

**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.**

**Order Granting Labor Intervenors' Motion to Compel Responses to Discovery Requests**

**ORDER NO. 25,997**

**March 7, 2017**

In this Order, the Commission grants 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 (collectively, Labor Intervenors), because the information sought is relevant to, or may lead to the discovery of, admissible evidence relevant to this proceeding, and concerns regarding confidential treatment of information disclosed can be addressed under procedural rules. The Commission also appoints a hearings examiner to serve as presiding officer to address any future discovery disputes that may arise in this proceeding in an expeditious manner.

**I. PROCEDURAL BACKGROUND**

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 consummate their merger and acquisition transaction. 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).

The Commission issued an Order of Notice on January 17, 2017, scheduling a prehearing conference and technical session for February 1 and setting a deadline for petitions to intervene in the proceeding. A petition to intervene was timely-filed by the Labor Intervenors, and a joint response to that petition to intervene was filed by CCHI and FairPoint. At the prehearing conference, the Commission granted the Labor Intervenors’ petition to intervene. Following the initial technical session, Staff recommended and the Commission approved a procedural schedule for this proceeding with hearings scheduled for late April and deadlines related to discovery matters that are generally more accelerated than those provided for under the Commission’s rules of practice and procedure.

On February 17, 2017, the Labor Intervenors filed a Motion to Compel Responses to Discovery Requests (Motion). On February 21, Objections to the Motion were filed separately by CCHI and by FairPoint. On February 22, the Commission issued a secretarial letter requesting that the Labor Intervenors respond to a particular federal law argument made by

FairPoint in its objection and confirm the status of disclosure of the subject information in the analogous proceedings currently pending in Maine and Vermont. On February 23, the Labor Intervenors filed a Response to Objections to Motion to Compel (Labor Intervenors' Response), and, on February 24, FairPoint filed a Motion for Leave to Reply to the Labor Intervenors' Response (FairPoint Reply).

## **II. POSITIONS OF THE PARTIES**

### **A. Labor Intervenors' Motion**

In their Motion, the Labor Intervenors stated that they served data requests separately on both CCHI and FairPoint, and that FairPoint had objected to three and CCHI to 18 of those data requests. The Labor Intervenors, CCHI, and FairPoint were unable to resolve their differences regarding the disputed data requests during a conference call. Thereafter, the Labor Intervenors filed the Motion.

According to the Labor Intervenors, all of the data requests to which the joint petitioners objected either relate directly to relevant information or are "likely to lead to relevant evidence that would be admissible in the proceeding," as nearly all of the contested data requests concern Consolidated's financial capabilities or seek more complete disclosure of information regarding matters expressly stated in the Joint Petition, related exhibits, or supporting pre-filed testimony. Motion at 4. They asserted that the disputed discovery requests "relate directly to matters raised in [CCHI witness] Childers's testimony and other representations about the proposed transaction and its effects on Consolidated and FairPoint." *Id.* at 5. The Labor Intervenors listed and described the following contested data requests:

Labor 1, which requests complete copies of all schedules, exhibits, and attachments to the Agreement and Plan of Merger referenced in and filed with the Joint Petition;

Labor 2, which requests all documents relating to Consolidated's loan agreement for financing arrangements associated with the proposed merger transaction;

Labor 3, 4, and 5, which request copies of reports, analyses, and fairness opinions from Consolidated's and FairPoint's financial advisors, as well as any internally generated financial projects and analyses;

Labor 9, 10, and 11, which request documents concerning the joint petitioners' due diligence efforts, their analyses of likely synergy savings from the proposed transaction, and related financial analyses;

Labor 13, 14, and 17, which request specific information referenced in the Joint Petition, including additional information about the number and type of customers Consolidated has experience serving and documentation for Consolidated's alleged "record of providing a high quality customer experience;"

Labor 18, which requests copies of Consolidated's most recent credit rating reports, as referenced on page 11 of the Joint Petition;

Labor 23-28, which request the detailed documents and data relied upon by CCHI witness Childers for various statements in his pre-filed testimony, including timelines for achieving synergy savings, details of the leverage ratio calculations provided in the testimony, details of the alleged improvement in Consolidated's dividend pay-out ratio following the merger transaction, and analyses related to the tax savings discussed generally in the testimony; and

Labor 31 and 32, which request additional information about Consolidated's financial condition following the merger transaction, including information provided by Consolidated to its financing lenders and a traditional "sources and uses of funds" calculation that "shows where the money is coming from to close the transaction and where that money will be spent."

