EXHIBIT
#33
DT 16-872

REDACTED VERSION

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 16-872

CONSOLIDATED COMMUNICATIONS HOLDINGS, INC. and FAIRPOINT COMMUNICATIONS, 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.

PREFILED REBUTTAL TESTIMONY OF

STEVEN CHILDERS

ON BEHALF OF

CONSOLIDATED COMMUNICATIONS HOLDINGS, INC.

May 18, 2017

REDACTED VERSION

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DT 16-872

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I. INTRODUCTION AND OVERVIEW OF REBUTTAL TESIMONY

Q. Please state your name and business address.

A. My name is Steven Childers. My business address is 121 S. 17th Street, Mattoon, Illinois 61938.

Q. By whom are you employed and what position do you hold?

A. I am employed by Consolidated Communications, Inc. ("CCI"), a wholly-owned subsidiary of Consolidated Communications Holdings, Inc. ("Consolidated"). I hold the position of Chief Financial Officer.

Q. Have you previously testified before the New Hampshire Public Utilities Commission ("the Commission") or another state public utility commission?

A. Yes. I submitted prefiled direct testimony in support of the Joint Petition in this docket and I testified before the Commission on April 27, 2017 which was the first day of hearings in this docket.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to demonstrate Consolidated's financial capabilities to maintain FairPoint's responsibilities as an incumbent local exchange carrier ("ILEC") in New Hampshire. My rebuttal testimony discusses Consolidated's financial strength, responds to various incorrect claims made by Mr. Randy Barber, a witness for the Communication Workers of America and International Brotherhood of Electrical Workers (together, the "Labor Intervenors"), and also respond to the recommendation of Commission

Staff Witnesses Mr. John Antonuk and Dr. Charles King relating to Consolidated's pledge of assets.

II. THE PROPOSED TRANSACTION RESULTS IN A STRONGER COMBINED COMPANY THAT WILL ENSURE THAT FAIRPOINT'S EXISITING ILEC OBLIGATIONS ARE MET.

Q. How does the proposed Transaction between Consolidated and FairPoint ("the Transaction") result in a stronger combined company?

A. Under the proposed Transaction, FairPoint will be merged into Consolidated to form a combined company that has stronger credit ratings, a more flexible credit facility, and greater revenue and cash flow diversity than FairPoint has now. All of these factors will place FairPoint and its New Hampshire customers in a stronger financial position relative to FairPoint on a standalone basis.

Q. Is there any dispute that the combined Consolidated company will have a better credit rating than FairPoint on a standalone basis?

A. No. As stated in my Prefiled Direct Testimony, Consolidated currently has a better secured debt credit rating than FairPoint and the proposed Transaction will not negatively impact Consolidated's ratings once it is a combined company.[1] Mr. Barber, a witness for the Labor

[1] Prefiled Direct Testimony of Steven Childers Childers, p. 5. Note that my Prefiled Direct Testimony at page 5, line 11 incorrectly stated that Consolidated's S&P secured debt credit rating was BB rather than BB-. My Prefiled Direct Testimony at page 5, lines 7-9 should be corrected to state: "As indicated in the table below, Consolidated is rated favorably compared to its peer companies and is rated higher than FairPoint. Consolidated's S&P rating is BB- versus FairPoint's S&P rating of B, a two level or two "notch" difference above FairPoint. This Transaction will not negatively impact our ratings."

Intervenors, has acknowledged that Consolidated has a better secured debt credit rating than FairPoint.[2]

Q. Does having a better credit rating as a combined Consolidated company benefit FairPoint New Hampshire customers?

A. The fact that the combined company will have a better secured debt credit rating than FairPoint on a standalone basis benefits FairPoint and its New Hampshire customers. Improved credit provides companies with better access to capital markets and allows them to borrow at a lower interest rate. Consolidated's execution of the acquisition financing demonstrates Consolidated's strong access to debt capital markets. This strong access to capital markets is a benefit to FairPoint's customers because, should additional investment opportunities arise through regulatory changes or other shifts in the market that Consolidated had not previously identified in its current plan, Consolidated is well positioned to fund those opportunities out of cash on the balance sheet or its ability to access the debt or equity capital markets, if needed.

