

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 23-103

Consolidated Communications Holdings, Inc. and Condor Holdings, LLC

Joint Petition to Approve Transfer of Control

**Order Approving Transfer of Control and Granting Motion for Confidential
Treatment**

ORDER NO. 27,045

August 9, 2024

Consolidated Communications Holdings, Inc. (CCHI) and Condor Holdings LLC (Condor) (together, Petitioners) filed a joint petition requesting that the Commission approve CCHI's transfer of an indirect ownership interest in Consolidated Communications of Northern New England Company, LLC (CCNE) and Consolidated Communications of Maine Company (CCM) to Condor pursuant to RSA 374:30, II. In this order the Commission grants the Petition and finds that Condor possesses the technical, managerial, and financial capabilities to ensure that the Licensees continue to maintain all the obligations of incumbent local exchange carriers ("ILECs") that are Excepted Local Exchange Carriers ("ELECs") as set forth in RSA 362:8 and RSA 374:22-p. The Commission also grants the Petitioners' motion for confidential treatment.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-103.html>.

I. BACKGROUND AND PROCEDURAL HISTORY

CCHI is a major broadband and business communications provider serving consumers, enterprise customers, and wireless and wireline carriers across rural and urban communities in a twenty-two-state service area, including in New Hampshire through Licensees. Leveraging an advanced fiber network spanning approximately 59,000 fiber route miles, CCHI offers a wide range of communications solutions, including: high-speed Internet access service, voice service, security services, managed services, cloud-based services, and wholesale carrier solutions. See Hearing Exhibit 1 at 2.

On December 27, 2023 the Petitioners filed the Petition with the Commission. On December 29, 2023 the Department of Energy (DOE) filed a notice of appearance in this matter. On March 4, 2024, the Office of the Consumer Advocate (OCA) filed a notice of appearance. On April 26, 2024 the DOE filed the testimony of Amanda Noonan¹ recommending approval of the Petition. There have been numerous other parties that filed petitions to intervene in this matter. At the time of the July 23, 2024 hearing the only intervenor who had not withdrawn was the International Brotherhood of Electrical Workers (IBEW), Local 2320 District 2 union. However, the IBEW elected to not appear for the final hearing in this matter. With the assent of the parties, the written testimony of IBEW business manager James Golden was admitted as an exhibit at hearing. See Hearing Exhibit 14. The Petitioners and the DOE were the only parties that appeared on July 23, 2024 for a final hearing on the Petition.

II. POSITIONS OF THE PARTIES

A. Petitioners

¹ Amanda Noonan is the Director of Consumer Services for the New Hampshire Department of Energy.

CCHI is a publicly traded company whose subsidiary, Consolidated Communications, Inc. (CCI), owns CCNE and CCM. *See* Hearing Exhibit 1 at 2, 6. Both CCNE and CCM operate in New Hampshire as ILECs. Condor's immediate parent company, Searchlight III CVL, L.P., presently owns 33.8 percent of CCHI's common stock and 100 percent of its series A preferred stock. *See* Hearing Exhibit 4 at 5. On October 15, 2023, the Petitioners entered into an Agreement and Plan of Merger (Agreement). The Agreement proposes that CCHI will merge with a subsidiary of Condor and CCHI will continue as the surviving corporation. Specifically, CCHI has agreed to the purchase by Searchlight Capital Partners, L.P. and British Columbia Investment Management Corporation (BCI) of its outstanding shares of common stock. *See Id* at 5-6. As a result of completing this stock purchase and executing the Joint Petitioners' Agreement and Plan of Merger (merger transaction), CCHI will become a direct wholly owned subsidiary of Condor and privately held. *See Id.* at 5-7. Condor, in turn, will become the direct holder of all CCHI common stock and the indirect parent of CCNE and CCM. *See* Hearing Exhibit 2 at 3-5 and Hearing Exhibit 1 at 6. The Petitioners assert that the proposed upstream stock transfer will provide significant benefits to CCHI's operating companies in NH.

The Petitioners argue that the transaction should be approved pursuant to RSA 374:30, II, because CCHI and Condor (and its affiliates) are technically, managerially and financially capable of causing the Licensees to maintain the obligations of an incumbent local exchange carrier set forth in RSA 362:8 and RSA 374:22-p. In support of its position, the Petitioners presented the testimony of Timothy Austin from Searchlight Capital Partners, LP (who also adopted the written testimony of Andrew Frey) and Michael Shultz of Consolidated Communications. The witnesses explained at

hearing, and in their sworn pre-filed testimony, that the financial resources of Searchlight would ensure that there will be no adverse effect on operations.

