labor Intervenors' witness Barber stated that the Labor Intervenors represent 1,300 FairPoint employees throughout New England; however, since FairPoint acquired Verizon in 2008, the FairPoint-NNE labor force has seen significant instability, including a bankruptcy, a strike lasting more than four months, layoffs, and the deterioration of customer service. Exh. 8 at 3. He asserted that the Labor Intervenors are hopeful of a more stable environment for FairPoint customers and employees, but are skeptical of Consolidated's plans, knowledge, and intentions. *Id.* at 3-4. According to Mr. Barber, the Labor Intervenors are concerned that they were not provided everything they need from the Joint Petitioners, including portions of internal

financial projections and analyses performed by the Joint Petitioners and their financial advisors. *Id.* at 9. They are also concerned by the lack of detail regarding post-merger operational plans and intentions that might impact New Hampshire customers, communities, and employees. *Id.*

Mr. Barber stated that, from a financial perspective, the Joint Petitioners identified very few verifiable benefits for FairPoint's New Hampshire customers, communities, or employees, despite representations to the contrary. *Id.* at 10. He highlighted apparent inequities in benefits, stating that in exchange for superior credit metrics and refinancing of its debt at a lower interest rate, FairPoint would contribute all of the savings to Consolidated and add \$18 million to its current debt level. *Id.* at 11. According to Mr. Barber, all of the Joint Petitioners' statements appear to be based on improvements to Consolidated's financial condition. *Id.* at 13. He also asserted that, other than agreeing to follow the law, the Joint Petitioners failed to provide any tangible commitments or concrete details regarding the impact of the proposed merger on New Hampshire. Mr. Barber emphasized that current FairPoint shareholders would begin receiving dividends following the merger closing, while Consolidated would have access to better cash flow, an improved dividend payout ratio, and a bolstered stock price, permitting it to pursue its long-term strategy of growth through acquisitions. Mr. Barber opined that the proposed merger would not provide benefits to FairPoint's customers. *Id.* at 11, 20-21.

Mr. Barber argued that the proposed merger may harm New Hampshire, noting that Consolidated has failed to meet various service quality requirements in other states. Some of those failures resulted in fines, exemplified by a payment of nearly \$40,000 to Illinois customers during the past two years because of Consolidated's failure to restore service outages within 30 hours. *Id.* at 14. He charged that such failures to meet service quality requirements call into question Consolidated's capability to manage a utility the size of FairPoint. *Id.* at 15.

Mr. Barber expressed the Labor Intervenors' conclusion that the Joint Petitioners had not provided enough information upon which an informed judgment could be made. He recommended that the Commission defer ruling on the proposed merger transaction pending further New Hampshire-specific discovery regarding capital expenditures, operating expenditures, cash flow, integration plans, closing or relocating to other states any New Hampshire-based operations, relocation of any operations into New Hampshire, plans to improve service quality, and projected employment levels. *Id.* at 12-13, 48-49.

Labor Intervenors' witness Soule testified that Consolidated's expectation to generate annual operating synergies of approximately \$55 million within two years, \$24.4 million of which would be achieved by reducing union labor, would mean over 200 individuals would lose their jobs, representing one out of every seven union jobs. Exh. 11 at 6. He asserted it is unlikely that Consolidated can achieve operating expense savings in the amounts projected by the Joint Petitioners without reducing the quality of telephone service provided to New Hampshire customers. *Id.* According to Mr. Soule, the Labor Intervenors are concerned that Consolidated made its estimates without visiting worksites in New Hampshire such as the Network Operations Center or Repair Center, and without meeting with any employees below the executive level for meaningful discussions with representatives of people in the field. *Id.* at 7.

Mr. Soule maintained that, over the eight years since FairPoint acquired the Verizon assets, it has already consolidated some of its key operations, like the New Hampshire dispatch functions, and has also made cuts in its operations and employees, to the point where it is now running a "bare-bones" operation. *Id.* at 7-8. He claimed that additional cuts in equipment and operations dedicated to installation, maintenance, and repair, or further reductions in workforce,

would weaken Consolidated's ability to provide the telephone service that New Hampshire customers deserve. *Id.* at 8. According to Mr. Soule, in September 2010, there were 924 union employees in New Hampshire, but there are now only 460 IBEW employees who work for FairPoint in New Hampshire. *Id.* at 33. He asserted that, while FairPoint's revenues have indeed declined, the numbers of bargained-for employees in the region have declined at a markedly greater pace, noting that FairPoint's revenues declined by 27.8 percent between the September 2010 quarter and the December 2016 quarter, as compared with a 50 percent decline in union employees in the region during that same period. *Id.* at 33-34. Mr. Soule testified that he "cannot accept" Consolidated's suggestion that following the merger it can generate millions of dollars by cutting its operating costs in New Hampshire by an additional 9-10 percent. *Id.* at 35.

During the first day of hearing, Mr. Barber testified that FairPoint probably could refinance its outstanding debt at lower interest rates and on terms more favorable than its current financing, although not as favorable as those obtained by CCHI through its acquisition financing arrangements. Transcript of Hearing 4/27/17 (Tr.) at 56-57. He was asked to contrast his financial analysis of FairPoint's potential to refinance its existing debt with the analysis performed and conclusions reached by Staff witness Vickroy. *Id.* at 57-58, 88-95. Mr. Barber was also asked to compare his conclusions regarding the ability to achieve merger synergies with Mr. Vickroy's financial stress test results. In response, he stated that they were "analyzing different things," as Mr. Vickroy looked at Consolidated's ability to meet various debt covenant restrictions while Mr. Barber focused on the potential failure to achieve the "level of savings that they're projecting in their synergies." *Id.* at 95-97, 133-135.

According to Mr. Barber, an important distinction between the proposed merger transaction and FairPoint as a standalone company is the post-merger obligation to pay a

dividend to former FairPoint shareholders. *Id.* at 135-136. He estimated that the amount of the dividend payable to those shareholders would be “roughly comparable” to the amount Consolidated is saving FairPoint by refinancing its existing debt in connection with the merger transaction. *Id.* at 136.

