

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 23-4353-PET

Joint petition of Consolidated Communications Holdings, Inc., Consolidated Communications of Northland Company, Consolidated Communications of Vermont Company, LLC, Consolidated Communications Enterprise Services, Inc., and Condor Holdings LLC for approvals pursuant to 30 V.S.A. §§ 107, 109, and 311	Hearings via GoToMeeting July 10, 2024
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Order entered: 11/14/2024

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**ORDER APPROVING PROPOSED ACQUISITION OF CONSOLIDATED COMMUNICATIONS**

**COMPANIES**

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**I. INTRODUCTION**

In this order, the Vermont Public Utility Commission (“Commission”) approves a transaction that involves the sale of the corporate parent of Vermont’s largest landline telecommunications provider. Specifically, we approve a joint petition filed by Consolidated Communications Holdings, Inc. (“CCHI”); Consolidated Communications Enterprise Services, Inc. (“CCES”); Consolidated Communications of Northland Company (“Consolidated Northland”); Consolidated Communications of Vermont Company, LLC (“Consolidated Vermont”) (together “Consolidated”); and Condor Holdings LLC, a wholly-owned subsidiary of Searchlight III CVL, L.P. (“Condor”) (collectively the “Joint Petitioners”), pursuant to 30 V.S.A. §§ 107, 109, and 311, for approval of a transaction that will result in Condor acquiring all issued and outstanding stock in Consolidated (the “Transaction”).

**II. PROCEDURAL HISTORY**

On December 27, 2023, the Joint Petitioners filed their petition for Commission approval of the Transaction. The petition was supported by the direct testimony and exhibits of Michael J. Shultz and Andrew Frey.

On April 2, 2024, the Commission issued an order granting intervention to the following parties: Charter Fiberlink-VT, CCO, LLC; the International Brotherhood of Electrical Workers, Second District and the International Brotherhood of Electrical Workers Local 2326 (“IBEW”); eight Vermont rural telephone companies<sup>1</sup>; Otter Creek Communications Union District; Deerfield Valley Communications Union District; CVFiber; East Central Vermont Telecommunications District; Southern Vermont Communications Union District; NEK

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<sup>1</sup> The eight Vermont rural telephone companies are: Perkinsville Telephone Company, Northfield Telephone Company, Topsham Telephone Company, Shoreham Telephone, LLC, Waitsfield & Champlain Valley Telecom, Vermont Telephone Company, Ludlow Telephone Company, and Franklin Telephone Company.

Community Broadband; and Vermont Communications Union Districts Association (“VCUDA”) (collectively the “CUDs”).

On March 7, 2024, the Commission held a remote public hearing on the petition. The public hearing was attended by several members of the public and a member of the Vermont Legislature.

On May 3, 2024, the Vermont Department of Public Service (“Department”) filed the direct testimony and exhibits of Hunter Thomsson, Carol Flint, and August Ankum.

Also on May 3, 2024, VCUDA filed the direct testimony of Ellie de Villiers.

On May 6, 2024, IBEW filed the direct testimony of Sandra Tumosa.

On June 14, 2024, the Joint Petitioners filed the rebuttal testimony of Michael Shultz.

On June 28, 2024, the Department filed the surrebuttal testimony of Hunter Thompson, Carol Flint, and August Ankum.

Also on June 28, 2024, VCUDA filed the surrebuttal testimony and exhibits of Ellie de Villiers.

On July 9, 2024, the Joint Petitioners filed the direct testimony of Timothy Austin, who adopted the direct testimony of Andrew Frey.

On July 10, 2024, the Commission held an evidentiary hearing for this case. During the evidentiary hearing, we admitted Stipulated Exhibit 1 into the evidentiary record. Stipulated Exhibit 1 lists all prefiled testimony and exhibits that were admitted into the evidentiary record for this proceeding.

On August 5, 2024, the Joint Petitioners, the Department, and VCUDA filed legal briefs.

On August 19, 2024, the Joint Petitioners, the Department, and VCUDA filed reply briefs.

### **III. PUBLIC COMMENTS**

Over the course of this proceeding, the Commission received seven written comments from members of the public. The Commission also received comments from four members of the public during the March 7, 2024, public hearing, including comments from a member of the Vermont Legislature.

