

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION



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.**

Docket No. DT 16-872

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement is entered into this 24th day of May, 2017, by and among Consolidated Communications Holdings, Inc. (CCHI), FairPoint Communications, Inc. (FairPoint), and the Staff of the Public Utilities Commission (Staff) (hereinafter referred to collectively as the Settling Parties). 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) fully participated in settlement negotiations and neither support nor oppose the provisions of this Stipulation and Settlement Agreement. This Stipulation and Settlement Agreement resolves all issues regarding the subject matter of this proceeding.

I. INTRODUCTION AND BACKGROUND

1. On December 29, 2016, CCHI and 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 (Merger Transaction).

2. As a result of that proposed merger transaction, Consolidated Communications, Inc. (Consolidated), a wholly-owned subsidiary of CCHI, will 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).

3. 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).

4. 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. The Commission granted the timely-filed petition to intervene of the Labor Intervenors. Following the prehearing conference, an accelerated procedural schedule for the proceeding was approved, and the parties engaged in extensive discovery.

5. Direct testimony was filed by witnesses for CCHI and FairPoint on January 17, 2017, by witnesses for the Labor Intervenors on April 11 and 20, 2017, and by witnesses for Commission Staff (Staff) on April 19, 2017. A revision of the pre-filed direct testimony of Staff witness Randall Vickroy was filed on May 12, 2017. Rebuttal testimony was filed by witnesses for CCHI and FairPoint on May 18, 2017. Hearings commenced on April 27, 2017 and are scheduled to continue on May 25, 2017.

6. In order to grant the Joint Petition under RSA 374:30, II, the Commission must find that Consolidated 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.

7. The Settling Parties have agreed that certain commitments be made and certain obligations undertaken by CCHI and FairPoint, and/or by Consolidated, FairPoint-NNE, and Northland, as the case may be, to support the findings required to be made by the Commission pursuant to RSA 374:30, II. This Stipulation and Settlement Agreement is intended to memorialize in a definitive and binding form the agreement of the Settling Parties with respect to such commitments and obligations.

II. SETTLEMENT TERMS AND CONDITIONS

In consideration of the foregoing premises, the Settling Parties hereby stipulate and agree as follows:

1. The Settling Parties agree that the record in this proceeding, as well as the commitments and obligations set forth in Section II of this Stipulation and Settlement Agreement, support findings by the Commission that Consolidated is technically, managerially and financially capable of maintaining the obligations of an ILEC set forth in RSA 362:8 and RSA 374:22-p.

2. The Settling Parties request that the Commission find pursuant to RSA 374:30, II that, subject to the specific terms and conditions set forth in this Section II, Consolidated is technically, managerially, and financially capable of maintaining the obligations of FairPoint-NNE and Northland as ILECs as set forth in RSA 362:8 and RSA 374:22-p.

3. The Settling Parties acknowledge and agree that the Commission shall monitor and enforce each commitment made and each obligation undertaken by CCHI and FairPoint herein until each such commitment and/or obligation expires.

A. Key Employees of Wholesale Services Group

4. For the period 24 months immediately following the date the Merger Transaction closes, Consolidated/FairPoint shall not seek to eliminate or remove key Consolidated/FairPoint employees associated with FairPoint-NNE's Wholesale Services Group from the positions that those key employees hold as of the date the Merger Transaction closes. Consolidated shall identify those key employees for Staff and Labor Intervenors under confidential protection within 48 hours after the date the Merger Transaction closes. Nothing herein shall be construed to limit the right of Consolidated/FairPoint to terminate any employee associated with the Wholesale Services Group at any time on the basis of unsatisfactory performance, or other conduct contrary to company policy or law.

B. New Hampshire CLEC Agreements

i. Treatment of Interconnection Agreements

5. For the period 24 months immediately following the date the Merger Transaction closes, Consolidated/FairPoint shall honor the existing interconnection agreements as entered into under Section 251 of the Telecommunications Act (ICAs) (even if under automatic renewal status) between Consolidated/FairPoint and all competitive local exchange carriers operating in New Hampshire as ELEC's (CLECs).

