

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 15, 2017

COMMISSIONERS PRESENT:

Gregg C. Sayre, Interim Chairman  
Diane X. Burman

CASE 17-C-0050 - Joint Petition of FairPoint Communications, Inc., Berkshire Telephone Corporation d/b/a FairPoint Communications, Chautauqua and Erie Telephone Corporation d/b/a FairPoint Communications, Taconic Telephone Corporation d/b/a FairPoint Communications, FairPoint Business Services LLC, Consolidated Communications, Inc., and Consolidated Communications Holdings, Inc. for Approval of Proposed Transactions Pursuant to Sections 99, 100 and 101 of the New York State Public Service Law.

ORDER APPROVING JOINT PETITION  
SUBJECT TO CONDITIONS

(Issued and Effective June 15, 2017)

BY THE COMMISSION:

INTRODUCTION

By Joint Petition filed January 13, 2017, Consolidated Communications Holdings, Inc. (Consolidated), Consolidated Communications, Inc. (CCI), FairPoint Communications, Inc. (FCI or FairPoint), Berkshire Telephone Corporation d/b/a FairPoint Communications (Berkshire), Chautauqua and Erie Telephone Corporation d/b/a FairPoint Communications (C&E), Taconic Telephone Corporation d/b/a FairPoint Communications (Taconic), and FairPoint Business Services LLC (FBS) (collectively the Petitioners) request Commission authorization of transactions that will ultimately result in Consolidated becoming the parent

holding company of FCI (Proposed Acquisition Transaction) and FCI's New York operating subsidiaries (Berkshire, C&E, Taconic, and FBS, collectively FairPoint New York, while Berkshire, C&E and Taconic are collectively the Three NY Incumbent Local Exchange Carriers (ILECs)). In addition, the Petitioners are seeking authorization to pledge the majority of the Three NY ILECs' assets and stock in support of Consolidated's existing term loan of approximately \$900 million and an incremental term loan of \$935 million (Proposed Financing Transaction). Appendix A hereto shows the existing ownership structure for Consolidated and FCI and their subsidiaries as well as the proposed post-transaction structure.

The Petitioners assert that the proposed transaction meets the public interest standard enumerated under the Public Service Law (PSL) §§99, 100 and 101, and is consistent with the interests of FairPoint's New York customers.<sup>1</sup> Under these applicable provisions of the PSL, the Commission must determine whether the proposed transaction (Proposed Financing Transaction and the Proposed Acquisition Transaction) is in the public interest. The public interest of any such transaction in the telephone industry is generally analyzed by considering, among other things, the potential impact on service quality, rates and competition, and the financial implications. After examining the proposed transaction here, and for the reasons stated in this Order, the Commission will approve Consolidated's

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<sup>1</sup> According to PSL §§99, 100 and 101, an application is deemed approved within 90 days under §§99 and 100 and 45 days under §101 unless the Commission or its designee notifies the petitioner in writing that the public interest requires the Commission's review and written decision. The Petitioners were notified by letter dated February 23, 2017, that the public interest requires a more detailed review of the Joint Petition, and that the Commission will issue a written decision in this proceeding.

acquisition of FCI and authorize the Three NY ILECs to guarantee Consolidated's existing credit facility and an Incremental Term Loan limited to an amount no greater than the total amount of their respective assets and to pledge the majority of their assets and stock as collateral for those debt instruments.

The Commission's approval, however, will be subject to the following: the Petitioners are required to (1) maintain current staffing levels of all customer-facing jobs at the Three NY ILECs in New York for two years post-close of the transaction; (2) invest a minimum of \$4 million in network reliability and service quality improvements (including expansion of its current Digital Subscriber Line (DSL) internet access service to a minimum of 300 additional locations) over three years post-close of the transaction, with an emphasis on the Taconic service territory;<sup>2</sup> (3) fulfill FairPoint's New NY Broadband Program Office (BPO) Phase 2 program project commitments and commit to bid into the BPO's Phase 3 program; (4) consult with Staff in the event that Consolidated gets close to defaulting on its bank covenants; (5) agree to a "Most Favored State" clause in the event another state's review of the proposed transaction yields additional benefits not covered by this Order on the instant transaction; and (6) provide a letter of credit to New York State in the amount of \$2 million that will be released only when the conditions for approval discussed in this Order have been satisfied. The Petitioners must unconditionally accept these conditions or the Commission's approval being granted here will be revoked.

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<sup>2</sup> The BPO defines unserved customers as those with access to broadband service below 25 Megabits per second (Mbps). For the purposes of the 300 additional locations here, expansion to the 300 additional locations must be to customers who currently do not have DSL service available from the companies at any speed.

BACKGROUND

FairPoint Communications, Inc.

FCI is a publicly traded Delaware corporation with its principal place of business located at 521 East Morehead Street, Suite 500, Charlotte, North Carolina. FCI functions as a holding company and does not provide any telecommunications services in its own right. Through its operating subsidiaries, FCI is a provider of advanced communications services, serving approximately 310,000 broadband and 377,000 residential voice line subscribers. In addition, FCI owns and operates an extensive fiber network that spans more than 21,000 fiber miles, reaches 2,000 on-net buildings, and serves 1,300 connected cellular towers.

FCI's operating subsidiaries provide interstate and international telecommunications services to business, wholesale and residential customers in 17 states, offering services such as: voice, data and broadband internet access services including Ethernet, Session Initiation Protocol Trunking, hosted Primary Branch Exchange, and data center colocation; voice services including local calling, long distance, and 911 services; and exchange access services including network transport, switched access, and interstate and intrastate access services.