As discussed in more detail below, FairPoint's capital structure does not provide it with the same flexibility. Additionally, FairPoint has to pay its excess interest costs (as compared to Consolidated's **[BEGIN CONFIDENTIAL]**[redacted]**[END CONFIDENTIAL]** interest savings) to service debt rather than being able to make strategic capital allocation. The significantly improved access to capital is a benefit to FairPoint's customers because it allows the Company to have more flexibility and more liquidity, while preserving the ability to reinvest some of these funds in additional products and services such as those discussed below.

[2] Direct Testimony of Randy Barber, p. 44.

Improved credit also allows Consolidated to borrow at a lower interest rate. One concrete example of the benefit of a better credit rating for FairPoint's New Hampshire customers is that Consolidated is able to obtain financing at a better rate than the terms of FairPoint's existing financing.[3] So everything else being equal, FairPoint would not obtain the same financing rate as Consolidated. In fact, Consolidated has secured a credit facility to refinance FairPoint's debt at an interest rate of approximately 4%, which is a substantially better interest rate than FairPoint's blended interest rate of 7.9% under FairPoint's existing credit facility. The reduced cost of debt due to the lower interest rate results in **[BEGIN CONFIDENTIAL]**[redacted]**[END CONFIDENTIAL]** in savings per year.

The lower cost of debt places the combined Consolidated Company in a stronger financial position and frees up additional capital resources for a variety of uses that otherwise would have to be allocated toward paying down debt. These uses could include offering additional products and services to customers, improving and enhancing the core network to make it more reliable, and issuing dividends to shareholders in order to allow the Company to compare favorably to its peers in the market, which in turn facilitates the strong access to capital discussed above. It is certainly in the interests of FairPoint's New Hampshire customers, who are paying their monthly bills, to be served by a well-capitalized and financially strong company that is flexible and able to make investments to enhance the experience for existing customers and to continue to attract new customers to compete in the market.

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[3] The favorable financing rate obtained by Consolidated is also attributable to its pledge of FairPoint assets and stock. *See* Prefiled Direct Testimony of Steven Childers, p. 8.

Q. How do you respond to Labor Intervenors' contention that although the combined company will have a higher credit rating, FairPoint's shareholders will own stock in a company with weaker financial ratios due to the fact that Consolidated has a higher Leverage Ratio and a lower Interest Coverage Ratio than FairPoint?[4]

A. Mr. Barber suggests that other than receiving a dividend for the first time since the 2009 bankruptcy[5], FairPoint's shareholders will be worse off as a result of the proposed Transaction because FairPoint, on a standalone basis, has a lower Leverage Ratio and a higher Interest Coverage Ratio than Consolidated and therefore post-closing, FairPoint shareholders will own stock in a company with weaker financial ratios. Consolidated strongly disagrees.

It's obvious that FairPoint's shareholders and the lenders participating in Consolidated's refinancing of the FairPoint debt do not share Mr. Barber's concerns on the comparative leverage ratios and interest coverage ratios. Despite having the same information as Mr. Barber, FairPoint's shareholders, based on the operational and financial merits of the merger, concluded that the Transaction was in the best interest of FairPoint and voted overwhelmingly to support the Transaction on March 28, 2017. In fact, FairPoint reported that approximately 96% of shareholders who voted approved the proposed Transaction, representing nearly 75% of the company's outstanding stock.[6]

Additionally, despite having the same information Mr. Barber has, lenders actively participated in Consolidated's December financing, which was three and one-half times

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[4] Direct Testimony of Randy Barber, pp. 44-45.
[5] Direct Testimony of Randy Barber, p. 34.
[6] Similarly, Consolidated's shareholders also concluded that the proposed Transaction is in the best interests of Consolidated, as 98% of the Company's shareholders who voted were in support of the Transaction, accounting for more than 70% of Consolidated's outstanding stock.

oversubscribed, resulting in very strong execution of Consolidated's credit facility both in terms of pricing and related covenants. As described in more detail below, Consolidated believes that the terms Consolidated achieved on the financing are significantly better than any hypothetical financing FairPoint could have achieved on a standalone basis. This view is also shared by Staff Witness Mr. Randall Vickroy who characterized Consolidated's Transaction financing as "comparatively attractive" noting that Consolidated's financing arrangements remove refinancing risks FairPoint would face in 2019 if it were to remain a stand-alone company.[7]

While Consolidated has tremendous respect for the current FairPoint management team and how they have turned the Company around post-bankruptcy, sophisticated investors conducting analysis similar to Mr. Barber's regarding the comparative leverage ratios, realize that FairPoint's debt structure, including the lower leverage ratio that Mr. Barber touts, is heavily affected by FairPoint's bankruptcy and subsequent reorganization when the lenders forgave significant levels of debt. That event is certainly factored into FairPoint's credit rating, the restrictive covenants of FairPoint's existing credit agreement, and the current cost of FairPoint's debt.