*Id.* at 5-8. The Labor Intervenors represented that all of the disputed discovery requests "were asked in substantially similar form in the parallel proceeding" before the Maine Public Utilities Commission, and the "Joint Petitioners answered all of those requests (many of which were subject to a protective order) in that proceeding." *Id.* at 9.

Citing precedent regarding the broad scope of discovery in Commission proceedings, the Labor Intervenors requested that CCHI and FairPoint be compelled to provide complete and accurate responses to Labor Intervenors' Set 1 data requests 1-5, 9-11, 13-14, 17-18, 23-28, 31,

and 32, within three days after the entry of the order compelling such responses. *Id.* at 3-4, and 9.

**B. CCHI's Objection**

CCHI's Objection generally raises issues regarding the scope of the proceeding, the relevance of the disputed discovery requests, the commercially sensitive, proprietary, and non-public nature of much of the information sought, and particular concerns regarding the Labor Intervenors' access to and potential use of the information requested.

According to CCHI, "it does not necessarily follow" that data requests seeking financial information or those concerning statements made in the Joint Petition and pre-filed testimony "are necessarily relevant and material to the specific and narrow findings that the Commission must make under RSA 374:30, II." CCHI Objection at 4. CCHI further asserted that the provision of answers to similar data requests propounded in the Maine proceeding does not automatically require that those similar questions be answered in this proceeding, in view of the differences in the relevant statutory standards for approval in the two states. *Id.* at 4-5. As an example, CCHI maintained that certain financial information provided in the Maine proceeding is relevant there because the Maine Commission is required to review and authorize the amount and terms of Consolidated's credit facilities and to authorize the encumbrance of FairPoint-NNE's property in Maine under that state's law, while no such approvals are required under New Hampshire law. *Id.* at 5.

CCHI also argued that, in the absence of a protective order, Consolidated should not be required to provide confidential, commercial, proprietary, or competitively sensitive information in response to the Labor Intervenors' data requests. *Id.* According to CCHI, Consolidated "should not be required to disclose irrelevant or immaterial information," nor should it be

compelled to provide competitively sensitive confidential, financial, and commercial information that “it does not routinely disclose to anyone outside of its corporate organization or its authorized representatives.” *Id.* at 6. CCHI maintained that Consolidated is “engaged in an intensely competitive industry,” and disclosure of its sensitive financial information would be an invasion of its privacy and would be competitively harmful if its competitors were able to obtain access to it. *Id.* at 6-7. In a number of instances, CCHI requested that, if the Commission were to determine that the requested information must be provided, it issue “an appropriate protective order which, among other things, prohibits public disclosure of the information, and limits its use to the instant proceeding.” *Id.* at 8-15.

CCHI further emphasized the status of the Labor Intervenors as parties to collective bargaining agreements with FairPoint-NNE that will be renegotiated in the future, and the potential disadvantage to FairPoint-NNE and Consolidated in those future contract negotiations that might result from the disclosure of competitively sensitive information to the Labor Intervenors in this proceeding. *Id.* at 7. With respect to data requests Labor 1-3, 1-4, 1-5, and 1-27, CCHI requested that, if the Commission were to determine that the requested information must be provided, it issue a protective order which, among other things, prohibits disclosure to any representative or member of the Labor Intervenors “except for an attorney representing the Labor Intervenors in this proceeding who will not be participating in future collective bargaining negotiations on behalf of Labor Intervenors, and limits use of the information to the instant proceeding.” *Id.* at 8-9, and 14.

