

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

**DT 16-872**

**CONSOLIDATED COMMUNICATIONS HOLDINGS, INC. et al.**

**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 RESPONSE OF CONSOLIDATED COMMUNICATIONS  
HOLDINGS, INC. AND FAIRPOINT COMMUNICATIONS, INC.  
TO LABOR UNIONS' PETITION TO INTERVENE**

NOW COME Consolidated Communications Holdings, Inc. ("Consolidated") and FairPoint Communications, Inc. ("FairPoint") (together "the Joint Petitioners"), by and through their undersigned attorneys, and respond as follows to the Petition to Intervene filed by Communications Workers of America ("CWA") Local 1400 and International Brotherhood of Electrical Workers ("IBEW") Locals 2320, 2326 and 2327, that form the IBEW System Council T-9 (collectively "the Labor Unions"):

1. On December 29, 2016, the Joint Petitioners filed a Joint Petition requesting that the Commission make the required findings under RSA 374:30, II, and any other applicable statutory provisions, to permit Consolidated and FairPoint to consummate their proposed merger and acquisition transaction.

2. On January 17, 2017, the Commission issued an Order of Notice in the above-captioned docket. The Order of Notice determined that

"The Commission will review the proposed merger and acquisition transaction described in the Joint Petition under RSA 374:30, II to determine whether the utility to which the transfer is proposed to be made is technically, managerially,

and financially capable of maintaining the obligations of an ILEC as set forth in RSA 362:8 and RSA 374:22-p. These obligations include the provision of basic telephone service through the ILEC's franchise territory at rates that are generally capped for a period of time, as well as obligations that arise pursuant to the Commission's authority under the federal Communications Act of 1934, as amended, and obligations related to the provision of services to competitive local exchange carriers, interexchange carriers, and wireless carriers, regardless of technology."

*Order of Notice*, DT 16-872 (Jan. 17, 2017), pp. 1-2.

3. The Order of Notice also directed any party seeking to intervene in the proceeding to file a petition on or before January 27, 2017 "stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32, I (b)." *Id.*, p. 3.

4. On January 19, 2017, the Labor Unions filed a Petition requesting intervention in this docket ("Intervention Petition"). Among other things, the Intervention Petition states that the Labor Unions are "authorized collective bargaining representatives for more than 1350 FairPoint employees in New Hampshire, Maine and Vermont." *Intervention Petition*, ¶ 3. The Intervention Petition also states that the Labor Unions "are looking for more information before forming an opinion as to the fitness of Consolidated to own and operate the major telecommunications provider in New Hampshire." *Id.*, ¶ 4. The Intervention Petition also expresses concern that the Agreement filed by the Joint Petitioners "does not represent the entire agreement" between Consolidated and FairPoint because exhibits and schedules to the Agreement were not filed. *Id.*, ¶ 5.

5. In addition to the foregoing, the Intervention Petition states that the Labor Unions are seeking "complete access to any and all allegedly confidential information," "... will seek discovery, and are planning to present testimony to determine the true nature of the proposed

transaction and to explore Consolidated's fitness to own and operate FairPoint-New Hampshire."

*Id.*, ¶¶ 6 and 7.

6. To qualify for intervention, a petitioner must state facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies under any provision of law. *See* RSA 541-A:32, I(b). The presiding officer must also find that the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing intervention. *See* RSA 541-A:32, I(c).

7. The Joint Petitioners respectfully submit that the Labor Unions' Intervention Petition fails to meet the above-stated intervention standard. The Intervention Petition does not state facts demonstrating how this docket will affect the Labor Unions' rights, duties, privileges, immunities or other substantial interests. Although the Intervention Petition indicates that the Labor Unions are interested in conducting discovery and gaining complete access to confidential information (so that they can develop an opinion regarding the nature of the proposed transaction, as well as Consolidated's capabilities to own and operate FairPoint), such an "interest" in a proceeding "is not the same as having a legal interest of some nature that may be affected by the proceeding." *North Atlantic Energy Corporation, et al.*, DE 02-075, Order No. 24,007 (July 8, 2002), p. 3.

