

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 8881

Joint Petition of Consolidated Communications)
Holdings, Inc., Consolidated Communications, Inc.,)
Falcon Merger Sub, Inc., FairPoint Communications,)
Inc., Telephone Operating Company of Vermont LLC,)
FairPoint Vermont, Inc., UI Long Distance, Inc., and)
Enhanced Communications of Northern New England,)
Inc., for Approval of a Transfer of Control by Merger,)
Pursuant to 30 V.S.A. §§ 107, 108, 109, 231(a), and 311)

**FAIRPOINT’S MOTION FOR CONFIDENTIAL
TREATMENT OF PREFILED EVIDENCE**

Pursuant to Paragraph 9 of the Protective Agreement dated January 11, 2017, by and among FairPoint,¹ Consolidated,² and the Vermont Department of Public Service (the “Department”) (attached here as **Attachment A**), as adopted by the Public Service Board (“Board”) by Procedural Order dated February 9, 2017 (attached here as **Attachment B**), as amended by an Amendment dated March 17, 2017, by and among FairPoint, Consolidated, the Department and the Labor Intervenors³ (attached here as **Attachment C**), which was adopted by the Board by Order dated March 27, 2017 (attached here as **Attachment D**), FairPoint hereby jointly moves that the Board issue an order that provides for confidential treatment of certain Allegedly Confidential Information contained in the prefiled testimony and exhibits of witnesses on behalf of the Department and the Labor Intervenors.

¹ “FairPoint” means FairPoint Communications, Inc., Telephone Operating Company of Vermont LLC d/b/a FairPoint Communications, FairPoint Vermont, Inc., UI Long Distance, Inc., and Enhanced Communications of Northern New England, Inc.

² “Consolidated” means Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., and Falcon Merger Sub, Inc. Consolidated and FairPoint may jointly be referred to as the “Joint Petitioners.”

³ The “Labor Intervenors” are Communications Works of America Local 1400 and International brotherhood of Electrical Workers (“IBEW”) Locals 2320, 2326, and 2327, which form IBEW System Council T-9. The Labor Intervenors, the Department, and the Joint Petitioners may be referred to individually as a “Party” and collectively as the “Parties.”

In support of this Motion, FairPoint states the following:

1. In recent correspondence, counsel to the Department and the Labor Intervenors each notified FairPoint that their respective testimony and exhibits would refer to Allegedly Confidential Information and/or Allegedly Highly Confidential Information produced by FairPoint.⁴ See **Attachment E**. A list of the Allegedly Confidential Information and Allegedly Highly Confidential Information to be included in the prefiled testimony and exhibits (the “Confidential Evidence” and “Highly Confidential Evidence,” respectively) is set forth in **Attachment F**.

2. On March 29, 2017, the Labor Intervenors submitted the Prefiled Direct Testimony of Randy Barber, which on Page 25 of 46 discusses a document that FairPoint provided in a discovery response as **Confidential Attachment 2 to Labor 1-4**.

3. Also on March 29, 2017, the Department submitted Prefiled Direct Testimony of several witnesses who reference or adopt documents that FairPoint provided in discovery responses as Confidential Attachments or Highly Confidential Attachments, as follows:

a. Prefiled Direct Testimony of F. Wayne Lafferty. Mr. Lafferty attaches, as Exhibit DPS-FWL-3, a document that FairPoint provided as **Confidential Attachment 1 to DPS-1-10**;

b. Prefiled Direct Testimony of W. Curtis Mills, Jr. Mr. Mills attaches: (1) as Exhibit DPS-WCM-2, a document that FairPoint provided as **Confidential Attachment 1 to DPS-FP-2-22**; and (ii) as Exhibit DPS-WCM-7, a document that FairPoint provided as **Highly Confidential Attachment 1 to DPS-FP-2-24**;

⁴ The correspondence gave identical notice to Consolidated, which has advised the Board that it will also file a Motion for Confidential Treatment to protect its Allegedly Confidential and/or Allegedly Highly Confidential Information. See Letter dated March 28 2017, from D. Bouffard to J. Whitney

c. Prefiled Testimony of Scott A. Wierson. Mr. Wierson discusses a document that FairPoint provided as **Confidential Attachment 1 to DPS-FP-2-13**, and attaches: (i) as Exhibit DPS-SAW-5, a document that FairPoint provided as **Confidential Attachment 3 to DPS-FP-2-16**; (ii) as Exhibit DPS-SAW-8, a document that FairPoint provided as **Confidential Attachment 1 to DPS-FP-2-14**; and (iii) as Exhibit DPS-SAW-9, a document that FairPoint provided as **Highly Confidential Attachment 1 to DPS-FP-2-5**.

