

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DT 23-103

CONSOLIDATED COMMUNICATIONS HOLDINGS, INC. AND  
CONDOR HOLDINGS LLC  
JOINT PETITION TO APPROVE TRANSFER OF CONTROL

**Objection by Consolidated Communications Holdings, Inc. to  
Motion to Compel Responses to Data Requests by the Town of Benton**

NOW COMES Consolidated Communications Holdings, Inc. (“Consolidated” or “CCHI”), by and through its undersigned attorneys, and respectfully objects to the Motion to Compel Responses to Data Requests (the “Motion”) filed by a member of the New Hampshire Electric Cooperative’s Board of Directors, William Darcy, on behalf of the Town of Benton.

**Introduction**

1. The Commission should deny the motion to compel filed by New Hampshire Electric Cooperative’s Director, William Darcy, on behalf of the Town of Benton. The Motion makes unfounded accusations related to “... unreliable telecommunications services from the incumbent telephone company...” but admits that it seeks (among other things) highly confidential, competitively sensitive information related to “DSL, and fiber *customers*” none of which bears any relation to the legal standard at issue in this Docket. Motion at p. 2. Additionally, the Data Requests propounded by the Town of Benton seek highly confidential, competitively sensitive information regarding Consolidated’s operating subsidiaries, such as employee staffing levels (Motion at 4), network infrastructure funding levels (*id.* at 4-5), and

extensive data related to Consolidated’s broadband business operated through its subsidiary, Consolidated Communications of Northern New England Company, LLC (“CCNE”) (*id.* at 6).

2. In addition, as with the New Hampshire Electric Cooperative (“NHEC”) Motion to Compel, the Motion requests “... evidence that supports the Petitioners’ testimony that it will honor all existing contractual and regulatory obligations ...” because “[t]he 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.”<sup>1</sup> Motion at 6. And in its argumentative Motion, the Town of Benton claims to ask for evidence of the fact that “... Petitioners are lawless violators of contracts and regulatory requirements” because it “is surely relevant” and must be investigated. *Id.*

3. This Docket solely relates to a joint request from Consolidated and Condor Holdings LLC (“Condor,” and together with Consolidated, hereinafter the “Petitioners”) for approval by the New Hampshire Public Utilities Commission (the “Commission”) of a transaction which (if consummated) would result in, among other things, the *transfer of indirect ownership and control* of CCHI’s subsidiaries: CCNE and Consolidated Communications of Maine Company (“CCM”) to Condor pursuant to RSA 374:30, II (the “Transaction”). *See* Joint Petition to Approve Transfer of Control, Dec. 27, 2023 (the “Joint Petition”), p. 1; *see also* Commencement of Adjudicative Proceeding and Notice of Prehearing Conference, February 16, 2024 (“Initial Order”), p. 1. If the Commission approves the relief in the Joint Petition, then

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<sup>1</sup> Not surprisingly, NHEC’s service territory encompasses the Town of Benton. *See* N.H. Elec. Coop, Service Area, <https://www.nhec.com/wp-content/uploads/2016/12/tariff-document-service-area.pdf>.

following the closing of the Transaction (as defined in the Joint Petition), Condor will become the direct holder of all of the common stock of CCHI and the indirect parent of CCNE and CCM, and CCHI, which is currently a publicly traded company, will become privately held. Joint Petition at 5.

4. For the reasons set forth below, Mr. Darcy’s motion to compel lacks merit and his data requests fail to adhere to principles of relevance, reasonableness and common sense. The motion should be denied.

### **Factual Background**

5. On December 27, 2023, Consolidated and Condor petitioned the Commission to allow the transfer of indirect ownership and control of Consolidated’s subsidiaries CCNE and CCM to Condor pursuant to RSA 374:30, II. The proposed Transaction is structured as a change of ownership at the holding company level only. The closing of the Transaction will not affect any of the operations or legal identities of CCNE, CCM, or any other operating subsidiary of CCHI. As further detailed in the Joint Petition, the Licensees will continue to operate under the current policies and procedures, and all existing obligations, including agreements, tariffs, contracts, and other arrangements, will be unaffected by the Transaction. Joint Petition, p. 7.