The commenters generally raised concerns regarding Consolidated's service quality. One commenter pointed out service quality issues regarding frequency and duration of outages, difficulty in reaching Consolidated to report problems, and lack of reliability in repairs. Two commenters are concerned about rate increases and a lack of publicly available information about Condor. One commenter is concerned about current, poor service quality and potential future issues with Consolidated after acquisition by Condor. The commenters also raised concerns about reliability of fiber-based telephone service during severe weather events, because unlike traditional copper-line service, fiber service requires an electric connection to operate. All but one commenter represented that they rely on Consolidated or one of its subsidiaries for emergency communications and are concerned about whether the Transaction will affect the service quality of Consolidated's telephone service.

We appreciate the insight provided by the public comments that we received, which aided in our review of the petition in this case. We share the commenters' concerns regarding Consolidated's service quality and repair times, which we address as part of this order. As we discuss below, penalties for specific instances of inadequate service quality are outside the scope of this proceeding. We do, however, adopt several conditions of approval for the Transaction that are directed at improving our ability to monitor Consolidated's service quality following the acquisition by Condor. Our order also makes clear that if Consolidated is unable to meet its baseline service quality obligations for its landline customers, then we will consider the imposition of financial penalties or initiate a more detailed investigation into the company's service quality performance.

#### **IV. FINDINGS**

##### **A. The Joint Petitioners and their Corporate Structures**

1. Consolidated is an incumbent local exchange carrier ("ILEC") that once was part of the Bell System. At inception, it was named New England Telephone & Telegraph and eventually changed its name to Verizon Communications ("Verizon"). Direct Testimony of Michael Shultz, Consolidated ("Shultz pf.") at 6.

2. In 2008, Verizon sold its northern New England assets to FairPoint Communications ("FairPoint"). Telephone Operating Company of Vermont ("TOCV"), a FairPoint subsidiary,

held the former Verizon Vermont assets. FairPoint also had an ILEC called FairPoint Vermont.<sup>2</sup> Shultz pf. at 6.

3. In 2017, Consolidated acquired FairPoint Communications, including its Vermont-based companies. Consolidated currently operates two local exchange companies in Vermont, Consolidated-Northland and Consolidated-Vermont (the successors to FairPoint Vermont and TCOV, respectively). Consolidated provides residential and business plain old telephone service (“POTS”), private line, and wholesale services. CCES, a separate Consolidated subsidiary, provides long distance, internet services, and other non-regulated communications and internet services. Shultz pf. at 6.<sup>3</sup>

4. Consolidated Vermont is a Delaware limited liability company. It operates under a certificate of public good (“CPG”) that was initially issued by the Commission to TCOV on February 15, 2008, in Docket 7270. The CPG was amended on March 14, 2019, in Case No. 18-4126-PET to reflect the company’s name change. Shultz pf. at 6-7.

5. Consolidated Northland is a Delaware corporation authorized as an ILEC in the State of Vermont. It operates under a CPG that was initially issued by the Commission on June 14, 1994, in Docket No. 5717. The CPG was subsequently amended on March 14, 2019, in Case No. 18-4126-PET to reflect the company’s name change. Shultz pf. at 7.

6. CCES is a Delaware corporation authorized to provide telecommunications services in Vermont. It operates under CPG No. 6919 (as amended in Case No. 20-3765-PET) and CPG No. 7270 (as amended in Case No. 20-3675-PET). CCES provides retail broadband Internet access service to both residential and business customers. It also provides Voice over Internet Protocol (“VoIP”) service and a variety of information services and business offerings. Shultz pf. at 7.

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<sup>2</sup> The Commission approved FairPoint’s acquisition of Verizon on February 15, 2008, in Case No. 7270. *In re Verizon New England Inc., dba Verizon Vermont*, Case No. 7270, Order of 2/15/08.

<sup>3</sup> The Commission approved Consolidated’s acquisition of FairPoint on June 26, 2017. *See Joint Petition of Consolidated Communications Holding, Inc., Consolidated Communications, Inc., Falcon Merger Sub, Inc., FairPoint Communications, Inc., Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, FairPoint Vermont, Inc., d/b/a FairPoint Communications, 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*, Case No. 8881, Order of 6/26/17.

