

**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

PROCEDURAL ORDER RE: PROTECTIVE AGREEMENT

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., and Enhanced Communications of Northern New England, Inc. (the five foregoing, collectively, “FairPoint”), or other parties may have information that they allege is of a confidential and proprietary nature and that it has been, or may be, asked to provide to the Public Service Board (“Board”), the Vermont Department of Public Service (“Department” or “DPS”) and certain other parties, the names of which are set forth on the signature pages and approved schedules to the Protective Agreement, as defined below. (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”). To preserve the confidentiality of that information while facilitating disclosure of information in this proceeding, the Parties have entered into a Protective Agreement, dated as of January ___, 2017 attached hereto (the “Protective Agreement”). Schedule I of the Protective Agreement, as may be amended in accordance with the terms of the Protective Agreement, describes information that the disclosing Party alleges may result in financial or competitive harm to it or its parent company/ affiliates, if it is required to disclose such information to the public, and which information the disclosing Party believes to

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be proprietary, privileged, commercially sensitive, 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 attached to the Protective Agreement.

Pursuant to that Protective Agreement and to preserve the confidentiality of Allegedly Confidential Information, Consolidated, FairPoint, the Department and such other parties that have executed the Protective Agreement request that the Board issue a Protective Order implementing the terms and procedures of the Protective Agreement.

Rule 26(c)(7) of the Vermont Rules of Civil Procedure, applicable here pursuant to Board Rule 2.214(A), specifically authorizes the issuance of protective orders, for good cause shown, so as to protect "confidential research, development, or commercial information" from disclosure by the party or parties receiving it for purposes of discovery and presenting testimony in a given case.

The Board finds good cause to order implementation of the Protective Agreement and finds that such Agreement is appropriate, useful and reasonable, but with the following clarification. Today’s Protective Order shall govern only the protection of documents and information provided in disclosures and discovery. If a Party wishes to keep confidential any material that is proffered for inclusion in the evidentiary record, that Party must present a properly supported motion for protection of that material.

Therefore, IT IS HEREBY ORDERED that Allegedly Confidential Information provided by a Party pursuant to the Protective Agreement shall be treated in this proceeding as follows:

1. The Protective Agreement, filed with the Board on January __, 2017 and attached hereto, is approved and adopted as part of this Order.
2. For each document or information response that a Party wishes to treat as Allegedly Confidential Information, the disclosing Party must submit a detailed, document-specific (or information-specific) averment of the basis for such treatment, which addresses the following, to the extent that the disclosing Party relies upon that factor as the basis for an assertion of confidentiality:
 - a. Identification of the specific document or information for which confidential treatment is sought;
 - b. Explanation of the degree to which the document or information contains a trade secret or other commercially sensitive information, or is privileged;

c. For documents and information alleged to contain Allegedly Confidential Information,

- i. the extent the information is known outside the Party and/ or its parent or affiliates,
- ii. the extent the information is known by employees and independent contractors,
- iii. the measures taken to guard secrecy,
- iv. the value of the information to the Party, its parent, its affiliates and competitors,
- v. the amount of effort or money used to develop the information,
- vi. the ease or difficulty of others in acquiring or duplicating the information, and
- vii. an explanation of how disclosure of the information could result in cognizable harm sufficient to warrant a protective order;

d. Justification of the period during which the Party asserts that material should not be available for public disclosure;

e. Explanation of whether partial disclosure, or disclosure of redacted versions, can adequately protect the Allegedly Confidential Information; and

f. Any other information that the party seeking confidential treatment believes may be useful in assessing whether the document or information should remain confidential.

3. 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 or other person 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 days' 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, and 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 the Protective Agreement. The Board 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 days' advance notice period, the testimony and exhibits may be filed as a document available for public access.

4. 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. 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 will then determine whether the testimony should be received in camera or subject to other protection.

5. Upon receipt of an executed Protective Agreement signature form, that is, either Schedule IIa or IIb to the Protective Agreement, counsel for the disclosing Party shall forward one copy of the form to the Clerk of the Board.

6. All documents filed with the Board that are subject to the Protective Agreement as Allegedly Confidential Information and any documents that discuss or reveal documents that constitute Allegedly Confidential Information shall be placed in a sealed record by filing such information 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 (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, and 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 the Protective Agreement.

7. The Board will retain jurisdiction to make such amendments, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

8. The Board cautions the parties that there must be a good-faith basis for all claims of confidentiality. Claims without such a basis may result in sanctions against the party making the unfounded claim. A party's public disclosure of information that it has designated as Allegedly Confidential Information may indicate that the party lacked a good-faith basis for that designation.

SO ORDERED.

Dated at Montpelier, Vermont, this _____ day of _____, 2017.

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