6. For the period 24 months immediately following the date the Merger Transaction closes, Consolidated/FairPoint shall not request amendments to the ICAs except as a result of a change of law.

ii. Local Number Portability Arrangements

7. Consolidated/FairPoint shall handle ports after the Merger Transaction closes so as to meet or exceed Federal Communications Commission (FCC) porting requirements as

measured under the Northern New England Wholesale Performance Plan (NNETO WPP), which measures all local number portability (LNP) transaction order types. These transaction order types are not limited to unbundled network element (UNE) loop and include standalone number ports.

iii. Operational Support Systems (OSS) (*i.e.*, those systems used in preordering, ordering, provisioning, maintenance, repair, and billing)

8. For the period 24 months immediately following the date the Merger Transaction closes, Consolidated/FairPoint shall continue to follow the FairPoint-NNE Wholesale Operations OSS Interface Change Management Process (Change Management Process). A copy of the current Change Management Process is attached to this Settlement Agreement as Attachment 1. Notification of a change in the OSS shall be made pursuant to the terms of the Change Management Process through Accessible Letters at the established notification intervals and through review during scheduled Change Management Process meetings.

9. For the period 24 months immediately following the date the Merger Transaction closes, Consolidated/FairPoint shall use FairPoint-NNE's existing OSS platforms, and maintain on a 12-month rolling average basis as measured in the NNETO WPP at least the same quality of service, accuracy, and flow-through, including for Local Service Requests (LSRs) associated with UNEs, LNP and directory listings (DLs), and for Access Service Requests (ASRs) and Design Layout Records (DLRs) associated with interconnection facilities, including "CLEC Trunks," and DS-1 (and higher capacity) facilities. Notwithstanding the foregoing commitment to use FairPoint-NNE's existing OSS platforms during the above-referenced 24-month period, this provision shall not prevent Consolidated/FairPoint from making adjustments or changes to FairPoint-NNE's existing OSS platforms in the normal course of business.

10. CLECs shall not be required to make any major adjustments to any existing systems or interfaces or to construct any new systems to interact with Consolidated's/FairPoint's Virtual Front Office (VFO) to be effective prior to the expiration of the 24-month period following the date the Merger Transaction closes. Consolidated/FairPoint shall continue to support both Graphical User Interface (GUI) and direct .xml interfaces to CLEC systems, per established operating procedures. This is not inclusive of the following:

- Industry Standards upgrades that may require major adjustments on CLEC or Consolidated/FairPoint systems to support Access Services Ordering Guidelines (ASOG) or Local Services Ordering Guidelines (LSOG).
- Any state or federal regulatory changes in law that require CLECs and Consolidated/FairPoint to make major configuration changes to conform to applicable laws.

11. Within the 24-month period immediately following the date the Merger Transaction closes, Consolidated/FairPoint shall provide CLECs and the Commission with at least 180 days' written notice of Consolidated/FairPoint's intent to transition to a new VFO platform or Circuit Inventory System (CIS), provided that no such change in a VFO platform or CIS shall become effective until after the expiration of the above-referenced 24-month period. Consolidated/FairPoint's 180-day notice shall include a plan describing the proposed transition to a new VFO platform, inclusive of technical design changes required for GUI or .xml direct interfaces between operating companies or CIS (*i.e.*, proposed schedule, specific systems and operations expected to be involved, and wholesale activities expected to be impacted). In all other respects, the Change Management Process shall apply. Finally, Consolidated/FairPoint shall provide CLECs with a reasonable opportunity for training provided by Consolidated/FairPoint and testing on the new OSS, if needed, at a facility in New Hampshire or other mutually agreed upon location. Consolidated/FairPoint shall pay the reasonable costs of

sponsoring the training and the training facility and CLECs shall be responsible for their expenses incurred to attend the training.