7. Organization charts reflecting the Consolidated entities' current ownership structure and proposed post-Transaction ownership structure are included in Exhibit PET-AF-1. CCHI is the ultimate parent company of each of the three Vermont entities. CCHI's direct subsidiary Consolidated Communications, Inc. ("CCI") will continue its role in directing the operations of its subsidiaries, including the Consolidated companies operating in Vermont. Shultz pf. at 7.

8. CCHI is a publicly held Delaware corporation with its principal place of business in Mattoon, Illinois. CCHI's operating subsidiaries currently provide voice, data, and video communications services in portions of the following states: Alabama, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Vermont, and Wisconsin. Shultz pf. at 7-8.

9. CCHI is currently a publicly traded company listed on the NASDAQ and its ownership shifts daily as shares are bought and sold. Shultz pf. at 8.

10. Condor's immediate parent company, Searchlight III CVL, L.P. ("Searchlight III CVL"), currently owns approximately 33.8% of CCHI's common stock and 100% of CCHI's Series A preferred stock. Shultz pf. at 8.

11. Searchlight Capital Partners, L.P. ("Searchlight") is a Delaware limited partnership and registered investment adviser with the United States Securities and Exchange Commission. Searchlight is a global private equity investment company whose funds invest in companies across various sectors, including communications, media, consumer, and business services. Prefiled Testimony of Andrew Frey, Condor ("Frey pf.") at 3; Prefiled Testimony of Timothy Austin, Condor ("Austin pf.") at 1.

12. Searchlight has at least \$12 billion in assets under its management, including investments in the deployment of broadband infrastructure. Frey pf. at 3; Austin pf. at 1.

13. Investment funds affiliated with Searchlight (including funds in which British Columbia Investment Management Company ("BCI") is a limited partner) currently hold voting and equity interests in CCHI of approximately 33.8% and 67.8%, respectively. These interests are held through Searchlight III CVL, which owns approximately 33.8% of CCHI's common stock, which is voting stock, and 100% of CCHI's Series A preferred stock, which is non-voting stock. Frey pf. at 3; Austin pf. at 1; exh. PET-AF-01.



14. BCI is a Canadian institutional investor with approximately \$233 billion (Canadian dollars) in gross assets under management as of March 31, 2023. It manages a portfolio of diversified public and private market investments on behalf of 32 British Columbia public sector clients. BCI does not currently hold voting interest in CCHI. Its passive limited partnership interest in Searchlight III CVL currently represents a proportionate indirect equity interest in CCHI of approximately 17.7%. Frey pf. at 4; Austin pf. at 1.

**B. The Proposed Transaction**

15. In 2021, Searchlight III CVL completed a purchase of approximately 39 million shares of CCHI common stock and approximately 434,000 shares of Series A preferred stock. The purchase was completed through a two-stage investment transaction approved by shareholders and regulatory agencies, including the Commission.<sup>4</sup> Searchlight III CVL also obtained the right to nominate two directors to CCHI's Board of Directors. Shultz pf. at 8-9.

16. In April 2023, Searchlight and BCI issued a non-binding proposal to acquire all outstanding shares of common stock of CCHI not already owned by Searchlight III CVL for \$4.00 per share. The terms of the agreement were finalized on October 5, 2023. Shultz pf. at 8-9; exh. PET-AF-2.

17. As part of the transaction, Searchlight III CVL will be converted to a limited liability company and will contribute its common stock in CCHI to Condor. Condor will assign all issued and outstanding stock of Condor Merger Sub Inc., a Delaware corporation and wholly owned subsidiary of Condor ("Merger Sub"), to CCHI. Frey pf. at 4-5; Austin pf. at 1; exh. PET-AF-01.

18. The agreement between Condor, Merger Sub, and CCHI will result in Merger Sub merging with and into CCHI. CCHI will continue as the surviving corporation. All issued and outstanding common stock of CCHI<sup>5</sup> will be converted into the right to receive consideration for the merger at the price of \$4.70 per share in cash. Frey pf. at 4-5; Austin pf. at 1.