Q. How does the proposed Transaction provide FairPoint with access to a better credit facility?

A. As discussed above, the Consolidated Credit Facility allows Consolidated to refinance all of FairPoint's debt at a substantially lower interest rate than the interest rate contained in FairPoint's current credit facility. However, the interest rate differential is not the only benefit of

[7] Direct Testimony of Randall Vickroy, pp. 35-36.w

the Consolidated Credit Facility over the existing FairPoint Credit Facility. Consolidated converted the committed financing to cover FairPoint's credit facility and the costs of the Transaction into a $935 million incremental term loan that was an amendment to Consolidated's existing credit agreement. Consolidated was able to fold the financing of FairPoint's debt into Consolidated's existing credit facility. This means that FairPoint also gets the benefit of terms and conditions associated with Consolidated's existing credit facility. Confidential Rebuttal Attachment SLC-1 submitted with this rebuttal testimony provides a high level comparison of the terms of FairPoint's Credit Facility and Consolidated's Credit Facility.

As shown in Confidential Rebuttal Attachment SLC-1, one of the benefits of the Consolidated Credit Facility relative to the FairPoint Credit Facility is that the term of the term loan under the Consolidated Credit Facility extends through March 2022, rather than ending in mid-February 2019 when the term loan under the FairPoint Credit Facility expires. Similarly, under the Consolidated Credit Facility, the revolver matures in October 2021 and the notes mature in October 2022, whereas, under the FairPoint Credit Facility, the revolver expires in mid-February 2018 and the notes expire in mid-February 2019. This additional time period before the revolver matures and the revolver expires, under the Consolidated Credit Facility (relative to the exiting FairPoint Credit Facility), provides continuity and assurance that the cost of debt will remain stable for a longer period of time. That fact strengthens the Company, and by extension, benefits customers.

Another benefit is that the Consolidated Credit Facility has much more flexibility under its covenants than the FairPoint Credit Facility, which is still quite restrictive as a result of

FairPoint's bankruptcy. As shown in Confidential Rebuttal Attachment SLC-1, a couple of key covenants that are in Consolidated's favor relative to the FairPoint Credit Facility are: (1) the 3.0x secured incurrence test; (2) the ability to finance synergies realized with two years of closing on an acquisition; (3) no restrictions on capex spending, and (4) larger baskets for capital leases and assets sales.

Additionally, under the Consolidated Credit Facility, Consolidated has access to a secured revolving loan facility in an aggregate amount of up to $110 million, whereas the FairPoint Credit Facility has access to a revolving loan facility in an aggregate amount of up to $75 million.[8] Increased access to capital either through capex under the term loan or under the revolver allows for more investment in the business which benefits all customers, including FairPoint's New Hampshire customers.

Q. If FairPoint was to obtain new financing on a standalone basis, would it be able to obtain terms as favorable as Consolidated's financing?

A. Mr. Barber states that, "If FairPoint had sought to refinance its debt on its own, making it fully secured on similar terms to those obtained by Consolidated (with the exception that the interest rate would be somewhat higher), it certainly would have been able to obtain a much lower rate."[9] It is pure speculation to forecast whether FairPoint could obtain as favorable terms as did Consolidated in the event that it was to seek to refinance its existing FairPoint debt.

[8] February 14, 2013 Credit Agreement Among FairPoint Communications, Inc., Morgan Stanley Senior Funding, Inc., Credit Suisse Securities (USA), LLC, and Jeffries Finance LLC, attached as Exhibit 10.3 to the February 14, 2013 8-K of FairPoint Communications, Inc., located at the following link: https://www.sec.gov/Archives/edgar/data/1062613/000110465913010904/a13-5198_1ex10d3.htm

[9] Direct Testimony of Randy Barber, p. 36.

