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**P R O C E E D I N G**

1  
2 CMSR. CHATTOPADHYAY: Good afternoon  
3 again. This is a hearing on Town of Benton's  
4 Motion to Compel Responses to Discovery Requests  
5 in Docket Number DT 23-103. I am Commissioner  
6 Pradip Chattopadhyay, joined today by  
7 Commissioner Carleton Simpson.

8 As background, on December 27, 2023,  
9 Consolidated Communications Holdings, or  
10 "Consolidated", filed a Joint Petition with  
11 Condor Holdings, or "Condor", requesting that the  
12 Commission approve Consolidated's transfer of an  
13 indirect ownership interest in Consolidated  
14 Communications of Northern New England Company,  
15 CCNE, and Consolidated Communications of Maine  
16 Company, CCM, to Condor, pursuant to RSA 374:30,  
17 II.

18 The Commission issued an Order of  
19 Notice on February 16th, 2024, which stated that  
20 Joint Petition presented the issue of whether the  
21 merger transaction will result in the transfer of  
22 an ownership interest in CCNE and CCM to an  
23 entity or entities technically, managerially, and  
24 financially capable of maintaining the

1 obligations of CCNE and CCM as ILECs set forth in  
2 RSA 362:8 and RSA 374:22-p, as required by RSA  
3 374:30, II, as well as their obligations under  
4 federal law.

5 On March 27, 2024, Benton, an  
6 intervenor, filed discovery requests, to which  
7 Consolidated objected on April 8, 2024. On  
8 April 22nd, 2024, Town of Benton filed a Motion  
9 to Compel Responses to these discovery requests,  
10 to which Consolidated objected on May 2nd, 2024.  
11 With its objection, Consolidated filed  
12 supplemental responses to two of the discovery  
13 requests in question. Condor has expressed its  
14 support of Consolidated's objection, and  
15 requested the Commission to deny Town of Benton's  
16 Motion.

17 So, let's start with the appearances.  
18 Consolidated first?

19 MR. McHUGH: Good afternoon,  
20 Commissioners. Patrick McHugh, Attorney Patrick  
21 McHugh, here on behalf of the Consolidated  
22 Communications Holdings, Inc., and the Licensees.  
23 With me today is Attorney Matthew Johnson, from  
24 Devine, Millimet & Branch.

1 MR. JOHNSON: Good afternoon.

2 CMSR. CHATTOPADHYAY: Thank you.

3 Condor?

4 MR. McHUGH: They're not present today,  
5 Mr. Commissioner.

6 CMSR. CHATTOPADHYAY: Town of Benton  
7 please?

8 MR. DARCY: Yes. My name is William  
9 Darcy. I'm the Chairman of the Board of  
10 Selectmen of the Town of Benton.

11 CMSR. CHATTOPADHYAY: Thank you. DOE?

12 MS. BAILINSON: Good afternoon,  
13 Commissioner. My name is Marie-Helene Bailinson.  
14 And I'm here on behalf of the Department of  
15 Energy. Along with me Paul Dexter, who is the  
16 Senior Hearings Examiner, and Amanda Noonan, who  
17 is the Director of Consumer Affairs -- Consumer  
18 Services.

19 CMSR. CHATTOPADHYAY: New Hampshire  
20 OCA?

21 MR. KREIS: Good afternoon,  
22 Commissioner Chattopadhyay. Good afternoon,  
23 Commissioner Simpson. I'm Donald Kreis, the  
24 Consumer Advocate.

1 CMSR. CHATTOPADHYAY: So, before we go  
2 into the hearings in all earnest, I think I'm  
3 going to go through some clarification matters.

4 It is our understanding that Benton's  
5 Motion to Compel concerns the following discovery  
6 requests, which are contained in the attachment  
7 to Benton's motions. And I'm just going to  
8 mention they are DR 1-01, Subparts (a) through  
9 (g); DR 1-02, Subparts (a) through (e); and DR  
10 1-04, Subpart (a).

11 With respect to 1-01 and 1-02,  
12 Consolidated has filed supplemental responses to,  
13 first, with respect to 1-01, it's Subsection (b)  
14 through (g); and, with 1-02, it's subsections (b)  
15 through (e).

16 Is that correct? Is that a correct  
17 understanding?

18 MR. DARCY: Maybe I could help by  
19 narrowing the issues to the questions that are  
20 still in dispute. They are the answers to my  
21 01(a), 01(c), 01(f), 02(a), 02(c), 02(f), and  
22 number 04(a).

23 Those are the only ones that remain in  
24 dispute.

1 CMSR. CHATTOPADHYAY: I heard, for 01  
2 and 02, you said "(a)", "(c)", and "(f)".

3 MR. DARCY: "(a)", "(c)", and "(f)" in  
4 both 01 and 02.

5 CMSR. CHATTOPADHYAY: Okay.

6 CMSR. SIMPSON: And 04?

7 MR. DARCY: And 04(a), yes.

8 CMSR. CHATTOPADHYAY: Okay. And that  
9 position holds even after the supplemental  
10 responses?

11 MR. DARCY: Yes. It was modified by  
12 the supplemental responses.

13 CMSR. CHATTOPADHYAY: Okay.

14 So, to make things organized, unless  
15 there is any objection, we propose that the  
16 parties discuss the DRs at issue one at a time.  
17 As the moving party, Town of Benton will begin.  
18 With regard to each DR, Benton will please  
19 explain how the information it seeks in the DR is  
20 relevant to the issues in this docket or  
21 reasonably calculated to lead to discovery of  
22 admissible evidence. Consolidated will then  
23 please explain how the information that Benton is  
24 seeking in this DR is either protected from



1 discovery, for example, because it is  
2 confidential or proprietary, or some other valid  
3 reason exists, for example, you know, the burden  
4 issue.

5 So, I would also just track a few more  
6 things before we dive into the discussions. I  
7 would like to understand how, I mean, from both,  
8 how, if at all, will the merger transaction at  
9 issue in this docket affect Consolidated's  
10 current obligations under RSA 362:8 and RSA  
11 374:22-p?

12 The Commissioners will, of course, ask  
13 questions as we pursue the DR-focused  
14 discussions. Generally, the Commissioners ask  
15 questions in turn. But I will let the discussion  
16 be more freewheeling, and I encourage  
17 Commissioner Simpson to jump in freely with  
18 interjections, questions, and observations.

19 I will also add, while the Motion to  
20 Compel Responses highlights the relevance of the  
21 DRs to the matter of determining technical,  
22 managerial, and financial capabilities of the  
23 Petitioners, I would encourage both Town of  
24 Benton and Consolidated to specifically hone into

1 such a determination ideally in more details when  
2 discussing their positions orally today.

3 Are there any objections to proceeding  
4 in this manner?

5 MR. DARCY: No objection, Commission.

6 MR. McHUGH: No objection.

7 CMSR. CHATTOPADHYAY: So, before we  
8 begin, I have a threshold question. This is  
9 purely my question, which perhaps has an obvious  
10 answer. But, for a nonlawyer like me, I wasn't  
11 very sure what the answer was, so that's why I'm  
12 asking this.

13 So, please confirm whether the indirect  
14 ownership interest in Consolidated Communications  
15 of Northern New England Company, that is CCNE,  
16 and Consolidated Communications of Maine Company,  
17 CCM, in its entirety is being transferred to  
18 Condor?

19 And that is a question for the  
20 Petitioners.

21 MR. McHUGH: I would answer it this  
22 way: No. The ownership interest in those two  
23 licensees is in the name of Consolidated  
24 Communications, Inc. That itself is a subsidiary

1 of Consolidated Communications Holdings, Inc.  
2 The transaction at issue only involves the  
3 acquisition of the public stock of Consolidated  
4 Communications Holdings, Inc.

5 So, there will be no transfer of the  
6 licensees' ownership interest, other than the  
7 indirect transfer, because the acquisition of the  
8 common stock of the ultimate parent entity, CCHI.

9 CMSR. SIMPSON: Something somewhat  
10 unrelated to today's hearing on the Motion to  
11 Compel. If the Company would be able to file a  
12 diagram of that transfer? We've gone back and  
13 forth, as Commissioners, to try to dissect that  
14 transfer of assets amongst the many different  
15 companies involved. It would greatly add to our  
16 clarity in this proceeding.

17 MR. McHUGH: I recall,  
18 Mr. Commissioner, there was a -- I don't know if  
19 it's as simple as what I just said, but there was  
20 a pre-organization -- I'm sorry, a  
21 pre-transaction diagram filed with the Joint  
22 Petition in the initial testimony, and a let's  
23 call it a "post-closing" diagram. So, I'll look  
24 for that as we proceed.

