

**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

PROTECTIVE AGREEMENT

THIS AGREEMENT is dated as of January 11, 2017, and is by and among Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., Falcon Merger Sub, Inc. (collectively “Consolidated”), 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. (the five foregoing, collectively, “FairPoint”) and the State of Vermont Department of Public Service (“Department” or “DPS”) and certain other below-signed parties, the names of which are set forth on the signature pages and approved schedules to this Agreement (Consolidated, FairPoint, the DPS, and each other party will be sometimes referenced herein, where the context requires, as a “Party” and collectively as the “Parties”);

WHEREAS, the Parties desire to cooperate in the provision of information relevant to the issues to be litigated or potentially litigated in the above-designated Docket;

WHEREAS, a Party may have information of its own or that of its parent or affiliates that is pertinent to issues in the Docket that it desires to provide to the Parties, which the disclosing Party believes could result in financial and/or competitive harm if it is required to disclose such

information to the public, and which information the disclosing Party believes to be proprietary, commercially sensitive, privileged, confidential or in the nature of a trade secret (which information is referenced herein as “Allegedly Confidential Information”) and is specifically described on Schedule I hereto, which Schedule may be amended only in accordance with the terms of this Agreement;

WHEREAS, each disclosing Party desires to disclose Allegedly Confidential Information only to Parties that have executed Schedule IIa or Schedule IIb as appropriate to this Agreement or, in certain situations, only to the State of Vermont Public Service Board (“Board”) and/or to the Department for review in accordance with this Agreement; and

WHEREAS, the Parties have agreed to the procedures established in this Agreement for the disclosure of Allegedly Confidential Information to the Parties, the Department, and/or the Board and to the provisions for holding such Allegedly Confidential Information in confidence;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. If a disclosing Party seeks to place information under this Agreement, it shall file an averment, as described in Paragraph 2 of the Protective Order and attached to this Agreement, with the Department. If the Department agrees to treat specific information to be provided as Allegedly Confidential Information, the disclosing Party will submit to the Board and all Parties a copy of Schedule I, as from time to time revised in accordance with the terms of this Agreement, identifying each such item of Allegedly Confidential Information and signed or initialed by the Department to evidence its agreement to treat such item as Allegedly Confidential Information. This Agreement applies only to that information that the Parties agree

will be treated as Allegedly Confidential Information listed on Schedule I. Schedule I may be amended only by agreement of the Parties. Upon agreement of the Department to Schedule I, or an amendment thereto, the entity seeking to place information under this Agreement shall file the same averment, previously filed with the Department, with the Board as required by the Protective Order which is attached as Schedule IV to this agreement. If the Department does not agree to treat specific information as Allegedly Confidential Information, the disclosing Party may request a hearing before the Board to seek a protective order as provided under V.R.C.P. 26(c). Any request for hearing shall be filed in writing with the Board and Parties within five (5) business days of its receipt of a denial by the Department that such information can be treated as Allegedly Confidential Information under this Agreement. During the five-day period, the information shall be treated as Allegedly Confidential Information under this Agreement. If a timely request is filed with the Board and the Parties, the information shall be treated in accordance with paragraph 16 of this Agreement.

2. The Department may obtain Allegedly Confidential Information by submitting to the disclosing Party's counsel Schedule IIa attached hereto, which incorporates by reference this Agreement. If such a request is made for Allegedly Confidential Information, the disclosing Party, through its counsel, will provide one copy of the Allegedly Confidential Information sought by the Department or otherwise make such Allegedly Confidential Information available. The Department will afford access to the Allegedly Confidential Information only to its employees and consultants who have executed Schedule IIa and returned the executed Schedule IIa to the disclosing Party's counsel. The Department shall make only one copy of any Allegedly Confidential Information for each individual who has executed Schedule IIa, except as otherwise provided in Paragraph 4 hereof.

3. A Party other than the Department may obtain Allegedly Confidential Information by submitting to the disclosing Party's counsel the Agreement attached hereto as Schedule IIb and its request by Schedule III hereto. If such a request is made for Allegedly Confidential Information, the disclosing Party, through its counsel, will provide one copy of the Allegedly Confidential Information sought to such Party, or otherwise will make such Allegedly Confidential Information available to such Party, except those documents or portions thereof excised based on legal objection and duly noted by the disclosing Party's counsel. Each such Party will afford access to the Allegedly Confidential Information only to such employees, consultants and other representatives who have executed Schedule IIb and are named in Schedule III to this Agreement and returned the executed Schedule IIb to the disclosing Party's counsel. A Party shall make only one copy of any Allegedly Confidential Information for each individual who has executed Schedule IIb, except as otherwise provided in Paragraph 4 hereof.