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<sup>4</sup> The Commission approved Searchlight's initial investment into Consolidated in 2021 in Case No. 20-3451-PET. See *Joint Petition of Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., Consolidated Communications of Vermont Company, LLC, Consolidated Communications of Northland Company, Consolidated Communications Enterprise Services, Inc. and Searchlight III CVL, L.P., for approvals pursuant to 30 V.S.A. Sections 107 and 108*, Case No. 20-3451-PET, Order of 6/1/2021.

<sup>5</sup> This Transaction will not include any: (i) common stock held by Condor, which will remain outstanding, (ii) treasury stock and common stock held by Merger Sub (if any), which will be cancelled and cease to exist, or (iii)

19. As a result of the Transaction, Condor, which will remain a wholly owned subsidiary of Searchlight III CVL, will own all issued and outstanding common stock in CCHI. Searchlight III CVL will continue to hold 100% of CCHI's Series A preferred stock. Frey pf. at 4-5; Austin pf. at 1; exh. PET-AF-01.

20. Condor will become the direct parent of CCHI and therefore the indirect parent company of the Consolidated entities operating in Vermont. Consolidated, which is currently a publicly traded company, will become privately held if the Transaction is completed.<sup>6</sup> Frey pf. at 4-5; Austin pf. at 1; exh. PET-AF-01.

21. Searchlight CVL AGG, L.P., a Delaware limited partnership that was formed for the purpose of the Transaction and is affiliated with Searchlight ("SCP Aggregator"), will hold an equity interest in Searchlight III CVL of approximately 76.8%. IMCPE 2020 Inc. ("IMCPE 2020"), a Canadian corporation that is controlled by BCI, will hold an equity interest in Searchlight III CVL of approximately 23.2%.<sup>7</sup> Frey pf. at 6; Austin pf. at 1; exh. PET-AF-01.

22. Upon closing the Transaction, Searchlight III CVL will have a nine-member board of managers that, subject to certain conditions related to the percentage of common units in Searchlight III CVL held by affiliates of Searchlight and BCI, respectively, will be composed of four members appointed by Searchlight or its affiliate, three members appointed by BCI or its affiliates, and two independent members. Frey pf. at 6; Austin pf. at 1.

23. For the upstream ownership with the Searchlight structure, Searchlight III CVL GP, LLC ("Searchlight III CVL GP"), a Delaware limited liability company, will be the general partner of SCP Aggregator. Six investment funds affiliated with Searchlight will hold interests in Searchlight III CVL indirectly through SCP Aggregator or Searchlight III CVL II, L.P. ("Searchlight III CVL II"), the latter of which will hold an approximate 51.3% equity interest in

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common stock held by any direct or indirect wholly owned subsidiary of CCHI or Condor (other than Merger Sub) (if any), which will be converted into a number of shares of common stock of CCHI such that immediately following the Transaction, the ownership percentage of any such subsidiary in CCHI will equal the ownership percentage of any such subsidiary in CCHI immediately prior to the Transaction.

<sup>6</sup> Consolidated currently trades on the NASDAQ market under the ticker symbol CNSL.

<sup>7</sup> These voting and equity interests are approximated because the Searchlight-affiliated funds' current equity interest included in Exhibit PET-AF-01 is based on the price of CCHI's common stock and the liquidation preference of the preferred stock as of November 13, 2023.

SCP Aggregator and have Searchlight III CVL GP as its general partner. Frey pf. at 6; Austin pf. at 1; exh. PET-AF-01.

24. The six Searchlight investment funds will ultimately be controlled by general partners in which one or more of the three founders of Searchlight—none of whom can act unilaterally to bind the entities in which they hold their interests—are members and/or managers: (1) Eric Zinterhofer, a United States citizen, (2) Erol Uzumeri, a Canadian citizen, and (3) Oliver Haarmann, a German citizen. Frey pf. at 7; Austin pf. at 1; exh. PET-AF-01.

**C. Consolidated Ownership and Management Structure Post-Transaction**

25. Following the Transaction, Condor will hold a 100% direct voting interest in CCHI and a 100% indirect voting interest in the Consolidated entities operating in Vermont. Searchlight III CVL will be the sole member of Condor and will therefore hold a 100% indirect voting interest in CCHI and the Consolidated companies operating in Vermont. Although Searchlight will provide management and other advisory services to certain Searchlight-affiliated investment funds in Condor's ownership structure, it will not have any direct or indirect voting or ownership interest in Condor and will not have any such interest in CCHI or the Consolidated companies operating in Vermont. Frey pf. at 8; Austin pf. at 1; exh. PET-AF-01.