1 CMSR. SIMPSON: Thank you. Appreciate  
2 that.

3 MR. MCHUGH: Yes.

4 CMSR. CHATTOPADHYAY: Okay. So, let's  
5 begin the discussions on the specific DRs.

6 MR. DARCY: I'm sorry, I can -- I think  
7 I can help this process, by the fact that many of  
8 the questions that I have asked have already been  
9 answered. They -- my Questions 01(a), 01(c),  
10 02(a), 02(c), and 01(f), in part, were answered  
11 by the confidential attachments to DOE DR 1-01,  
12 DR 1-02, and DR 1-05(b), and by OCA DR 1-05,  
13 1-06, and 1-07.

14 Now, the reason why I was not provided  
15 that information is summarized in the opposition  
16 brief of CCI, and I'll read it: "Specifically,  
17 Consolidated believes that the discovery process  
18 in this Docket is being exploited as a means to  
19 obtain additional information to benefit NHEC  
20 both as a competitor of CCNE and NHEC's use in  
21 the State Court Litigation."

22 "For good reason, Consolidated submits  
23 that Mr. Darcy propounded these data requests to  
24 solicit additional information not for the Town

1 of Benton, which does not even contend that the  
2 Town is a customer of Consolidated, but to  
3 advance NHEC's litigation interests."

4 And I think it will expedite things for  
5 me to address that claim, which goes and covers  
6 five or six of the particular questions, which  
7 have ultimately been judged not to be so  
8 burdensome or irrelevant as to not be provided to  
9 other parties to this proceeding.

10 First of all, I should note that one of  
11 the statements in there, actually most of them  
12 are untrue, but I did contend, in my Motion to  
13 Intervene, that both the Town of Benton and our  
14 residents are dependent upon the CCI  
15 infrastructure. And I provided, the other side,  
16 the most recent bill, showing that the Town of  
17 Benton was indeed a customer of CCI.

18 But the larger question is "Should I,  
19 should the Town of Benton, be trusted not to turn  
20 over this information to NHEC, which I am a  
21 director, I am also the chairman of their  
22 broadband subsidiary?"

23 But that has nothing to do with my  
24 intervention in this case at all, except for one

1 possibility. I have Consolidated on my Web  
2 search with Google, so I knew they were being  
3 purchased by Searchlight Capital. Other than  
4 that, there is nothing about NHEC in this case.

5 And, so, the first issue I want to  
6 address, because I've never appeared before the  
7 Commission, is who am I? Why should you trust me  
8 in any way to not do what CCI is claiming that I  
9 would do, which was to turn over the information  
10 to NHEC? Which, as I will state as I go on,  
11 NHE [sic] has no interest in it for the reasons I  
12 will state.

13 I've been an attorney for 47 years. I  
14 have had lots of confidential information in my  
15 various roles as attorney and public servant. I  
16 was counsel for the City of Hartford and their  
17 Procurement Department. I was the CEO of the  
18 Waste Management Recycling Authority, which  
19 served 2 million residents, and we did everything  
20 by contract RFP. There was many multiple  
21 millions of dollars of confidential information.  
22 And I have never, in my 47-year career, ever been  
23 accused of divulging any confidential information  
24 to anybody.

1 I understand the obligations of  
2 confidentiality. And, even if you're serving  
3 multiple people representative in the lawyer  
4 context "clients", you don't provide confidential  
5 information provided to one client to the other.  
6 So, I recognize those obligations.

7 Secondly, Benton is not NHEC. I have  
8 had no communications with NHEC about this  
9 matter, or its subsidiary. Attorney Magee, when  
10 NHEC was in this case, himself represented that  
11 NHEC has had no communications with me. So,  
12 there is no conflict there at all.

13 And I pledge to you that, if given  
14 access, as I believe I should, to that  
15 information, that I will not in my way release  
16 that to anybody inappropriate.

17 Secondly -- thirdly, NHEC is not  
18 interested in the information Benton requested.  
19 NHEC was a party to this proceeding. It didn't  
20 make the same requests I made. We have  
21 completely different interests.

22 The primary concern that I stated in  
23 the Motion to Intervene is we're concerned, we're  
24 a very rural area, we have no cable producers,

1 and, for most people, Consolidated is the entire  
2 game. We have lousy cellphone, because we're in  
3 mountain -- between two mountains. So, unless  
4 you have a good internet connection, so you can  
5 make WiFi calls, that's a big problem.

6 So, our primary concern is the  
7 deterioration of the copper network. They're  
8 moving quickly to a more profitable enterprise,  
9 fiber internet, and I understand that. But we  
10 want to make sure that they don't leave the  
11 legacy copper customers behind. And there's a  
12 lot of them in rural networks, like Benton.

13 So, is NHEC interested in that? If  
14 anything, they would be on the other side of it.  
15 Think about this. If they do allow their copper  
16 network to deteriorate, what are people going to  
17 do? They're going to look for alternatives.  
18 NHEC's fiber internet business and telephone  
19 services would, obviously, pick up the slack  
20 there. Those are our members, and we don't want  
21 that to happen, that is NHEC members, that they  
22 don't want that to happen. But, if it does, it  
23 doesn't financially hurt NHEC, just the opposite.

24 Some of the information that



1 Consolidated has labeled as "highly confidential"  
2 isn't highly confidential at all, and especially  
3 to NHEC. We -- NHEC is aware of the public  
4 information that's available, you know, for  
5 instance, and I think what they would probably  
6 consider the most confidential, which is "where  
7 are they putting their fiber installations?" I  
8 think the theory is that either NHEC or the cable  
9 companies would want to know where they're  
10 building it, so they know where their competition  
11 is.

12 Well, NHEC knows where it is. Most  
13 people don't know this, but most of the building  
14 that's going on is the result of grant programs.  
15 There's been a lot of grant money thrown around,  
16 and there's going to be a lot more grant money  
17 thrown around. So, for instance, in trying to  
18 figure out who and where the fiber installations  
19 are of Consolidated, the grant programs specify  
20 the specific locations where they're going to  
21 serve. That goes for the CARES Program, which  
22 was a \$50 million program of Governor Sununu. It  
23 goes for the ARPA CPF Program, which gave \$50  
24 million to NHEC and \$40 million to Consolidated.

1 Most of their build for this year is going to be  
2 as a result of that build program. And last, but  
3 hardly least, is they have to file a form with  
4 the FCC stating where they built it.

5 And the BEAD Program, which is  
6 providing \$42.5 billion in the United States, and  
7 \$197 million in the State of New Hampshire, is  
8 all based on an FCC map, which itemizes all the  
9 areas that are served by fiber and otherwise  
10 exceed -- meets the standards for grant  
11 eligibility.

12 So, that information is -- is largely  
13 public information. You can pull up the FCC  
14 webpage and see it. And there's some areas that  
15 are in process, that they're anticipation. One  
16 of the exhibits that's being filed is they're  
17 filing their 2024 Build Plan. Now, most of that  
18 is going to be the grant I described, the  
19 \$40 million. But the one party that isn't going  
20 to be surprised by where they're building is  
21 going to be NHEC. We own 100,000 poles in our  
22 service area. And, if we're really -- if NHEC  
23 was really interested, they could take advantage  
24 of PUC [En?] Regulation 1303.06, which says "An

1 existing attaching entity shall provide written  
2 notice to the pole owner or owners of the intent  
3 to overlash a minimum of five days prior to  
4 installing".

5 So, what are some of the most  
6 confidential information is of no interest to  
7 NHEC. So, the idea that I have some great  
8 incentive to take privileged information, violate  
9 my own ethics in order to turn it over to NHEC,  
10 just doesn't wash.

11 CCI claims that I was also asking  
12 questions to further the litigation interests of  
13 NHEC. Well, I think even they will concede that  
14 it no longer applies, because that litigation has  
15 been settled. So, there is no incentive to  
16 provide any such information to NHEC.

17 Therefore, I believe that their claims  
18 have no merit on the confidentiality issues.  
19 That I should be provided the same information  
20 that was provided to the Energy Department and  
21 the OCA.

22 Now, as to the issues that are not  
23 directly been provided to other parties already,  
24 Question 01(f) asked for consumer satisfaction

1 reports. The idea there, I was looking for the  
2 trend of consumer satisfaction over time. If my  
3 theory was right, that the copper infrastructure  
4 is deteriorating and it's harming people, then it  
5 would show up in consumer satisfaction reports.

6 Now, I asked for a specific one, of  
7 which they claim that they don't have, and I  
8 accept that. But, surely, there are consumer  
9 satisfaction reports that they have to regularly  
10 file.