4. Documents containing or incorporating Allegedly Confidential Information to be offered in evidence under seal may be copied as necessary for that purpose. The Parties' counsel, personnel, and consultants, who have agreed in writing to be bound by this Agreement, may take notes regarding such Allegedly Confidential Information, but only as necessary for preparation for proceedings in this Docket. Such notes shall be treated the same as the Allegedly Confidential Information from which the notes were taken and shall not be used for any purpose other than as specified herein.

5. No Party that has executed this Agreement, no person representing such Party, no agent of such Party or expert associated with such Party, that is afforded access to the Allegedly Confidential Information shall use the Allegedly Confidential Information for any purpose other than the purpose of preparation for and conduct of this Docket, including appeals of any order or

ruling therein, and then solely as contemplated herein. Each such Party, and each such representative person, agent or expert witness, shall keep the Allegedly Confidential Information secure and shall not disclose it or afford access to it to any person not authorized by this Agreement to receive same. Nothing in this Agreement precludes the Department from using Allegedly Confidential Information obtained hereunder either to seek a Board investigation (provided that the Department continues to treat such Allegedly Confidential Information pursuant to the protective terms of this Agreement), or requesting that the Allegedly Confidential Information or similar information be provided by the disclosing Party in any other context.

6. There must be a good-faith basis for all claims of confidentiality.

7. All documents filed with the Board and/or Department that are subject to this Agreement as Allegedly Confidential Information and any documents that discuss or reveal documents that constitute Allegedly Confidential Information shall be filed by enclosing such information in sealed envelopes and/or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the contents (materials, discovery response, report, etc.) and a statement that it shall not be opened or released from custody of the Clerk of the Board except by order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed Allegedly Confidential Information, but shall not disclose the contents of any such sealed information to any person who has not agreed to be bound by this Agreement.

8. The Board will retain jurisdiction to make such amendments, modifications and additions to this Agreement. Any Party or other person may apply to the Board for an

amendment, modification, or addition to the Protective Order issued in accordance with this Agreement.

9. If a Party wishes to prefile any testimony or exhibits that include or otherwise disclose Allegedly Confidential Information, that Party must give five business days' advance notice to counsel for the Party that designated the information as Allegedly Confidential Information. Any Party may move the Board for an order that the testimony or exhibits be filed under seal or under other conditions to prevent unnecessary disclosure.

- a. If such motion is filed within the five-business-day advance notice period, the proponent of the testimony and exhibits shall place them in a sealed record by filing such documents in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the contents (exhibit, report, etc.) and a statement that it shall not be opened or released from custody of the Clerk of the Board, except by Order of the Board or Hearing Officer. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed Allegedly Confidential Information, but shall not disclose the contents of any such sealed information to any person who has not agreed to be bound by this Agreement. The Board or Hearing Officer will then determine whether the proffered evidence should continue to be treated as confidential

information and, if so, what protection, if any, may be afforded to such information.

- b. If no such motion is filed by the end of the five-business-day advance notice period, the testimony and exhibits may be filed as a document available for public access.

10. At any hearing or conference in this proceeding, no witness may be questioned with respect to any Allegedly Confidential Information, unless examining counsel has provided advance notice to counsel for any party or other person that designated the information as Allegedly Confidential Information. To the extent possible, such notice shall be given prior to the commencement of the hearing or conference. Any Party may move the Board for an order that the testimony be received *in camera* or under other conditions to prevent unnecessary disclosure. If such motion is made, the Board or Hearing Officer will then determine whether the testimony should be received *in camera* or subject to other protection.

11. The disclosing Party may make a written request to the Department or other Party for the return of Allegedly Confidential Information. Such request shall be made within sixty (60) days after final decision, order, or judgment in this Docket, unless appeal from such decision, order, or judgment is taken, in which case the request shall be made within sixty (60) days after the conclusion of the appeal and any remand or further appeal therefrom. Within sixty (60) days of such a request, the Department or other Party shall: (a) return the Allegedly Confidential Information to the disclosing Party's counsel, except for those portions of the Allegedly Confidential Information which have been made public; (b) cause its employees and consultants to destroy any notes taken concerning, or any documents or information in any form incorporating, Allegedly Confidential Information which has not been made public; and (c)

advise the disclosing Party in writing that the requirements of this paragraph have been met.