CCHI objected to data requests Labor 1-9, 1-10, and 1-11, all of which request information submitted under Section 4(d) of the federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), on the basis that the requested information is protected

from public disclosure pursuant to 15 U.S.C. §18a(h). *Id.* at 9-10. According to CCHI, the Commission has protected such information from disclosure in the past, citing *Unitil Corporation, et al.*, Order No. 25,014 (September 22, 2009) at 6. *Id.*

Based on its assertions and arguments, CCHI requested that the Commission either deny the Motion in its entirety, or, in the alternative, issue an appropriate protective order that ensures the confidentiality of the information designated as confidential in its Objection. *Id.* at 15.

**C. FairPoint's Objection**

FairPoint objected to the Labor Intervenors' data requests Labor 4, which seeks reports, analyses, and fairness opinions provided to "FairPoint's executives and Boards of Directors by outside advisors as well as internal staff"; and Labor 5, which seeks "all pro forma projections, created by or for Consolidated and/or FairPoint, in the greatest detail produced." FairPoint Objection at 1. According to FairPoint, those two data requests seek premerger information that was generated in contemplation of FairPoint's decision to enter into the merger agreement with CCHI, and are objectionable on a number of grounds, including that the requests are overbroad, unduly burdensome, and impermissibly vague, seek information that is not relevant to the issues in this proceeding, and seek information that should be treated as confidential. *Id.* at 2.

In addition, FairPoint asserted that the "factors that led FairPoint to decide to enter into the Merger Agreement are not relevant in this proceeding," based on the "established principle that the Commission will not compel the discovery of information simply to shed light on the thinking of parties that enter into contracts subject to our review." *Id.* at 2-3 (citing *In re Verizon New England, Inc.*, Order No. 24,767 (June 22, 2007)). According to FairPoint, the Commission's principle of barring discovery about pre-merger negotiations "applies with even

greater force in a proceeding, such as this one, involving ILEC-ELECs, over whom the Commission now applies a very narrow statutory review” under RSA 374:30, II. *Id.* at 3.

FairPoint argued that the Labor Intervenors’ data requests “venture so far afield of the matters at issue in this proceeding as to raise a legitimate inference that the Labor Intervenors are more concerned about their 2018 collective bargaining negotiations with FairPoint than about the proposed [CCHI and FairPoint merger transaction].” *Id.* at 3. According to FairPoint, providing the information requested in Labor 4 and 5 “poses a significant risk of unfairly disadvantaging FairPoint in its 2018 collective bargaining negotiations with the Labor Intervenors, which will occur irrespective of the outcome of the present proceeding.” *Id.* at 3-4.

FairPoint also objected to data request Labor 11, which seeks all documents FairPoint submitted in section 4(d)(i) of its HSR Act filing, on a number of grounds, including that the requested documents are not relevant in this proceeding, are not reasonably calculated to lead to the discovery of admissible evidence, and should not be disclosed to the public generally or to the Labor Intervenors in particular “because of the risk of putting FairPoint at an unfair disadvantage in its [2018] collective bargaining negotiations with the Labor Intervenors.” *Id.* at 4.

FairPoint further asserted that pre-merger notification filings under the HSR Act are confidential and protected from disclosure under the federal Freedom of Information Act, pursuant to 15 U.S.C. §18a(h). *Id.* at 5. According to FairPoint, federal courts have strictly enforced the HSR Act confidentiality obligation, such that “even state attorneys general authorized by 15 U.S.C. §26 to bring suit on behalf of victims of Sherman Antitrust Act violations cannot gain access to HSR premerger information.” *Id.* at 5-6 (citing *Lieberman, et al. v. Federal Trade Commission*, 771 F.2d 32, 37 (2nd Cir. 1985) (“[Section 18a(h)]’s limitation on



the disclosure of premerger information to the ‘public’ precludes confidential disclosure to state law enforcement officials”). FairPoint argued that the Labor Intervenors “attempt[] to sidestep the strict confidentiality requirements governing FairPoint’s HSR filing must be rejected,” based on the express federal law requirement to maintain the confidentiality of HSR Act filings, and the “inability even of state law enforcement officials to obtain access to such information to enforce federal antitrust laws.” *Id.* at 6. FairPoint further asserted that the information Labor Intervenors “would gain if the Commission were somehow to overlook those federal confidentiality provisions is not even relevant to this proceeding.” *Id.*