11 I'm a director of a small hospital, and  
12 we do consumer satisfaction. NHEC does consumer  
13 satisfaction studies all the time. You've got to  
14 find out what your customers are interested in.

15 So, I would ask that whatever they have  
16 that I get copies of that for the period 2017 to  
17 2023.

18 And what the OCA asked about,  
19 reliability concerns, I'd like access to those as  
20 well, for the same reason. If the network is  
21 deteriorating for lack of maintenance, it will  
22 show up in outages and other stuff. So, the data  
23 request from OCA I'd like to have access to for  
24 the exact same reason.

1           The next one that, it was a simple,  
2           very simple question, 02(f). I asked whether  
3           they agree that some emergency service providers  
4           and consumers prefer Plain Old Telephone, with  
5           that little electrical charge, that makes it more  
6           reliable during electrical outages?

7           I know, from talking to my  
8           constituents, and there's a lot of cases going  
9           back, you know, a decade, about Commissions have  
10          reviewed requests by telephone companies to get  
11          rid of the Plain Old Telephone, and substitute  
12          fiber or something else in order to do it, and  
13          the conflicts with people not wanting to do that.  
14          They like their old telephone, and they like the  
15          way it works, and the reliability of it.

16          So, all I was asking is they're aware  
17          of what I think was an obvious fact, and they  
18          refused to answer that.

19          CMSR. SIMPSON: Attorney Darcy, a  
20          question on "02(f)".

21          MR. DARCY: Yes.

22          CMSR. SIMPSON: I'm looking, is this  
23          Request 1-02?

24          MR. DARCY: Let me see.

1 CMSR. SIMPSON: Or, if you could read  
2 me the question? Because I --

3 MR. DARCY: You want to know something,  
4 you're right. You're right. It's "02(f)",  
5 instead of "01(f)".

6 CMSR. SIMPSON: Well, I'm looking at  
7 Request 1-02, and I'm only seeing (a) through  
8 (e), (e) --

9 MR. DARCY: There's no "(f)"? I  
10 thought my Question (f) was "Do the Licensees  
11 agree that some emergency services, police, fire,  
12 ambulance, *et cetera*, and consumers prefer the  
13 regulated voice service with an electric  
14 current?" I thought that was my question.

15 CMSR. SIMPSON: Okay. Thank you.

16 MR. DARCY: Yes.

17 CMSR. SIMPSON: Let me look at a  
18 different schedule.

19 Please proceed.

20 MR. DARCY: Okay.

21 CMSR. SIMPSON: Thank you.

22 MR. DARCY: And the last question that  
23 I have that they didn't answer is 04(a). "Since  
24 2017, have Licensees complied with all its

1 contractual obligation" -- "obligations under its  
2 pole attachment and joint use agreements with  
3 pole owners?"

4 This question goes to credibility. At  
5 their last proceeding in which there was a  
6 transfer, they made commitments that they honor  
7 all existing contractual and other obligations,  
8 and I want to know if they have fulfilled those  
9 obligations. If they have not, then it goes to  
10 the credibility of their assertions to the  
11 Commission, and the reliability and the weight  
12 you give to that. It also suggests that maybe  
13 some conditions or contingencies should be  
14 included in the order. It's one thing, they're  
15 saying -- making all these commitments in their  
16 testimony. If they can't be relied upon, then  
17 that's relevant.

18 So, that's -- that's all of my  
19 questions that I'd like to address. I think most  
20 of them are resolved by the question of whether  
21 or not I should have access to the confidential  
22 information that was provided to OCA and the  
23 Energy Department, and the other ones I have  
24 addressed as well.

1 CMSR. CHATTOPADHYAY: So that I have it  
2 correctly in my head, let's first talk about  
3 responses to Question 1-01. You're essentially  
4 saying Part (b), (d), and (e), and (g), you don't  
5 have issues with?

6 MR. DARCY: That's correct. I only  
7 have (a), (c), and (f).

8 CMSR. CHATTOPADHYAY: Okay. I'm going  
9 to confirm with respect to 1-02 as well. So, you  
10 have issues with (a), (c), and (f)?

11 MR. DARCY: That's correct.

12 CMSR. CHATTOPADHYAY: So, you don't  
13 have issues with (b), (d), and (e)?

14 MR. DARCY: That's correct.

15 CMSR. CHATTOPADHYAY: Okay. And for  
16 Question 1-04, 1-04, it's (f)?

17 CMSR. SIMPSON: That's "(a)".

18 CMSR. CHATTOPADHYAY: Sorry, "(a)". I  
19 meant "(a)". That is the question that you still  
20 having issues with?

21 MR. DARCY: That is correct.

22 CMSR. CHATTOPADHYAY: Okay.

23 MR. DARCY: Yes.

24 CMSR. CHATTOPADHYAY: So, before I let



1 Consolidated respond, I'm just making sure.

2 I thought I heard what you said with  
3 respect to (a), (c), and (f), the information is  
4 out there, it has been responded to other  
5 parties?

6 MR. DARCY: Yes.

7 CMSR. CHATTOPADHYAY: And you don't  
8 have -- you're not privy to it?

9 MR. DARCY: They refused to provide  
10 that information, arguing that I'd turn it over  
11 to NHEC, and their competitor.

12 CMSR. CHATTOPADHYAY: So, that is the  
13 issue. And that is true for both 1-01 and 1-02,  
14 (a), (c), (f)?

15 MR. DARCY: That's right.

16 CMSR. CHATTOPADHYAY: Okay, I just  
17 wanted to -- and was there any question out there  
18 from any other party that was submitted to 1-04?

19 MR. DARCY: Have any other parties  
20 requested that? No, I'm not aware of any.

21 CMSR. CHATTOPADHYAY: Okay. I'm going  
22 to let Consolidated provide your --

23 MR. McHUGH: Well, first, I think I  
24 need a clarification, Mr. Commissioner. I don't

1 think any party, other than Benton, asked a  
2 question equivalent to 1-02(f), which is the  
3 reference to Licensees, "Do the Licensees agree  
4 that some emergency services, police, fire, and  
5 ambulance, *et cetera*, and consumers prefer  
6 regulated voice service with an electric current  
7 that assures voice service when electric service  
8 is not operable?" And I don't --

9 MR. DARCY: That's correct. He's  
10 correct on that.

11 CMSR. CHATTOPADHYAY: Thank you.

12 MR. McHUGH: A couple of introductory  
13 matters in terms of the broad claims, statements  
14 Mr. Darcy made.

15 First, the reference to the fact that  
16 Consolidated, and including me, did not find the  
17 Town of Benton to be a customer, because we have  
18 no record of Benton being a customer, other than  
19 the Town discontinuing services years ago.

20 The invoice that Mr. Darcy produced is  
21 listed as a customer of "Benton Community  
22 Building". That looks like it's something that  
23 came in via the Call Center. And, so, no one put  
24 two and two together, that something called the

1 "Benton Community Building" might, on its face,  
2 you know, obviously appear to be related to the  
3 Town of Benton. But, in terms of a search of  
4 billing systems, that never came to be. So, you  
5 know, the service is minor, and it is what it is.

6 Second, there's quite a lot that  
7 Mr. Darcy said, but I never claimed that he had  
8 violated confidentiality in the past, nor did I  
9 claim that he would violate confidentiality in  
10 the future. Any information that we had  
11 deemed -- the Joint Petitioners had deemed  
12 competitively sensitive, has not been provided to  
13 any parties, other than the Department of Energy  
14 and the Consumer Advocate. In this docket, there  
15 is no protective agreement in place.

16 As you've heard from Mr. Darcy, he is  
17 the chairman of the -- not just the founder, as  
18 he claimed in the Laconia newspaper article, that  
19 he and Leo Dwyer, you know, got that grant for  
20 the New Hampshire Electric Co-op to build  
21 broadband, and now he's the chairman of the  
22 broadband subsidiary, he is a competitor. He's  
23 the chairman of that competitive entity.

24 And none of the competitors in this

1 docket have any commercially sensitive  
2 information. And my understanding is none of the  
3 competitors, their -- any of their management  
4 people, business people have any access to  
5 competitively sensitive information in any of the  
6 dockets in NNE [sic]. And here, we're not in  
7 Vermont, we're not in Maine, and I'm just  
8 explaining my understanding of the lay of the  
9 land in those jurisdictions. But, here, we don't  
10 have a protective agreement.

11 And, with all due respect, and you've  
12 heard Mr. Darcy is articulate, and he's, you  
13 know, the chairman of this entity. He's got one  
14 brain, he can't separate it. He's going to be  
15 going into board meetings, he's going to be going  
16 into committee meetings, he's going to be acting  
17 as the chair of the broadband subsidiary, having  
18 all of this competitively sensitive information  
19 at his disposal. Not that he's going to hand it  
20 over to anybody. But he's got one brain, and  
21 he's going to have it in his head, and he's going  
22 to be able to make decisions based on that  
23 information.