However, there are several factors that would increase the likelihood that FairPoint would not be able to refinance its debt on terms as favorable as those secured by Consolidated, if FairPoint were to go out to the credit market.

One of these factors is FairPoint's credit history, which includes bankruptcy. As Staff Witness Mr. Vickroy observed, "FairPoint has difficulties with debt financing markets, due to its bankruptcy and financial performance following emergence from bankruptcy."[10] Mr. Vickroy concluded that "FairPoint faces real re-financing risk at this point, and would probably be saddled with financing terms and interest rates similar to its 'lower high-yield' debt financing currently in place."[11]

Consolidated agrees with Staff Witness Vickroy's assessment of FairPoint's re-financing risk. Based upon Consolidated's experience in the credit markets, Consolidated believes that if FairPoint was to go out into the credit market on a standalone basis, it would be at a disadvantage due to the fact that it declared bankruptcy within the last ten years. As the Commission is well aware, over $1.7 billion in FairPoint debt was forgiven as part of the 2009 bankruptcy and 2011 reorganization proceedings. As a result of these bankruptcy and reorganization proceedings, equity investors were wiped out and lenders forgave debt in exchange for equity and control of the company.

Consolidated learned first-hand through this proposed Transaction that FairPoint's prior bankruptcy has had an adverse impact on FairPoint's access to the credit markets. One of

[10] Direct Testimony of Randall Vickroy, p. 36.
[11] *Id.*

Consolidated's key relationship banks, **[BEGIN CONFIDENTIAL]**[redacted] **[END CONFIDENTIAL]** did not participate in Consolidated's committed financing of the proposed Transaction due to the fact that it lost a significant amount of money when the loan that it helped finance for the FairPoint/Verizon Transaction was eliminated in FairPoint's bankruptcy process. Specifically, when Consolidated commenced the process of obtaining upfront committed financing in advance of signing the definitive agreement for this proposed Transaction in early December 2016, Consolidated had expected **[BEGIN CONFIDENTIAL]**[redacted]**[END CONFIDENTIAL]** to jointly lead the effort and each provide one-half of the necessary financing for the Transaction. Unexpectedly, **[BEGIN CONFIDENTIAL]**[redacted]**[END CONFIDENTIAL]** did not participate in the financing of the proposed Transaction due to the fact that they lost a significant amount of money on the original FairPoint/Verizon Transaction. Accordingly, based on Consolidated's experience in this proposed Transaction, it is reasonable to believe that the taint of the bankruptcy could adversely impact FairPoint's ability to execute a standalone credit facility if it were to seek refinancing of its debt on its own, notwithstanding Mr. Barber's suggestion to the contrary. While it is not clear whether this would have a direct effect on FairPoint's ability to refinance, the fact that some lenders would see FairPoint as too big a risk in light of its credit history, would narrow the pool of available lenders and thus decrease FairPoint's options for obtaining favorable terms in the credit market.

Additionally, Mr. Barber assumes as part of his testimony that if FairPoint were to refinance its debt, it would pledge all of its assets as part of its secured credit facility which would result in an interest rate reduction relative to FairPoint's existing credit facility. Although

Consolidated has a long-standing practice of pledging all of its assets as part of its secured credit facility in part to lower its cost of debt, FairPoint has historically only pledged the stock of some of its subsidiaries as part of its credit facility and has declined to pledge its regulated assets. There is no indication that if FairPoint refinanced its debt, it would have changed the structure of its existing credit facility and pledged its regulated assets in addition to its stock.

Additionally, Consolidated believes that had Mr. Barber performed even a cursory review of the FairPoint credit agreement, he would have realized FairPoint currently has very little capacity to borrow on a secured basis. This would imply having to complete the financing with a mix of term debt and bonds. The ultimate cost of debt that FairPoint could achieve would be greatly influenced by how much of the financing would reside on secured versus unsecured terms.

Thus, Mr. Barber's contention that FairPoint could obtain a rate for its standalone credit facility that would be in the range of 0.75% to 1.5% higher[12] than the rate for the Consolidated Credit Facility is, in part, based on an assumption without any basis: that FairPoint's new hypothetical standalone credit facility would be structured as a pledge of assets and that such credit facility had the capacity to support all required borrowings for the refinancing.

Q. Please respond to Labor Intervenors' testimony that FairPoint could refinance its debt on a standalone basis without incurring the incremental $18 million that was included in the Consolidated Credit Facility to cover Transaction costs.

