

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

Consolidated Communications Holdings, Inc., and Condor Holdings, LLC

Joint Petition for Approval of Transfer of Control

Docket No. DT 23-103

Motion of the Office of the Consumer Advocate to Compel Responses to Data  
Requests

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and moves pursuant to N.H. Code Admin. Rules Puc 203.09(i) for an order compelling Consolidated Communications Holdings, Inc. (“Consolidated”) and Condor Holdings, LLC (“Condor”) (collectively, “Petitioners”) to respond to certain data requests interposed by the OCA and objected to by Consolidated on April 8, 2024. A copy of Consolidated’s objections to the OCA data requests is appended hereto for reference. In support of its motion, the OCA states as follows:

**I. Introduction**

In this proceeding, the Petitioners seek approval pursuant to RSA 374:30, II of a transaction whereby Consolidated – which owns New Hampshire’s largest incumbent local exchange carrier, as the successor-in-interest to what was once the state’s portion of the nationwide Bell Telephone monopoly, and is also a major provider of wireless and broadband services – would become the property of a subsidiary (Condor) of a global private equity firm known as Searchlight. *See*

Petition (tab 1) at 3-4 (noting *inter alia* that Searchlight “has nearly \$12 billion in assets under management and . . . a proven track record of partnering with strong management teams to drive long-term value and shareholder returns”). This proposed transaction is of paramount interest to the OCA inasmuch as the constituency represented by our office has long been ill-served by a succession of owners during the Twenty-First Century that have slowly allowed the quality of landline telephone service in the state to deteriorate to the point of inadequacy, various promises to the contrary notwithstanding. Needless to say, the OCA is committed to assuring that the proposed new owner is in a position to demonstrate that it has the requisite technical, managerial, and financial capability to reverse this trend. Accordingly, congenial to the procedural schedule to which we agreed (tab 19) and which the Commission by procedural order (tab 20) thereafter approved, we sent the Petitioners a set of nine data requests on March 27, 2024.

Nine data requests is a small number of discovery requests in comparison to the number of such queries we typically send, and receive, in a docket of this magnitude. Nevertheless, Consolidated has objected to and is therefore refusing to respond to all but two of them (with Condor objecting to one of the other OCA requests). These objections are part of a fusillade of such objections simultaneously interposed by Consolidated to essentially every party that dares subject this utility’s exit strategy to a measure of skeptical scrutiny. The Commission should not countenance this take-no-prisoners approach to administrative litigation before the agency.

## II. The Legal Standard

“In a discovery dispute, the Commission applies by analogy the standard applicable to civil litigation, which requires a party seeking to compel discovery to show that the information being sought is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.” *Hampstead Area Water Company*, Order No. 26,584 (Feb. 17, 2022) at 13 (citation omitted). “The Commission also weighs the effort needed to gather the requested information, the availability of the information from other sources, and other relevant criteria.” *Id.* (citation omitted). “In ruling on a motion to compel, the Commission enjoys broad discretion in the management of discovery.” *Id.* (citations and internal quotation marks omitted).<sup>1</sup>

## III. Consolidated’s Unpersuasive Objections, Analyzed

Applying this standard requires the Commission to direct the Petitioners to provide responses to all of the OCA’s discovery requests.

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<sup>1</sup> Rule Puc 203.09(i)(4) requires a party to certify that it has “made a good faith effort to resolve the dispute informally.” The OCA requests that the Commission waive this requirement here. The Petitioners interposed their objections on April 8, just two days before the due date for motions to compel discovery. *See* Rule 203.09(i)(2) (specifying that motions to compel discovery must be made “within 15 business days of receiving the applicable response or objection, *or the deadline for providing the response*, whichever is sooner”) (emphasis added) and Commission-approved procedural schedule (tab 19), establishing April 10 as the date for discovery responses. The procedural schedule approved by the Commission was drafted by Consolidated; the OCA would not have acquiesced to the proposal if we had known that the Petitioners were going to interpose discovery objections on a wholesale basis – not just to the OCA but to *every other party* that issued data requests (i.e., the Department of Energy, the New Hampshire Electric Cooperative, the International Brotherhood of Electrical Workers, and Charter Fiberlink) with just two days of reaction time remaining. In these circumstances, the Commission should excuse the OCA for assuming that “good faith” is not applicable to this situation.