iv. Provision of Wholesale Services

12. During the 24-month period immediately following the date the Merger Transaction closes, Consolidated/FairPoint shall continue to provide wholesale services at the rates reflected in FairPoint-NNE's Tariff No. 3: Access Tariff (other than for rate decreases), ICAs, and any applicable Commission order(s). Notwithstanding the foregoing, Consolidated/FairPoint shall be permitted to modify such ICAs and/or file a request for a change in the wholesale tariff or applicable Commission order(s) as a result of a change in law. The foregoing provision shall not preclude Consolidated/FairPoint from filing a request for a change to FairPoint-NNE's wholesale rates established in its Tariff No. 3: Access Tariff or any Commission order(s), or from filing for a reduction in switched access rates, or a notification of termination of the ICAs prior to the expiration of the above-referenced 24-month period, for effect upon or after the expiration of said period.

13. Consolidated/FairPoint shall maintain updated escalation procedures, contact lists and account manager information and shall identify and assign a point of contact to address issues with CLECs.

14. Consolidated/FairPoint shall not seek to replace or repeal the NNETO WPP prior to March 31, 2019, except to the extent permitted and pursuant to the processes set forth in NNETO WPP Section H (FairPoint and CLEC Biennial Review) and Section K (Change of Law) therein.

15. During the 24-month period immediately following the date the Merger Transaction closes, Consolidated/FairPoint shall continue to provide access to Section 251 UNEs, including any DS1, DS3, and dark fiber transport UNEs that may attain non-impaired status under Section 251. This provision does not alter the non-impairment status of existing non-impaired wire centers.

C. Network Investment

16. Network Improvement Capital Investment Commitment

For each of the calendar years commencing January 1, 2018, January 1, 2019, and January 1, 2020 (Network Improvement Commitment Years), Consolidated/FairPoint shall make investments in the New Hampshire network as follows:

a. **Capital Expenditures** (including CAF II, growth [network]¹, non-revenue generating [core]² and success-based,³ but excluding IT capital expenditures) equal to 13% of Consolidated/FairPoint's New Hampshire intrastate revenues from FairPoint-NNE, Northland, Enhanced Communications of Northern New England, Inc., and UI Long Distance, Inc. New Hampshire operations, less intercompany revenues. For example, for calendar years 2014-2016, such capital expense investments averaged 11% of annual intrastate revenues.

¹ The growth (network) category of capital expenses includes fiber expansion, broadband build-out and speed upgrades where identified as network growth.

² The non-revenue generating (core) category of capital expenses includes IT, plant maintenance, infrastructure and cost-saving projects.

³ Success-based includes spending directly attributable to sales.

b. Incremental Maintenance and Network Repairs in the amount of \$1 million per year to address areas of the network that have service quality issues and/or higher than average trouble reports (Network Improvement Projects).

1. The \$1 million per year for Network Improvement Projects shall be spent on Network Improvement Projects selected at Consolidated/FairPoint's discretion after review of the proposed projects with Commission Staff at least 90 days prior to the commencement of each Network Improvement Commitment Year. The purpose of those confidential reviews shall be to demonstrate in reasonable detail and with supporting confidential documentation that the Network Improvements Projects for the following year are incremental to work scheduled to be completed in the ordinary course of business, are not part of Consolidated's/FairPoint's CAF II commitments, and are generally expected to improve basic service and wholesale services. The Settling Parties agree that it may be impracticable for Consolidated/FairPoint to complete Network Improvement Projects each year that total exactly \$1 million and that Consolidated/FairPoint is committing to invest that amount, on average, during each of the three Network Improvement Commitment Years, provided that the amount invested in Network Improvement Projects during any

particular Network Improvement Commitment Year shall not be less than \$700,000.