With respect to data request Labor 11, FairPoint reiterated the argument that the information sought regarding FairPoint’s premerger assessments of Consolidated, where the only issue before the Commission is its own assessment of Consolidated’s capabilities in light of the transaction as it actually exists, is irrelevant and inconsistent with the “established principle that the Commission will not compel the discovery of information simply to shed light on the thinking of parties that enter into contracts subject to our review.” *Id.* at 7 (citing *In re Verizon New England, Inc.*, Order No. 24,767).

#### **D. Labor Intervenors’ Response**

As requested by the Commission, the Labor Intervenors’ Response to Objections addressed the federal confidentiality restrictions applicable to HSR Act filings. According to the Labor Intervenors, the *Lieberman* decision cited by FairPoint addressed a narrow question under federal law as to whether the confidentiality provision of the HSR Act prohibited the Federal Trade Commission (FTC) from disclosing information that was in its possession solely because it was contained in an HSR Act filing, and the Court held that the FTC was prohibited from disclosing HSR Act documents under that statutory section. Labor Intervenors’ Response at 1-2.

The Labor Intervenors asserted, however, that the *Lieberman* decision is irrelevant to the issue of whether the parties to the proposed transaction are required to disclose the documents in a separate proceeding in which they are parties, such as the Commission's regulatory proceeding. *Id.* at 2.

The Labor Intervenors maintained that the Commission has previously reviewed the confidentiality provisions of the HSR Act and concluded that they provided a basis for treating as confidential HSR Act documents that the utility was required to provide to other parties subject to the typical confidentiality protections under a protective order. *Id.* at 2-3 (citing *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009)). According to the Labor Intervenors, other state utility commission rulings have consistently rejected attempts by prospective merger partners to use federal law to prevent the production of documents on which they relied in developing the proposed transaction, and the mere fact that documents were provided to the FTC in an HSR Act filing is irrelevant to the parties' duty to produce relevant documents through discovery. *Id.* at 3-4. (citing *Joint Application of Qwest Communications Corp. and US West Communications, Inc.*, 1999 Mont. PUC LEXIS 121, \*5-6 (December 14, 1999); *Delmarva Power & Light Co., Exelon Corp., PEPCO Holdings, Inc., Purple Acquisition Corp., Exelon Energy Delivery Co., LLC*, 2014 Del. PSC LEXIS 102, \*6 (August 25, 2014)).

In their Response, the Labor Intervenors also confirmed that they had received, under a protective order, a substantive response to the same discovery requests in the Maine proceeding reviewing the proposed CCHI-FairPoint transaction. That protective order permits the HSR Act filing documents to be provided to the Labor Intervenors' counsel and expert witness (with the exception of one Consolidated HSR Act document that is available only to Labor Intervenors' counsel). *Id.* at 4. The Labor Intervenors represented that, in connection with the Vermont

proceeding, they had been provided with the public responses to discovery requests made by the Vermont Department of Public Service, and those public responses include a statement indicating that Consolidated has provided the Department of Public Service with the HSR Act filing pursuant to the provisions of a protective order. *Id.*

**E. FairPoint Reply**

In the FairPoint Reply, FairPoint restated its argument regarding the HSR Act confidentiality restrictions, asserting only that “submissions under the HSR Act are statutorily confidential, under 15 U.S.C. §18a(h), subject to a disclosure exemption when disclosure ‘may be relevant to any administrative or judicial action or proceeding.’” FairPoint Reply at 1. FairPoint also repeated its general arguments regarding scope and relevance under the statutory findings criteria set forth in RSA 374:30, II. *Id.* at 1-2. According to FairPoint, the Labor Intervenors have made a broad claim of relevance without making any effort to tailor their claims to the narrow scope of the Commission’s statutory review, nor have they responded to the objection that the HSR Act documents are not relevant under the Commission’s “established principle” of barring discovery of a party’s pre-merger transaction evaluation as contrasted with review of the actual transaction as presented to the Commission. *Id.* at 2-4.