It is estimated that approximately 70% of FairPoint New York's customers (the Three NY ILECs combined) have alternative wireline and cellular options. Under the

Commission's Framework Orders,<sup>3</sup> the Three NY ILECs operate as Scenario 1 companies. This means they all are facing significant competition and are also earning less than their allowed returns on equity plus 500 basis points.

FairPoint Business Services

FBS is a competitive local exchange carrier (CLEC) authorized to provide all forms of resold and facilities-based local exchange and interexchange telecommunications services and access services throughout New York State, including advanced point-to-point and broadband-based services.

Berkshire Telephone Corporation d/b/a FairPoint Communications

Berkshire is a New York corporation with its principal office located at 19 Broad Street, Kinderhook, New York. The company, an indirect wholly-owned subsidiary of FCI, is a rural local exchange carrier (RLEC) authorized to provide local exchange service in the State of New York. The company operates three exchanges (Kinderhook, Niverville and Stuyvesant Falls), serving approximately 2,300 access lines in a predominantly rural service territory in the northwest corner of Columbia County, New York. The company was the recipient of the Commission's service quality commendation annual award in both 2012 and 2016. Berkshire also has a wholly-owned subsidiary, Berkshire Cable, a New York corporation located at 19 Broad Street, Kinderhook, New York. Berkshire Cable provides cable

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<sup>3</sup> In 2008 and 2009 the Commission adopted a framework authorizing qualified small ILECs to increase basic local rates up to \$2.00 annually, subject to a \$23.00 residential basic local service rate cap, based upon a Staff analysis of its earnings and level of competition in its service territory. See, Case 07-C-0349, Framework for Regulatory Relief, Order Adopting Framework issued March 4, 2008) and Untitled Order (issued December 18, 2009).

television services to less than 700 subscribers in the Berkshire service territory.

Chautauqua and Erie Telephone Corporation d/b/a FairPoint Communications

C&E is a New York corporation with its principal office located at 30 East Main Street, Westfield, New York. The company, an indirect wholly-owned subsidiary of FCI, is an RLEC authorized to provide local exchange service in the State of New York. The company provides local and toll access to approximately 4,500 access lines, serving a predominantly rural service territory located in Chautauqua County, western New York, with the majority of its access lines providing residential service. The company was the recipient of the Commission's service quality commendation annual award from 2013 through 2016. C&E also has a wholly-owned subsidiary, C&E Communications, whose principal office is located at 30 East Main Street, Westfield, New York. C&E Communications provides data and high speed internet services to less than 2,000 subscribers in the C&E Service territory.

Taconic Telephone Corporation d/b/a FairPoint Communications

Taconic is a New York corporation with its principal office located at One Taconic Place, Chatham, New York. The company, an indirect wholly-owned subsidiary of FCI, is an RLEC authorized to provide local exchange service in the State of New York. The company furnishes local and toll access services in the Hudson Valley area of eastern New York State, including portions of Columbia, Rensselaer, and Dutchess Counties. Taconic serves approximately 16,000 access lines in a predominantly rural service territory, with the majority of its total access lines providing residential service. Notably, the company has not received the Commission's service quality commendation annual award since 2006. Taconic also has a

wholly-owned subsidiary, Taconic TelCom Corp., which is a New York corporation with a principal office located at One Taconic Place, Chatham, New York. Taconic TelCom Corp. provides long-distance telephone service to approximately 11,000 customers in the Taconic service territory.

Consolidated Communications Holdings, Inc.

Consolidated is a publicly traded Delaware corporation with its principal place of business located at 121 South 17th Street, Mattoon, Illinois. The company, through its various operating companies, provides a wide range of telecommunications services to residential and business customers primarily in California, Illinois, Iowa, Kansas, Minnesota, Missouri, North Dakota, Pennsylvania, South Dakota, Texas and Wisconsin, including local and long-distance telephone services, high-speed broadband internet access, standard and high-definition digital television, and digital telephone services, custom calling features, private line services, carrier access services, network capacity services over regional fiber optic networks, and directory publishing. Consolidated's operating companies' fiber network covers 14,100 fiber miles; reaches 5,500 on-net buildings; and serves 1,100 connected cellular towers. Currently, the company has no footprint in New York.

Consolidated's operating companies are both ILECs and CLECs. At present, the company's operating companies provide approximately 219,000 residential broadband connections and 409,000 business broadband connections (including over 7,000 Metro Ethernet connections); as well as approximately 189,000 residential voice lines both Voice Over Internet Protocol (VoIP) and Plain Old Telephone Service (POTS) and approximately 269,000 business voice lines (also both VoIP and POTS). Consolidated is a holding company that does not directly provide telecommunications services in any state, and it will not

directly provide telecommunications services in New York upon completion of the proposed transaction.

PETITION

Proposed Transactions

Pursuant to PSL§§99, 100, and 101, the Petitioners request that the Commission: approve the transfer of all of the outstanding equity interests in FCI to Consolidated in exchange for Consolidated's stock (the Proposed Acquisition Transaction); and allow FairPoint New York to guarantee or otherwise secure: 1) Consolidated's existing term loan of approximately \$900 million; and 2) a prorated amount of an incremental term loan in an aggregate of up to \$935 million under an amendment to an existing Credit Agreement of Consolidated.

Stated Benefits of the Proposed Acquisition Transaction

The Petitioners indicate that among the benefits of the Proposed Acquisition Transaction are cost reductions and improved efficiency for both the acquiring and the acquired companies due to a consolidation of resources. They have identified approximately \$55 million in operating synergies that could be realized within two years after completion of the acquisition. In part, because Consolidated is a financially stronger entity than FCI, and because of the nature of the acquisition (a stock-for-stock transaction with no new debt being incurred), the Petitioners also assert that the acquisition of FCI will result in a significantly larger and financially stronger parent company and that will manifestly improve the financial stability and access to capital of the Three NY ILECs as well as enable them to more effectively compete in the market. The Petitioners also commit to maintain current services at current rates without degradation in quality of service.



