

**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 Town of Benton to Compel Responses to Data Requests

NOW COMES the Town of Benton, 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”) to respond to certain data requests interposed by the Town of Benton and objected to by Consolidated on April 8, 2024.<sup>1</sup> A copy of Consolidated’s objections to the Town of Benton’s data requests is appended hereto for reference. In support of its motion, the Town of Benton states as follows:

**I. Introduction**

The Town of Benton is a rural town located in Northern New Hampshire whose residents have suffered for many years with unreliable telecommunications services from the incumbent

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<sup>1</sup> The Town of Benton believed that it had 15 business days from the date it received Consolidated’s objections to file a motion to compel and wanted to await the Technical Session to see if its questions would be answered before filing a motion to compel responses. The Town of Benton, new to NH PUC proceedings, subsequently learned that Rule Puc 203.09(i)(2) requires 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 that the deadline for providing the response was Consolidated’s response to data requests scheduled for Wednesday, April 10. Consolidated’s response two days before the deadline gave little time to file appropriate motions. The Town of Benton requests that the Commission waive the filing deadline for its motions to compel because its error was inadvertent and should not prejudice any party to this proceeding.

telephone company. The concerns of the Town of Benton are well expressed by the Office of Consumer Advocate in its April 10, 2024 Motion to Compel Responses:

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.

The inadequate telephone company services also include its unreliable and slow digital subscriber line (DSL). Benton is a town without any cable providers and no alternative voice or internet services, until recently.<sup>2</sup> The majority of Town residents will be dependent on the quality and reliability of Consolidated's copper wire infrastructure for many years to come.

The focus of the Town of Benton's questions in this proceeding seeks to determine whether the takeover of Consolidated's ownership by an international private equity firm will exacerbate the deterioration of the copper wire infrastructure under Consolidated and its predecessors or whether it will improve the situation. It seeks hard evidence and data to make that determination, not vague and unenforceable promises. The questions of the Town of Benton therefore seek details about the current POTS, DSL, and fiber customers (including telephone services) and how they are likely to fare under the new owners and new capital investments the Petitioners claim to offer as a result of the proposed transaction.

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<sup>2</sup> In the last few months installation has begun of fiber internet and VOIP phone service from a provider dedicated to serving rural customers, but most Benton residents are likely to be reliant on POTS for the foreseeable future. That is because no adequate cell phone service is available in our mountainous region (3/4 of the Town is in the White Mountain National Forest) and many residents prefer the reliability of POTS when electric service is not available.

The Town of Benton’s concern would exist with a proposed ownership transfer to any new owner of this infrastructure and service so vital to its residents, but its concern is heightened because:

- 1) The telephone company will become a private company and will be not subject to as much scrutiny or available information from publicly available sources (e.g., Securities and Exchange Commission filings and quarterly investment calls and presentations for shareholders).
- 2) It will be owned primarily by foreign investors, with foreign ownership increased from the level the FCC approved in 2021 in a proceeding to “permit foreign ownership of the proposed controlling U.S. parent, Consolidated Communications, Inc. (CCI).” (see the FCC decision in docket [DA-21-1468](#), November 23, 2021). As a result, the proposed transaction may authorize the dominant telephone company in New Hampshire to be even more out of touch with New Hampshire concerns than a multi-state corporation like Consolidated.

The Town of Benton received two responses to its questions from Consolidated (April 8 and 15) and one response from Condor (April 10). Condor made a good-faith attempt to answer the Town’s substantive questions, but Consolidated did not. The April 15 answers of Consolidated addressed a couple of minor questions that were acceptable so this motion focuses on the April 8 non-responses of Consolidated.

## **II. Consolidated’s Refusal to Answer Relevant Questions**

**Question 1:** The Town of Benton’s first series of questions focus on Consolidated’s POTS customers, the funding of its copper infrastructure, the staffing levels used to maintain that

infrastructure, consumer satisfaction with Consolidated's services, and evidence that the transaction will increase the financial support for needed improvements. The Consolidated objections are that these questions are not relevant and are too burdensome to answer. They are all relevant and can be easily extracted from the company's routine business records. What can be more relevant to the Commission than to know whether New Hampshire customers under the Commission's protection will be well served by the transaction? It helps answer the question if the Petitioners are "technically, managerially, and financially capable of maintaining the obligations of an incumbent local exchange carrier" to properly serve its customers. To determine that the Commission needs to know whether funding and staffing will increase or decrease and whether customer service is adequate now and likely to improve with the approval of the transaction. A brief description of the questions Consolidated refused to answer follows.

- a.** This question simply asks for the number of Consolidated customers dependent upon the company's copper wire infrastructure.
- b.** This question asks how the transaction will affect the funding of the copper wire infrastructure, with a response providing more than mere generalities.
- c.** This question asks the employee count for each year since Consolidated took over the ILEC obligations of FairPoint Communications, to establish the trend and baseline for assessing the impact of the proposed transaction.
- d.** This question asks for the employees assigned to fiber work; it helps determine the net number of employees now assigned to the copper wire infrastructure.