Mr. Barber also asserted that Consolidated had failed to hold substantive discussions with union representatives during its due diligence investigations, drawing a contrast with other recent industry acquisitions, including some that involved mergers or other stock acquisitions. *Id.* at 130-131, 137-139. He generally reiterated the recommendations made in his prefiled direct testimony. *Id.* at 76-77, 102-103, 110-113.

### **C. Commission Staff**

Staff witnesses Antonuk, King, and Vickroy, of Liberty Consulting Group (Liberty), testified regarding their assessment of Consolidated’s technical, managerial, and financial capability to meet FairPoint’s ILEC obligations following the proposed merger transaction. Exhs. 13 and 28. Mr. Vickroy reviewed and analyzed FairPoint’s financial health since it emerged from bankruptcy in 2011. Exh. 28 at 6-11. He asserted that, because of FairPoint’s bankruptcy and financial performance, the current capital markets view FairPoint relatively unfavorably. *Id.* at 12. According to Mr. Vickroy, while Moody’s rating views FairPoint as significantly improved, Standard and Poor’s still views it as “weak” and “highly leveraged.” *Id.* at 15. He claimed that FairPoint’s prospects for efficient refinancing in 2019 are “uncertain” because it has experienced slight increases in net leverage and decreases in interest coverages, both of which are negative trends. *Id.* at 16. Mr. Vickroy also examined Consolidated’s financial health and found it to be stronger than that of FairPoint; while both ratings agencies rate Consolidated as “fair,” its financial risk assessment was somewhat more favorable than

FairPoint's. *Id.* at 17-22. He conducted a number of financial "stress tests" using information provided by the Joint Petitioners that evaluated Consolidated's ability to meet its financing covenants in different potential future scenarios. *Id.* at 29-34. He concluded that Consolidated has the financial capability to meet the standards required by New Hampshire statutes, but the proposed pledge of FairPoint's assets could present a significant risk to FairPoint. *Id.* at 6, 34-41.

Staff witnesses Antonuk and King acknowledged, based on considerable scrutiny by the Liberty team, that Consolidated has a significant track record in operating telecommunications operations across a broad swath of the nation. Exh. 13 at 12. They asserted, however, that Consolidated has not demonstrated the capability to undertake the challenges presented by operations in Northern New England generally or in New Hampshire specifically, in particular with respect to capabilities adequate to address the managerial and technical needs associated with the proposed merger and integration. *Id.*

Mr. Antonuk and Dr. King identified as areas of concern the relatively large size of the merger transaction as compared to Consolidated's other operations, a lack of commitments and plans regarding local leadership and management, the geographic distance from its other operations, its lack of knowledge of FairPoint's particular circumstance, the lack of plans for operating in the region and under challenging market and company-specific circumstances, the under-development and lack of support for transition plans that include logical milestones and completion dates, the appearance that quantified operating synergies result far more from a financial need for them to occur than from a soundly-based forecast of what can reasonably be expected, and the potential that agreement to or imposition of conditions proposed for securing

approvals in Maine and Vermont might have a significantly deleterious effect on New Hampshire management and operations. *Id.* at 12-13.

They maintained that the basis for their reservations was specific to the proposed FairPoint acquisition and Consolidated's lack of knowledge regarding FairPoint's current business operations and prospects, rather than Consolidated's past operational and strategic growth experience. *Id.* at 14, 19. According to Mr. Antonuk and Dr. King, Consolidated's due diligence investigation has been "superficial," and Consolidated has not developed coherent, well-founded plans for structuring, resourcing, and transitioning FairPoint to inevitable new platforms, functional consolidations, process integrations, and systems. *Id.* at 14-15. In addition to those concerns, they stated that the proposed FairPoint merger would "dwarf" the other acquisitions made by Consolidated since 2004 and greatly increase the size of the combined business. *Id.* at 20.

Mr. Antonuk and Dr. King asserted that Consolidated lacks sound pre-acquisition evaluation and comprehensive planning for ongoing post-acquisition operations. *Id.* at 21-22. Consolidated relied on a "proven playbook" that it apparently uses for all of its acquisitions; however, its general description of acquisition strategy is not documented in any "book" and does not provide the kind of dimension and detail necessary to carry out the investigation and planning required for the FairPoint acquisition. *Id.* at 24-25. Based on Consolidated's "disconcerting lack of investigation and planning," they concluded that it has not demonstrated the managerial and technical capability required to make the FairPoint acquisition effective. *Id.* at 25.

Mr. Antonuk and Dr. King stated that Consolidated's efforts to examine staffing matters associated with the proposed acquisition of FairPoint is "disappointing," as it had demonstrated

no knowledge about job changes, relocations, layoffs, hiring, and training that would be necessary and had not met with employees below the executive level. *Id.* at 25. They found Consolidated's suggestion that there may not be an impact on the New Hampshire workforce to be "disingenuous," speculative, and not in line with its "proven playbook" or with FairPoint's existing operations. *Id.* at 27-31. They further asserted that Consolidated has taken no clear actions to identify key post-merger employees of FairPoint. *Id.* at 35.

Mr. Antonuk and Dr. King also expressed concerns regarding the potential impacts that regulatory commitments in Maine and Vermont might have on New Hampshire, noting that projected savings lost to costly regulatory commitments made elsewhere might lead to "sacrifices in New Hampshire, with its comparatively narrower level of regulation," used as a means of making up the loss. *Id.* at 39.

According to Mr. Antonuk and Dr. King, Consolidated's lack of investigation and planning extends to customer service areas, such as adequate current and post-merger staffing, transition planning, and customer service management. *Id.* at 41-42. They maintained that basic service in New Hampshire requires an appropriate level of quality, reasonable customer access, and timely and transparent billing procedures. *Id.* They asserted that Consolidated had not conducted an independent analysis of FairPoint's customer service-related staffing needs, nor had it developed long-term staffing models. *Id.* They cited Consolidated's statement that it would not make final determinations regarding which customer service centers to regionalize, virtualize, or centralize "until several quarters after close." *Id.* According to Mr. Antonuk and Dr. King, Consolidated had not identified individuals responsible for planning and executing the transition of FairPoint customers, nor has it identified individuals responsible for overseeing FairPoint's customer service-related operations in New Hampshire following the closing, despite

the fact that those are important steps for Consolidated to take because its customer service operations will more than double following the FairPoint acquisition. *Id.* at 42-43.