The first data request to which Consolidated objects seeks a topographic map of Consolidated's New Hampshire service territory, including signal strength contours throughout the territory. Consolidated objected on the ground that Consolidated does not provide wireless services and, therefore, that the requested information is irrelevant. The Petition itself states to the contrary at page 2, *viz*: "CCHI [i.e., the parent company that is the actual petitioner, as opposed to its subsidiary Consolidated Communications of Northern New England Company] is a major broadband and business communications provider serving consumers, enterprise customers, and wireless and wireline carriers across rural and urban communities in a twenty-two-state service area, including in New Hampshire." The question is therefore seeking information that is relevant to the question of whether the transferee has the technical and other requisite capabilities to meet the needs of Consolidated's service territory in New Hampshire.

The same objection, and the same argument to the contrary, applies to the second data request to which Consolidated objected. That one seeks to determine whether and to what extent there are specific service dead zones in the New Hampshire service territory of Consolidated.

The OCA's fifth data request, also objected to by Consolidated, seeks system performance statistics for the past five years, including the frequency and duration of service interruptions along with information about the root causes of these interruptions. Consolidated claims that the requested information is irrelevant because the proposed transaction is an indirect ownership transaction and requests

information that is not kept in the ordinary course of business. The OCA is aware of no case law, at either the agency or appellate level, that shields an indirect transferor or transferee from scrutiny with respect to the service difficulties the transferor intends to leave in its wake and, derivatively, the transferee's capability to address them. As to the "information not kept in the ordinary course of business" claim if Consolidated has truly not kept track of its service quality it should simply say so in response to the OCA's data request, as opposed to hiding behind a meritless objection.

Data request Number 6, also objected to by Consolidated, seeks the same information as to Consolidated's other service territories in the northeast. Consolidated's objection is identical to the one it interposed to Data Request Number 5. The purpose of this question, obviously, is to ascertain the extent to which any service difficulties encountered by New Hampshire customers are unique to New Hampshire, which is probative of the track record Consolidated intends to leave in its wake here in the Granite State.

Similarly, data request numbers 7 and 8 seek a summary of consumer concerns and complaints over the past three years in New Hampshire and regionally. Consolidated again complains that given the indirect nature of the transfer here the Petitioners should not be required to disgorge this information. Consolidated nowhere explains why the indirect nature of the transfer makes information about Consolidated's performance irrelevant.

Beyond these specific objections, Consolidated attempts to interpose a series of “General Objections” that are not amenable to a response here in light of Consolidated’s failure to explain how the specific issues described in the general objections apply to the specific requests for information transmitted by the OCA. We obviously do not seek disclosure of information or production of materials that are covered by a legally cognizable form of privilege. In response to a claim that our modest set of nine discovery requests is “overly broad, unduly burdensome, oppressive, and harassing,” Consolidated Objection at 2, the facts speak for themselves.

#### **IV. Conclusion**

For the reasons stated above, the OCA requests that the Commission send these Petitioners a message to the effect that if they intend to gain the agency’s imprimatur for the proposed transfer of control they will be expected to cooperate fully with the Commission’s rules, including those entitling the parties to conduct reasonable discovery. The Commission should deliver that message via an order compelling the Petitioners to respond fully to the OCA’s data requests as well as those of other parties.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Grant the OCA’s motion to compel the Petitioners to provide discovery responses, and
- B. Grant such further relief as shall be necessary and proper in the circumstances.

Sincerely,



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April 10, 2024

Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.



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Donald M. Kreis