24 I see no reason, and we will not give

1           it to Mr. Darcy voluntarily. It's not the Town  
2           of Benton, it's Mr. Darcy. He's the chairman of  
3           the Planning Committee, but he's also the  
4           chairman of the board of this subsidiary. And it  
5           can't be -- I see no possible reason how it can  
6           be separated from that regard.

7                        But, to the beginning of the hearing,  
8           in terms of the outlay of how the Commission  
9           preferred the arguments to be structured, I mean,  
10          we can go through one at a time, you first have  
11          to determine "Is it relevant? If it is relevant,  
12          what's it relevant to?", because a lot of what  
13          Mr. Darcy wants has to do with fiber.

14                       And, when you look at the statutes at  
15          play, and what, you know, the Petitioners' burden  
16          is, in terms of getting the approvals that they  
17          requested, you know, you look at 374:22-p, which  
18          is basic telephone service, it's POTS. And none  
19          of the information that he's asked that I can see  
20          has any relevance to POTS, for nearly all of  
21          these questions. And, if you want me to go  
22          through one by one, I'm happy to do that.

23                       And, then, when you look at 362-8,  
24          there's various obligations there that apply to

1           excepted local exchange carriers, none of which I  
2           can see would apply to the Town of Benton. And,  
3           certainly, I can -- you can hear a response,  
4           specific arguments or questions to the contrary,  
5           but it's under those elements that we formed our  
6           answers and what we're willing to provide various  
7           intervenors, who are or who are not competitors,  
8           but outside of the regulatory realm of the  
9           Consumer Advocate or the Department of Energy.

10           I agree, the Cooperative, you know, the  
11           case settled. I'm more than happy to report the  
12           case settled. The Cooperative withdrew its  
13           intervention, it's withdrew its motion. More  
14           recently, it's on the record that the Town of  
15           Greenfield withdrew.

16           So, you know, we're left with this one  
17           intervention, and why it needs the information it  
18           asked for. In terms of some of the questions,  
19           just going backwards, the one that was just asked  
20           about, in terms of "Do the Licensee agree that  
21           some emergency services and consumers prefer  
22           various services?" We can't answer that. We  
23           have no idea. "Whether or not some" -- what does  
24           "some" mean? "Emergency services providers

1 prefer some services over the other?" I don't  
2 see how we can answer for a multitude of third  
3 parties, when we're in somewhere between maybe  
4 150, upwards to 175, 180 communities.

5 Is it possible that some of them, or  
6 one, is it 10? I don't know what number. But,  
7 you know, it's all speculation and conjecture.  
8 So, I don't see how we can possibly answer it. I  
9 don't see how it's relevant. But that's our  
10 position on that one.

11 In terms of looking at 1-04(a), "Since  
12 2017, have the Licensees complied with all  
13 contractual obligations under pole attachment and  
14 joint use agreements with pole owners?" Again, I  
15 don't know why it's relevant to any of the issues  
16 raised in the statutory scheme at issue in this  
17 case. That's number one, and first and foremost.

18 But, number two, basically, what we're  
19 being asked to do is state a legal conclusion  
20 with -- about a multitude of contracts, with a  
21 multitude of electric companies, with, as  
22 Mr. Darcy well knows, joint use agreements, which  
23 have an extensive amount of terms and conditions.  
24 The agreements are long, they all come with a

1 multitude of what we call "IOPs", "Intercompany  
2 Operating Procedures". There's no possible way  
3 we can go through every one of those and answer  
4 whether or not, you know, we complied with "all  
5 contractual obligations".

6 And I'm not going to allow my client to  
7 be in a position to make some broad statement to  
8 satisfy the Town of Benton, when it could  
9 eventually be used against him in a court of law,  
10 because they, you know, made it, and it can be  
11 used at the PUC proceeding, when Mr. Shultz or  
12 any other Consolidated witness is under oath.

13 But, again, it's not relevant to any of  
14 the issues in this case, which is a very  
15 different case, a very different docket, than one  
16 company coming in and completely overtaking the  
17 operations of another company, i.e., the  
18 FairPoint acquisition of Verizon back in 2008,  
19 or, i.e., the maybe more obvious one, the  
20 Consolidated Communications acquisition of  
21 FairPoint, was two companies, one completely  
22 taking over the operations, management, and  
23 everything else of another company. This is a  
24 vastly different transaction.



1           And, you know, I mean, and in terms of  
2           some of the other statements that Mr. Darcy made,  
3           he's clearly knowledgeable in terms of what's  
4           going to be filed. I have no comment on whether  
5           or not the Co-op would find it useful or not,  
6           whether the Co-op might, you know, get it or not.

7           But, clearly, Mr. Darcy knows about it.  
8           Mr. Darcy knows where the information is. And,  
9           if it's relevant to him, he can go find -- he can  
10          go find that information himself. He's  
11          articulated his knowledge in that regard. I  
12          don't see why Consolidated needs to put together  
13          extraneous information for him, when he already  
14          knows where to get it.

15          I'd be happy to answer any questions.

16          MR. DARCY: May I respond?

17          MR. McHUGH: Can I -- if I can just do  
18          01(f)? I'm sorry, I missed that one. Thank you.

19          CMSR. SIMPSON: 01(a), (c), and (f) as  
20          well.

21          MR. McHUGH: Yes. Yes. Oh, sure. Let  
22          me start with -- I'll just keep working  
23          backwards, I guess.

24          Yes. 01(f), yes, "Provide the consumer

1 satisfaction reports for licensees from the  
2 American Customer Satisfaction Index?" Again,  
3 while I question whether or not it's relevant, we  
4 answered the question. We just -- we answered  
5 it. There's no other pending question.

6 That he wants to maybe rephrase it now,  
7 it's beyond the scope of the procedural order.  
8 He asked this question, we did answer it. And,  
9 so, I think the Commission should find that one  
10 to be resolved.

11 01(a) and 01(c), they are -- they're  
12 highly confidential information. I have no idea  
13 why it would matter how many FTEs were devoted to  
14 a fiber net -- internet business, when there is  
15 no reference to a "fiber internet business"  
16 standard in the statute before the -- the  
17 statutes before the Commission. It's not  
18 relevant to these proceedings. And it's highly  
19 confidential information, in terms of a number of  
20 FTEs.

21 I believe, in our objection, in our  
22 Exhibit A for our supplemental responses, we did  
23 answer. We provided public answers to 01(a) and  
24 01(c). And that's the scope of what we're

1 willing to do.

2 But, for 01(c), if I have the right  
3 one, 01 -- I'm sorry. Oh, I'm sorry, I was  
4 looking at 01(d). "How many of the Licensees  
5 employs FTEs for each year stated but were  
6 devoted to the Licensees' fiber internet  
7 business?" I apologize. That one's been  
8 answered, that's 1-01(d).

9 (c), I misread. It's just "State the  
10 year-end employee in headcount for the Licensees  
11 from 2017 through 2023?" I submit that's  
12 confidential. And, again, I see why it has no  
13 relevance to this docket whatsoever. So, I'll  
14 leave it.

15 The same with 01(a), in terms of  
16 information about the Company's customer count.  
17 But we -- in part, we, I think in fairness to the  
18 Company, we did provide a public statement in  
19 response to the Department of Energy Data Request  
20 1-02. And we confirmed publicly that, in terms  
21 of the fiber passings that the Licensees in New  
22 Hampshire have passed is 294,000 homes and  
23 businesses in the State of New Hampshire since  
24 2020, when the investment came from Condor's, you

1 know, ultimate owners. So, that provides the  
2 Town of Benton, and others, on a very public  
3 basis, as to what has been done to improve the  
4 network since 2020. And I submit that's more  
5 than a fair answer.

6 CMSR. CHATTOPADHYAY: So, a question  
7 that I am sort of thinking about. You mentioned  
8 "protective agreement". You would never have a  
9 protective agreement with competitors, would you?

10 MR. McHUGH: We do. It's who has  
11 access to what information. So, there's  
12 different levels of information. Anything that  
13 the Company would consider "competitively  
14 sensitive", we would not give to the competitors.  
15 We would give them to an outside attorney, like  
16 Attorney Johnson, from Devine Millimet, or  
17 another firm. And, potentially, if there's an  
18 outside consultant/expert that a competitor has  
19 hired, they would sign on to the protective  
20 agreement, and there's usually what we call a  
21 "Schedule 1", where they agree that they have  
22 read everything, they agree to be bound by it.