Proposed Financing Transaction

In connection with the Proposed Acquisition Transaction, the Petitioners also seek the Commission's authority to allow the Three NY ILECs, along with all other FCI subsidiaries, to become parties to a Guaranty Agreement and a Collateral Agreement, and thereby to become additional guarantors of, and to have a security interest in their assets granted as security for, the payment obligations under Consolidated's existing approximately \$900 million term loan and for up to \$935 million of new debt (the Incremental Term Loan) that will be used largely to repay and redeem all \$916 million of existing FCI indebtedness. In addition, pursuant to the Collateral Agreement, the stock of all FCI subsidiaries, including the Three NY ILECs will also be pledged as security for the two loans.

According to the Petitioners, the proceeds of the Incremental Term Loan may also be used to pay certain fees and expenses in connection with the proposed transaction. The Petitioners expect that the interest rate of the Incremental Term Loan will be significantly lower than the weighted average interest rate on the existing FCI debt to be refinanced, and that it also has the added advantage of a later maturity date than the outstanding debt obligations. They state that these significant savings will largely be realized as a result of

Consolidated's relatively stronger credit standing<sup>4</sup> and the current low interest rate environment. Based upon the financial benchmarks developed by Department of Public Service Staff (Department Staff), Consolidated's financial benchmarks are consistent with a B rating from Moody's Investors Service, Inc., as shown in the table below.

<b>Consolidated Communication Holdings</b>		
	<b>2016 Credit Metrics</b>	<b>Minimum Benchmark for Moody's "B" Rating</b>
Debt/EBITDA	5.31x	less than 6.0x
Free Cash Flow/Debt	15.9%	greater than 4.0%
FFO Interest Coverage	3.88x	greater than 2.0x
Retained Cash Flow/Debt	10.3%	greater than 10%
(EBITDA-Capex)/Interest	1.78x	greater than 1.0x
Credit Rating (S&P)	B+(equivalent to Moody's B1)	

PUBLIC NOTICE

On May 12, 2017, the Secretary issued a Notice of Public Statement Hearing. The Secretary's Notice also sought public comments by June 5, 2017. In addition, Staff sent a letter to regional community leaders in May 2017, notifying

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<sup>4</sup> Consolidated has a Standard & Poor's (S&P) issuer credit rating of "B+" and a Moody's Investors Service (Moody's) rating of "B1.", while FCI's equivalent ratings are both one notch lower at "B" and "B2", respectively. Because the Incremental Term Loan will be a secured credit facility Moody's has assigned it a "Ba3" rating. Together the added strength of the new combined entity and the secured nature of the Incremental Term Loan significantly reduce the risk of default: according to a Moody's annual default study published February 15, 2017, the average five year default rate for an issue in the "Ba" category is under 9% and for the "B" category it is about 20%.

them of the pending Joint Petition.<sup>5</sup>

Prior to the public statement hearing, a number of interested parties filed comments regarding this transaction, none of which objected to the proposed merger. These commenters are comprised of New York consumers and Town Board Officials, located in areas served by the Petitioners. A number of the commenters requested a public hearing on this matter.

The primary focus of the comments submitted prior to the Public Statement Hearing focused on improved services for both wireline infrastructure and internet offerings. Commenters indicated that the underlying technology in these, primarily rural, areas falls behind the speed and availability offered to urban areas elsewhere in the State. Almost uniformly, they called for the Commission to mandate service improvements if the transaction is approved. A number of commenters specifically called for the Commission to require the same conditions imposed in the Charter/Time Warner and Altice/Cablevision transaction orders.<sup>6</sup> These included upgrading wireline infrastructure to modern technological standards including fiber to the home; requiring the offering

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<sup>5</sup> Actions under PSL §§99, 100 and 101 are specifically exempt from the State Administrative Procedures Act §102(2)(b)(xiii). Thus, no notice of this petition was published in the State Register.

<sup>6</sup> See, Case 15-M-0388, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions (issued January 8, 2016); Case 15-M-0647, Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions (issued June 15, 2016).

of high speed internet to all customers by 2020; establishment of a low-income broadband service offering of 30 Mbps at a \$14.99/month price point; implementing customer service standards (e.g., on-site visits within 24 hours, reduction of consumer complaints); and commitments to ongoing technological improvements (e.g., higher speeds in future years).

The Public Statement Hearing was well attended and many attendees expressed appreciation for the decision to hold the hearing. Attendance consisted of Town Officials and Town Board members from Columbia County as well as current FairPoint residential, business and home-based business customers. The majority of Public Statement Hearing comments supported that the aforementioned two recent cable merger conditions be imposed, should the transaction be approved. Commenters indicated that currently, internet access provided over DSL, in Columbia County is slow and unreliable. They advocated that the Commission should require a pre-condition of approval to include access to high-speed broadband and improved service. Additional reference to the recent FairPoint grant award of \$36.7 million by the BPO was also mentioned.<sup>7</sup> The grant funding is to support expansion projects that deliver broadband access in the State. Commenters welcomed the investment to expand broadband service and expressed that the Commission should determine that Consolidated be required to honor and report on the expansion progress and that penalties be imposed for delayed build outs in Columbia County. Some commenters recognized that approval of similar petitions filed in other states came with such requirements. For example, Vermont, New Hampshire and Maine

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<sup>7</sup> The NY Broadband Program Office, Phase 2 Awards, <https://nysbroadband.ny.gov/new-ny-broadband-program/phase-2-awards> (accessed on May 02, 2017).

have approved the FairPoint acquisition with the condition of reinvestment within those respective states. The commenters advocate that New York should include similar conditions in its decision. Additional commenters emphasized the need for traditional wireline telephone service, which is critical to the health and safety of the elderly and most vulnerable of society.