6. Mr. Darcy is a member of the NHEC Board of Directors. *See* N.H. Elec. Coop., *Board of Directors*, <https://www.nhec.com/board-of-directors/>. In a letter to the editor of the Daily Sun in 2023, Mr. Darcy asserts that his “... most notable achievement was serving as project manager and co-author with Leo Dwyer<sup>2</sup> of a grant application that won a remarkable \$50 million for NHEC broadband.” *See* Bill Darcy, *Bill Darcy: Dwyer, Darcy the Smart Choices for Electric Co-op Seats*, The Laconia Daily Sun (May 4, 2023),

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<sup>2</sup> Mr. Dwyer also is a member of the NHEC Board of Directors.

[https://www.laconiadailysun.com/opinion/letters\\_to\\_editor/bill-darcy-dwyer-darcy-the-smart-choices-for-electric-co-op-seats/article\\_fe78b382-e9c4-11ed-926a-9b4c9e458f66.html](https://www.laconiadailysun.com/opinion/letters_to_editor/bill-darcy-dwyer-darcy-the-smart-choices-for-electric-co-op-seats/article_fe78b382-e9c4-11ed-926a-9b4c9e458f66.html).

7. Completely independent from this matter, NHEC and Consolidated are currently involved in contentious and long-running litigation in New Hampshire Superior Court, captioned as *New Hampshire Electric Cooperative, Inc. v. Consolidated Communications of Northern New England, LLC*, Docket No. 216-2020-CV-00555 (hereinafter the “State Court Litigation”). In the State Court Litigation, the parties are presently litigating vegetation management issues arising from the parties’ General Agreement Joint Use of Wood Poles, dated July 1, 1977 (the “Joint Use Agreement” or “JUA”), and a related Intercompany Operating Procedure attached thereto. Other Joint Use Agreement based issues are a byproduct of the same litigation. *See* Consolidated’s Objection to NHEC Motion to Compel [Tab 32], p. 3 (fn. 1).

8. In March 2024, in this proceeding before the Commission, Mr. Darcy, on behalf of the Town of Benton, propounded data requests on Consolidated wholly unrelated to the indirect transfer of control of CCNE and CCM. Consolidated timely objected to the requests as irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and improperly seeking information related to issues in the current State Court Litigation.

### **Argument**

9. It is well settled that “discovery should be relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence.” *Re Public Service of New Hampshire*, 86 NH PUC 730, 731-32 (2001); *see also N.H. Ball Bearings, Inc. v. Jackson*, 158 N.H. 421, 429 (2009) (“[P]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action...”). Broad though it is, this standard “does not exempt discovery requests from principles of reasonableness and common

sense.” *Re City of Nashua*, Order 24,654 (August 7, 2006), at 3 (*citing State v. Barnes*, 150 N.H. 715, 719 (2004)). The Commission “...is permitted to keep discovery within reasonable limits and avoid open-ended fishing expeditions or harassment to ensure that discovery contributes to the ordinary dispatch of judicial business...” *N.H. Ball Bearings*, at 430. At the outer limits, where a motion to compel seeks discovery of information which could under no circumstance be considered relevant, the motion must be denied. *Re PSNH*, 86 NH PUC at 731-32. The information the Town of Benton seeks lies beyond the outer limits of reasonable discovery and is an open-ended fishing expedition related to NHEC/CCNE disputes that have nothing to do with this Docket.

10. In this proceeding, the only matter before the Commission for approval is the transfer of the indirect ownership and control of CCNE and CCM to Condor. New Hampshire RSA 374:30, II governs the Transaction and is at issue in this Docket. The proposed Transaction is occurring at the parent company level. And, as detailed in the Joint Petition, CCNE’s operating procedures will continue in their current form and will not be impacted by the indirect change in control of CCNE or any other operating subsidiary of CCHI. The sole issue before the Commission therefore is whether the new entity to which the transfer of control is to be made is technically, managerially and financially capable of maintaining the obligations of an ILEC *set forth in RSA 362:8 and RSA 374:22-p*. RSA 374:30, II (emphasis added). In this proceeding, the Commission is not tasked with analyzing the infrastructure related to the provision of services to one specific town within the state, nor the details of a Consolidated operating subsidiary’s broadband and fiber-based business in New Hampshire on behalf of a competitor.