FairPoint conceded that portions of its HSR Act documents have been disclosed to Labor Intervenors pursuant to a protective agreement in Maine, but emphasized the broader scope of regulatory review in that state. *Id.* at 4-5. FairPoint concluded with its concern “about suggestions that the discovery decisions that other states, in parallel proceedings, have reached have any bearing on the decision that the New Hampshire Commission must reach in this proceeding under New Hampshire law.” *Id.* at 5-6.

### III. COMMISSION ANALYSIS

To prevail on their Motion, the Labor Intervenors must demonstrate that their data requests seek facts that are admissible or are reasonably calculated to lead to the discovery of admissible evidence. *Public Service Co. of N.H.*, Order No. 25,646 (April 8, 2014) (citations omitted). “Discovery is not the time to argue policy or advocate for the final result but merely to seek and respond to factual matters that may lead to admissible evidence.” *City of Nashua*, Order No. 24,485 (July 8, 2005) at 4. Data requests are a “vehicle for developing factual information.” *Freedom Ring Communications, LLC d/b/a Bay Ring Communications*, Order No. 24,760 (June 7, 2007) at 2. We have long recognized that:

In the context of civil litigation, New Hampshire law favors liberal discovery, *see, e.g., Yancey v. Yancey*, 119 NH 197, 198 (1979), and that discovery is regarded as “an important procedure ‘for probing in advance of trial the adversary’s claims and his possession or knowledge of information pertaining to the controversy between the parties.’” *Johnston v. Lynch*, 133 NH 79, 94 (1990) (citing *Hartford Accident etc., Co. v. Cutter*, 108 NH 112, 113 (1967)). Consistent with Superior Court Rule 35(b) regarding the scope of discovery, we require parties to show that the information being sought in discovery is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.

*City of Nashua*, Order No. 24,681 (October 23, 2006) at 2.

In ruling on a motion to compel, we “enjoy ‘broad discretion in the management of discovery.’” *Public Service Co. of N.H.*, Order No. 24,342 (June 29, 2004) at 23 (quoting *YYY Corp. v. Gazda*, 145 N.H. 53, 59 (2000)). We weigh “the effort needed to gather [the requested information], the availability of the information from other sources, and other relevant criteria.” *Public Service Co. of N.H.*, Order No. 25,595 (November 15, 2013) at 3-4; *City of Nashua*, Order No. 24,485 at 4. If we perceive of no circumstance in which the requested data would be relevant, we will deny a request to compel its production. *Valley Green Natural Gas, LLC*, Order No. 25,867 (February 17, 2016) at 5.

Based on our application of those standards and our review of the disputed data requests propounded by the Labor Intervenors, we grant the Labor Intervenors' motion to compel responses from CCHI and FairPoint to those data requests as discussed below.

**A. Scope and Relevance of Discovery**

The Motion and the Objections filed by CCHI and FairPoint raise the issue of the proper scope of the Commission's inquiry in this proceeding. All agree that the Commission must review the proposed merger and acquisition transaction between CCHI and FairPoint described in the Joint Petition under RSA 374:30, II to determine whether the acquirer 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.