#### DISCUSSION

Under PSL §§99, 100 and 101, it is necessary for the proposed transaction to be in the public interest in order for the Commission to grant its approval. If the proposed transaction is not in the public interest, the Joint Petition can be remedied through modifications or mitigation of detriments and/or enforceable conditions. As stated previously, generally, the telephone industry's public interest standard is analyzed by reviewing, among other things, the following areas: quality of service at reasonable rates, competition, and financial considerations. In approving a proposed acquisition of the type involving ILECs under PSL §§99 and 100, the Commission must find that the transaction is in the public interest.

PSL §99(2) requires the consent of the Commission to any proposed transfer of its "works or system." As the Commission has noted in another merger case, "[a]lthough PSL §99(2) does not specify a standard of review, all such utility transfers have been interpreted as requiring an affirmative public interest determination by the Commission."<sup>8</sup> PSL §§100(1) and (3) require the Commission's consent to the acquisition of

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<sup>8</sup> Case 05-C-0237, Joint Petition of Verizon Communications et al., Order Asserting Jurisdiction and Approving Merger Subject to Conditions (issued November 22, 2005), n. 46.

the stock of a telephone corporation.<sup>9</sup> Unlike §99(2), however, these provisions expressly bar the Commission from giving its consent unless the applicant has shown, in the first instance, that the acquisition is in the public interest.<sup>10</sup> Public Service Law §101 also requires the Commission's consent when telephone corporations issue debt.<sup>11</sup> In this Order, the Commission determines that the proposed transaction is expected to produce benefits beyond any identifiable detriments, after mitigation measures are taken, as discussed below.

#### Synergy Savings

The Petitioners have identified \$55 million in annual operating synergies which are expected to be achieved within two years after completion of the merger. The Commission has recently required that a portion of synergy savings associated with a merger or acquisition request be set aside for the benefit of ratepayers and opts to do so here in order to ensure that the incremental benefits outweighed the potential detriments.

#### Benefits

The Petitioners indicate that among the benefits of the proposed transactions are cost reductions and improved efficiency for both the acquiring and the acquired companies due to a consolidation of resources. However, there are notably no

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<sup>9</sup> Consent is presumed after 90 days unless it is determined, as it has been here, that the public interest requires the Commission's review and written opinion.

<sup>10</sup> Again, consent is presumed unless it is determined, as it has been here, that the public interest requires the Commission's review and written opinion.

<sup>11</sup> PSL §101 states that an application is deemed approved after 45 days unless the Commission or its designee notifies the petitioner in writing, within the time period, that the public interest requires the Commission's review and its written opinion. Again, such written notification was provided.

concrete commitments to New York customers in the Joint Petition. The Commission further notes that the Federal Communications Commission (FCC), in its review of the proposed transaction, also recognized the difficulty of calculating a specific valuation of the asserted benefits to customers by the Petitioners.<sup>12</sup>

#### Potential Harms

Contrary to the Petitioners assertion that there will be no harm as a result of the proposed transaction, the Commission has identified several potential harms. Indeed, the absence of any specific commitments regarding targeted investment, funding, or scheduling means the public benefits put forward by Petitioners are speculative at best. The Commission has previously stated in other mergers of this type, that while there is no inherent reason why an acquisition should result in a deterioration of the customer service experience and competitive pressures should play a role in maintaining adequate service quality, the risks associated with the debt and efficiency gains sought through the proposed transactions cannot be ignored. To ensure adequate customer service, the Petitioners must focus on maintaining adequate service quality and satisfying the needs of their New York customers.

Although Consolidated has made assertions that it anticipates further improvements in broadband service and other new services in the FairPoint New York market areas, the Petitioners make no concrete, substantive commitments on such investments or improvements as to where, when, what, and how

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<sup>12</sup> WC Docket No. 16-417, In the Matter of Joint Application of Consolidated Communications Holdings, Inc., and FairPoint Communications, Inc., to Transfer Indirect Control of Authorization Holders to Consolidated Communications Holdings Inc., Memorandum, Opinion and Order, ¶20 (issued May 8, 2017) (FCC Approval Order).

many consumers might be recipients of such additional network and service improvements. Thus, as is, the Joint Petition contains no specific, concrete actionable items related to broadband expansion or upgrades that the Commission deems to be a measurable net public benefit. Hence, there is no guarantee that the synergy savings expected from the proposed transaction will inure to the benefit of New York customers, especially since New York represents less than 5% of FairPoint's total customer base throughout its 17 state footprint.

Moreover, based on a review of service quality standards and performance, PSC Complaints, and various comments of poor performance received as part of the public record in this case, it appears that maintaining current levels of service quality, as indicated in the Joint Petition, would not be adequate, particularly in the large Taconic network territory.

The Department provides direct and timely assistance to consumers in resolving disputes with utilities, including local exchange telephone companies and cable companies in addition to statistical information with regard to customer complaints and analyzes customer concerns and brings them to the attention of the Commission. While consumer complaints are not a part of the Commission's Service Standards, they do serve as an independent measure of service quality, apart from performance reported by the carriers under the Commission's Service Standards. The Department has an established PSC Complaint Rate metric, with a threshold of 0.075 complaints per 1,000 lines. This PSC Complaint Rate is one criteria used by the Commission annually in consideration of its Commendation for Excellent Quality Telephone Service.

For calendar year 2016, Berkshire and C&E complaints were resolved and both companies were subsequently recognized by the Commission for excellent service quality in 2016. However,



the Taconic PSC Complaint Rate for 2016 was in excess of the 0.075 complaints per 1,000 line threshold, and the company failed to receive a Commission commendation for its phone service quality.<sup>13</sup> Moreover, Taconic Telephone has not received a Commission Commendation for Excellent Service since 2006.