The benefits to New Hampshire include further expansion of the fiber network in the State. *See* Hearing Exhibit 2 at 20. The overall management of CCHI for New Hampshire operations will not change. The transaction will not change structure, or regulations of CCHI. *See* Id at 21.

Mr. Shultz testified as to the history of Consolidated Communications in New Hampshire. Consolidated is the successor company of New England Telephone & Telegraph which eventually became Verizon Communications. *See* Hearing Exhibit 4 at 5. In 2008, Verizon sold its northern New England assets to FairPoint Communications, and Northern New England Telephone Operating Company, LLC held the former Verizon New Hampshire assets. FairPoint also had an ILEC called Northland Telephone. In 2017, Consolidated Communications acquired FairPoint Communications, and it currently operates two local exchange companies in New Hampshire, CCNE and CCM, providing residential and business POTS services, private line, and wholesale services. *See* Id.

In 2021 Searchlight bought a minority interest in CCHI (roughly 33.8 percent) and obtained the right to nominate two directors to CCHI's Board of Directors. *See* Hearing Exhibit 4 at 5. Mr. Austin testified that from the time Searchlight took a minority interest in Consolidated in 2021 to present, the percentage of users who had access to the Fiber network grew from 5 percent to 50 percent. The proposed purchase will provide the capital to increase consumer fiber buildouts to further expand its network. *See* Hearing Exhibit 4 at 7. The fiber expansion will ultimately result in the delivery of higher broadband speeds and more advanced services to new and existing customers, including customers in areas that are underserved by high-speed

broadband today. *See Id.* Mr. Austin testified, that the goal after the proposed purchase is effectuated would be to ensure that the percentage of users who have access to the fiber network would be greater than 75 percent.

B. DOE

The DOE reviewed the Petition and issued data requests in this matter. The DOE found that the proposed indirect transfer of ownership meets the standard of review and could potentially bring the benefits of a fiber network, and the accompanying access to services such a network allows, to New Hampshire communities sooner than might occur absent the transaction. *See Hearing Exhibit 11 at 3.*

After reviewing discovery, the DOE explained the transaction as follows:

- 1) The proposed transaction is that private investors will replace the public shareholders of CCHI;
- 2) No changes are planned at the operational level of the CCHI subsidiaries that operate in New Hampshire as a result of the proposed transaction; and
- 3) The transaction will provide the operating subsidiaries greater access to capital than currently exists. This capital can be used for maintaining and improving CCNE and CCM's network in New Hampshire.

See Id at 4. The DOE noted that there is no evidence of adverse changes planned for New Hampshire operations, and because the joint filing, testimony, and discovery responses indicated that Condor possesses the managerial, technical and financial capabilities to maintain the obligations of an ILEC as set forth in RSA 362:8 and RSA 374:22-p, the DOE concluded that the petitioners have met the required standard for approval of the transaction. *Id.*

C. OCA

The OCA filed a letter of non-participation on July 9, 2024. In that letter, the OCA noted that after participating in discovery, there was no basis on which the OCA should object to the granting of the relief sought by petitioners therefore, the OCA was not participating in the final hearing on the merits. *See* July 9, 2024 Letter from the OCA.

D. International Brotherhood of Electrical Workers, Local 2320

In his pre-filed testimony, James Golden², expressed ongoing concern that CCI was cutting its workforce and not maintaining its vehicle fleet. *See* Hearing Exhibit 14 at 5. Concerning the proposed merger, the union does not oppose the proposed merger provided that workforce in the area remain appropriately sized and that the workers' are equipped with the tools necessary to perform the work needed to serve the customers in New Hampshire. *See* Id at 5-6.

III. MOTION FOR CONFIDENTIAL TREATMENT

In its motion, the Petitioners requests confidential treatment of the following documents:

- Material produced in Discovery to the DOE and the testimony of DOE witness Amanda Noonan that may reference the confidential responses provided.

Concerning the motion for protective order and confidential treatment, the Petitioners assert that during discovery with the DOE they produced highly confidential information related to CCNE's broadband build information, including wire center data and plans for further broadband expansion. In addition, CCHI responded to the DOE data request with highly confidential information concerning CCNE's and CCM's New

² James Golden is the business manager of the IBEW, Local 2320 and prior to being the business manager he was employed by CCI and its predecessors for 28 years

Hampshire based management structure with employment position titles. The information provided, if released, would cause harm to the Petitioners and should be protected from disclosure. Further, there is no discernable public interest in disclosure. See July 15, 2024 Motion at 4.

