

**THE 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.**

**COMMISSION STAFF'S WRITTEN STATEMENT REGARDING DISPUTED
DATA REQUESTS FOR HEARINGS EXAMINER'S RESOLUTION**

The Staff of the Public Utilities Commission (Staff), pursuant to Order No. 25,997 (March 7, 2017) at 17-19 (Order), hereby submits to F. Anne Ross, Commission General Counsel, in her capacity as hearings examiner in this proceeding appointed pursuant to the Order (Hearings Examiner), its Written Statement Regarding Disputed Data Requests For Hearings Examiner's Resolution (Statement). Staff respectfully requests that the Hearings Examiner address with the parties and attempt to resolve the current discovery disputes described in this Statement. In support of that request, Staff states as follows:

1. On December 29, 2016, Consolidated Communications Holdings, Inc. (CCHI) and FairPoint Communications, Inc. (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 requests that the Commission make the required findings under RSA 374:30, II, and any other applicable statutory provisions, to permit CCHI and FairPoint to complete their proposed merger and acquisition transaction.

2. As a result of that proposed 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).

3. Under RSA 374:30, II, in connection with the proposed transaction, the Commission must find that the utility to which the transfer is proposed to be made 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.

4. On February 3, 2017, the Commission approved a procedural schedule for this proceeding, with rolling discovery on the Joint Petition and the supporting direct testimony filed by the Joint Petitioners permitted through March 10, 2017. In accordance with that procedural schedule, Staff propounded a first set of data requests on each of CCHI and FairPoint, on February 17, 2017 (Data Requests).

5. CCHI and FairPoint submitted extensive and detailed objections to a majority of the Data Requests propounded by Staff, on February 27, 2017 (Objections). The Objections focused primarily on the proper scope of inquiry in this proceeding, the relevance of questions directed to

the joint petitioners, and the alleged commercial sensitivity and non-public, proprietary nature of much of the information sought through the Data Requests, warranting confidential treatment of such information.

6. CCHI and FairPoint were provided an extension of time until March 1, 2017 to provide responses to the Data Requests. CCHI and FairPoint each requested additional time to provide initial answers to Staff's data requests, and the Commission granted an additional extension until March 6, 2017. CCHI and FairPoint provided written responses to a number of the Data Requests (Responses), but provided no response to many other Data Requests. A number of the Responses were claimed to be either "Confidential" or "Highly Confidential."

7. Staff attempted to resolve outstanding disputes regarding the Data Requests, the Objections, and the Responses during a conference call with representatives of CCHI, FairPoint, and Staff's consultant, Liberty Consulting Group (LCG), and through subsequent written communications following that conference call. Despite these efforts, as of this date, a number of the Data Requests have not been answered, a number of the Responses are considered to be inadequate by Staff and LCG, and disputes regarding the proper scope of discovery have not been resolved, despite the parties' efforts to address those issues and the clarification provided by the Commission in the Order. Summary descriptions of the disputed Data Requests, presented in tabular form as prepared by LCG, are attached to this Statement. Those summary descriptions include the text of the relevant Data Requests, the nature of the objections raised, the purpose and relevance of the questions asked and information sought, and the basis of the inadequacy of the Responses received. Also attached to this Statement are copies of the Objections.

8. In the Order, the Commission granted the Motion to Compel Responses to Discovery Requests filed by 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 found that:

In view of the general preference to permit liberal discovery in litigated matters before the Commission, we are not prepared to impose narrow restrictions on the scope of parties' discovery. We do not believe that the scope of discovery should be unduly restricted when the results of the inquiry may produce relevant facts that may support the record for our findings. Rather, we will permit broad discovery at this stage, while withholding judgment on specific issues of relevancy until the parties' positions have been further elucidated through their prefiled testimony and their hearing testimony.

Order at 14. The Commission also clarified that allegedly confidential information contained in discovery response should be handled pursuant to the standards and processes set forth in N.H. Code Admin. Rules Puc 203.08(d). Order at 15.

9. In view of the broad scope of discovery permitted in this proceeding, as recognized by the Commission in the Order, Staff believes that complete and adequate responses to all of the Data Requests must be provided by CCHI and by FairPoint, as applicable. Receipt of such responses, and the documents, data, and other information sought thereby, is essential to establish the factual backdrop against which the proposed CCHI-FairPoint merger transaction can be evaluated consistent with the RSA 374:30, II statutory criteria of technical, managerial, and financial capability to maintain the obligations of an ILEC as set forth in RSA 362:8 and RSA 374:22-p. In the absence of such responses and related documents, data, and other information, it is uncertain whether the joint petitioners can be found to have met their burden to demonstrate satisfaction of those statutory criteria.

10. In particular, the technical, managerial, and financial capability of CCHI to maintain ILEC obligations in large measure depends upon the nature of the business and operations being

acquired. It similarly depends upon the governance, executive, and management structure, functional organizations, resources, systems, practices, requirements, and activities as now conducted by FairPoint and as proposed to be changed by CCHI. Many of the Data Requests that remain in dispute concern the nature of FairPoint's business operations and of its other attributes cited above. Many similar Data Requests concern where and how CCHI attributes will be maintained or changed. All questions clearly frame the requirements that CCHI must meet as a managerially, technically, and financially capable successor to FairPoint in carrying out its ILEC responsibilities. Understanding what the challenges are, how they are being met, and what CCHI intends to do in continuing to meet them have clear relevance in this proceeding.

11. Many other Data Requests address the sufficiency of information that CCHI has gained about business, operations, managerial, technical, and financial challenges. Those questions bear on how well CCHI has identified what is required to operate in New Hampshire with the required level of managerial, technical, and financial capability.

12. Still other questions bear upon the degree to which CCHI has demonstrated managerial, technical, and financial capability when integrating prior acquisitions. Particularly in recognition of the comparatively large size of the FairPoint acquisition for CCHI, past experience in integrating new business operations bears on its managerial, technical, and financial capability to integrate FairPoint's operations.

13. These three categories, into which fall most if not all of the questions in dispute, demonstrate the material connection between what Staff has asked in the Data Requests and the fundamental questions that the Commission is tasked with answering in this proceeding. Even should it prove difficult to fit a small number of the disputed questions neatly into these three broad categories, their seeking of information about what FairPoint is doing in New Hampshire

and how it does it, and where and how CCHI intends to continue or change it, clearly seeks to render transparent the relevant context for informing the Commission's determination regarding managerial, technical, and financial capability.

14. Staff therefore requests that the Hearings Examiner attempt to resolve the discovery disputes described in this Statement on an expedited basis, in view of the accelerated nature of the approved procedural schedule for this proceeding.

WHEREFORE, Commission Staff respectfully requests that the Hearings Examiner address with the parties and attempt to resolve the discovery disputes described in this Written Statement Regarding Disputed Data Requests For Hearings Examiner's Resolution.

Respectfully,

STAFF OF THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Date: March 15, 2017

By: 
David K. Wiesner, Esq.
Staff Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Written Statement Regarding Disputed Data Requests For Hearings Examiner's Resolution has this day been served by electronic mail to all persons named on the official service list for this docket.

Dated: March 15, 2017



David K. Wiesner, Esq. (N.H. Bar No. 6919)