We have not previously had occasion to interpret or apply the findings criteria specified in RSA 374:30, II; therefore, this is a case of first impression for the Commission. We are not persuaded that the proper scope of inquiry is as limited as suggested by CCHI and FairPoint, and we are not prepared to make a definitive determination regarding that scope at this early stage in the proceeding. We can foresee that information regarding the current and projected financial condition and business prospects of the prospective merger partners and their affiliates, the terms and conditions of their transactional and financing documents, the related reports, analyses and expert opinions available to their management and directors, and similar information provided to

federal regulators under the HSR Act, all may be relevant, in whole or in part, in the ultimate determination of technical, managerial, and financial capability.

In particular, we do not believe that the Commission's "established principle" restricting discovery conducted "simply to shed light on the thinking of parties that enter into contracts subject to our review," should be applied to deny production of the information sought through the disputed data requests. *See In re Verizon New England, Inc.*, Order No. 24,767 at 4-5. The information sought may well be relevant to review and evaluation of technical, managerial, and financial capability to provide retail basic service and wholesale obligations required by state and federal law and whether those obligations can be met following the merger. It does not appear that the primary focus of those discovery requests is to delve into the parties' motivations in entering into the proposed merger transaction.

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 pre-filed testimony and their hearing testimony.

We have reviewed the data requests propounded by the Labor Intervenors and objected to by CCHI and FairPoint, and we find that those requests seek information that may be admissible or is reasonably calculated to lead to the discovery of admissible evidence. We also find that the requests are neither vague nor burdensome, especially in light of responses to similar requests having been produced in neighboring jurisdictions. We therefore grant the Motion and order

CCHI and FairPoint to respond to the disputed data requests within three business days of the date of this Order, subject to the conditions and limitations specified in Section III.B below.

**B. Confidentiality of Responsive Information**

Both CCHI and FairPoint object to a number of the disputed data requests propounded by the Labor Intervenors on the grounds that the responses to those requests would include information that is non-public, proprietary, and commercially sensitive, and therefore should be kept confidential. The Commission's procedural rules describe the process for handling confidential information produced through discovery. Under Puc 203.08(d), a party providing documents in discovery that it wishes to remain confidential is not required immediately to file a motion for confidential treatment, if it accompanies the submission with a written statement that:

- (1) The party submitting such documents has a good faith basis for seeking confidential treatment of the documents pursuant to this rule; and
- (2) Such party intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in such proceedings.

Prior to any final determination regarding confidential treatment of those documents, other parties in a proceeding may have access to the discovery information asserted to be confidential if those parties execute a non-disclosure agreement with the disclosing party.

Under Puc 201.04(b) and (c), documents submitted to the Commission in discovery must be marked and redacted to identify the information asserted to be confidential, pursuant to RSA 91-A:5, IV. In this case, we believe that the redaction requirements of Puc 201.04(b) and (c) may prove unduly burdensome for parties during the discovery phase, and we will waive that requirement on our own motion under Puc 201.05, having found that the waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission. As an alternative to the redaction otherwise required under that rule, we direct the

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.

CCHI's and FairPoint's objections based on the possibility that information obtained through discovery might be used by the Labor Intervenors to their advantage in later collective bargaining negotiations represents a legitimate concern. We therefore direct the respective parties to either address that concern in their non-disclosure agreements or file a motion for confidential treatment specifying the information proposed to be afforded that heightened level of protection.<sup>1</sup>

With respect to discovery of documents filed under the HSR Act, we find the argument, implied in FairPoint's Objection, that such information cannot be disclosed through discovery conducted in a state regulatory proceeding, to be overstated. Based on the Labor Intervenor's Response, it appears that such information has been disclosed in connection with other states' regulatory proceedings, and indeed the Commission itself has previously required such disclosure subject to confidentiality restrictions. *See, e.g., Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014 at 6. We note also that both the Labor Intervenors' Response and the FairPoint Reply<sup>2</sup> concede that HSR Act filing information has been disclosed through discovery in the similar proceeding currently pending in Maine, subject to a protective order. We therefore direct that the parties either address that issue in their non-disclosure agreements or file a motion

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<sup>1</sup> We would have expected CCHI and FairPoint to be able to reach agreement with the Labor Intervenors on appropriate terms of non-disclosure on their own, especially in light of similar arrangements already in place in other jurisdictions.