- e. This question asks how the transaction will affect future staffing levels, an input into the likely level of customer service, and copper wire maintenance if the transaction is consummated.
- f. This question asks whether customers are satisfied with Consolidated's tenure as the ILEC in New Hampshire. Consolidated may say it has no ASCI reports or other consumer satisfaction surveys or reports. If that is true, the complaint records requested by the Office of Consumer Advocate, which Consolidated says it will provide, should be provided to the Town of Benton.
- g. This question asks Consolidated and Condor to say how much of the promised *additional* capital infusion from the proposed transaction will come to New Hampshire vs other jurisdictions served by Consolidated. The Department of Energy asked this question repeatedly at the Technical Session without a satisfactory reply.

**Question 2:** Consolidated's fiber business is closely related to its ILEC voice service obligations because it provides an [alternative phone service via VOIP](#). Consolidated will likely seek to migrate its POTS customers to Fidium VOIP in New Hampshire. Consolidated at the Technical Session suggested this may occur within five (5) years. The pace of the extension of the Fidium fiber service to improve phone and internet services and whether it will include all of Consolidated's current phone customers, including in rural areas, is important to Benton and many New Hampshire residents. How the proposed transaction will affect the fiber buildout and POTS transition is thus an important question to be answered in this proceeding. Below is a brief summary of the questions the Town of Benton asked.

- a. This question provides the baseline of the current extension of fiber internet in Consolidated's service territory.
- b. This question asks how the current fiber build plans will be increased as a result of the new capital infusion from the consummation of the proposed ownership transfer.
- c. This question focuses on whether the transaction will help to extend the reach of the fiber system, beyond what has already been planned, to reach the rural areas most in need of improved telecommunications services.
- d. This question asks if competition from other fiber providers will deter Consolidated from expanding the reach of its fiber phone and internet system and if the proposed transaction will help to expand the system even in those competitive areas.
- e. This multi-part question asks if Consolidated's fiber phone services will be used as a reason to abandon its copper-based phone and internet services and its ILEC provider of last resort obligations. It also asks if the Petitioners recognize that not all of its customers, including emergency service providers, will prefer VOIP to POTS.

**Question 4 a.** This question asks for evidence that supports the Petitioners' testimony that it will honor all existing contractual and regulatory obligations. The Petitioner knows when and where it has refused to honor existing contracts or regulatory obligations, some of which are disputed in a case it cites in its objection to this question, while others are evident from the Commission's case files. The Town of Benton is affected by this issue as it relates to Consolidated's rights to attach its services to the poles of other utilities in the town. Evidence that either of the Petitioners are lawless violators of contracts and regulatory requirements is

surely relevant to the question of whether they are “technically, managerially, and financially capable of maintaining the obligations of an incumbent local exchange carrier.”

### **III. Good Faith Efforts to Resolve**

The Town of Benton attended the Technical Conference last week and noted its inability to ask follow-up and clarifying questions, the purpose of the Technical Conference, because Petitioners did not answer the most important questions it asked. No response or justification was provided by Petitioners.

Petitioners at the Technical Conference provided some information regarding the transfer from POTS voice service to voice service via fiber VOIP, which was also asked in the Town of Benton’s questions, and suggested it had a timeline of about 5 years. However, Petitioners did not provide the details requested in the Town of Benton’s questions that are necessary to assure POTS users of satisfactory voice services.

The issues raised by the Town of Benton questions 1-01(g) and 1-02(b) were explored in the Energy Department’s questions at the Technical Conference. They asked about additional investments in New Hampshire as a result of the proposed transaction. They did not receive a satisfactory answer, despite repeated requests. The Consolidated witness in response pointed to work to extend fiber as a result of New Hampshire Department of Business and Economic Affairs (BEA) grants (\$40 million) and FCC RDOF grants which predated the proposed transaction and were thus not a result of the transaction.

While there was no discussion of the consumer surveys that the Town of Benton requested, there was discussion of Consolidated providing consumer complaints requested by the Office of Consumer Advocate. That information may help determine consumers' reaction to the deterioration of copper wire infrastructure under Consolidated's tenure in NH. That information should be provided to the Town of Benton if no consumer surveys are available in the files of Consolidated.

#### **IV. Conclusion**

The Town of Benton's questions addressed above are "reasonably calculated to lead to the discovery of admissible evidence" that bears on the question of whether the Petitioners are "technically, managerially, and financially capable of maintaining the obligations of an incumbent local exchange carrier." The Town of Benton respectfully requests that the Commission issue an order compelling the Petitioners to answer the questions submitted by the Town of Benton.

Respectfully submitted this 22<sup>nd</sup> day of April 2024



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#### **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.



A handwritten signature in black ink, appearing to read "Bill Darcy". The signature is fluid and cursive, with the first name "Bill" and the last name "Darcy" clearly distinguishable.

William R. Darcy