23 But, in terms of management or anybody  
24 involved in the business affairs of the company,

1           they would not get that competitively sensitive  
2           information.

3                       CMSR. CHATTOPADHYAY:   And there is no  
4           way that you can have such an arrangement with  
5           NHEC?

6                       MR. DARCY:   Not NHEC, Town of Benton.

7                       MR. MCHUGH:   No, because he is the --  
8           part of the management of NHEC's broadband  
9           subsidiary.

10                      MR. DARCY:   I'm not management.

11                      MR. MCHUGH:   Well, the Chairman of the  
12           Board is management.   That's my business  
13           experience.   So, I'm just going to leave it at  
14           that.   I'm not going to argue the point.   That's  
15           my position on it.

16                      But, again, I want to reiterate,  
17           Commissioner, he cannot separate himself from  
18           those roles.   He'll have the information, he will  
19           have read it, he'll have access to it, and it is  
20           what it is.   So, no.

21                      CMSR. CHATTOPADHYAY:   So, I have a  
22           simple question for the Town of Benton here now.  
23           You -- Consolidated has it -- has it got it right  
24           that you are part of the Board?

1 MR. DARCY: I am on the Board of  
2 Directors of NHEC. And, in that capacity, I'm  
3 also on what's called the "Managers Committee" of  
4 their wholly-owned subsidiary, NH Broadband, LLC.

5 May I respond to --

6 CMSR. CHATTOPADHYAY: Okay. Go ahead.

7 MR. DARCY: All right.

8 First of all, Attorney McHugh said he  
9 doesn't see why he should have to prepare for me,  
10 for Benton, information that I pieced together,  
11 some of the pieces I told you, FCC maps, grant  
12 programs. They have already provided it in this  
13 docket. There's nothing needed to be prepared  
14 for me. They have already filed it.

15 He states that all my questions regard  
16 -- are about fiber. Fiber is related only to my  
17 concern about the abandonment of the copper wire  
18 infrastructure. So, the pace at which they do  
19 that, and how they make that transition, that's  
20 of great concern of me. That's why I asked  
21 questions about the number of employees, why I  
22 ask questions about the employee counts. Is the  
23 employee count going down? The Union says it is  
24 in their testimony. Consumer satisfaction, is

1           that a result of the deterioration of the  
2           network, and will it continue at a pace with a  
3           foreign equity capital firm taking control and  
4           giving the directions? I think those are all  
5           legitimate questions.

6                         So, both -- they obviously are  
7           interested in moving forward for fiber. I don't  
8           want them to leave behind their other customers.  
9           The fact is that people are reluctant to change,  
10          to go to fiber, if they're -- if they get their  
11          emails or it's good enough, they might not move.  
12          But, then, the complaints will increase.

13                        I get complaints from my constituents  
14          all the time about what's going on. And I tell  
15          them, "Well, sign up with somebody else."

16                        But I just don't think there's any -- I  
17          am not attorney for NHEC, and obligated to turn  
18          over documents to them. I'm not attorney for the  
19          cable company, and, therefore, obligated to turn  
20          over documents or information to my client.  
21          Plus, I'm at a loss for what the information here  
22          would be of any value to NHEC at all. And, when  
23          we get to the point of arguing whether their  
24          claims that the information, even to the OCA and

1 Energy Department, is confidential and should be  
2 protected, I'll be arguing against that at that  
3 time.

4 But, for the present purposes, I don't  
5 see anything that I would use in my other mind in  
6 my capacity. And, so, I don't see there's any  
7 grounds for depriving me of relevant information  
8 that's already been prepared and distributed to  
9 other parties.

10 *[Cmsr. Chattopadhyay and Cmsr. Simpson*  
11 *conferring.]*

12 CMSR. CHATTOPADHYAY: Thank you.

13 Since I gave the Town of Benton this  
14 opportunity, is there anything else that you want  
15 to say, as far as Consolidated is concerned?

16 MR. McHUGH: Well, one, any transition  
17 from fiber to copper, retirement of copper, comes  
18 with fairness regulatory obligations, both at the  
19 FCC and the Commission. So, a lot of the  
20 argument, I think, is for another docket. A lot  
21 of the information would be from another docket.

22 There's no suggestion that the indirect  
23 acquisition of the Licensees two levels above at  
24 the ultimate public parent entity in any way



1 involves any of the questions related to that  
2 narrow subset of issues.

3 And, number two, the Town of Benton,  
4 you know, has no witness to present at the  
5 hearing. So, it also, in the end, it's a minor  
6 point, but I wanted to make it, is to what end do  
7 they want or need the information for. The  
8 information in a vacuum of the number of  
9 employees, what does that tell anybody, other  
10 than the number of employees we have, which we  
11 believe is overall confidential. It doesn't tell  
12 you anything. It doesn't tell you who's out  
13 working in what field, doing whatever number of  
14 tasks.

15 And what -- I don't understand the  
16 relevance in that vacuum of what it can do. We  
17 say "we have X number of employees", and Mr.  
18 Darcy or the Town gets to say "That's not enough.  
19 We object to the transaction." What if it was,  
20 you know, 50,000 employees? You know, again,  
21 they could still say "50,000 isn't enough. We  
22 argue against the transaction."

23 So, I think, just putting things out  
24 there in the public realm that's, you know, could

1 be harmful to the Company, vis-à-vis competitors,  
2 and our competitive interests, again, there's no  
3 relevance to the ultimate issues in this docket.

4 In terms of some of the other  
5 information, I mean, I suppose he's right, NHEC  
6 has no interest in take rate information, in  
7 terms of, you know, the number of customers, the  
8 expansion.

9 As a competitor against Comcast,  
10 Charter, Breezeline, other competitive entities  
11 in the state, we would love to know that  
12 information. And I can assure you they would, if  
13 they were sitting here, they would love to know  
14 the information that we have.

15 So, the fact that the Cooperative,  
16 which is a competitor in this space, may or may  
17 not really have an interest in the information,  
18 I'll take it at face value that they don't. But  
19 other competitors do, and he's a competitor. And  
20 so, I still don't see a need to provide the  
21 information, and request that you rule such.

22 CMSR. CHATTOPADHYAY: Thank you. I'm  
23 going to let DOE and the OCA provide their  
24 opinions, if they have any. So, I'll start with

1 the OCA. Please. Thank you.

2 MR. KREIS: Thank you, Commissioner  
3 Chattopadhyay. At the risk of being the fool who  
4 rushes in where angels fear to tread, I do have a  
5 few thoughts to share.

6 As I understand this discovery dispute,  
7 the Town of Benton is seeking access to  
8 information that has already been provided to the  
9 OCA and to the Department of Energy in discovery.  
10 And the OCA favors broad access to docket-related  
11 materials by all parties to dockets.

12 I think that it is in the interests of  
13 the constituency that my Office represents to  
14 assure that as little as possible of the PUC's  
15 business is conducted in secret, or subject to  
16 artificial constraints on who has access to what.  
17 And, in my experience, to the extent we agree  
18 with other parties on matters, it's to our  
19 benefit when those other parties have access to  
20 the same information that we do.

21 Here, the Town of Benton is a party to  
22 the docket. The Commission has broad authority  
23 to manage its adjudicative proceedings, and can  
24 impose conditions or limitations on parties that

1 is calculated to protect any proprietary  
2 interests that anybody might have to information  
3 that is shared in discovery. And the questions  
4 around whether to provide the Town of Benton with  
5 confidential information seem to relate to issues  
6 involving Mr. Darcy personally.

7 Well, I do know that Mr. Darcy is a  
8 fiduciary of the New Hampshire Electric  
9 Cooperative and its subsidiary, it's possible, at  
10 least in my mind, that he could gain access to  
11 information here that would implicate his  
12 fiduciary obligations to other entities like  
13 those. Those are matters between him and those  
14 entities to which he has fiduciary obligations.  
15 I would be very concerned about that, if I were  
16 him, frankly.

17 And, if I were involved in a docket  
18 here that implicated any fiduciary obligations I  
19 might have to outside organizations, I would  
20 probably turn my involvement in a case here over  
21 to one of the other attorneys in my Office, just  
22 to protect myself from allegations that I was  
23 potentially exposing myself to arguments that I  
24 was not able to keep faith with my fiduciary

1 obligations.

2 But that's all outside the scope of  
3 what we're talking about here. What we're  
4 talking about here is whether this intervenor,  
5 the Town of Benton, should have access to the  
6 same information that my Office and the  
7 Department of Energy does.

8 And I'm confident that it is possible  
9 for the PUC to impose conditions that would allow  
10 the Town to have full access to everything. And  
11 I would respectfully suggest that the PUC take  
12 whatever steps are necessary to assure that.