26. As discussed in the findings above, SCP Aggregator will hold an equity interest in Searchlight III CVL of approximately 76.8%. Searchlight III CVL's common units will not carry traditional voting rights. Therefore, the Joint Petitioners have attributed to SCP Aggregator a post-closing voting interest in Searchlight III CVL of 44.4% because Searchlight or its affiliates will have the right to appoint four members to Searchlight III CVL's nine-member board of managers. SCP Aggregator is controlled by its general partner, Searchlight III CVL GP. Each of Messrs. Zinterhofer, Uzumeri, and Haarmann will hold a 33.3% voting interest in Searchlight III CVL GP. Frey pf. at 8-9; Austin pf. at 1; exh. PET-AF-01.

27. IMCPE 2020, the entity controlled by BCI, will hold an equity interest in Searchlight III CVL of approximately 23.2%. The Joint Petitioners have attributed to IMCPE 2020 a post-closing voting interest in Searchlight III CVL of 33.33% because BCI or its affiliates will have the right to appoint three members to the Searchlight III CVL's nine-member board of managers. Frey pf. at 9; Austin pf. at 1; exh. PET-AF-01.

28. The existing Consolidated entities operating in Vermont, including Consolidated Vermont, Consolidated Northland, and CCES, will remain intact and continue to operate subject to their existing CPGs. Shultz pf. at 10-12.

29. The Transaction will not result in any new debt obligations for the Consolidated entities operating in Vermont. Shultz pf. at 10.

30. The Transaction will not result in a change of carrier for any customers or the assignment of any existing CPGs issued by the Commission. Shultz pf. at 10.

31. Consolidated's existing tariffs will not be affected by the Transaction. Its customers will not experience any immediate changes in services or rates, terms, or conditions of service as a result of the Transaction. Shultz pf. at 10.

32. The Transaction will not affect the day-to-day management of Consolidated's Vermont operations. The same officers and managers who currently oversee the Consolidated companies' operations in Vermont will continue to do so after the Transaction is complete, subject only to changes that may occur as employees come and go in the normal course of business. Shultz pf. at 10.

33. Consolidated will continue to maintain its existing copper network and service quality commitments. Shultz pf. at 10.

**D. Public Benefits of the Transaction**

34. The Transaction will strengthen the financial health of Consolidated, providing additional capital for investments in Vermont's fiber networks, and should not impact Consolidated's day-to-day operations in Vermont. Direct testimony of Hunter Thompson, Department ("Thompson pf.") at 5.

35. The Transaction will improve Consolidated's access to capital and aid in the buildout of improved infrastructure, including continued buildout of fiber-optic network equipment. Since Searchlight III CVL's initial investment in Consolidated (which was approved by the Commission in Case No. 20-3451-PET), Consolidated has built out fiber connections that are capable of 1 Gbps symmetrical high-speed internet to over 105,000 locations, covering 29 exchanges or municipalities in Vermont. The fiber buildout has occurred in both larger municipalities, such as Barre, Brattleboro, and Rutland, and more rural markets including Dover,

Fair Haven, and Wilmington. The Transaction includes private equity commitments of approximately \$380 million that will be invested in infrastructure upgrades throughout Consolidated's national service territory. Shultz pf. at 14; Direct Testimony of August Ankum, Department ("Ankum pf.") at 29-30.

36. Consolidated anticipates completing new fiber buildouts to approximately 30,000 to 35,000 locations in Vermont in 2024. It also intends to complete its Lamoille and Otter Creek CUD build and other Rural Digital Opportunity Fund ("RDOF") and non-grant builds in 2024. Rebuttal Testimony of Michael Shultz ("Shulz reb.") at 4.

37. Consolidated estimates that it will build to 25,000 to 35,000 locations in 2025, including RDOF locations. Shultz reb. at 4.

38. The Transaction is an indirect acquisition of Consolidated's Vermont operating entities occurring at the holding company level. The existing Consolidated managerial and technical teams are expected to remain in place. Thompson pf. at 7.

39. There are no significant concerns regarding the business reputations of the Joint Petitioners, including the acquiring entities affiliated with Searchlight. Thompson pf. at 7.