11. The New Hampshire Legislature expressly limited the standard of review under RSA 374:30, II to whether the utility transferee will be capable of maintaining ILEC based

obligations that arise under RSA 362:8 and RSA 374:22-p. These statutes address ILEC obligations related to: basic service (RSA 362:8, IV, citing to obligations arising under 374:22-p), the provision of services to competitive local exchange carriers, interexchange carriers, and wireless carriers (RSA 362:8, III), certain issues related to availability of broadband services, soft disconnect processes and capital expenditure commitments within the state that arose prior to February 1, 2011 (RSA 362:8, II), and the Commission's authority under the federal Communications Act of 1934 (RSA 362:8, I).

12. All of Mr. Darcy's data requests for the Town of Benton seek information outside this scope of review. Mr. Darcy, on behalf of the Town of Benton has now moved to compel responses to its burdensome data requests, seeking information concerning the infrastructure of one of Consolidated's subsidiaries, CCNE, as well as confidential and competitively sensitive: (i) customer information, (ii) business plans, and (iii) employee staffing and related information. It should come as no surprise that Consolidated will not produce such information that is both irrelevant and confidential (as competitively sensitive) to a member of the Board of Directors of a competitor that has been embroiled in almost four years of litigation with a Consolidated operating subsidiary. Such matters have no relevance to the proposed Transaction before the Commission. And even if they did, which Consolidated does not concede, a competitor engaged in longstanding litigation has no right to such information. *See Electricity Utility Customers*, DE 12-097, Order No. 25,439 (Dec. 7, 2012) at p. 8-9 (denying motion to compel with respect to sensitive commercial information requested by competitor). Instead, Consolidated believes that Mr. Darcy seeks this information ostensibly on behalf of the Town of Benton to achieve an outcome unrelated to this proceeding. Specifically, Consolidated believes that the discovery

process in this Docket is being exploited as a means to obtain additional information to benefit NHEC both as a competitor to CCNE and for NHEC's use in the State Court Litigation.

13. The Motion asserts that requests related to the maintenance and investment in CCHI's infrastructure are relevant because knowing whether customers are well served by the transaction helps answer the question of whether Petitioners are "technically, managerially, and financially capable of maintaining the obligations of an incumbent local exchange carrier." Motion at p. 4. But RSA 374:30, II does not require such a showing and the Motion is devoid of a single statutory citation that supports its purported legal standard applicable to this Docket. It is not the role of the Commission to assess, and this Docket is not the proper forum to raise, particularized concerns relating to the provision of CCHI's services, especially those related to broadband and fiber-based services. *See Investigation into Whether Certain Calls are Local*, DT 00-223, Order No. 23, 658 (Mar. 22, 2001) at p. 5-6 (denying motion to compel where requested information was "so specific" that it would "not lead to the resolution of the docket but will cloud the central issues").

14. The Town of Benton's Motion claims that data request 4.a seeks evidence that the Petitioners will "... honor all existing contractual and regulatory obligations ..." Motion at 6. But data request 4.a asks whether "[s]ince 2017 have Licensees complied with all its contractual obligations under its pole attachment and joint use agreements with pole owners." Motion at PDF p. 14 of 15, data request 4.a. This data request mirrors NHEC's claims in the State Court Litigation and the claims/proceedings that will continue between the parties. *See infra* Consolidated's Objection to NHEC Motion to Compel, paras. 4-6, ps. 4-5. Whether or not Consolidated complied with various private contracts with other "pole owners," apparently not even limited to New Hampshire pole owners, is far afield from discovery that contributes to the

ordinary dispatch of judicial business. *See NH Ball Bearings, supra* at 430. Discovery related to a myriad of the private pole owner-based contracts would be excessive, burdensome and not in any way relevant to the issues in this Docket.