Mr. Antonuk and Dr. King also expressed their concerns that, although Consolidated generally appears to be meeting the measurements it currently monitors, those measurements are limited in the range of operational data they monitor, and its attention to those measurements is conditioned on whether a state utility regulatory commission requires them. *Id.* at 48-49.

Because New Hampshire no longer requires such measurements for retail service, it is reasonable to believe that Consolidated may not be sufficiently motivated to provide acceptable levels of service quality in the state, including service provided to FairPoint's basic service customers. *Id.*

According to Mr. Antonuk and Dr. King, Consolidated's due diligence review and analysis of FairPoint's physical network in New Hampshire was not adequate. *Id.* at 49-51. As an example, they cited Consolidated's physical inspection of only two FairPoint central offices, in Manchester and Bedford, representing only 1.67 percent of FairPoint's total central offices in New Hampshire, and neither of which is located in a rural area. *Id.* They further asserted that Consolidated had not obtained sufficient information to develop an estimate of upgrade and improvement costs needed in FairPoint's New Hampshire network. *Id.* at p.54.

Mr. Antonuk and Dr. King concluded their testimony by stating that Consolidated is financially capable of maintaining the relevant FairPoint ILEC obligations, except for their concern about the need to incorporate a pledge of assets as collateral with the potential for creditor "scavenging" of pledged assets. *Id.* at 60, 63. They concluded that Consolidated is generally capable of operating a telephone company from a technical and managerial perspective; however, the notable "gaps" in due diligence investigation and transition planning are sufficient for them to conclude that Consolidated has not demonstrated that its past

capabilities in those areas would be transferred to the unique circumstances and conditions found in New Hampshire. *Id.* at 61.

In order to address their concerns regarding the proposed transaction and Consolidated's capabilities, and consistent with representations made by Consolidated with respect to its future intentions, Mr. Antonuk and Dr. King recommended that a number of conditions on structural and staffing changes be imposed: (1) prohibiting for a period of three years changes exceeding five percent in levels of resources located in Northern New England that are unrelated to enterprise resource planning (ERP); (2) excluding from the population of personnel subject to that limitation only those Northern New England personnel whose work serves either or both of Maine and Vermont exclusively; (3) retaining for the full three-year period all executive and management positions in Northern New England, with the exception of those associated with properly-defined ERP functions and activities; and (4) permitting a waiver during the third of the three years of the structural and employment restrictions to the extent the Commission finds such a reduction appropriate. *Id.* at 61-62.

With respect to the pledged asset scavenging concern, Mr. Antonuk and Dr. King recommended that "a clear requirement for prior Commission authorization of any pledged asset disposition should be confirmed," to ensure that any secured party sale of FairPoint's network or other operating assets, in whole or in part, is made to a buyer with the capability to provide the required services and meet the relevant statutory obligations. *Id.* at 63. They further recommended that Commission approval of the proposed merger transaction be conditioned on the pre-closing submission of "a clear and unambiguous legal opinion of a reputable, experienced commercial law firm confirming the enforceability of the prior Commission-

approval condition against Consolidated, FairPoint, their lenders, their respective administrative, collateral, and other agents and representatives, and their successors and assigns.” *Id.*

**D. CCHI and FairPoint Rebuttal**

In their rebuttal testimony, CCHI and FairPoint provided updates on the status of due diligence, regulatory approvals and other relevant events, and responded to the criticisms and recommendations contained in the direct testimony of Staff and the Labor Intervenors. Exh. 29 at 2; Exh. 31 at 1-2; Exh. 33 at 1. According to their rebuttal testimony, several significant events had occurred since the filing of their direct testimony, including: (1) the FTC had granted early termination of its Hart-Scott-Rodino Act pre-merger review; (2) the merger had been approved in 5 of 11 jurisdictions that require state regulatory approval; (3) 96 percent of FairPoint’s shareholders and 98 percent of CCHI’s shareholders had voted to approve the merger; and (4) the FCC had approved the merger transaction in WC Docket No. 16-417. Exh. 29 at 5, 18; Exh. 31 at 2-3; Exh. 33 at 5; Exh. 35 at 7. CCHI witness Shultz stated that there are six more regulatory approvals required, which are “on track,” and for both financial and competitive perspectives, it is “imperative” that the merger closing occur no later than June 30, 2017. Exh. 31 at 2-3.

The Joint Petitioners agreed in substance with Staff’s assessment regarding the financial aspects of the proposed merger, and reiterated their view that FairPoint’s financial health would be greatly improved as a result of the merger. Exh. 29 at 7; Exh. 33 at 2-16, 23-24. They disagreed, however, with Staff’s conclusions regarding Consolidated’s managerial and technical capabilities based on the status of its due diligence and transition planning. They emphasized Consolidated’s history of successful acquisitions and integrations, and asserted that Staff is concerned about potential problems that may or may not occur, yet it failed to examine

Consolidated's prior acquisitions to determine whether any such problems actually occurred, and, if so, how those problems were resolved. According to the Joint Petitioners, it is unreasonable for Staff to expect Consolidated to have developed detailed contingency plans for hypothetical situations mere weeks after announcing the proposed merger or to have completed its due diligence efforts prior to announcing the transaction. They asserted that Consolidated has expanded its due diligence since that time and now has much greater insight into FairPoint's operations. Exh. 29 at 8-9, 12; Exh. 31 at 4-5.

Mr. Shultz maintained that Consolidated's due diligence regarding FairPoint was substantial and followed a consistent methodology it has employed in each of its five acquisitions since 2004. He expressed confidence that Consolidated's due diligence was appropriately conducted and performed consistently with its prior successful acquisitions. Exh. 31 at 5-10. Mr. Waggoner addressed in detail the steps taken by Consolidated in its due diligence examination of FairPoint's network and operations, and described Consolidated's technical capabilities, knowledge, and experience with successfully transitioning network and service operations of its acquired companies. Exh. 35 at 2-9.