c. On or before April 1st following each Network Improvement Commitment Year, Consolidated/FairPoint shall submit to the Commission a notification filing: (i) demonstrating that Consolidated/FairPoint have met the obligation in subsection (a) above regarding capital expenditures for the prior Network Improvement Commitment Year; and (ii) demonstrating that Consolidated/FairPoint have met the obligation in subsection (b) above to complete Network Improvement Projects, which demonstration shall describe in reasonable detail and with supporting confidential documentation the Network Improvement Projects completed under subsection (b) above that were performed during the prior Network Improvement Commitment Year.

d. Expenditure Reconciliations

1. If, in any Network Improvement Commitment Year, Consolidated/FairPoint does not meet 90% of the capital expense obligation set forth above in subsection a, Consolidated/FairPoint shall be obligated to spend an additional \$500,000 of capital expense by the end of the three-year Network Investment Commitment period.

2. If, by the end of the three-year Network Investment Commitment period, Consolidated/FairPoint does not meet the aggregate Network Improvement Project expense obligation set forth above in subsection b, Consolidated/FairPoint shall be obligated to spend an amount equal to the sum of the applicable shortfall plus \$250,000 during the first year following the expiration of the three-year Network Investment Commitment period.

3. Notwithstanding the foregoing, in the event of a force majeure or other exogenous circumstance, this provision shall not prohibit Consolidated/FairPoint from petitioning the Commission for a reduction of these penalties provided for in this section or for additional time to meet the annual capital expenditure and/or Network Improvement Project obligations.

D. Additional Commitments and Stipulations

17. Once Consolidated/FairPoint finalizes its Synergies Plan,⁴ but no later than three (3) months from the date of close of the Merger Transaction, Consolidated/FairPoint shall submit its Synergies Plan to the Commission and Labor Intervenors and shall schedule a meeting to describe the Synergies Plan to the Commission Staff and Labor Intervenors.

18. During the 24-month period immediately following the date the Merger Transaction closes, Consolidated shall maintain an executive presence in northern New England by retaining some of FairPoint's executives in northern New England and by moving some

⁴ The Synergies Plan describes Consolidated/FairPoint's plan to achieve targeted merger efficiencies.

Consolidated executives to the northern New England area, including at least one such Consolidated executive to be relocated to New Hampshire.

19. The Settling Parties acknowledge and agree that, under currently applicable New Hampshire law, in the event that, following the closing of the Merger Transaction, creditors of Consolidated seek to sell or transfer all or any portion of Consolidated/FairPoint's network or other assets that are used to provide basic service and/or wholesale services in New Hampshire, no such sale or transfer may occur without the approval of the Commission required under RSA 374:30, I or, if applicable, the findings of the Commission required to be made under RSA 374:30, II if the proposed buyer or transferee is operating or will operate as an ILEC-ELEC in New Hampshire.

III. MISCELLANEOUS PROVISIONS

The Settling Parties further agree to the following miscellaneous provisions:

1. Binding on Settling Parties. The Settling Parties agree to support the terms and conditions contained herein. The Settling Parties understand and acknowledge that this Stipulation and Settlement Agreement is subject to adoption and approval by the Commission.

2. Integrated Terms of Settlement. This Stipulation and Settlement Agreement represents an integrated resolution of all issues raised in this proceeding. Accordingly, the effectiveness of this Stipulation and Settlement Agreement is conditioned on the Commission's adoption and approval of this Stipulation and Settlement Agreement in its entirety, without material modification or condition. If the Commission adopts and approves this Stipulation and Settlement Agreement in its entirety without material modification or condition, each of the Settling Parties hereby waives its right to seek reconsideration or appeal of the Commission's final order but expressly reserves its right to respond in the event any other party or person seeks

such reconsideration or appeal. If the Commission does not adopt and approve this Stipulation and Settlement Agreement in its entirety and without material modification or condition, the Settling Parties shall have an opportunity to amend or terminate this Stipulation and Settlement Agreement. If terminated, this Stipulation and Settlement Agreement shall be deemed withdrawn and shall not constitute a part of the record in any proceeding or be used for any purpose.