<sup>2</sup> We find that the FairPoint Reply has aided our understanding of the relevant issues, so we grant FairPoint's motion for leave to file it.



for confidential treatment specifically identifying the HSR Act filing information proposed to be afforded protection.

Based on the foregoing, we order CCHI and FairPoint to provide responses to the Labor Intervenors' data requests requiring disclosure of allegedly confidential information within three business days of the date of this Order, subject to the conditions and limitations specified above in this Section III.B.,

**C. Appointment of Hearings Examiner to Resolve Discovery Disputes**

In view of the possibility that future discovery disputes may arise in this proceeding, adoption of an efficient and expeditious process for resolving such disputes is warranted. Under Puc 203.14(c) and (d), a hearings examiner may serve as a "presiding officer" when authorized pursuant to RSA 363:17, with authority to "[rule] on discovery disputes, confidentiality requests, and procedural matters which may arise during the course of the proceeding." Under RSA 363:17, except in certain limited circumstances, the Commission "may assign one of its members or appoint a qualified member of its staff as examiner to hear the parties, report the facts, and make recommendations to the commission."

Based on that authority, we appoint F. Anne Ross, Commission General Counsel, to serve as hearings examiner and presiding officer to address with the parties and attempt to resolve any future discovery disputes that may arise in this proceeding. If such future discovery disputes cannot be resolved informally through good-faith efforts by the respective parties, then the parties must submit to Attorney Ross written statements regarding the disputed data requests and their arguments for and against production of the documents and information sought to be obtained. Attorney Ross will have the authority and discretion to schedule a hearing or technical session to address the dispute directly with the parties, and she will also have the authority to

issue written recommendations for action by the Commission. The dispute resolution process conducted by Attorney Ross as presiding officer will have to be completed prior to the filing of a motion to compel with the Commission. Attorney Ross also will have the authority to extend deadlines otherwise applicable under the procedural schedule for the docket. We believe that dispute resolution process should serve to streamline and expedite the discovery phase of this proceeding. Given the expedited schedule requested by the petitioners, we caution the petitioners that additional discovery disputes may lead to an extension of the procedural schedule.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the Labor Intervenors' Motion to Compel Responses to Discovery Requests is GRANTED, subject to the conditions and limitations described in the body of this Order; and it is

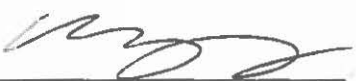
**FURTHER ORDERED**, that FairPoint's Motion for Leave to Reply to the Labor Intervenors' Response is GRANTED; and it is

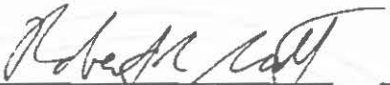
**FURTHER ORDERED**, that CCHI and FairPoint are ordered to provide responses to the data requests described in the Labor Intervenors' Motion, subject to the conditions and limitations described in the body of this Order, within three business days of the date of this Order; and it is


**FURTHER ORDERED**, that the redaction requirements of Puc 201.04(b) and (c) are waived, such that any discovery information claimed to be confidential shall be redacted, in the manner specified in those rules provisions, at the time a motion for confidential treatment is filed with respect to that information; and it is

**FURTHER ORDERED**, that F. Anne Ross, Commission General Counsel, is appointed to serve as hearings examiner and presiding officer to address with the parties and attempt to resolve any future discovery disputes that may arise in this proceeding, as described in the body of this Order.

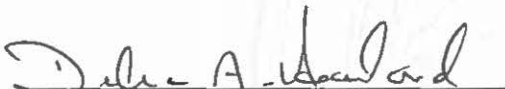
By order of the Public Utilities Commission of New Hampshire this seventh day of March, 2017.

  
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Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Robert R. Scott  
Commissioner

  
\_\_\_\_\_  
Kathryn M. Bailey  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director