FairPoint witness Reed emphasized that the proposed merger is not an asset sale in which a new company, new workforce, and new systems will result and the old company "is closing up shop and ceasing its operations." Exh. 29 at 11. He maintained that FairPoint would continue to be a fully-operational business with only a change in its corporate parent following the merger closing, and that transaction structure would afford Consolidated time to evaluate FairPoint's operations and to make sound business judgments regarding the transitions. *Id.* Mr. Shultz expressed confidence that Consolidated "knows what it is purchasing in this transaction," and

claimed the fact that CCHI has already secured financing demonstrates that its lenders have confidence in its experience and track record. Exh. 31 at 10.

Mr. Waggoner emphasized that Consolidated does not seek out stand-alone assets or piecemeal components of a company for acquisition, as those types of transactions require a new platform to cutover from the seller's systems to keep serving customers. Exh. 35 at 2-3. He maintained that approach is unattractive to Consolidated as it would prefer to retain customer relationships. *Id.* at 3. According to Mr. Waggoner, because the proposed merger does not require a cutover of any operating platforms, the bulk of the due diligence issues raised by [Staff's witnesses] do not apply here." *Id.*

The Joint Petitioners also disagreed with Staff's position that the regulatory proceedings in Maine and Vermont raise concerns from the perspective of New Hampshire. Mr. Reed maintained that, although the three Northern New England states "face common challenges," each state "has its own regulatory and statutory requirements as well as unique geographies." Exh. 29 at 15.

With regard to the Labor Intervenors' contention that integration and risk management plans should have been completed, Consolidated responded that, since the systems integration process cannot begin in earnest until Consolidated owns FairPoint, it can only communicate its views through due diligence and past experience. Exh. 31 at 11. Mr. Shultz assured that Consolidated's due diligence is continuing in a thorough manner. *Id.* at 11-16.

The Joint Petitioners rebutted the Labor Intervenors' testimony that the proposed merger is "a one-way street" which is more beneficial to Consolidated than to FairPoint, claiming that the proposed merger would provide many benefits and opportunities for FairPoint and its stakeholders. Exh. 29 at 17. According to Mr. Reed, the evidence demonstrates that the

proposed merger would result in a “stronger combined entity” that would have the financial, managerial, and technical ability to “continue to provide high-quality service to FairPoint’s retail and wholesale customers.” *Id.* at 18.

Mr. Reed asserted that speculation by the Labor Intervenors as to whether FairPoint could have refinanced its existing debt on a standalone basis earlier this year has no bearing on the regulatory findings required to be made by the Commission, characterizing those opinions as “pure supposition and baseless speculation” that should be disregarded by the Commission. *Id.*

Mr. Childers discussed in detail the perceived flaw in the Labor Intervenors’ analysis of the merged companies’ financial circumstances, and emphasized that FairPoint would be more diversified and would have a much stronger financial standing post-closing than as a standalone company. Exh. 33 at 2-16.

Mr. Reed rebutted the contention that FairPoint’s organized workforce had been cut back to the point that it is unable to provide safe and reliable service. He stated that FairPoint maintains a workforce sufficient to provide safe and reliable service to its customers, remain competitive, and continue to expand its network. Exh. 29 at 19-24. In particular, Mr. Reed asserted it is a serious omission from the Labor Intervenors’ testimony that FairPoint’s deployment of new technology, such as laptops and cell phones in each dispatch truck, provide more technically advanced and efficient means of handling workload in a timely manner. *Id.* at 21-22.

Mr. Shultz rebutted the Labor Intervenors’ contention that reductions in personnel of the merged companies would reduce service quality to FairPoint's New Hampshire customers, explaining that Consolidated uses a “whole company” approach that retains the “best talented”

and skilled personnel from the entire combined company and therefore may reduce personnel not just from FairPoint but from the whole company. Exh. 31 at 17-20.

CCHI objected to the Labor Intervenors' recommendation that, should the Commission approve the proposed merger, it should impose conditions that govern the management of the business on a going-forward basis. Exh. 31 at 21-23. According to Mr. Shultz, if such conditions were imposed, they would have the effect of "preventing" Consolidated from managing FairPoint efficiently as part of a consolidated company and would "severely restrict" Consolidated's ability to "respond to market conditions, competition and customer demands." *Id.* at 21. He asserted that the Commission is not authorized to impose conditions such as those requested by the Labor Intervenors in connection with the findings required to be made under RSA 374:30, II. *Id.* Mr. Shultz argued that, even if the Commission were authorized to impose such conditions, it should not do so because they would be "inappropriate, unnecessary and counterproductive." *Id.* at 21-23.

CCHI also objected to Staff's recommendation that Consolidated be restricted from making changes exceeding 5 percent in resource levels of personnel in Northern New England for a three-year period following the merger closing. *Id.* at 24-26. Mr. Shultz stated that Consolidated "cannot accept" Staff's recommendation because it would "severely restrict Consolidated's ability to effectively and efficiently manage the merged company post-closing." *Id.* at 24. According to Mr. Shultz, Consolidated must be able to "exercise its unfettered business judgment and experience gained over the course of its long history in the telecommunications business and from several of its recent acquisitions to determine the appropriate staffing levels needed to successfully operate FairPoint's northern New England operations once [it becomes] part of Consolidated." *Id.* at 24-25. He further asserted that

requiring specific staffing levels for employees who are subject to FairPoint's existing collective bargaining agreements “would effectively tie Consolidated’s hands in the upcoming renegotiations of those agreements in 2018.” *Id.* at 25. Mr. Shultz maintained that Consolidated employs “a skilled workforce of over 1,600 employees with extensive telecommunications experience,” and it “must retain the flexibility to draw upon those resources as well as FairPoint’s resources” to meet FairPoint’s ILEC obligations under New Hampshire law. *Id.* at 26. CCHI concluded that the Commission could make the required statutory findings without imposing the recommended conditions. *Id.* at 24-26.