[12] Direct Testimony of Randy Barber, p. 37.

A. Mr. Barber contends that if FairPoint was to refinance its debt on a standalone basis, it would not incur the additional $18 million in debt associated with Transaction costs under the Consolidated Credit Facility.[13] This conclusion is unreasonable because it is premised on the erroneous assumption that the banks would issue the financing for free. Based upon Consolidated's experience obtaining financing, Consolidated believes that this is highly unlikely and that FairPoint would likely incur significant costs associated with refinancing its existing debt. Assuming, for the sake of argument only, that FairPoint would maintain its current mix of debt of a $617 million term loan and a $300 million in notes/bonds, Consolidated believes that FairPoint would reasonably incur the following incremental costs:

i. To execute the refinancing, the banks would charge a fee of at least 50 to 100 basis points of the term loan borrowings. This is a very conservative estimate of a financing done on a "best efforts" basis by the banks. If the financing were done with a fully underwritten commitment, the bank fees would most likely be at least one point. On a best efforts basis, Consolidated estimates that the term loan refinancing would have cost FairPoint between $3.1 million and $6.2 million.

ii. Additionally, there would generally be a new issue discount to the par loan value of 50 to 100 basis points of the term loan borrowings. The discount would result in additional borrowings under the term loan of between $3.1 million and $6.2 million.

iii. For the $300 million in bonds, the banks would charge fees of approximately 2-3%. This would represent another $6 to $9 million in fees.

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[13] *Id.*, p. 37, n. 36.

iv. FairPoint currently has $300 million of 8.75% bonds. These bonds mature in 2019. If those bonds were called before maturity, there would be a bond redemption penalty that would have to be funded as part of the refinancing. Per the 2016 FairPoint 10-K, if the bonds were called before February 15, 2017, the redemption penalty would be 4.375%, or $13.1 million. If the bonds were called before February 15, 2018, the redemption penalty would be 2.188%, or $6.6 million.[14]

v. As part of its refinancing requirements, FairPoint would be required by the banks to have the financing package rated by both Moody's and Standard and Poor's. Consolidated estimates that, at minimum, this would cost FairPoint between $500,000 and $1 million for each agency.

vi. If FairPoint issued public bonds as part of the refinancing, it would incur several hundred thousand dollars of legal expenses and accounting costs associated with the bond registration offering.

Thus, as shown in Figure 1 below, the additional refinancing costs that FairPoint could incur to obtain a standalone credit facility would range between $13.8 million and $27.5 million. Such costs would be "tacked on" to the debt amount covered by the new FairPoint credit facility. Therefore, it is incorrect to assume, as Mr. Barber did, that if FairPoint were to refinance its

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[14] FairPoint Communications, Inc., *Annual Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934 For The Fiscal Year Ended December 31, 2016 (Form 10-K)* at 77. Consolidated hereby incorporates the 2016 FairPoint 10-K by reference. The document is available at http://phx.corporate-ir.net/phoenix.zhtml?c=122010&p=irol-sec&secCat01.8_rs=11&secCat01.8_rc=10.

existing debit, it would avoid the costs that are associated with Consolidated's Transaction financing.

Figure 1

Fees & Costs	Low Estimate	High Estimate
Term Loan Fees	$3.1M	$6.2M
New Issue Discount	$3.1M	$6.2M
Bond Redemption Penalty	$6.6M	$13.1M
Rating Agency Fees	$1M ($500,000 x 2)	$2M ($1M x 2)
Fees Associated with Bond Offering	Not included to be conservative	Not included to be conservative
Total Transaction Fees	**$13.8M**	**$27.5M**

Q. Please describe how the proposed Transaction creates a financially stronger combined company through greater revenue diversity.

A. As discussed in the Prefiled Direct Testimony of Michael Shultz, the proposed Transaction will combine Consolidated, which is a mid-sized communications company with a network in 11 states, with FairPoint, a mid-sized communications company with a network in 17 states. The combined company will have an extensive network located in 24 states throughout the Northeast, the Southeast, the Southwest, the Midwest, the Mid-Atlantic, the Rocky Mountain and the Pacific regions of the U.S. The expanded geographic footprint of the combined company will enhance diversity of revenue sources. This diversity will serve as an economic hedge that will help to mitigate any volatility in revenue resulting from a future, unexpected downturn in sales in the northern New England market. On a standalone basis, FairPoint lacks this security.