At the July 23, 2024 hearing the DOE did not object to granting the Petitioners motion for confidentiality treatment and issuing a protective order as requested.

IV. COMMISSION ANALYSIS

Transfer of Ownership Control

The Commission must determine whether the merger transaction will result in the transfer of an ownership interest in CCNE and CCM to an entity or entities technically, managerially, and financially capable of maintaining the obligations of CCNE and CCM as ILECs set forth in RSA 362:8 and RSA 374:22-p, as required by RSA 374:30, II, as well as their obligations under federal law.

Concerning the managerial, technical and financial capability of Condor, and its parent company Searchlight, the Commission finds the evidence presented at hearing supports a conclusion that the transfer of the public shares to Searchlight will increase investment of capital into the infrastructure of CCHI. Searchlight has adequate financial resources to support the transaction. Since taking a minority interest in the CCHI in 2021 Searchlight has used its resources to fund the vast expansion of the fiber network. Searchlight has nearly \$12 billion in assets and has significant experience working with portfolio companies executing strategies that involve deploying broadband infrastructure, along with a proven track record of partnering with strong management teams to drive long term value and shareholder returns. See Hearing Exhibit 2 at 4.

Concerning the requirements the technical and managerial requirements of RSA 374:30, II, the proposed merger will not affect the management of CCHI's Licensees. Mr. Schultz affirmed that there is no discernable impact from the merger petition on the day-to-day operations of Consolidated in New Hampshire. See Hearing Exhibit 4 at 9-10. The same officers and managers who are guiding the CCHI companies today will continue to guide the companies after the transaction. See *Id.*

CCHI employs a skilled workforce of over 3,200 employees with extensive telecommunications experience. CCHI has the technical and managerial capacity to meet its ongoing obligations set forth in RSA 362:8 and RSA 374:22-p. Because CCHI will remain intact and continue its current systems and operations after the transaction the Licensees will continue to possess the necessary technical capabilities to maintain their ILEC obligation. See *Id.* at 10

The Petitioners testimony that the transaction will not affect rates, terms, services or operations in New Hampshire is found persuasive. Furthermore, for the reasons explained above, it is found that the Buyers possess the financial managerial and technical capacity needed for ownership.

Motion for Confidential Treatment

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that

it must be balanced against the public's interest in disclosure." *Id.* at 553 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. *See Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5(IV) expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... " In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. *See* Puc 203.08(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." *See Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case the Petitioners seeks protection for financial and business information under RSA 91-A:5, IV. We agree with Petitioners that the information contained within the applicable filings in this docket constitutes confidential and

sensitive commercial or financial information under RSA 91-A:5, IV, and that the Petitioners have a privacy interest in protecting the information pertaining to this transaction. We therefore conclude that the Petitioners interest in nondisclosure of the information identified in its motions outweighs the public's interest in disclosure of that information. Although the public may have an interest in that information to aid in understanding the Commission's analysis of the issues presented in this proceeding, we find that the public's interest in disclosure is outweighed by the Petitioners privacy interests in information that, if disclosed, could pose legitimate financial harm to or privacy risk to the Petitioners.

Accordingly, pursuant to Puc 203.08(a), we grant the Petitioners motion for protective order and confidential treatment. Consistent with past practice and Puc 203.08(k), the protective treatment provisions of this order are subject to the ongoing authority of the Commission, on its own motion or on the motion of any party or member of the public, to reconsider this protective order under RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

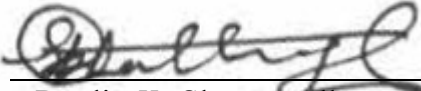
ORDERED, that the Petition to approve the indirect transfer of control of CCHI's operating subsidiaries is hereby **GRANTED**; and it is

FURTHER ORDERED, that Petitioners shall submit written confirmation of the completed transaction within 10 days of execution of the closing date of the transaction; and it is

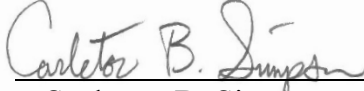
FURTHER ORDERED, the Joint Petitioners shall cause a copy of this order to be published on their websites, as well as CCNE's and CCM's websites, no later than five business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before August 19, 2024; and it is

FURTHER ORDERED, that the Petitioners Motion for Protective Order and Confidential Treatment is **GRANTED**.

By order of the Public Utilities Commission of New Hampshire this ninth day of August 2024.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-103

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