13 The only other thing I would say, in  
14 response to Consolidated, is I thought I heard  
15 Mr. McHugh say something like "Well, I don't want  
16 to have to give them information that they could  
17 use someday in court against me."

18 Well, that's the nature of discovery  
19 generally. I mean, you know, discovery papers  
20 have a way of becoming public. And, if you say  
21 something in discovery, that in some future  
22 situation elsewhere on Planet Earth ends up  
23 getting used against you in court, maybe you  
24 should be very careful about what you say in

1 responses to discovery requests.

2 But, in other words, to be a little  
3 less snarky, the fact that you -- the fact that a  
4 discovery response that you issue, in response to  
5 a lawful discovery request, could come back to  
6 haunt you in some future scenario, that itself is  
7 not a valid objection to a discovery request, in  
8 my opinion.

9 I think that's all I have to say.  
10 Hopefully, some of that is constructive.

11 CMSR. CHATTOPADHYAY: Thank you. Let's  
12 go to DOE.

13 MS. BAILINSON: Thank you,  
14 Commissioner.

15 The Department has no position. We  
16 view this as a dispute between the Company and  
17 the Town of Benton. We requested information,  
18 which we received, and we used to produce our  
19 report.

20 Thank you.

21 CMSR. CHATTOPADHYAY: Thank you. I'm  
22 going to let Commissioner Simpson ask questions  
23 or share his thoughts.

24 CMSR. SIMPSON: Okay. Thank you. I'll

1           just go one-by-one.

2                       Mr. Darcy, so, looking at 1-01(a), "How  
3 many of the Licensees' customers still depend on  
4 its copper wire voice and data cell services?"  
5 This seems extremely broad when I read it. This  
6 question seems incredibly broad.

7                       And I'm unclear what "depend" means.  
8 I'm not sure how the Company can answer that.

9                       MR. DARCY: I think all they have to do  
10 is take the total number of customers, deduct  
11 their fiber customers, and you've got their  
12 customers dependent on their copper -- their  
13 copper network.

14                      And that document has already been  
15 provided. Actually, it was provided to the  
16 Energy Department. I'm not looking for anything  
17 more than that.

18                      CMSR. SIMPSON: Are you looking  
19 statewide or just within the Town of Benton?

20                      MR. DARCY: No, no. Statewide.

21                      CMSR. SIMPSON: And why?

22                      MR. DARCY: Because it shows the trend  
23 of who's dependent upon it.

24                      Now, it affects the Town of Benton, it

1 affects all the municipalities in the state. I  
2 could tell you that I went to the N.H. -- before  
3 I intervened, I went to the Municipal Association  
4 and asked them if they were going to intervene in  
5 this proceeding. And they said "Oh, we don't  
6 have any utility lawyers on staff. And it's a  
7 short timeframe. So, I don't think we can do  
8 it."

9 Now, Commissioner -- "Commissioner" --  
10 Attorney McHugh, at one point, made the point  
11 that "Why Benton, of all other towns in the whole  
12 state, why this municipality of all?" And the  
13 answer is very simple. Benton had a free lawyer,  
14 who used to be a consumer advocate and director  
15 of regulation at the Connecticut DPUC. So, they  
16 had free services to be able to take this on,  
17 that the Municipal Association did not.

18 So, I mean, this information is, you  
19 know, designed to look at the big picture, so I  
20 can make argument that also affect Benton as  
21 well. So, --

22 CMSR. SIMPSON: Okay. Thank you for  
23 that.

24 With respect to the employee count, is



1           this pertaining to Consolidated's New Hampshire  
2           operations overall? Is it pertaining to both  
3           fiber and copper? What are you really looking  
4           for here?

5                       MR. DARCY: Yes. They, in another  
6           answer that they provided, said they couldn't  
7           separate out the fiber from the copper wire  
8           maintenance. So, what I was looking for, and  
9           it's not one number, as he stated, that would  
10          provide me no information. I'm looking at the  
11          trend.

12                      The same reason that the Union  
13          testimony provided the trend of employees, it  
14          tells you whether or not there may be a problem  
15          with the maintenance of the copper wire  
16          infrastructure.

17                      CMSR. SIMPSON: Okay. Thank you. With  
18          respect to (f), I'll ask Attorney McHugh, did I  
19          understand correctly that the Company does not  
20          have ACSI reports specifically?

21                      MR. McHUGH: Correct.

22                      CMSR. SIMPSON: Do you have an  
23          alternative, in terms of customer satisfaction,  
24          that you could provide?

1 MR. McHUGH: We do, but they're highly  
2 confidential. We don't give them out to the  
3 public. And I would submit they're competitively  
4 sensitive.

5 CMSR. SIMPSON: Can you explain that  
6 for me further?

7 MR. McHUGH: Yes. I think a lot of  
8 them have to do -- there's different reports, to  
9 my understanding, I don't have them. So, it's  
10 nothing that I've read. But they are mostly, in  
11 my understanding, is mostly internally generated,  
12 they're focused on broadband, especially fiber  
13 services. I don't know if there's any related  
14 to, say, POTS, versus an overall voice services.  
15 And, as the Commission probably knows, voice can  
16 be a lot more than Plain Old Telephone Service.

17 So, again, I don't think there's  
18 anything that would directly implicate something  
19 that's at issue in these statutes which pertain  
20 to the Commission's analysis. So, --

21 CMSR. SIMPSON: With respect to  
22 reports, were a similar or the internal reports  
23 that you've referred to as "confidential", were  
24 those provided to other parties in this case?

1 MR. McHUGH: No.

2 CMSR. SIMPSON: So, no other party has  
3 asked for customer satisfaction reports?

4 MR. McHUGH: Yes, I believe that's  
5 correct. Yes.

6 CMSR. SIMPSON: Okay.

7 Looking at 02(a), I'll stay with  
8 Attorney McHugh, "the total number of current  
9 customers and the number of those who currently  
10 have access to fiber?"

11 So, the number of customers, is that a  
12 competitive figure, the number of customers,  
13 whether copper or fiber?

14 MR. McHUGH: Yes, I believe it is.  
15 Anything related to take rate information that  
16 allows you to drill down of how successful, or  
17 lack thereof, any particular business aspect is,  
18 is highly sensitive.

19 I will tell you, as I mentioned  
20 earlier, part of it has been answered with the  
21 public information provided in response to the  
22 Department of Energy Data Request 1-02(a) and our  
23 supplemental response, for New Hampshire. And,  
24 because the number of passings, as I said today

1 on the record, and it was public, or let's put it  
2 as "non-confidential" anyway, in response, is  
3 294,000 passings that the Company has -- sorry,  
4 the Company has passed 294,000 homes and  
5 businesses or other types of entities in the  
6 State of New Hampshire since 2020. So, I  
7 think -- I don't know why he needs more  
8 information, but that answers that part of that  
9 question.

10 CMSR. SIMPSON: And this is  
11 insufficient, Attorney Darcy?

12 MR. DARCY: That is correct. I want  
13 the -- the Energy Department also asked the same  
14 question, and was provided it. So, I want that  
15 information. But I'm not --

16 CMSR. SIMPSON: But let me ask you to  
17 clarify on that. I think Attorney McHugh said  
18 that there's been a response to the Department  
19 that's publicly available?

20 MR. DARCY: But it doesn't address the  
21 question that I asked. It talks about some of  
22 the passings over a certain time period. I'm  
23 looking for the breakdown of POTS and DSL, the  
24 copper-based system and the noncopper-based

1 system.

2 I'm not looking for take rates. I know  
3 he stated that, and I understand the sensitivity  
4 about that. And, so, I'm not looking for that.  
5 That is sensitive information, and I'm not  
6 interested in that.

7 CMSR. SIMPSON: And how is that  
8 information -- how would that information benefit  
9 the Town, as an intervenor?

10 MR. DARCY: You mean, the breakdown  
11 of --

12 CMSR. SIMPSON: The number of current  
13 customers who have access to fiber, how is that  
14 relevant to your --

15 MR. DARCY: Well, it tells you what is  
16 remaining of the POTS network. I mean, if you  
17 could break it down and just have the POTS  
18 customers, I'd be -- POTS and DSL customers, and  
19 what the universe is of those that aren't going  
20 to be provided with fiber, I'd be satisfied with  
21 that.

22 CMSR. SIMPSON: Is that something the  
23 Company could provide?

24 MR. McHUGH: No. But I don't even

1 understand what the point of it is. The question  
2 is really is the -- overall, is it -- it's not a  
3 legal question, but, I think, intuitively, you  
4 look at "Is the transaction going to benefit New  
5 Hampshire's residents and businesses?" And we've  
6 explained why it will.