3. Procedure. The Settling Parties shall cooperate in submitting this Stipulation and Settlement Agreement promptly to the Commission for approval so that it may be implemented in a timely manner. Counsel for the Settling Parties and the Labor Intervenors have entered into a separate stipulation concerning the admission of testimony and documents into evidence and regarding the conduct of the hearing on May 25, 2017, a copy of which is being filed contemporaneously with this Stipulation and Settlement Agreement. Each of the Settling Parties shall make a witness or witnesses available as necessary to answer questions in support of this Stipulation and Settlement Agreement, or provide such other support as the Commission may request, at or in connection with the hearing on the merits of the settlement terms and conditions described herein. The Settling Parties agree to cooperate, in good faith, in the development of any such other information as may be necessary to support and explain the basis of this Stipulation and Settlement Agreement and to develop and supplement the record accordingly.

4. No Binding Precedent. The Settling Parties enter into this Stipulation and Settlement Agreement to avoid further expense, uncertainty, and delay in resolving issues raised in this proceeding. By its execution of this Stipulation and Settlement Agreement, no Settling Party shall be deemed to have accepted or consented to the facts, principles, methods, concepts, or theories employed in arriving at the terms and conditions of this Stipulation and Settlement

Agreement. Except to the extent expressly set forth in this Stipulation and Settlement Agreement, no Settling Party shall be deemed to have agreed that such terms are or would be appropriate for resolving matters at issue in any different proceeding or context. Each Settling Party shall be free to take the same or a different position on any of the issues resolved hereby in any such different proceeding or context. The Settling Parties agree that the Commission's approval of this Stipulation and Settlement Agreement shall not constitute continuing approval of, or precedent for, any particular principle or issue, but such acceptance does constitute a determination that the provisions stated in their totality are just and reasonable and consistent with the public interest.

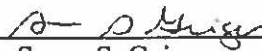
5. Confidentiality. This Stipulation and Settlement Agreement is the product of confidential settlement negotiations. The content of those negotiations, including any documents prepared during the course of such negotiations for the purpose of reaching a settlement, shall be privileged and shall not be admissible as evidence in this or any other proceeding. All offers of settlement shall be without prejudice to the position of any Settling Party presenting such offer and shall not be used in connection with any future proceeding or otherwise.

6. Execution. This Stipulation and Settlement Agreement may be executed by the Settling Parties in one or more counterparts, and through original and/or electronic or facsimile signatures. As so executed, this Stipulation and Settlement Agreement shall constitute one and the same agreement. This Stipulation and Settlement Agreement constitutes the complete agreement of the Settling Parties and may not be amended except by a written instrument signed by all of the Settling Parties. The effective date of this Stipulation and Settlement Agreement shall be the date of its approval by the Commission.

WHEREFORE, the Settling Parties recommend that the Commission issue an order adopting and approving the terms of this Stipulation and Settlement Agreement in resolution of all issues raised in this proceeding, in the manner specified hereinabove.

Respectfully submitted,

Consolidated Communications Holdings, Inc.

By: 
Name: Susan S. Geiger
Title: Attorney for Consolidated Communications Holdings, Inc.
Duly Authorized

FairPoint Communications, Inc.

By: _____
Name: _____
Title: _____
Duly Authorized

Staff of the Public Utilities Commission

By: _____
David K. Wiesner, Esq., Staff Attorney

WHEREFORE, the Settling Parties recommend that the Commission issue an order adopting and approving the terms of this Stipulation and Settlement Agreement in resolution of all issues raised in this proceeding, in the manner specified hereinabove.

Respectfully submitted,

Consolidated Communications Holdings, Inc.

By: _____
Name: _____
Title: _____
Duly Authorized

FairPoint Communications, Inc.

By: Michael C Reed
Name: MICHAEL C REED
Title: STATE PRESIDENT MAINE - VERMONT
Duly Authorized

Staff of the Public Utilities Commission

By: David K. Wiesner
David K. Wiesner, Esq., Staff Attorney