As shown in Confidential Rebuttal Attachment SLC-2 and summarized in Figure 2 below, more than **[BEGIN CONFIDENTIAL]**[redacted]**[END CONFIDENTIAL]** of FairPoint's total company operating revenue comes from its service territories in the northern New England states of Maine, New Hampshire, and Vermont (collectively referred to as "NNE"). Given that these states are in the same region, a reduction in revenue in one or more of the NNE states due to increased competition from cable or CLEC providers, or an economic downturn in NNE for some other reason, would have a substantial effect on FairPoint operating revenue overall. This would increase the likelihood that FairPoint would need to reduce expenses in discretionary areas such as additional capex investment above and beyond FairPoint's committed capex funding, and would negatively impact the rollout of broadband and advanced services to FairPoint customers in the NNE states, including New Hampshire.

Figure 2

[BEGIN CONFIDENTIAL]

[redacted]

[END CONFIDENTIAL]

Upon the closing of the proposed Transaction, Consolidated will generate revenue in 24 states which will materially diversify Consolidated's sources of revenue and make the combined company less susceptible to market downturns in particular regions. In fact, as shown above in

Figure 2 in the "Proforma 2016" column, it is projected that after closing of the proposed Transaction, approximately **[BEGIN CONFIDENTIAL]**[redacted]**[END CONFIDENTIAL]** of Consolidated's operating revenue will come from Maine, New Hampshire and Vermont, and **[BEGIN CONFIDENTIAL]**[redacted]**[END CONFIDENTIAL]** of Consolidated's operating revenue will come from its service territories in the remaining states outside of Northern New England.

Thus, the combined Consolidated company is more diversified from a revenue generation perspective, which will mitigate the company-wide effects of revenue shortfalls or revenue volatility in a single state or in the northern New England region. This will provide a benefit to FairPoint customers in northern New England, including FairPoint's New Hampshire customers, because the products and services offered to them will be less susceptible to revenue volatility in NNE. Additionally, a larger, more diverse company reduces New Hampshire's portion of the common expenses relative to the entire company.

III. CONSOLIDATED IS COMMITTED TO MAKING CAPITAL INVESTMENTS IN NEW HAMPSHIRE, AND IT MUST HAVE THE FLEXIBILITY TO MAKE SUCH INVESTMENTS CONSISTENT WITH ITS OVERALL BUSINESS AND OPERATIONAL NEEDS AND WITHOUT JEOPARDIZING ITS MARKET POSITION.

Q. Please summarize Consolidated's plan for capital investments in the FairPoint portion of the Company after closing of the proposed Transaction.

A. In Consolidated's Projection Model (which was provided to Staff and Labor Intervenors during discovery as Confidential Attachment Staff 1-7), a portion of which is reproduced in relevant part in Figure 3 below, Consolidated projected amounts that it will spend on capex between now and 2021. The FairPoint Projection Model results (which were incorporated into

Confidential Attachment Staff 1-7), a portion of which also is reproduced in Figure 3, shows FairPoint's capex projections for the same period if it did not enter into the proposed Transaction and remained as a standalone company.

Figure 3
Consolidated Projected Capex for FairPoint Territory and FairPoint Model Projected Capex

[BEGIN CONFIDENTIAL]

[redacted]

[redacted]

[END CONFIDENTIAL]

Thus, as shown above, Consolidated's capex projections are consistent with FairPoint's standalone capex projections for the same time period.

Q. Does the similarity between FairPoint's and Consolidated's capex projections necessarily warrant the retention of existing staffing levels in Northern New England as recommended by Staff Witnesses Antonuk and King?

A. No. As a single metric, cap ex spend is not an accurate predictor of staffing levels. An assessment of the quality network and plant, product capabilities, service quality standards and employee productivity, systems and processes would also have to be taken into consideration to property determine staffing levels. As of December 31, 2016, Consolidated had 1,676 employees and full year revenue of $703 million (excluding revenue from our Equipment

Services business which was sold on December 6th, 2016). This compares to Fairpoint's 2016 year end headcount of 2,500 and full year operating revenue of $821 million. This means that when compared to Consolidated, Fairpoint has almost 50% more employees to support 17% more revenue.