CCHI also objected to Staff’s recommendations intended to address concerns regarding secured creditor “scavenging” of pledged FairPoint assets. Exh. 33 at 19-23. As bases for that objection, Mr. Childers cited both the low probability of any such “piecemeal” asset sales by a secured creditor and the language of the CCHI Collateral Agreement “providing for the rights of the [Commission] and the inability of the Administrative Agent to scavenge assets without prior action by the [Commission].” *Id.* at 21-23. According to Mr. Childers, Consolidated believes that “any transfer of ILEC-ELEC assets as a result of [a] bankruptcy proceeding is still subject to [Commission] approval under RSA 374:30, II.” *Id.* at 22. Mr. Childers dismissed Staff’s recommendation regarding pledged asset sales as “an unnecessary solution in search of a nonexistent problem” and urged the Commission to reject the proposed conditions. *Id.* at 23.

#### **E. Settlement Agreement Terms and Conditions**

The Settlement Agreement includes future commitments and obligations made by CCHI and FairPoint with respect to the management and operations of FairPoint-NNE and Northland as ILECs in New Hampshire. Those commitments and obligations can be divided into four broad categories: (1) wholesale service operational continuity and stability, (2) wholesale service

availability and pricing, (3) network expansion and incremental improvement, and (4) general management and transitional provisions, as described in further detail below.

1. Wholesale Service Operational Continuity and Stability. Consolidated/FairPoint (the Merged Company) commits that, for two years following the merger closing (Two-Year Period), it will not seek to eliminate or reassign key employees in the FairPoint-NNE Wholesale Services Group and key employees will be identified to Staff and the Labor Intervenors within 48 hours of the merger closing. Exh. 42 at 5 (Sec. II, Par. 4). During the Two-Year Period, the Merged Company commits to use FairPoint-NNE's existing Operational Support Systems (OSS) platform, including the existing Virtual Front Office (VFO), and the existing Circuit Inventory System (CIS). *Id.* at 6-8 (Sec. II, Pars. 9-11). The Merged Company will also follow the FairPoint-NNE "Wholesale Operations OSS Interface Change Management" process, which provides for early notice to CLECs of upcoming systems changes, during the Two-Year Period. *Id.* at 6 (Sec. II, Par. 8). For the period from 18 to 24 months after the merger, the Merged Company commits to providing at least six months' notice to CLECs and the Commission before transitioning to any new VFO or CIS. *Id.* at 7-8 (Sec. II, Par. 11). The Merged Company also commits to provide training for CLEC personnel for any new OSS system. *Id.* During the Two-Year Period, the Merged Company will maintain the current level or better for quality of service, accuracy, and flow-through for ordering processes regarding various services provided to CLECs. *Id.* at 6 (Sec. II, Par. 9). The Merged Company also commits to maintain escalation procedures and contact information, including points of contact identified by the Merged Company for CLEC issues. *Id.* at 8 (Sec. II, Par. 13). Prior to March 31, 2019, the Merged Company will not seek to replace or repeal the FairPoint-NNE Wholesale Performance Plan

(WPP), beyond changes arrived at through steps described in the plan itself. *Id.* at 8 (Sec. II, Par. 14).

2. Wholesale Service Availability and Pricing. During the Two-Year Period, the Merged Company commits to honor and not seek to amend existing Interconnection Agreements (ICAs) with New Hampshire CLECs operating as ELECs, even where those agreements are in automatic renewal (i.e., “evergreen”) status. *Id.* at 5 (Sec. II, Par. 5). The Merged Company will continue to provide wholesale services at the rates established in the “FairPoint-NNE Tariff No. 3: Access Tariff,” other than rate decreases, and/or at the rates established in any existing Commission orders, for the Two-Year Period. *Id.* at 8 (Sec. II, Par. 12). The Merged Company also commits to handle local number porting requests so as to meet or exceed Federal Communications Commission (FCC) requirements, specifically as measured under the WPP, which applies to both unbundled network elements (UNEs) and other porting types. *Id.* at 5-6 (Sec. II, Par. 7). During the Two-Year Period, the Merged Company will continue to provide access to “Section 251” UNEs in those wire centers where they are currently available, even where particular wire centers become re-classified as “unimpaired” during that period. *Id.* at 9 (Sec. II, Par. 15).

3. Network Expansion and Incremental Improvement. In each of calendar years 2018, 2019, and 2020, the Merged Company will make capital expenditure investments in its New Hampshire network totaling at least 13% of New Hampshire intrastate revenues from FairPoint-NNE, Northland, Enhanced Communications of Northern New England, Inc., and UI Long Distance, Inc., less intercompany revenues. *Id.* at 9 (Sec. II, Par. 16.a). During each of those three calendar years, the Merged Company will also make incremental investments that represent improvements, maintenance, or repairs to its New Hampshire network, in amounts averaging at least \$1 million per year and totaling no less than \$700,000 in any single year. *Id.* at 10-11 (Sec.

II, Par. 16.b.1). The incremental network investments are intended to address areas of the New Hampshire network that have service quality issues and/or higher than average trouble reports and where the improvements are expected to improve basic and wholesale service, and the improvements will be in addition to any work scheduled to be completed in the ordinary course of business or covered by Connect America Fund II (CAF II) commitments. *Id.* The Merged Company commits to review with Staff its plan for proposed network improvements at least 90 days prior to the start of the year in which the improvements are planned. *Id.* That review will include the disclosure of confidential information enabling Staff to evaluate the proposal with regard to basic service and wholesale service impacts and to confirm that the proposal does not duplicate capital expenditure investments otherwise required to be made or the Merged Company's normal network maintenance spending. *Id.* For each of the three calendar years, the Merged Company will file a notification demonstrating that the required capital expenditure and incremental investments were successfully completed during the preceding year, by April 1 of the following year. *Id.* at 11 (Sec. II, Par. 16.c). If the Merged Company fails to make at least 90% of the required capital expenditure investment amount in a given year, then it will be obligated to spend an additional \$500,000 of capital expenditures by the end of the three-year investment period. *Id.* at 11 (Sec. II, Par. 16.d.1). If the Merged Company fails to meet the aggregate \$3 million incremental network improvement investment obligation by the end of the three-year period, then it will be required to spend an amount equal to the sum of the applicable shortfall plus \$250,000 during the first year following the expiration of the three-year period. *Id.* at 12 (Sec. II, Par. 16.d.2). In the event of a force majeure or other exogenous circumstance, the Merged Company may petition the Commission to reduce the additional amounts owed or to

extend the time for making the required network capital expenditure and incremental improvement investments. *Id.* at 12 (Sec. II, Par. 16.d.3).