The PSC Consumer Complaint Rate results for Taconic in 2016 parallels written comments received in this case from FairPoint's Taconic customers, local elected officials, and others, and similar oral complaints taken on the public record at the Public Statement Hearing. As indicated, many customers commented on poor phone and DSL internet access service quality (or lack of DSL service altogether), high cost, difficulty resolving customer troubles, and an overall concern about old, outdated phone lines and network that does not support or provide an adequate level of service necessary to engage in personal, professional and community activities.

The Taconic subsidiary is the largest of the Three NY ILECs with ten central office entities (COEs) and approximately 16,000 access lines as of December 2016, while the C&E subsidiary is second in size, with only six COEs and approximately 4,500 access lines, followed by the Berkshire subsidiary with three COEs and approximately 2,300 access lines. As regulated telephone corporations providing local exchange service, RLECs must abide by, and report on monthly, certain Telephone Service Quality Standards delineated in NYCRR Part 603. Network reliability performance is assessed in terms of the Commission's Service Standards' two Customer Trouble Report Rate (CTRR) metrics, which measure individual and aggregate company COE performance, reflected in the frequency of network

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<sup>13</sup> Case 16-C-0235, In the Matter of Quality of Service provided by Local Exchange Companies in New York State (issued March 29, 2017).

problems identified and reported by customers to the company. As discussed below, performance in the Berkshire and C&E exchanges has generally been good, however, performance in the Taconic exchange, the largest of the three subsidiaries, has not met certain metric thresholds in 2014, 2015 and 2016.

The first CTRR metric addresses individual COE performance. Each COE is expected to achieve a CTRR of 5.5 or less reports per hundred lines (RPHL) per month. This metric is applicable to all three of FairPoint's subsidiaries. A three-year review (April 2014 through March 2017) conducted by Staff identified the following performance results in each of the ILECs: C&E had no individual CTRR misses in any COEs during the review period, Berkshire experienced a single miss in one COE in September 2015, but Taconic experienced individual COE CTRR misses in its Canaan and Copake COEs in July 2014; Stephentown COE in December 2015 and August 2016; and Millerton COE in July 2014, September 2016 and November 2016.

The second CTRR metric addresses aggregate COE performance and is applicable to companies with seven or more COEs. This monthly metric only applies to Taconic, which has ten COEs. With regard to aggregate network reliability, 85% or more of all COEs must achieve a CTRR of 3.3 or less RPHL, per month. In other words, if two or more of Taconic's ten COEs exceed the 3.3 RPHL, per month, the aggregate CTRR metric is missed. A three-year review conducted by Staff identified the following Taconic COE performance misses: in July 2014 (Canaan, Copake, Millerton, Pine Plains, Stephentown); in December 2014 (Millerton, Nassau); in June 2015 (Canaan, Copake, Stephentown); December 2015 (Millerton, Stephentown); in August 2016 (Berlin, Canaan, Millerton, Stephentown, West Lebanon); and in November 2016 (Canaan, Millerton, West Lebanon).

Based upon the foregoing CTRR analysis, C&E's individual COE CTRR results indicate overall good performance. Likewise, aside from a single COE miss by Berkshire in September 2015, the company's individual COE CTRR results indicate overall good performance. However, Taconic's CTRR results, on the individual COE and aggregated COE CTRR metrics, indicate problem performance among eight of its ten COEs, with some COEs experiencing repetitive CTRR trouble. For customers subscribed to Taconic telephone or DSL services in these COEs, the performance results are indicative of variable service quality, which could lead to degraded phone calls, interruptions in Internet connectivity, or complete loss of service, including access to 911 emergency services.

In consideration of the proposed transactions, the FCC determined that based on its analysis of the record before it, the FCC gave, "minimal weight to the Applicants' assertion that the transaction will result in the combined company being better positioned to deliver high-quality services than either company could provide on its own," and, "evidence in our record indicates that Consolidated has a positive record of improving services to acquired customers in prior transactions," but, the "Applicants failed to provide firm service quality commitments" and "the amount of anticipated service quality improvements that are likely to result from the instant transaction are difficult to weigh or quantify, and thus we only credit them as a minimal public interest benefit."<sup>14</sup>

Given the large service coverage area of Taconic in Columbia and Rensselaer counties, and the company's large customer base (accounting for approximately 70% of the overall access line count of the Three NY ILECs), the impact of poor

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<sup>14</sup> FCC Approval Order, ¶¶ 21, 23.

service quality in the Taconic network has a significant effect on FairPoint's overall New York subscriber base. Based on the Commission's review of service quality standards and performance, PSC Complaints, and various comments of poor performance received in this case, the Commission finds that certain performance improvement steps are necessary, particularly in the large Taconic network and service territory, to mitigate poor COE performance, and improve the overall service quality experience for FairPoint's New York customers.

Moreover, as a general practice, the Commission does not allow ILEC assets to be pledged as security for non-ILEC loans absent a compelling set of facts to do otherwise. The Commission's ultimate goal in adopting this practice is to ensure continuous ILEC operations should any non-ILEC affiliate default on its commitments.<sup>15</sup> Under a worst-case scenario, in which Consolidated defaults on its obligations, a bankruptcy proceeding may be initiated. Because of the Three NY ILECs' guarantee and pledge of assets, Consolidated's creditors could bring the Three NY ILECs into an involuntary bankruptcy along with its parent, which could adversely affect the operations of the Three NY ILECs and potentially result in the liquidation of their assets. In the absence of a bankruptcy resulting in