40. The surviving company's conduct in dealing with the citizens of Vermont will be consistent with Consolidated's current practices because Consolidated's current service offerings will remain in place with no significant modifications. Thompson pf. at 8.

41. The Transaction will result in efficiencies that will have a benefit for customers. It will also have a favorable impact on competition. Investment in fiber deployment should allow more opportunities for digital and online engagement, including remote work capabilities and tele-medicine access for a broader population of Vermonters. In addition to the direct benefit to consumers, the expanded fiber buildout should offer businesses a more robust network to participate in an ever-increasing online marketplace. However, even with the focus on new fiber deployment, Consolidated will need to meet its current service quality standards and prevent neglect and deterioration of the existing copper network. Thompson pf. at 8; Shultz reb. at 3-4.

**E. Consolidated's Current Operations and Service Quality**

42. Consolidated is required to report quarterly on a series of service quality metrics and reporting requirements that were initially established by the Commission in Case No. 5903.<sup>8</sup> Ankum pf. at 15-16.

43. Consolidated's quarterly service quality reports track the following retail service quality metrics: Network Trouble Report Rate ("NTRR"); Out-of-Service Troubles Cleared Within 24/48 Hours; Calls Answered Within 20 Seconds – Residence; Installation Appointments Met – Residence; Installation Appointments Met – Business; Average Delay Days for Missed Appointments – Residence; and Average Delay Days for Missed Appointments – Business. Ankum pf. at 26-27.

44. Consolidated failed to meet the baseline standard for the Out-of-Service Troubles Cleared Within 24/48 Hours metric in six consecutive quarters between 2022 and 2024 and in eight of the fifteen quarters before that period beginning in the first quarter of 2019. Ankum pf. at 27.

45. There has been only one quarter where Consolidated has met all of its baseline retail service quality performance standards throughout its history of reporting. Direct Testimony of Carol Flint, Department ("Flint pf."), at 6.

46. Consumer complaints against Consolidated that were filed with the Department's Consumer Affairs and Public Information Division ("CAPI") have fluctuated in recent years. There were 579 complaints in 2018, 236 complaints in 2019, 197 complaints in 2020, 177 complaints in 2021, 117 complaints in 2022, and 236 complaints in 2023. These data show that complaints decreased year-over-year from a peak in 2018 through 2022 and then spiked in 2023 due to weather-related repairs. Flint pf. at 9-10; Shultz reb. at 7.

47. Consolidated's union employee headcount decreased by 26% between 2018 and 2024. Ankum pf. at 22.

**V. LEGAL STANDARD**

The Joint Petitioners seek approval of the Transaction under 30 V.S.A. §§ 107, 109, and 311. Section 107 provides that "[n]o company shall directly or indirectly acquire a controlling

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<sup>8</sup> *Investigation into Service Quality Standards, Privacy, and Other Consumer Safeguards for Retail Telecommunications Service*, Docket No. 5903, Order of 7/2/1999.

interest in any company subject to the jurisdiction of the [Commission], or in any company which, directly or indirectly has a controlling interest in such a company, without the approval of the [Commission].” Section 107(e)(1) defines “controlling interest” to mean “10 percent or more of the outstanding voting securities of a company; or such other interest as the [Commission] determines . . . to constitute the means to direct or cause the direction of the management or policies of a company.” Section 107(b) also establishes that the “Commission may grant such approval only . . . upon finding that such an acquisition will promote the public good.” The Commission’s evaluation of the “public good standard” under Section 107 has traditionally considered the following factors:

Determining whether an acquisition will promote the public good involves evaluating several considerations about the surviving company, such as the competence of management, the financial strength of the company, its reputation and conduct in dealing with the citizens of Vermont, any expected efficiencies that will benefit the company’s customers, and the impacts of the acquisition on competition.<sup>9</sup>

Section 109 requires that any company subject to the Commission’s jurisdiction must receive the Commission’s approval for “a sale or lease or series of sales or leases in any one calendar year constituting 10 percent or more of the company’s property located within this State and actually used in or required for public service operations.” Section 109 also includes a requirement that the Commission find that the proposed sale or lease “will promote the public good.”