4. General Management and Transitional Provisions. The Merged Company commits that, within three months after the merger closing, it will submit its Synergies Plan (i.e., the plan to achieve targeted merger efficiencies) to both the Commission and the Labor Intervenors, and it will thereafter meet with Staff and the Labor Intervenors to describe the Synergies Plan. *Id.* at 12 (Sec. II, Par. 17). During the Two-Year Period, the Merged Company will maintain an executive presence in Northern New England, consisting of both current Consolidated executives and current FairPoint-NNE executives, including at least one Consolidated executive to be relocated to New Hampshire. *Id.* at 12-13 (Sec. II, Par. 18). The Settling Parties acknowledge and agree that, under currently applicable New Hampshire law, any proposed sale or transfer by a secured creditor of all or a portion of the Merged Company's pledged assets used to provide basic service and/or wholesale service must first be approved by the Commission. *Id.* at 13 (Sec. II, Par. 19). The Settling Parties also acknowledge and agree that the Commission will monitor and enforce the commitments and obligations undertaken by the Merged Company in the Settlement Agreement. *Id.* at 4 (Sec. II, Par. 3).

**F. Settling Parties' Positions at Hearing**

During the second day of hearing, witnesses for the Settling Parties described, explained, and supported the terms and conditions of the Settlement Agreement. CCHI witness Shultz described the settlement terms with reference to general themes and categories. Tr. 5/25/17 at 13-15. Staff witnesses Antonuk and Ladam focused on how the settlement terms address the concerns expressed in Staff's direct testimony. *Id.* at 15-21.

Mr. Antonuk testified that the potential for “continued or accelerated deterioration” in what is an “existentially challenged business” creates a “risk of rash response that could have deleterious impacts on basic service and service to wholesale providers as well.” *Id.* at 16. He noted that Staff’s recommendation to mitigate that risk was to ensure a short protected transitional period focused on staffing level preservation. *Id.* Mr. Antonuk described how, based on potential administrative complexities in a multistate regional operating environment, Staff ultimately concluded that the proposed settlement terms, which are based in part on a similar stipulation reached in Maine, represent a reasonable alternative approach focused more on capital expenditure and network improvement investments than on staffing level protection. *Id.* at 16-17. He emphasized that the settlement “directly responds to root causes of network performance issues affecting basic service,” while addressing wholesale services as well, and also “enhances visibility about problems and solutions affecting basic service.” *Id.* at 17. Those goals are accomplished through regular reporting and dialogue with Staff, interactions that will offer more insights than now routinely exists into causes and their effects on the quality of basic service and wholesale services. *Id.* Mr. Ladam separately described the various settlement terms that are intended to ensure protection of wholesale services in general and CLEC interests in particular. *Id.* at 19-21.

According to Mr. Antonuk, Staff believes that the settlement both provides the benefits that Staff’s principal recommendation was intended to achieve and “allows us to move forward in an environment that remains challenging for telecom service providers” like FairPoint and Consolidated. *Id.* at 17-18. He also confirmed that Staff’s concern regarding “scavenging” of pledged network assets by a secured creditor is addressed by the Settlement Agreement provision that any such creditor sale or transfer of all or a portion of pledged assets used to provide basic

service and/or wholesale service must first be approved by the Commission, under current state law. *Id.* at 18-19.

In response to questions posed by the Commissioners, witnesses for the Settling Parties clarified and explained a number of significant aspects of the settlement terms and conditions. CCHI witness Shultz explained the company's goal to have the FairPoint-NNE wholesale services group "manage that process company-wide" and its intent to "try to keep the group as intact as possible" by retaining "key employees." *Id.* at 22-23. He also testified that the FairPoint-NNE wholesale services group currently has about 20 direct employees. *Id.* at 74. Mr. Shultz also clarified that the Merged Company would, if requested by a CLEC, renegotiate an existing ICA with a CLEC, or negotiate a new agreement with a new CLEC. *Id.* at 32.

With respect to management and staffing of the Merged Company, Mr. Ladam stated that the presence of Consolidated executives is in part intended to ensure that Consolidated has a "clear channel of communications" from Northern New England back to corporate headquarters, while the retention of FairPoint executives is intended in part to ensure institutional continuity. *Id.* at 41. Mr. Shultz emphasized that the capital expenditure and network improvement commitments would likely result in "a lot of activity that's going to require head count, experienced head count that knows New Hampshire." *Id.* at 42-43.

Staff witness Antonuk clarified his view that the settlement represents a "short-term approach" to provide some assurance that increased near-term challenges will not result in drastic changes without adequate corporate planning, while noting that in the longer term there can be no assurance that adverse consequences will not result from the "existential challenges" created by "outside-the-market forces" and technological changes. *Id.* at 29-30.

Mr. Shultz testified that Consolidated expects the incremental network improvements to be targeted in more rural areas of New Hampshire, including the North Country and the western areas of the state, rather than in more populous urban areas. *Id.* at 72. Mr. Ladam testified that the commitment for the Merged Company to demonstrate that it had met the incremental network improvement requirement will involve the Merged Company supplying information to Staff that it would not otherwise be required to provide, and this information access would represent a positive benefit from Staff's perspective. *Id.* at 28.

Mr. Shultz also clarified that approximately 95 percent of FairPoint-NNE's overall assets to be pledged to a creditor would be "mixed-use and would qualify as a regulated asset," requiring Commission approval before a creditor sale, even if the assets "might be predominantly used for broadband or something to that effect." *Id.* at 68.

In its closing statement, CCHI emphasized that the proposed merger of CCHI and FairPoint is a transaction "very different" from the one in 2007 whereby FairPoint acquired Verizon's assets and had to develop operating systems and then cut over to those systems to provide service to its customers. *Id.* at 80. CCHI stated that in the proposed merger, which is a stock transaction, CCHI will acquire FairPoint as a going concern, and therefore, there will be no system cutover that needs to occur post-close initially, and FairPoint's operating companies will remain intact and will "continue to meet their ILEC-ELEC obligations in New Hampshire in a seamless fashion." *Id.* at 80-81. CCHI maintained that, following the merger closing, FairPoint would also continue to meet federal law obligations to provide services to CLECs, rural exchange carriers, inter-exchange carriers and wireless carriers, and to serve as an eligible telecommunications carrier. *Id.* at 81.