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<sup>15</sup> See, e.g., Case 17-C-0017, Petition of Alteva of Warwick, LLC for Authority to Participate in a Financing Arrangement, Order Authorizing Participation in Financing Arrangement (issued May 18, 2017); Case 14-C-0308, Petition of Brick Skirt Holdings, Inc. DFT Telephone Holding Company, LLC, et al. for Authority to Transfer and Acquire Shares of Capital Stock and Other Transactions, Order Approving Transfer of Control With Conditions, (issued December 12, 2014); and Case 16-C-0118, Joint Petition of Middleburgh Telephone Company; Newport Telephone Company, Inc.; NTCNet Long Distance, Inc.; NTCNet Telecom, Inc.; and Joseph A. Tomaino for Authority to Transfer and Purchase Capital Stock, and to Issue Long Term Debt, Order Approving Transfer of Control and Issuance Of Securities With Conditions (issued August 1, 2016).

liquidation, guarantying non-ILEC debt could result in cash being drained out of the ILECs. This in turn could negatively impact the Three NY ILECs' ability to fund capital projects needed to ensure safe and adequate service.

Therefore, specific enforceable concrete conditions as discussed below are necessary to bring the proposed transaction into alignment with the Commission's public interest standard.

Conditions

1. Impact on the Three NY ILECs' Staffing

The Petitioners expect that the proposed transaction will have minimal impact on customer-facing employees in New York State. However, to ensure the continuation and improvement of adequate quality service during the transitional period to the new corporate parent, as a condition of the Commission's approval, Petitioners will be precluded from laying off, involuntarily reducing, or taking any action that is intended to reduce customer-facing jobs in New York for any of the Three NY ILECs for two years following the close of the transactions,<sup>16</sup> with the exception of early retirement incentives and attrition.

2. Service Quality and Network Investments

As discussed, the service quality of Taconic is a particular concern. In addition, based on the public record in this case, many customers are without any internet service in the Three NY ILEC territories, but more so in the Taconic exchanges. Accordingly, as a condition of the Commission's approval, Consolidated will be required to invest a minimum of \$4 million in incremental<sup>17</sup> network reliability and service

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<sup>16</sup> For purposes of this Order, "customer-facing jobs" is defined to mean those positions with direct interaction with customers; including, but not limited to call center and other walk-in center jobs, and service technicians.

<sup>17</sup> This amount is incremental to FairPoint's 2016 actual capital expenditures.

quality improvements over the three years following the close of the transaction. As part of that investment, Consolidated will be required to provide internet access service to at least 300 unserved locations within its New York footprint, with particular focus in the Taconic service area, on the same or better terms as currently offered by FairPoint subsidiaries.<sup>18</sup>

Those service quality improvements must be comprehensive, with the goal to improve overall COE performance and, ultimately, customer satisfaction. Improvements may be achieved by correcting and upgrading equipment within central offices and outside plant. To the extent possible, repairs and upgrade work should also facilitate service enhancements, such as additional internet service deployment to customers.

Within 60 days of the close of the transaction, the Petitioners are required to consult with Staff on meeting this condition, and provide an initial plan describing where and how it will achieve network reliability and service quality improvements. As part of its initial plan, the Petitioners shall provide for how they intend to track such incremental investments, as well as how they will report such investments to Department Staff. The Petitioners shall thereafter be required to file updates regarding their progress every six months.

### 3. BPO Phase 2 and Phase 3 Commitments

In early 2017, FairPoint was awarded \$36.7 million by the BPO.<sup>19</sup> The grant funding is to support expansion projects that deliver broadband access in the State. FairPoint was one of several companies to successfully bid on, and receive, a

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<sup>18</sup> The 300 locations in this condition are exclusive of any locations included as part of any BPO project awards.

<sup>19</sup> NY Broadband Program Office, Phase 2 Awards, <https://nysbroadband.ny.gov/new-ny-broadband-program/phase-2-awards> (accessed on May 2, 2017)

Phase 2 grant award to improve broadband service to unserved or underserved locations within its service footprint. The FairPoint applications were submitted to the BPO prior to the January 2, 2017 Joint Petition to the Commission for transfer of control to Consolidated. The BPO announced its grant fund awardees for Phase 2 broadband projects on March 2, 2017.

FairPoint's award of \$36,668,472 was the second highest state grant of all winning bidders. The BPO approved three separate FairPoint projects involving 10,321 total units within FairPoint's service footprint. The broadband service upgrade includes a new fiber optic network capable of providing broadband service of 100 Mbps download speed to all units in the three projects. The company's match of \$9,301,930 on the estimated total project costs of \$45,970,402 represents a commitment of 20.2%, and a State award of 79.8% of the total project cost.

FairPoint's broadband network and service upgrades, mainly supported by State funding, are certainly a benefit to the thousands of residential and business customers that will have higher speed and quality broadband service available when complete. Accordingly, as a condition of the Commission's approval, the Petitioners will be required to fulfill FairPoint's prior commitments made under the terms and conditions of the BPO's Phase 2 program awards. Additionally, to ensure additional broadband deployment, as a condition of the Commission's approval, the Petitioners will be required to bid for the BPO's Phase 3 awards (which will be accepting application from June 6, 2017 through August 15, 2017).

4. Consultation with Staff if Financial Metrics Approach  
Default Conditions

For decades, the Commission has prohibited utilities from pledging their assets as security for non-utility loans absent a compelling set of facts to do otherwise. The rationale for this approach has always been to ensure continuous utility operations should a non-utility affiliate default on its commitments.<sup>20</sup> The primary concern with utilities pledging their assets in support of the debt obligations of non-utility affiliates is that a default in the unregulated business will result in the utility being brought into an involuntary bankruptcy proceeding along with its parent. Another concern and reason for our long-standing approach is that if a utility has pledged its assets in support of a parent's loan, and that parent is experiencing financial difficulty of a magnitude such that it is unable to access capital, then the utility's ability to access to capital independently may also be foreclosed because its assets are not available as security.