Q. Please respond to Mr. Barber's contention that Consolidated's capital intensity in the legacy Consolidated portion of the Company is greater than in the FairPoint portion of the Company.

A. In his direct testimony, Mr. Barber observes that based on the capex investments as a percentage of revenues ("capital intensity") forecasted in the Consolidated Projection Model for 2018-2024, Consolidated projects less capital investment as a percentage of revenue in the FairPoint portion of the business as compared to the legacy, Consolidated portion of the business.[15] Again, this is a faulty comparison that does not bear on the issue of Consolidated's financial capability. In the instant case, the applicable standard is not whether the FairPoint entity will get as much capital investment as legacy Consolidated companies over the next few years, but whether Consolidated has the financial capability to maintain FairPoint's ILEC obligations in New Hampshire. As shown above in Figure 3, Consolidated's projected capital investments over the forecast period covered by the Consolidated Projection Model are consistent with FairPoint's projected capital investments over the same period.[16] Accordingly, it

[15] Direct Testimony of Randy Barber, p. 35 and Table 6.
[16] It is important to note that it is not possible to know what capex FairPoint planned on a standalone basis for the forecast period from 2022 through 2024 because the FairPoint Projection Model only projects capex through 2021, whereas the Consolidated Projection Model forecasts capex through 2024.

is reasonable to conclude that, from a capital investment perspective, Consolidated will be able to meet the same ILEC obligations that FairPoint has factored into its capex projections.

Q. Please respond to Labor Intervenors' recommendation that Consolidated reduce dividend payments by up to 50% using the savings to pay down FairPoint-related debt, or alternatively, to use the savings to fund certain capital investments suggested by Mr. Barber.

A. As a public company, Consolidated's dividend policy is set by its Board of Directors. Consolidated cannot agree to any restriction on dividend payments.

IV. STAFF'S CONCERN ABOUT CONSOLIDATED'S PLEDGE OF ASSETS IS MISPLACED, THEREFORE ITS PROPOSED CONDITION TO ADDRESS THAT CONCERN SHOULD BE REJECTED.

Q. Please respond to Staff's concern about Consolidated's financing agreement in which Consolidated has pledged FairPoint's assets as collateral, and the conditions Staff proposes to address that concern.

A. The concern on pledging of assets is certainly inconsistent with the results of the stress testing and financial analysis performed by Staff Witness Mr. Vickroy. Mr. Vickroy's stress testing demonstrated Consolidated's projection model, even in the unlikely downside scenarios he tested, has significant cushion relative to the covenants of both its secured credit facility and its Senior Notes. This means based on Mr. Vickroy's own analysis, an event of default is highly unlikely. For as much time as Consolidated spent collaborating with Mr. Vickroy on the stress test and discussing the covenants of the various debt agreements, it was surprising to us that neither Mr. Vickroy, nor any other member his consulting firm expressed any concern on the pledge of assets or sought clarification on the language of the Guaranty Agreement until their testimony was filed. Moreover, as Mr. Vickroy indicated at the May 12th technical session in this docket, pledging assets is a common practice and he agreed with action taken by the Company.

We agree with Mr. Vickroy that pledging assets is a common practice and the difference between secured debt and unsecured debt could mean as much as 200 basis points in an interest rate. It is important to note that in proceedings regarding the Transaction at the Maine Public Utilities Commission and Vermont Public Service Board, the pledge assets was not an issue and that in the instant proceeding, Labor Intervenors' financial witness raised no concerns about it. In fact, this is the first time since 2007 (the time of Consolidated's new credit agreement and related Collateral Agreement), or in the 24 states where we have had the pledge of assets, that someone has taken issue with the language of the Collateral/Guaranty agreement.