7 The Town of Benton, I cannot see any  
8 interest that this Town has in the overall number  
9 of customers which may have access to fiber.  
10 That's customer-specific. They have no business  
11 to know how many customers we have.

12 The question is, is the, you know,  
13 network, we cover 150-175 towns in the State of  
14 New Hampshire. And we've just told you that  
15 we've -- the Company has expanded access to fiber  
16 services greatly in the State of New Hampshire.  
17 I don't see why it matters how many customers the  
18 Company has, especially given the size of the  
19 Town of Benton. It doesn't show them anything,  
20 as the Town of Benton.

21 MR. DARCY: You know something, I'm  
22 used to this, Commissioner. The Town of Benton  
23 is irrelevant to anything in --

24 MR. McHUGH: I did not say that.

1 MR. DARCY: The only way you can get  
2 information about the trends overall is to ask a  
3 broader question. They're not going to do  
4 something or not do something because of Benton  
5 at all. It will be doing something only because  
6 of the wider world and how that affects things.  
7 That's why I asked those questions.

8 If it's relevant to the Energy  
9 Department, it's irrelevant [sic] to me. I  
10 should be entitled to make arguments based on the  
11 data as a whole that affect this jurisdiction.

12 MR. McHUGH: To be clear, my response  
13 would have been the same had the City Solicitor  
14 for the City of Manchester been sitting there.  
15 Just to be abundantly clear.

16 CMSR. SIMPSON: Okay. So, then, (c), I  
17 want to make sure I'm understanding correctly.  
18 So, "Fidium on its own, apart from in towns who  
19 issued bonds to receive fiber services, appears  
20 to have concentrated its efforts in the denser  
21 part of its service territory". This is 02(c).

22 MR. DARCY: Uh-huh.

23 CMSR. SIMPSON: Attorney Darcy, okay.  
24 "How will the proposed transaction increase

1 service in the less dense areas of New Hampshire  
2 most in need of improved telecommunications  
3 services?"

4 For this question, did Condor reply in  
5 a sufficient manner?

6 MR. DARCY: I believe they did. I'm  
7 not sure if they addressed it at all, frankly. I  
8 think CCH [*sic*] addressed it.

9 And I understand that this is, in part,  
10 argumentative. All I'm asking for is the same  
11 information, general information, that was  
12 provided to the Department of Energy on this  
13 issue.

14 CMSR. SIMPSON: Where I struggle with  
15 this one is it seems speculative.

16 MR. DARCY: I think the -- I think the  
17 answer is, that they have already answered it in  
18 a hundred different ways saying "We're not going  
19 to tell you." We've got no plans for the future.  
20 The only future information in any way that I've  
21 seen that they provided is they provided the  
22 fiber build for 2024. Which I'm not that  
23 interested in, but it's also something that's  
24 probably their grant work, and their \$40 million



1 grant.

2 But I'm interested in the breakdown  
3 between the copper and the fiber network, in  
4 gross ways, in the same way that the Energy  
5 Department asked the question.

6 CMSR. CHATTOPADHYAY: Can I just --

7 MR. DARCY: So, I guess I'm abandoning  
8 the further question about how it helps the less  
9 dense areas of it. I mean, everybody knows that  
10 everybody focuses on the dense areas of the  
11 state, and, you know, avoid the places that are  
12 more expensive and hard to maintain and hard to  
13 build.

14 So, I mean, I would hope that, when  
15 they get an infusion of capital, they extend more  
16 into the rural areas. I think we all want that  
17 in New Hampshire.

18 CMSR. CHATTOPADHYAY: You mentioned  
19 that this question has been answered for the --  
20 for DOE, for the Department of Energy?

21 MR. DARCY: Well, in a broad-based  
22 basis. The breakdown between the copper network  
23 and the fiber network, yes, they had answered  
24 questions. And I think I wrote them down, that

1 it was either in DOE 1-01, 1-02, or DR 1-05(b).

2 CMSR. CHATTOPADHYAY: Is all of that  
3 public information?

4 MR. DARCY: All that was in a  
5 confidential attachment. That's the whole --

6 CMSR. CHATTOPADHYAY: So, you don't  
7 know what the answers were?

8 MR. DARCY: No. I don't know what the  
9 answers were. But the question would elicit, at  
10 least in a broad basis, the information that I'm  
11 looking for.

12 CMSR. CHATTOPADHYAY: I'm just going to  
13 go back to Part (a) here. The information that  
14 the Company has provided to the other parties  
15 there, Part (a), was that public information?

16 MR. DARCY: I'm sorry. I haven't been  
17 provided any information that was in response to  
18 either 01(a) or 02(a).

19 CMSR. CHATTOPADHYAY: I'm talking about  
20 02(a) right now.

21 MR. DARCY: Yes. No. I've got no  
22 information on that.

23 CMSR. CHATTOPADHYAY: Okay. Just  
24 wanted to make sure.

1           Can I, for Part (c), it was DOE that  
2           received the information?

3           MR. DARCY:   Yes.

4           CMSR. CHATTOPADHYAY:   Okay.   Can DOE  
5           say anything, without creating any  
6           confidentiality issues, about whether Part (c),  
7           the question that is what you got the response  
8           for, even broadly?

9           MS. BAILINSON:   Can you give us a  
10          minute please, --

11          CMSR. CHATTOPADHYAY:   Sure.

12          MS. BAILINSON:   -- to talk about this?  
13          Thank you.

14          *[Atty. Bailinson, Dir. Noonan, and*  
15          *Atty. Dexter conferring.]*

16          MR. McHUGH:   Mr. Commissioner, I  
17          apologize for interrupting, but -- and I'll  
18          certainly let the DOE answer your question.   But  
19          I'm looking at some of the data, it's take rate  
20          information.   And it's build -- what we'd  
21          consider highly confidential broadband expansion  
22          build information.   That's part of what we  
23          provided.

24                 It's very different, I think, than what

1 he asked. But another reason why just turning  
2 over confidential data to the Town, why we object  
3 to it. I'm looking at some of it right now.

4 So, again, I'm not trying to answer for  
5 the Department of Energy. But, while I'm looking  
6 at it, I at least wanted to represent what it is.

7 CMSR. CHATTOPADHYAY: Thank you for the  
8 information. I would still wait for the DOE to  
9 respond, and we'll move forward from there.

10 CMSR. SIMPSON: I see Attorney Darcy  
11 deep in thought.

12 MR. DARCY: Yes. I'm trying to figure  
13 out why he's saying "take rates". Certainly, the  
14 build information, as I went over in detail, that  
15 the build information is available from public  
16 sources, and NHEC would know, in their service  
17 area, where they're building.

18 So that I don't -- so, I don't know how  
19 he's saying "take rates". We can determine take  
20 rates from that. I always think of "take rates"  
21 is how many passings, and then how many  
22 customers, then you can figure take rates from  
23 that.

24 MR. McHUGH: That's what it is.

1 MS. BAILINSON: Mr. Commissioner, I  
2 have some general information, but I am trying to  
3 kind of balance, looking at confidential  
4 information and, you know, also answering your  
5 question.

6 So, I think what we can say is that we  
7 did not pose a similar question as to (c), which  
8 is the Request 1-02(c) by the Town of Benton. We  
9 did not pose a question like that, and we did not  
10 receive information.

11 CMSR. CHATTOPADHYAY: Do you mind  
12 sharing the question?

13 MS. BAILINSON: That we did pose?

14 CMSR. CHATTOPADHYAY: Yes.

15 MS. BAILINSON: All right. I can --  
16 I'd have to pause and go to it, if that's okay?

17 CMSR. CHATTOPADHYAY: Absolutely.

18 *[Short pause.]*

19 CMSR. SIMPSON: While Attorney  
20 Bailinson does some research, I'll ask Attorney  
21 Darcy, 02(f), with respect to emergency services?

22 MR. DARCY: Yes.

23 CMSR. SIMPSON: What do you mean by  
24 "prefer"?

1           MR. DARCY: They don't want FO -- Voice  
2 Over internet Protocol. They want the Plain Old  
3 Telephone, with the electrical current that gives  
4 them service when the electricity is down.  
5 That's preferred.

6           You know, I was looking at cases more  
7 than a decade ago in which this issue has come  
8 before commissions, where there's controversy  
9 over there. This was holdouts, people that don't  
10 want to make that transition. And I've heard  
11 from chiefs of police, emergency service  
12 directors, and they say "What do you mean? With  
13 fiber, we're going to have to get a generator,  
14 we're going to have to have a backup for that.  
15 Tell me about your backups? Because, you know,  
16 we're giving up something, a reliable phone  
17 service, which is essential for emergency  
18 services. And you're giving us something else  
19 that is strange, unknown, and has risks to it,  
20 that we're not sure we want to take on."