In this case, the Petitioners argue that the Three NY ILECs are facing tough competition and financial hardships, and that the lower interest rates afforded by the pledging of assets, rather than a detriment to the ILECs, actually provides them a better potential opportunity.

Based upon the loan documents, the more than \$1.8 billion in loans involved are being sourced on a global basis and the lenders require a uniform pledging of assets in order to

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<sup>20</sup> Case 14-C-0308, Brick Skirt Holdings, Inc. et. Al. - Merger Proceeding, Order Approving Transfer of Control with Conditions (issued December 12, 2014), pp. 5, 18; Case 16-C-0018, Middleburgh Telephone Company and Newport telephone Company, Inc. - Merger Proceeding, Order Approving Transfer of Control and Issuance of Securities with Conditions (issued August 1, 2016), p. 19.



prevent their securities from being subordinated to any subsequent issuances by the borrowers. Petitioners have also indicated that while the lenders are not necessarily focused on the particular assets of the Three NY ILECs, they are reluctant to provide carve-outs to certain assets.

Consolidated has indicated that its investments in New York, including any broadband/internet expansion, may be hampered by the inability to pledge the Three NY ILECs' assets. Consolidated is, however, a considerably larger and financially stronger entity than FairPoint, with lower debt leverage and stronger cash flows. While these types of transaction will be reviewed on a case-by-case basis, given this particular set of circumstances and the conditions discussed here, the Commission will allow the limited pledging of utility assets in this case.<sup>21</sup>

To ensure that Consolidated is doing everything possible to avoid a default on its debt, the Commission will require the Petitioners to consult with Staff in the event that the company gets close to triggering its bank covenants and defaulting on its debt.

Included within Consolidated's loan agreement is a requirement to maintain certain financial ratios at acceptable levels. Specifically, Consolidated's loan agreement indicates that, among other things, it will be an event of default if Consolidated's Total Net Leverage Ratio (Net debt to EBITDA)<sup>22</sup> exceeds 5.25x or if its Interest Coverage Ratio (EBITDA to Interest Expense) falls below 2.25x as of the end of any fiscal

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<sup>21</sup> The Commission notes that according to information provided by the Petitioners in response to Staff interrogatories, all but two larger properties (and attached plant) owned by the Three NY ILECs will be excluded from the mortgage in connection with the transaction.

<sup>22</sup> EBITDA is defined as earnings before interest, taxes, depreciation, and amortization.

quarter during the term of the loan. Within 60 days after any fiscal quarter, the Petitioners shall provide these metrics to the Secretary to the Commission with supporting documents. The Commission will require the Petitioners to meet with Staff to discuss the company's plan for avoiding a default on its debt if its Total Net Leverage Ratio exceeds 5.0x or if its Interest Coverage Ratio falls below 2.5x. This meeting will take place within ten business days of any filing showing that these metrics trigger the requirement of a meeting.

5. Most Favored State Clause

The Commission is aware that the Petitioners have obtained and may obtain approval, with conditions, from other states and the FCC, and that these jurisdictions may require commitments that would also be beneficial to New York. In order to ensure that New York gains the benefits of these commitments, the Commission will require the Petitioners to agree to a Most Favored States (MFS) clause. If, in obtaining approval of the proposed transaction in other jurisdictions, the Petitioners commit to any public benefit greater than that contained in this Order, they will, within 30 days of the close of the transaction, notify the Commission of its intent to provide those same benefits to New York at terms that are reasonably comparable to the other state or federal conditions.

The Petitioners will also be required, within 60 days of the close of the transactions to provide the Secretary to the Commission copies of any and all final orders, settlements and/or stipulations from any federal or state jurisdiction that have imposed conditions on the Petitioners.

6. Enforcement - Letter of Credit

In addition to the enforcement and penalty provisions under the PSL, as a condition of the Commission's approval we will require the Petitioner's to post a letter of credit in the

amount of \$2 million in a form acceptable to Staff within 60 days after the close of the proposed transaction to secure performance in accordance with the conditions for approval in this Order. The Letter of Credit by its terms will be automatically renewed on an annual basis, unless the Department of Public Service has received a Notice of Non-Extension at least 60 days prior to the then current expiration date. If the Department of Public Service has received a Notice of Non-Extension and the Petitioners have not replaced the letter of credit at least 30 days prior to the then current expiration date, then the Petitioners will forfeit any remaining balance on the Letter of Credit.

The letter of credit will assist the Commission in ensuring that the Petitioners will timely perform under the requirements of this Order. At the end of the three year period post-transaction close, if the Petitioners have satisfied the conditions for approval in this Order, the letter of credit will be released. If the Petitioners have not satisfied the conditions for approval in this Order, the letter of credit will be drawn down in the full \$2 million amount, which monies will be deposited in the State Treasury and will not be recallable. In addition, the Commission can pursue any other additional remedies under the PSL to ensure performance.

7. Unconditional Acceptance

Petitioners and their successors in interest shall unconditionally accept and agree to comply with the conditions and commitments set forth in the body of this Order. If the Petitioners do not unconditionally accept such, within seven (7) business days of the issuance of this Order, this Order shall constitute a denial of the Joint Petition.

CONCLUSION

Based upon the foregoing, the Commission approves Consolidated's acquisition of FCI and the Three NY ILECs subject to the conditions discussed above and Consolidated will be allowed to use of the Three NY ILECs' assets to guarantee Consolidated's existing credit facility and an Incremental Term Loan limited to an amount no greater than the total amount of their respective assets and pledging the majority of their assets and stock as collateral for those debt instruments. The authorization of the transaction, subject to Petitioners' unconditional acceptance of the conditions described herein, is in the public interest.