Notwithstanding the foregoing, nothing in this paragraph shall require the Department to destroy notes, documents, or information in violation of statute.

12. No signing Party hereto shall assign to any third party its rights or obligations hereunder, and any such assignment by any signing Party of the rights and obligations hereunder shall be null and void.

13. An individual's access to Allegedly Confidential Information ceases upon termination of employment with a Party, and any individual who terminates employment with a Party who has executed this Agreement or Schedule IIa or Schedule IIb shall continue to be bound by its terms.

14. This Agreement is made under and shall be governed by the laws of the State of Vermont.

15. This Agreement shall in no way be deemed to constitute any waiver of the rights of any Party to this Docket. The foregoing provisions of this Agreement notwithstanding, any Party to this Docket may at any time, to the full extent allowable by applicable law, contest any assertion or appeal any finding that specific information is or should be Allegedly Confidential Information or that it should or should not be subject to the protective requirements of this Agreement. The Parties hereto retain the right to question, challenge, and object to the admissibility of any and all Allegedly Confidential Information furnished under this Agreement on any available grounds. Any Party may at any time seek by appropriate pleading to have Allegedly Confidential Information submitted under this Agreement, or under protective order issued by the Board or Hearing Officer pursuant to this Agreement, removed from the coverage of this Agreement or the order.

16. In the event that the Board or a Hearing Officer assigned to this Docket should rule that any information is not appropriate for inclusion in a sealed record, or should be disclosed to a Party where the disclosing Party objects to such disclosure under Paragraph 3 of this Agreement, the Parties agree that, at the request or upon the motion seeking protection of such information from disclosure, such information will not be disclosed until the later of five business days after the Board or Hearing Officer so orders, or, if an interlocutory appeal or request for a stay of such order is filed, the date upon which such appeal or request is decided; provided, however, that such period of time may be extended in accordance with any stay ordered by the Board or a reviewing court.

17. The Parties will promptly submit to the Board a proposed Protective Order in the form attached hereto as Schedule IV, which, if adopted, will set forth the procedure for treating Allegedly Confidential Information in a sealed record.

18. Each Party warrants that it will act in good faith and will not do anything to deprive any other Party of the benefit of this Agreement.

19. This Agreement may be amended or modified only by a written document signed by the Parties hereto.

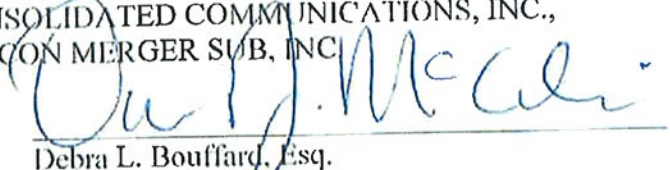
20. The Parties have entered into this Agreement to expedite the production of information, to minimize the time spent in discovery disputes, and to facilitate the progress of these investigations to the fullest extent possible. Entry into this Agreement shall not be construed as an admission by any Party regarding the scope of the Party's statutory right to information, nor shall it be construed as a waiver of the right to raise any and all appropriate confidentiality issues in future dockets.

21. Information that is designated as Allegedly Confidential Information pursuant to this Agreement that a Party obtains independent of this Agreement is not subject to this Agreement.

22. The disclosing Party shall not seek the disqualification of any Department employee, consultant, or other representative as to any authorized Department activity on the grounds that such person reviewed Allegedly Confidential Information provided hereunder.

CONSOLIDATED COMMUNICATIONS HOLDINGS, INC.,
CONSOLIDATED COMMUNICATIONS, INC.,
FALCON MERGER SUB, INC.

By:


Debra L. Bouffard, Esq.
Owen J. McClain, Esq.

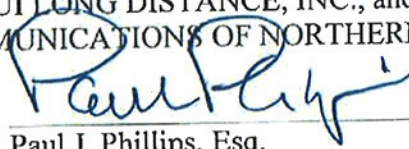
VERMONT DEPARTMENT OF PUBLIC SERVICE

By:


Dan Burke, Esq.
Special Counsel

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.

By:


Paul J. Phillips, Esq.