21           And I've talked to individual customers  
22 in my town, that said "Yeah, yeah, the internet's  
23 nice, but this, you know, VOiP, you know, I want"  
24 -- and I'm sure that, you know, in areas where

1           there's no cell coverage, I'm sure that a lot of  
2           people are sticking with their Plain Old  
3           Telephone for that reason. So, I mean, the  
4           answer is very simple.

5                    CMSR. SIMPSON: Is that the case for  
6           Benton?

7                    MR. DARCY: Yes.

8                    CMSR. SIMPSON: Okay.

9                    MR. DARCY: Yes.

10                   CMSR. SIMPSON: Okay. That's all I  
11           have, Commissioner. So, I'll return back to you.  
12           And perhaps, at this time, the Department has a  
13           response to your question. Thank you.

14                   CMSR. CHATTOPADHYAY: Yes. I'll wait  
15           for the DOE to respond, and then --

16                            *[Short pause.]*

17                   MS. BAILINSON: Okay. We have three  
18           questions that received confidential responses.  
19           We're going to tell you what the questions are,  
20           start with that.

21                           Request 1-01: "How many customers do  
22           Licensees, Consolidated Communications of  
23           Northern New England and Consolidated  
24           Communications of Maine, currently serve in New

1 Hampshire? How many premises do the Licensees  
2 currently offer fiber services, to, in New  
3 Hampshire? Of those, how many are fiber  
4 customers?"

5 All right.

6 *[Atty. Bailinson and Dir. Noonan*  
7 *conferring.]*

8 MS. BAILINSON: And we'll -- okay. And  
9 now I'm going to give you the second question. I  
10 was thinking about whether we were going to give  
11 you the public answer to the first question, but  
12 we're going to give you the second question.

13 Am I going too fast, Steve?

14 "Reference Petition, Page 11. The  
15 Petitioners state: The proposed transaction will  
16 benefit residents and businesses in New  
17 Hampshire, as it will facilitate infrastructure  
18 investment, technological development, and  
19 economic expansion. Indeed, as Witness Shultz  
20 explains, issuing the findings requested in the  
21 Petition and approving the Transaction will allow  
22 CCHI to continue its multi-pronged fiber  
23 expansion strategy and position itself to become  
24 a leading fiber provider across the United



1 States."

2 "Please describe how New Hampshire  
3 customers will benefit from this expansion and  
4 provide examples of the infrastructure  
5 investment, technological development, and  
6 economic expansion that will result from the  
7 proposed transaction. If the Commission does not  
8 approve the proposed transaction, would the  
9 Petitioners be able to continue the multi-pronged  
10 expansion strategy in New Hampshire? Please  
11 explain in detail why or why not."

12 And for this one we have a public  
13 response, which I can read: "CCHI has expanded  
14 the number of locations to which it offers fiber  
15 service and plans to *[further]* expand its network  
16 by leveraging consumer fiber buildouts, including  
17 in New Hampshire. Network expansion will allow  
18 CCHI to further close the digital divide by  
19 continuing to bring broadband services to  
20 underserved and unserved communities across rural  
21 portions of its New Hampshire markets. CCHI's  
22 network expansion will also improve the  
23 reliability of the network, benefiting customers.  
24 CCHI has not identified any New Hampshire

1 specific infrastructure investment, technological  
2 development, and economic expansion that it will  
3 implement post-closing."

4 "If the Commission does not approve the  
5 proposed transaction, the Petitioners  
6 multi-pronged fiber expansion strategy in New  
7 Hampshire would be significantly delayed."

8 And, then, there's a supplemental  
9 response: "Searchlight --

10 *[Court reporter interruption.]*

11 MS. BAILINSON: "Searchlight III CVL's  
12 original investment in 2020 has *[already]* enabled  
13 the Licensees to make significant investments in  
14 bringing fiber-based broadband to their  
15 customers. In New Hampshire alone, the Licensees  
16 have passed more than 294,000 additional homes  
17 with fiber through mid-April 2024."

18 Okay. "The New Hampshire communities  
19 which directly benefited from this investment are  
20 listed in Highly Confidential Attachment A -  
21 Supplemental NH DOE DR 1-02 and DR 1-05(b). In  
22 addition to the amounts that have *[already]* been  
23 invested in CCHI through Searchlight III CVL, the  
24 Joint Petitioners anticipate that hundreds of

1 millions of dollars in additional equity capital  
2 will likely be invested in CCHI as the result of  
3 the Transaction, though the precise amounts have  
4 not yet been determined. CCHI's access to this  
5 additional capital will facilitate the execution  
6 of the Company's build plan, which includes the  
7 upgrade of approximately 1.6 million passings to  
8 fiber that will enable multi-Gigabit-capable  
9 services to over 70 percent of CCHI's passings  
10 across the Consolidated footprint."

11 "With respect to New Hampshire  
12 specifically, Highly Confidential Attachment B -  
13 Supplemental NH DOE DR 1-02 and 1-05(b) provides  
14 the Company's Fidium broadband build information  
15 for fiscal year 2024."

16 Excuse me. "While competitive  
17 pressures and economic conditions have delayed  
18 the execution of CCHI's fiber buildout plans, the  
19 Transaction will provide CCHI with near-term  
20 financial and operational flexibility that will  
21 better enable the Company to execute its fiber  
22 buildout to these and other locations in New  
23 Hampshire in the future."

24 *[Atty. Bailinson and Dir. Noonan*

1                   *conferring.]*

2                   MS. BAILINSON: We were thinking, one  
3 remaining, you want the question to 1-05?  
4 1-05(b) has the highly confidential answer.

5                   CMSR. CHATTOPADHYAY: I was really  
6 trying to see whether there is a parallel with,  
7 you know, the previous discussion about  
8 Part 02(c). Just trying to get a sense of what  
9 was being shared with the DOE.

10                  So, I think I'm good with what you have  
11 just shared. Okay.

12                  MS. BAILINSON: Okay. Thanks.

13                  CMSR. CHATTOPADHYAY: And I notice you  
14 are raising your hand. Please go ahead.

15                  MR. DARCY: Yes. I want to withdraw my  
16 request for the information in the DOE DR 1-01  
17 that refers to the number of customers. Mr.  
18 McHugh is right, since the way it was phrased, if  
19 you have the number of lit passings, then the  
20 number of customers, you have the take rate.

21                  So, I withdraw that aspect of it. So,  
22 I wouldn't be able to even have in my mind what  
23 the take rates are.

24                               *[Cmsr. Chattopadhyay and Cmsr. Simpson*

1                   *conferring.]*

2                   CMSR. CHATTOPADHYAY: So, I think all  
3 of the discussion here was helpful. I'm going to  
4 see whether there is anything else that the  
5 parties want to share before I conclude the  
6 hearing today?

7                   MR. McHUGH: Two final comments.  
8 One -- both in response to the Consumer Advocate.

9                   In terms of his last point about my  
10 argument concerning "discovery being used against  
11 the party", it's a little bit taken out of  
12 context. The issue with answering the question  
13 about "Are we in breach of all these contracts?",  
14 goes back to how nearly impossible it is to  
15 answer the question. It's overly broad, and  
16 unduly burdensome. It would require  
17 Consolidated's personnel to go through a  
18 multitude of joint use type agreements, with a  
19 multitude of electric companies, all of which  
20 contain all of these IOPs and other terms.  
21 That's the basis for that one.

22                   And, in terms of Attorney Kreis's  
23 reference to the OCA supporting broad access to  
24 data, it's irrelevant whether I agree with him or

1 not. But I would offer to the Commission that I  
2 believe the vast majority of data provided in  
3 this docket is public, and has been provided to  
4 the Town of Benton. And it's a very narrow  
5 subset of data that we are unwilling to provide  
6 to the Town of Benton.

7 So, I'll end with that. That will  
8 conclude my remarks today. And thank you for  
9 your time.

10 CMSR. CHATTOPADHYAY: Thank you.

11 I say this in other dockets, too. So,  
12 regardless of who the parties are, I always  
13 encourage them to resolve data request disputes  
14 as much as possible amicably, without requiring  
15 Commission involvement. So, if the parties  
16 continue their dialogue and resolve the matter on  
17 their own, please let us know expeditiously. We  
18 will, of course, strive to issue a decision as  
19 soon as possible, though. Thank you all.

20 MR. McHUGH: Thank you for your time.

21 MR. DARCY: Thank you.

22 CMSR. CHATTOPADHYAY: Take care.

23 ***(Whereupon the hearing was adjourned***  
24 ***at 2:35 p.m)***