15. Consolidated and NHEC are engaged in a private, contractual dispute being adjudicated in a New Hampshire Superior Court pursuant to the underlying terms of their contract and applicable law. Simply because the NHEC and Mr. Darcy claim that Consolidated has violated that contract does not make it so. There is simply no basis for seeking to re-litigate NHEC's (and Mr. Darcy's) claims in this forum as well.

16. Consolidated, through its operating subsidiaries, respectfully contends that it is currently maintaining its ILEC obligations set forth in the relevant statutory scheme applicable to this Docket. Because Consolidated's operating subsidiaries will remain intact after the consummation of the Transaction, Consolidated will continue to comply with its obligations. Because Consolidated's new ownership will not change this fact, the Town of Benton's requests do not have any relevance to CCHI and Condor's capabilities.

17. The Commission should not overlook the fact that Mr. Darcy serves on the Board of NHEC and focuses his efforts on NHEC's broadband business. It is clear that the New Hampshire service territory of Consolidated's operating subsidiaries includes upwards of 75% to 80% of the state's cities, towns and other communities.<sup>3</sup> Yet the Town of Benton, which happens to have an NHEC Board member on its Board of Selectpersons, is the only one of well over 150 communities served by CCNE and CCM that sought to intervene in this Docket. For good reason, Consolidated submits that Mr. Darcy propounded these data requests to solicit

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<sup>3</sup> See N.H. Pub. Utils. Comm'n, *ILEC Exchange Boundaries Map*, <https://www.puc.nh.gov/telecom/ILEC%20Exchange%20Boundaries%20Map.pdf>.



additional information not for the Town of Benton, which does not even contend that it (the Town) is a customer of Consolidated, but to advance NHEC's litigation interests. As detailed in Consolidated's Objection to NHEC's Motion to Compel, NHEC issued a number of data requests that were wholly irrelevant to the Docket and are a means to benefit NHEC in the pending State Court Litigation. Just as the Commission should not sanction NHEC's abuse of the discovery process, the Commission should also not allow Mr. Darcy and the Town of Benton to obtain responses to data requests that are plainly not relevant and material to the resolution of this proceeding.

18. Finally, the Town of Benton did not reach out to counsel for either of the Joint Petitioners to make "a good-faith effort to resolve the dispute *informally*" as required by PUC 203.09(i)(4) before filing its motion to compel. The Town of Benton claims that its attendance at the Technical Conference satisfied this requirement, but that was not an informal discussion between the parties. Further, any effort to resolve the dispute at the Technical Conference was not in good faith because Mr. Darcy and the Town of Benton did not attempt to narrow their questions in response to Consolidated's objections against providing highly confidential, competitively sensitive information to a competitor's Board member. If the Town of Benton had reached out informally, Consolidated would have also directed it to publicly available information already filed in the docket responding to the questions from the New Hampshire Department of Energy and Office of Consumer Advocate that sought similar information from Consolidated. And Consolidated this day has served supplemental responses to the Town of Benton addressing several of its data requests (attached hereto as Exhibit A).

19. Nevertheless, Consolidated is not providing the Town of Benton the confidential information it provided to the New Hampshire Department of Energy and Office of Consumer

Advocate to the Town of Benton because, as previously stated, Consolidated will not provide, and is not obligated to provide, highly confidential information to a competitor's Board member. Thus, the Town of Benton cannot certify it has made the required good-faith effort to resolve the dispute informally.

**Conclusion**

20. For the above stated reasons, Consolidated respectfully requests that the Town of Benton's motion to compel be denied.

Respectfully submitted,

CONSOLIDATED COMMUNICATIONS  
HOLDINGS, INC.

By its Attorneys,

Dated: May 2, 2024

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CERTIFICATE OF SERVICE

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

Dated: May 2, 2024

By: /s/Matthew R. Johnson  
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