CCHI highlighted its experience in operating other ILECs and CLECs, with many federal and state law obligations similar to FairPoint's, and also CCHI's record of successful industry acquisitions and integrations. *Id.* at 81-82. According to CCHI, its "substantial experience in successfully integrating acquired companies" demonstrates that it is capable of operating FairPoint and maintaining all of its ILEC responsibilities under New Hampshire law, and CCHI'S commitments under the Settlement Agreement "underscore that and provide further assurance of those capabilities." *Id.* at 82. CCHI asserted that the weight of the evidence in the proceeding, coupled with its commitment under the Settlement Agreement, enables the Commission to make the required findings that it is technically, managerially, and financially capable of maintaining the obligations of an ILEC which are set forth in RSA 362:8 and RSA 374:22-p. *Id.* at 79-80. CCHI requested that the Commission issue an order making the required findings in favor of the merger transaction by the end of May, in order to accommodate a planned merger closing date of June 30, 2017. *Id.* at 83.

In its closing statement, FairPoint expressed its support for the settlement, asserting that CCHI brings a tremendous amount of financial strength, flexibility of services, and enhancement of services. *Id.* at 79. According to FairPoint, CCHI is technically, managerially, and financially capable of "maintaining FairPoint's ILEC-ELEC obligations going forward." *Id.* FairPoint asserted that the Settlement Agreement represents and underscores CCHI's commitment to the State of New Hampshire and strengthens the position that it brings to the State. *Id.* FairPoint urged the Commission to make the requisite findings under the statute and to adopt the Settlement Agreement in its entirety. *Id.*

The Labor Intervenors reiterated that they "neither support nor oppose the proposed settlement." *Id.* at 76-77. They explained this position by citing the failure of the Settlement

Agreement to provide “the complete level of commitment we were hoping for.” *Id.* at 77. They observed that the commitment to keep financial resources in the state for certain purposes for a three-year period, while it “helps the people who work in the field, [it] does not do anything for the people who work in call centers and other activities that are not directly related to, ... capital investment and direct maintenance activities.” *Id.* According to the Labor Intervenors, the Settlement Agreement, while “a very positive development,” is not sufficient to meet all of their concerns but is “sufficient to allow [them] to stop advocating for anything more before this Commission.” *Id.*

In its closing, Staff stated that the settlement terms and conditions “provide a reasonable alternative” to address the concerns expressed in its direct testimony regarding the proposed merger transaction. *Id.* at 78. Staff concluded that the settlement terms are just and reasonable and in the public interest and support the findings required to be made by the Commission under RSA 374:30, II. *Id.*

### **III. COMMISSION ANALYSIS**

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. N.H. Code Admin. Rules Puc 203.20(b) requires the Commission to approve the disposition of a contested case by settlement if it determines that the settlement results are just and reasonable and serve the public interest. In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise, as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 17 (March 10,

2011). Even where all parties join a settlement agreement, however, the Commission cannot approve it without independently determining that the result comports with applicable standards. *Id.* at 18.

In this proceeding, the applicable underlying standard is set forth in RSA 374:30, II. Under that statute, the Commission must review the proposed merger and acquisition transaction between CCHI and FairPoint described in the Joint Petition to determine whether CCHI is technically, managerially, and financially capable of maintaining the obligations of an ILEC as set forth in RSA 362:8 and RSA 374:22-p. Those obligations include the provision of basic telephone service throughout the ILEC's franchise territory at rates that are generally capped for a defined period of time, as well as obligations that arise pursuant to the Commission's authority under the federal Communications Act of 1934, as amended (including those applicable to RBOCs), and obligations related to the provision of services to competitive local exchange carriers, interexchange carriers, and wireless carriers, regardless of technology. We have not previously had occasion to interpret or apply the findings criteria specified in RSA 374:30, II.<sup>2</sup> This is therefore a case of first impression for the Commission.

Our inquiry under RSA 374:30, II is not limited to the acquiring company's capability as of the closing date, but must extend to consider a relevant near-term transition period. If the acquirer's transitional business and integration plans would potentially affect its capability of meeting the New Hampshire ILEC's statutory obligations, then the Commission may not be able to make the required findings. This concern is heightened in view of the challenging business environment in which landline telephone companies now operate, on both the national and the regional level. In the words of Staff witness Antonuk, it is an "existentially challenged

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<sup>2</sup> That statute was amended effective as of August 10, 2012.

business,” attempting to deal with both competitive pressures and technological advances.

Tr. 5/25/17 at 16, 29-30.

We have reviewed the record in this proceeding and the terms and conditions of the Settlement Agreement. The record supports the conclusion that CCHI and its subsidiaries have extensive experience operating telephone carriers, including both ILECs and CLECs, and that they have successfully acquired and integrated a number of ILECs in the relatively recent past. We do share, however, the concerns raised by Staff and the Labor Intervenors regarding the scope and scale of the FairPoint acquisition, the lack of experience with RBOC obligations, and the ongoing nature of diligence investigations and transition planning. We believe that the settlement terms and conditions are reasonably designed to address those concerns, in particular as they relate to the provision of basic service to retail customers under state law and of wholesale services to competitors under federal and state law. In the absence of the commitments undertaken in the Settlement Agreement, we are not convinced that the record would support the findings required to be made regarding CCHI’s technical, managerial, and financial capability to meet FairPoint’s ILEC obligations under state and federal law. We now review those settlement terms and conditions in more detail.

The Settlement Agreement contains a number of commitments, obligations, and protections intended to cover wholesale service operational continuity and stability. Those provisions are largely focused on preserving the status quo operation of the FairPoint-NNE wholesale services group and the services it provides to CLECs and to other competitive telecommunications carriers. The transitional protections extend to key employee retention, systems continuity, change management processes, communications, and training, and continuation of the WPP performance standards and penalty provisions. Wholesale service

availability and pricing are addressed by commitments intended to protect ICA terms and conditions, tariffed wholesale service offerings, local number porting requirements, and continuing provision of UNEs even in wire centers found to be unimpaired, all of which commitments will be effective for specified time periods. Although the Settlement Agreement references only “Tariff No. 3: Access Tariff,” in New Hampshire there are three applicable tariffs that cover wholesale, access, and resale. Tariffs 2 and 4 will remain in place, with any proposed revisions to those tariffs required to be approved by the Commission pursuant to Puc 404.05 and RSA 378.

