

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 16-872

CONSOLIDATED COMMUNICATIONS HOLDINGS, INC.

and

FAIRPOINT COMMUNICATIONS, INC.

UNOPPOSED MOTIONS FOR PROTECTIVE ORDER
AND CONFIDENTIAL TREATMENT,
PARTIAL WAIVER OF PUC RULES 201.04(b) and (c),
AND PARTIAL MODIFICATION OF ORDER NO. 25,997

NOW COMES Consolidated Communications Holdings, Inc. (“Consolidated”), by and through its undersigned attorneys, and, pursuant to RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08(b), respectfully moves the New Hampshire Public Utilities Commission (“the Commission”) to issue a protective order which accords confidential treatment to certain information described below. In addition, Consolidated respectfully moves pursuant to N.H. Admin. Rule Puc 201.05 for a waiver of N.H. Admin. Rules Puc 201.04 (b) and (c), and for partial modification of Order No. 25,997, to the extent that the above-cited rules and Order require Consolidated to submit redacted and confidential versions of the information described below. In support of these Motions, Consolidated states as follows:

1. On December 29, 2016, Consolidated and FairPoint Communications, Inc. (“FairPoint”) filed a Joint Petition (“the Petition”) in the above-captioned docket requesting

findings from the Commission under RSA 374:30, II relative to the transfer of FairPoint's assets to Consolidated.

2. Within a relatively compressed time frame (i.e. between March 1, 2017 and April 13, 2017), Consolidated has provided hundreds of written documents and electronic files in response to five (5) sets of data requests propounded by Staff, and one (1) set of data requests propounded by Labor Intervenors in the above-captioned docket.

3. Many (approximately 102) of Consolidated's documents and electronic files provided in response to data requests in this docket contain confidential or highly confidential information relating to Consolidated's finances and business operations. This confidential and highly confidential information were provided to Staff pursuant to N.H. Admin. R. Puc 203.08(d) and to Labor Intervenors pursuant to a protective agreement dated March 9, 2017 to which FairPoint, Labor Intervenors and Consolidated are parties. Under the terms of that protective agreement, a copy of which is attached, "Confidential" and "Highly Confidential" information are those documents that the Parties agree should not be publicly available. "Confidential Information" consists of data to be shared only with signatories to the protective agreement and with the PUC (including but not limited to the Staff and its consultants). "Highly Confidential Information" consists of commercially and/or competitively sensitive data to be shared only with the PUC (including but not limited to the Staff and its consultants) and signatories to the protective agreement, provided that such Highly Confidential information has been and would continue to be withheld from parties that are or will be engaged in collective bargaining or business competition with the submitting parties, regardless of whether such party is a signatory to the protective agreement.

4. The above-referenced materials provided in response to data requests for which Consolidated seeks protective treatment here include the following:

Highly Confidential Attachments Staff: 1-66.2, 1-66.3, 1-67, 1-67.1, 1-67.2, 1-92, 1-108.1, 1-108.2, 1-122, 1-131.1, 1-131.2, 1-131.3, 1-131.4, 2-4.1, 2-4.2, 2-51.1, 2-51.2, 3-9.1, 3-9.2, 3-22, 3-25.1, 3-25.2, 3-25.3, 4-5.1 through 4-5.9, 5-7, 5-7.2.

Confidential Attachments Staff: 1-3, 1-7, 1-9, 1-15, 1-24.3, 1-55, 1-64, 1-66.4, 1-68, 1-80¹, 1-89, 1-106.1, 1-106.2, 1-112, 1-115.1, 1-115.2, 1-118, 1-135 (material provided via dropbox and disc, i.e. 1-135.1 through 1-135.6), 1-136 (provided via dropbox and disc, i.e. 1-136.1 through 1-136.8), 1-138, 1-159.5, 1-161, 1-163 (provided via dropbox and disc, i.e. 1-163.1 through 1-163.4), 2-5.2, 2-15, 2-30, 2-31.1, 2-31.2, 3-22, 3-26, 4-6, 5-1, 5-5, 5-8, 5-9, 5-11, TS 1 through TS 6.

Confidential Revised Response to Staff Data Request 3-13.

Highly Confidential Attachments Labor: 1-9.3 and 1-9.5.

Confidential Attachments Labor 1-1, 1-2, 1-5², 1-9.1, 1-9.2, 1-9.4, 1-17.1, 1-17.2, 1-17.3, 1-31.1 through 1-31.17.

5. To protect the above-referenced confidential and highly confidential discovery information from public disclosure, N.H. Admin. Rule Puc 203.08(e) requires the filing of a motion for confidential treatment “at or prior to commencement of the hearing in the proceeding.” As the first day of hearing in this docket is scheduled for April 27, 2017, the instant motion is timely filed.

¹ Redacted and unredacted versions are filed herewith.

² Pursuant to Labor Intervenors’ request, Consolidated will provide the parties with a redacted copy of this document.

6. In addition to seeking protected treatment for the above-referenced confidential and highly confidential data responses, Consolidated requests confidential treatment for all of the confidential and highly confidential information contained in the unredacted/confidential prefiled testimony and attachments of Randy Barber, Randall Vickroy, John Antonuk and Dr. Charles King, as well as Mr. Barber's confidential response to Consolidated's data request 1-14 and other materials he provided in response to Consolidated's data requests which he has designated as confidential (*i.e.* "Confidential Barber Tables").