At pages 62 and 63 of their Direct Testimony, Mr. Antonuk and Dr. King express concern about provisions in the Collateral Agreement that they believe are unclear on the point of whether the Commission must give prior approval of the disposition of the FairPoint assets by the lender if Consolidated defaults on its debt obligations. To address their concerns about Consolidated's creditors' ability to "scavenge" network assets, Mr. Antonuk and Dr. King recommend that a "clear requirement for prior Commission authorization of any pledged asset disposition" be confirmed.[17] They also suggest that any Commission approval of the acquisition of FairPoint by Consolidated be conditioned on the pre-closing submission of a clear and

[17] Direct Testimony of John Antonuk and Dr. Charles King, p. 63.

unambiguous legal opinion of a reputable, experienced commercial law firm confirming the enforceability of the prior Commission-approval condition…"[18]

Despite their expressed concern over the language in the Collateral Agreement, which Mr. Antonuk characterized in the May 12th technical session as "very low probability, potentially high impact," Liberty Consultants have been unable to provide examples of an incumbent local exchange carrier ("ILEC") bankruptcy in any state which resulted in network assets being "scavenged" or sold piecemeal by lenders. Our key financial and legal advisors have also verified that they are unaware of any situation where an ILEC bankruptcy resulted in assets being scavenged. This is logical because, from a practical stand point, in default situations, lenders are focused on maximizing recovery of their investment which means it is in their best interests to keep the ILEC operating, providing quality service to its customers and generating cash until the debtor company either emerges from bankruptcy or there is a formal change in control as directed by a bankruptcy court. It is our understanding that according to RSA 374:30, II, that in the normal course of business, the Commission has the authority to approve all ILEC-ELEC[19] asset sales.

Additionally, we believe that Section 5.1(b) of the Collateral Agreement is quite clear in providing for the rights of the New Hampshire PUC and the inability of the Administrative Agent to scavenge assets without prior action by the New Hampshire Commission for the following reasons.

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[18] *Id.*
[19] Excepted local exchange carrier.

1. Specifically, Section 5.1(b) clearly states that the requirements of the section itself override any other provision in the Collateral Agreement ("Notwithstanding anything to the contrary in this Agreement…");

2. It applies to any foreclosure on, sale, transfer or other disposition of, or the exercise or relinquishment of any right to vote or consent;

3. It applies with respect to any of the Collateral (that is, even the most immaterial piece of collateral, such as a desk chair); and

4. It requires either (1) the prior approval of or (2) notice to and non-opposition of any applicable PUC, which would include the New Hampshire PUC.

The most relevant language is set out in **bold text** below:

> **Notwithstanding anything to the contrary in this Agreement, any foreclosure on, sale, transfer or other disposition of, or the exercise or relinquishment of any right to vote or consent with respect to, any of the Collateral** by the Administrative Agent **shall**, to the extent required, be in conformance with Sections 214 and 310(d) of the Communications Act of 1934, as amended, and the applicable rules and regulations thereunder, and, if and only to the extent required thereby, **subject to the prior approval of or notice to and non-opposition of the FCC or any applicable PUC**.

We acknowledge that in a bankruptcy proceeding there could be some conflict between the authority of the Commission and the bankruptcy court. However, even in a bankruptcy proceeding there would be an orderly disposition of assets that would prevent network scavenging by the banks. Additionally, we believe that any transfer of ILEC-ELEC assets as a result of bankruptcy proceeding is still subject to New Hampshire Commission approval under RSA 374:30,II.

Finally, based on the Liberty Consultants' own financial analysis, there is an exceptionally low probability of a default event occurring as the result of the Commission approving Consolidated's acquisition of Fairpoint. While it is theoretically possible at the most minute level that network assets could be "scavenged," it would be an unprecedented occurrence in telecom history. Instead of wasting their time scavenging assets, lenders would allow the regulated assets to continue to provide regulated services and generate cash flow until Consolidated either remedied the default and/or emerged from bankruptcy, or there is an orderly change of control administered by a bankruptcy court.

Mr. Antonek's and Dr. King's recommendation "that any Commission approval of the acquisition of FairPoint by Consolidated be conditioned on the pre-closing submission of a clear and unambiguous legal opinion of a reputable, experienced commercial law firm confirming the enforceability of the prior Commission-approval condition..."[20] is an unnecessary solution in search of a nonexistent problem and their proposed conditions should be rejected by the Commission.

V. CONCLUSION

Q. Do you have any further comments regarding Consolidated's financial capabilities to maintain FairPoint's New Hampshire ILEC obligations?

A. Staff's financial expert Randall Vickroy has concluded that "Consolidated has the financial capability to meet the standards required by New Hampshire statutes."[21] We obviously

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[20] *Id.*
[21] Direct Testimony of Randall Vickroy, p. 6.

concur with that conclusion and therefore believe that the Commission may readily made that finding in this case.

Q. Does this conclude your rebuttal testimony?

A. Yes.

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