We find the settlement terms and conditions intended to ensure continuity, stability, availability, and level pricing of wholesale services provided by FairPoint-NNE following the merger to be just and reasonable. We note that those commitments are based in large part on a settlement reached in the similar proceeding pending before the Maine Public Utilities Commission, in which a number of CLECs and a CLEC trade association have intervened and actively participated. *Id.* at 17, 31. We also acknowledge CCHI’s stated goal to have the FairPoint-NNE wholesale services group manage the wholesale services function on a company-wide basis for all of CCHI’s ILEC subsidiaries. *Id.* at 22. That stated goal and the numerous transition period commitments should serve to alleviate concerns regarding the provision of wholesale services specific to RBOCs in view of CCHI’s lack of experience with RBOC obligations.

With respect to the network expansion capital expenditure obligation, we believe it demonstrates a meaningful commitment to pursuing strategic business opportunities and enhancing the growth and stability of the New Hampshire network. Those expenditures may effectively improve the quality of basic service and wholesale service offerings, as well as

bolster the Merged Company's financial capabilities. The commitment to make incremental network maintenance and repair improvements of \$1 million per year for three years should address trouble spots and enhance quality of service to rural and underserved basic service and other retail customers. The process specified for identifying, planning, and reconciling the incremental investments should provide Staff with greater insight into telephone network operations and maintenance. We anticipate that increased visibility and regular reviews between Staff and Consolidated may serve to sustain or even improve both basic service and wholesale services. We understand the network investment commitments are also consistent with the approach under consideration in Maine and Vermont, and we believe there are advantages in regional consistency, given the multistate nature of the Merged Company's Northern New England network and operations.

With respect to the general management and transitional provisions included in the Settlement Agreement, the commitment to submit and discuss with Staff and the Labor Intervenors, in advance, the Merged Company's detailed Synergies Plan should also provide greater insight and transparency into integration planning and implementation. The commitment to maintain an executive presence in Northern New England, consisting of both current FairPoint-NNE executives and current Consolidated executives, at least one of whom will be relocated to New Hampshire, should serve to provide direct channels of communication from the region to CCHI headquarters, thereby enabling greater responsiveness to regional issues. The express acknowledgement that secured creditor sales or transfers of most pledged assets would require prior approval by the Commission under current state law should serve to allay concerns regarding the potential "scavenging" of network assets.

The Settling Parties have also agreed that the Commission will monitor and enforce the commitments and obligations undertaken by the Merged Company in the Settlement Agreement. That is authority we continue to have under RSA 365:5 (independent inquiry), RSA 365:40 (compliance required), and RSA 365:41 (penalty against utility), notwithstanding the ELEC status of FairPoint-NNE and Northland. *See* RSA 362:8, IV (obligations arising under RSA 374:30, II specifically excluded from restrictions otherwise applicable to Commission's regulatory enforcement authority). We retain that authority notwithstanding RSA 365:1-a, which contains a limited exception from the provisions of RSA 365 for "any end user of an [ELEC], [or for] any service provided to such end user." The applicable standard under RSA 374:30, II focuses not on general end user services but on basic service and wholesale services provided by the ILEC-ELEC and the acquiring company's technical, managerial, and financial capability to continue to provide those services. Those specific services are not covered by the limited exception in RSA 365:1-a.

Based on the foregoing analysis, we find that the terms and conditions of the Settlement Agreement are just and reasonable, serve the public interest, and are consistent with the underlying statutory standards. We therefore approve the Settlement Agreement in its entirety as filed. Based on the record developed in this proceeding, and subject to the approved terms and conditions of the Settlement Agreement, we find that, in connection with the proposed merger transaction between CCHI and FairPoint, Consolidated is technically, managerially, and financially capable of maintaining the obligations of FairPoint-NNE and Northland as ILECs as set forth in RSA 362:8 and RSA 374:22-p.

In the interest of accommodating the Joint Petitioners' request that an order making the required statutory findings be issued by the end of May to permit the merger closing to occur on

or before June 30<sup>th</sup>, we have expedited our review and issuance of this Order making those findings. We will address the parties' pending motions for confidential treatment in a separate order to be issued at a later time.

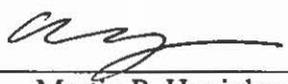
**Based upon the foregoing, it is hereby**

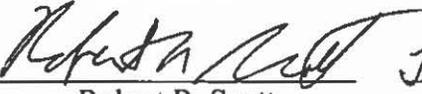
**ORDERED**, that the Revised Stipulation and Settlement Agreement is accepted pursuant to Puc 203.20(f) and is admitted into evidence as Exhibit 42; and it is

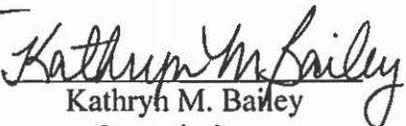
**FURTHER ORDERED**, that the Revised Stipulation and Settlement Agreement is approved as just and reasonable and in the public interest, pursuant to RSA 541-A:31, V(a) and Puc 203.20(b); and it is

**FURTHER ORDERED**, that, subject to the approved terms and conditions of the Revised Stipulation and Settlement Agreement, in connection with the proposed merger transaction between Consolidated Communications Holdings, Inc. and FairPoint Communications, Inc., the Commission finds that Consolidated is technically, managerially, and financially capable of maintaining the obligations of an ILEC as set forth in RSA 362:8 and RSA 374:22-p.

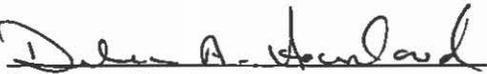
By order of the Public Utilities Commission of New Hampshire this thirty-first day of May, 2017.

  
\_\_\_\_\_  
Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Robert R. Scott  
Commissioner

  
\_\_\_\_\_  
Kathryn M. Bailey  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director