7. The information referenced in paragraphs 4 and 6 above is competitively sensitive confidential, financial and commercial information that Consolidated does not routinely disclose to anyone outside of its corporate organization or its authorized representatives. As such, the information is entitled to be protected from public disclosure under RSA 91-A:5, IV. *See also* RSA 350-B ("Uniform Trade Secrets Act").

8. In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs a "three-step balancing test for determining whether certain documents meet this designation." *Vivint Solar, Inc.*, DE 15-303, Order No. 25, 859 (Jan. 15, 2016), p. 22. The Commission first determines whether the information in question involves a privacy interest. *Id.*, p. 23. If a privacy interest is implicated, the Commission considers whether the public has an interest in disclosure of the information. *Id.* If so, then the Commission balances the public's interest in disclosure against the moving party's privacy interests "to determine whether disclosure is warranted." *Id.*

9. Consolidated meets the above-stated test. The information it seeks to protect is private, competitively sensitive financial and business information which Consolidated

safeguards and does not publicly disclose. Consolidated is engaged in an intensely competitive industry over which the Commission has relatively limited regulatory authority. Disclosure of this sensitive financial and commercial information would be an invasion of Consolidated's privacy and would be competitively harmful to Consolidated if its competitors were able to obtain access to it. The financial information in question was developed in connection with Consolidated's decision to acquire FairPoint, a transaction over which the Commission has limited authority. *See* RSA 374:30, II. Moreover, given that there is only one intervenor in this docket, and that said intervenor has signed a confidentiality agreement regarding this information, there is little if any, public interest associated with obtaining this competitively sensitive financial information. Even assuming, *arguendo*, a public interest in disclosure exists, that interest is outweighed by Consolidated's interest in maintaining the confidentiality of the information. Accordingly, disclosure is not warranted.

10. Consolidated requests that the Commission issue an order protecting the above-described information from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. Consolidated requests that the protective order also extend to any discovery, testimony, argument or briefing in this docket relative to the confidential information.

11. Consolidated also requests a waiver of N.H. Admin. Rules Puc 201.04 (b) and (c) which require the filing of redacted and unredacted confidential documents (with redactions identified in blacked out text, and confidential information either shaded or otherwise noted) for which a moving party seeks protective treatment. In addition, Consolidated respectfully requests that the Commission modify Order No. 25,997 to the extent that said Order "directs parties to redact any discovery information claimed to be confidential, in the manner specified in Puc 201.04(b) and (c) at the time a motion for confidential treatment is filed with respect to that

information.” *Order Granting Labor Intervenors’ Motion to Compel Responses to Discovery Requests*, Order No. 25, 997 (March 7, 2017), pp. 15-16.

12. Requiring Consolidated to provide both redacted and confidential versions for over 100 data responses, many of which are comprised of several pages of written documents, and some of which include data furnished in electronic format, *i.e.* discs and excel spreadsheets which including numerous “workbooks”, would be extremely onerous. As the Commission noted in Order No. 25,997, “the redaction requirements of Puc 201.04(b) and (c) may prove unduly burdensome for parties ...”. *Id.* Accordingly, the Commission, on its own motion, waived the rules during the discovery phase. *Id.*

13. Consolidated respectfully submits that the reasoning underlying the Commission’s waiver of Puc 201.04(b) and (c) holds true for the adjudicative phase of these proceedings as well. Moreover, providing redacted and unredacted versions of each and every confidential and highly confidential data response provided by Consolidated will serve no useful purpose, especially if the information is not introduced into the record at hearing.

14. In the event that Consolidated intends to introduce into evidence at hearing any of the confidential or highly confidential material noted above, or any other confidential information, Consolidated intends to submit it in the manner specified in N.H. Admin. Rules Puc 201.04 (b) and (c). As of this time, the only such document of which Consolidated is aware is Consolidated’s Confidential Attachment Staff 1-80. Redacted and unredacted copies of that document are submitted herewith. Consolidated intends to work with Staff and the other parties to identify confidential information that they intend to introduce into evidence at hearing so that redacted and unredacted versions can be submitted in accordance with the above-referenced rules.

15. Consolidated has made a good faith effort to obtain concurrence with the relief sought in these Motions from the other parties and Staff. Counsel for Staff, Labor Intervenors and FairPoint have indicated that they have no objections to this Motion.

WHEREFORE, Consolidated respectfully requests that this honorable Commission:

A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of: 1) the unredacted information listed in paragraphs 4 and 6, above; 2) the unredacted version of Confidential Attachment Staff 1-80 filed herewith; 3) and any other information that Consolidated has provided to Staff and Labor Intervenors with the designations “highly confidential” or “confidential” which was inadvertently omitted from the lists contained in paragraphs 4 and 6, above;

B. Issue an appropriate order that waives the provisions of N.H. Admin. Rules Puc 201.04 (b) and (c) which require the filing of redacted and unredacted versions of each of the confidential and highly confidential documents identified above;

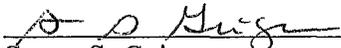
C. Issue an appropriate order modifying Order No. 25,997 to eliminate the requirement that Consolidated redact any discovery information claimed to be confidential, in the manner specified in Puc 201.04(b) and (c), at this time; and

D. Grant such additional relief as it deems appropriate.

Respectfully submitted,
Consolidated Communications Holdings, Inc.

By its attorneys,
Orr & Reno, P.A.

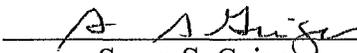
Date: April 26, 2017



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Certificate of Service

I hereby certify that on this 26th day of April, 2017 a copy of the foregoing Motion was served electronically to persons on the Service List in this docket



Susan S. Geiger

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