8. Although not expressly stated, it may reasonably be inferred from the Intervention Petition that the Labor Unions' interest in this proceeding concerns the issue of its members' employment relationships with FairPoint and their future relationships with Consolidated. However, this concern does not have a "legal nexus to the outcome" of the Commission's decision on whether to make the requisite findings under RSA 374:30, II. Those findings are limited only to whether Consolidated has the financial, technical and managerial capabilities to

maintain FairPoint's wholesale and retail obligations in New Hampshire. Neither the scope of the Commission's inquiry under RSA 374:30, II, nor its limited regulatory authority over FairPoint extends to issues relating to FairPoint's collective bargaining agreements with the Labor Unions.

9. The Joint Petitioners recognize that the Commission has discretionary authority to grant a petition to intervene "at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly conduct of the proceedings." RSA 541-A:32, II. However, the Joint Petitioners do not believe that the Commission should exercise that discretion here because full intervention by the Labor Unions is unnecessary and therefore is not in the interests of justice. The proposed transaction involves a cash-free exchange of stock between two holding companies that will result in an upstream, indirect change of ownership of FairPoint's New Hampshire operating entities. As the Joint Petition makes clear, "Because the Transaction involves only a change of ownership at the holding company level, it will not affect any of the operations or obligations of FairPoint or its subsidiaries." Joint Petition, at 5. Specifically, "Consolidated and [its subsidiary Consolidated Communications, Inc.] will honor all collective bargaining agreements with FairPoint's union employees . . ." *Id.*, at 6; *see also Prefiled Direct Testimony of Michael J. Shultz*, DT 16-872 (Jan. 17, 2017), p. 14, lines 21-22 ("Consolidated will honor FairPoint's collective bargaining agreements with FairPoint's union employees.")

10. As indicated above, the proposed transaction between Consolidated and FairPoint is expressly designed not to affect the rights, duties, privileges, immunities or substantial interests of parties to existing contracts and agreements with FairPoint, including FairPoint's existing collective bargaining agreements with the Labor Unions, which have now been in force

for two years of an approximate three-and-a-half year term and will remain in force until the third quarter of 2018. The proposed transaction will not require any assignment of those collective bargaining agreements or any substitution of parties to those agreements. Moreover, the Commission lacks jurisdiction to hear any issues arising from the Labor Unions' collective bargaining agreements with FairPoint, and those issues are therefore not appropriate matters for consideration in this proceeding. Thus, there is no issue in this docket that would warrant granting the Labor Unions full intervenor status. Instead, the interests of justice would be served by allowing the Labor Unions to present their concerns and positions to the Commission in the form of public comment.

11. Full intervention by the Labor Unions would also likely impair the orderly conduct of the proceedings. The Intervention Petition's statements that the Labor Unions are "looking for more information" and seeking "complete access to any and all allegedly confidential information" indicate that the Labor Unions will actively be engaged in discovery. However, it is unclear why this discovery is needed in light of Consolidated's commitment to honor the Labor Unions' contracts with FairPoint. In addition, the Labor Unions' request for access to confidential information will likely result in discovery disputes, as the Joint Petitioners will oppose any attempts by the Labor Unions to access confidential information that would unfairly disadvantage Consolidated in future collective bargaining negotiations. These discovery disputes will cause delays in this proceeding and undermine the Commission's ability to review the Joint Petition in a timely fashion so that the Joint Petitioners are able to close their transaction on or before June 30, 2017.

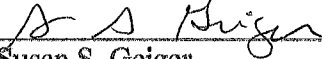
12. As demonstrated above, the Intervention Petition fails to meet the mandatory and discretionary standards for intervention in this docket. Nonetheless, should the Commission


determine to grant the Labor Unions' request for intervention, the Commission should limit the Labor Unions' participation in this docket to the issue of whether the proposed transaction between Consolidated and FairPoint will affect the Labor Unions' existing contracts with FairPoint.

Respectfully submitted,

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**By its Attorneys**  
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Dated: February 1, 2017

**Certificate of Service**

I hereby certify that on this 1st day of February, 2017, I caused a copy of this Response to be delivered by electronic mail to the Service List in this docket.

  
Susan S. Geiger

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