The Commission orders:

1. The Joint Petition of Consolidated Communications Holdings Inc. (Consolidated) and FairPoint Communications, Inc. (FairPoint) together with FairPoint's New York operating subsidiaries (the Three NY ILECs) collectively Petitioners)), subject to the conditions imposed herein, is approved under Public Service Law §§99, 100, 101, subject to the commitments and conditions discussed in the body of this Order and upon receipt by the Commission of certifications that Consolidated and FairPoint and their successors in interest unconditionally accept and agree to comply with the conditions and commitments set forth in the body of this Order. Such certifications shall be submitted within seven (7) business days of the issuance of this Order. If the Petitioners do not unconditionally accept within seven (7) business days of the issuance of this Order, this Order shall constitute a denial of the Joint Petition.

2. FairPoint's Three NY ILECs may guarantee Consolidated's existing credit facility and an Incremental Term Loan limited to an amount not to exceed their total assets for a

period not to exceed their maturity date. Under no circumstances shall the Commission's authorization extend to any other borrowing pursued either in addition to or in lieu of these loans. If additional borrowing with a guarantee is sought in the future, the relevant petitioner(s) may petition the Commission for authorization at that time.

3. The Petitioners existing term loan of approximately \$900 million and an incremental term loan of \$935 million may be secured by the Three NY ILECs' assets, as discussed in the body of this Order, and stock for the duration of the loans hereby considered. Under no circumstances shall the Commission's authorization extend to any other borrowing pursued either in addition to or in lieu of these loans. If additional borrowing with a pledge of assets is sought in the future, the relevant persons may petition the Commission for authorization at that time.

4. Within 60 days of the end of every fiscal quarter, the Petitioners must provide Consolidated's Total Net Leverage Ratio and Interest Coverage Ratio metrics and supporting materials to the Secretary to the Commission.

5. The assets of the Three NY ILECs may not be transferred to another entity without prior Commission approval, pursuant to PSL §99; an event of default notwithstanding. The relevant petitioner(s) may petition the Commission for such approval at that time.

6. Any costs related to the change in control shall not be recovered from ratepayers.

7. The Petitioners shall be precluded from laying off or involuntarily reducing or taking any action that is intended to reduce, with the exception of early retirement incentives and attrition, customer-facing jobs in New York for the two years following the close of the transaction.

8. The Petitioners shall be required to invest \$4 million in incremental internet/service quality improvements consistent with the discussion in the body of this Order.

9. The Petitioners shall be required to fulfill their Phase 2 Broadband Program Office commitment and bid into the Phase 3 Broadband Program Office consistent with the discussion in the body of this Order.

10. The Petitioners shall be required to provide a letter of credit consistent with the discussion in the body of this Order.

11. The Petitioners shall be required to consult with Department Staff on their debt covenants consistent with the discussion in the body of this Order.

12. The Petitioners shall be subject to a Most Favored State clause consistent with the discussion in the body of this Order.

13. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

14. This proceeding is continued but shall be closed by the Secretary as soon as the compliance filings required above have been reviewed, unless the Secretary finds good cause to continue the proceeding further.

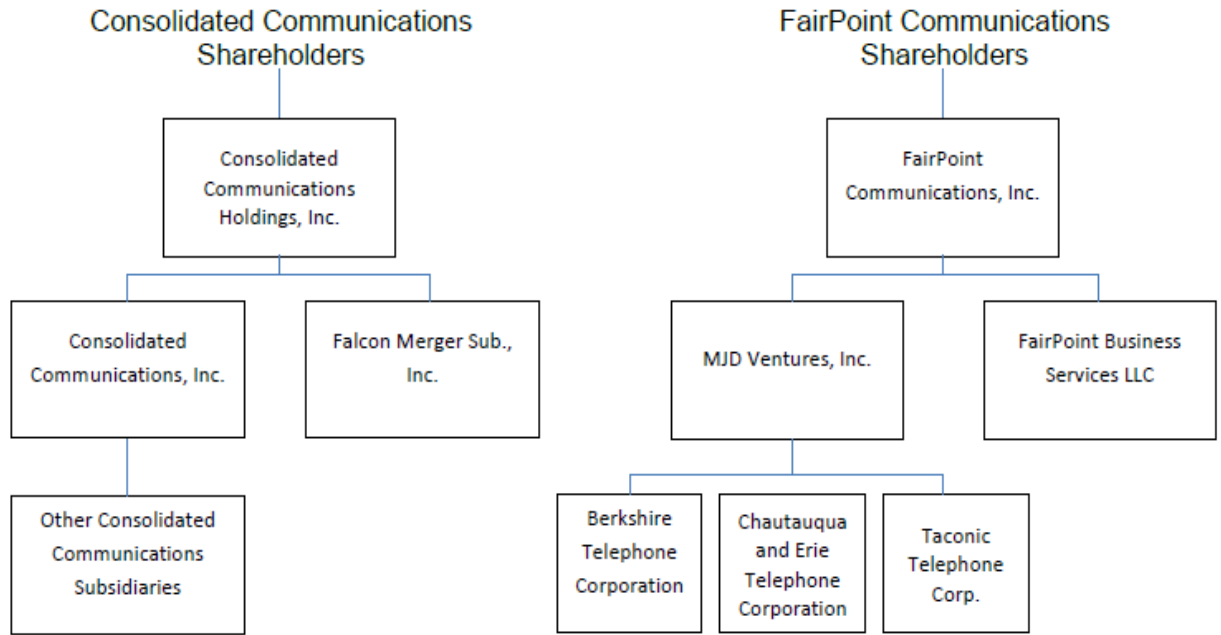
By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

**APPENDIX A**

**Pre-Transaction Ownership Structure**



**Post-Transaction Ownership Structure (Appendix A cont'd)**