4. As demonstrated in FairPoint's Averments 1 through 7 (attached here as **Attachment G**), the Confidential Information and Highly Confidential Information should be treated in a confidential manner, and only those persons who have executed the appropriate schedules to the Protective Agreement and who have been authorized by the disclosing Party to have the appropriate level of access, either to the Confidential Evidence or to the Highly Confidential Evidence, should be afforded such access during the hearings in this Docket.

5. The Board accords confidential treatment to Allegedly Confidential Information upon a determination that the moving party has made a *prima facie* showing that confidential treatment is warranted for the information at issue. *In re Renewal of the Certificate of Public Good of Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC d/b/a Comcast*, Docket No. 8301, Protective Order (Vt. PSB Aug. 4, 2016), slip op. at 1. In making its determination, the Board considers three issues: (1) whether the information is a trade secret or other confidential research, development, or competitively sensitive information that should be protected; (2) whether disclosure of the information would cause a cognizable harm sufficient to warrant a protective order; and (3) whether the moving party has shown good cause for invoking the Board's protection. *Id.*, slip op. at 1-2.

6. The Board has also determined that “Vermont law recognizes that some commercial information is entitled to [higher] protection that would limit its disclosure to the public or even other parties.” *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: Proposed Sale to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545, Order Re: Protective Order (Vt. PSB, Mar. 29, 2002), slip op. at 1. In making such a determination, the Board is exercising its authority, consistent with V.R.C.P. 26 and widespread practice, “to place additional limits on the dissemination of such information if a party demonstrates good cause for such limits.” *Id.* In Vermont, such limits include “restricting disclosure of discovery materials to protect a party from being put at a competitive disadvantage.” *Zenith Radio Corp. v. Matsushita Elec. Industrial Co. Ltd.*, 529 F. Supp. 866, 890 (E.D. Pa. 1981) (“*Zenith Radio Corp.*”); *see also Tariff Filing of Green Mountain Power Corp.*, Docket No. 5983, Order (Vt. PSB, Nov. 26, 1997) (adopting for Board practice the standard enunciated in *Zenith Radio Corp.*).

7. The highly confidential nature of the information contained in **Highly Confidential Attachment 1 to DPS-FP-2-24** (attached to Mr. Mills’s Direct Testimony as Exhibit DPS-WCM-7) and **Highly Confidential Attachment 1 to DPS-FP-2-5** (attached to Mr. Wierson’s testimony as Exhibit DPS-SAW-10) is similar to information for which the Board has granted higher level of confidentiality protection, including preventing disclosure to any entity that may obtain a special benefit or advantage from access to commercial sensitive information. Under the Amendment to the Protective Agreement dated March 17, 2017, and adopted by the Board by Order issued on March 27, 2017, access to such information is barred to “Parties that are or will be engaged in collective bargaining or business competition with the disclosing Party, regardless of whether the Party from which the Allegedly Highly Confidential Information is

withheld is a signatory to the Protective Agreement and/or to this [Amendment].” Amendment to Protective Agreement (Mar. 17 2017) ¶ 1(B), at 3-4.

8. FairPoint will continue to review the information and to work with the Department and with Labor Intervenors in this regard to determine whether any of the subject information can be reclassified, and FairPoint will advise the Board and the Parties of the results of its review.

9. To the extent any Party disputes the designation of the subject information as Confidential Evidence or Highly Confidential Evidence (as the case maybe) and FairPoint and the Party are unable to resolve the dispute, FairPoint reserves its right to submit additional information and argument for the Board's consideration specific to any disputed information in connection with this Motion.

WHEREFORE, FairPoint respectfully requests that the Board issue an order according confidential treatment to the Confidential Evidence and highly confidential treatment to the Highly Confidential Evidence in the manner set forth in the proposed Order attached hereto as **Attachment H**.

DATED at Montpelier, Vermont this 3rd day of April, 2017.

FairPoint Communications, Inc., Telephone Operating
Company of Vermont LLC d/b/a FairPoint Communications,
FairPoint Vermont, Inc., UI Long Distance, Inc., Enhanced
Communications of Northern New England, Inc.

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