Section 311 requires that a “consolidation or merger under the provisions of this chapter shall not become effective without the approval of the [Commission] . . . and the finding on its part that such consolidation or merger will not result in obstructing or preventing competition . . . .”

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<sup>9</sup> *Petition of Gregg L. Haskin & Eric S. Haskin for Approval of an Indirect Acquisition of A Controlling Interest in Waitsfield-Fayston Tel. Co., Inc. & Green Mountain Long Distance Serv., Inc. Pursuant to 30 V.S.A. § 107*, Case No. 17-4423-PET, Order of 14/14/17, at 4; *Petition of Trencap L.P. and Caisse de dépôt et placement du Quebec (“CDAQ”) for approval of the acquisition of an additional indirect interest of more than 10% in Vermont Gas Systems, Inc. and Green Mountain Power Corp.*, Case No. 21-2584-PET, Order of 9/29/21.

## VI. DISCUSSION

### A. Positions of the Parties

#### 1. Joint Petitioners

The Joint Petitioners argue that the Transaction will strengthen Consolidated's financial position and improve the quality of service that the Consolidated companies currently offer in Vermont. They highlight Consolidated's investments in network upgrades that have been completed in Vermont after Searchlight was authorized to acquire a partial ownership interest in Consolidated in 2021. Specifically, they cite to the fiber upgrades that have been completed at approximately 105,000 locations in 29 different exchanges in Vermont. The Joint Petitioners also represent that an additional 55,000 to 70,000 locations are expected to receive upgraded fiber service by the end of 2025. The evidence in this case also shows that the Transaction includes commitments of \$380 million of new equity capital that will be directed at network upgrades throughout Consolidated's national operations, which are expected to include upgrades in Vermont. The Joint Petitioners' testimony also states the Transaction will not result in any new debt obligations that affect the Consolidated entities operating in Vermont.

The Joint Petitioners also emphasize that the Transaction is limited to a change in upstream ownership and it will not entail any immediate changes to the day-to-day management of operations of the Consolidated companies in Vermont. Their testimony represents that all existing tariffs and customer rates and services will remain in place. Their witnesses also testified that no existing Consolidated customers will be required to switch carriers or otherwise experience an immediate change in their service offerings as a result of the Transaction.

The Joint Petitioners also argue that Consolidated's service quality performance has improved in recent years. They state that "Consolidated has already improved Vermont service quality since acquiring the Vermont assets from FairPoint—a point the Department's own evidence supports."<sup>10</sup> They also assert that Consolidated's service quality performance trends "have generally been positive, except in 2023 due to extreme weather."<sup>11</sup> Their testimony and briefing acknowledge that Consolidated will continue to be subject to the Commission's existing

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<sup>10</sup> Joint Petitioner Reply Brief at 4.

<sup>11</sup> Joint Petitioner Brief at 5.



service quality standards. Although Consolidated argues that the Transaction will result in improved or steady service quality performance, it asserts that “to the extent service quality issues do arise, the Department can pursue—as it has done in the past—further review through a service quality investigation.”<sup>12</sup>

## **2. The Department**

The Department recommends that the Commission approve the Transaction. However, its testimony and briefing raise several concerns associated with the Transaction. The Department argues that the Transaction is not without risk, but it proposes a series of eight discrete conditions of approval, which it asserts “would mitigate—and enable corrective actions regarding—the potential risks associated with the Transaction.”<sup>13</sup>

Of particular concern to the Department is the lack of detailed planning for future upgrades to Consolidated’s existing network in Vermont. The Department’s testimony agrees with the Joint Petitioners’ general positions that the Transaction will improve Consolidated’s financial position and make new capital available for network upgrades. The Department, however, raises concerns that the Joint Petitioners have not made any explicit commitments for investments or upgrades in Vermont. The Department also expresses concern that the Joint Petitioners will prioritize investments into new fiber upgrades in competitive areas, which will result in under-funding and inadequate maintenance for the existing copper network that remains the primary source of communications and connectivity for many Vermonters.

The Department also criticizes Consolidated’s service quality performance. It notes that Consolidated regularly misses its Baseline and Action Level service quality metrics. The Department asserts that despite this performance level, the company “has responded to service quality issues with the same approach of sharing the missed metrics with management teams and rebalancing workload since 2018 or early 2019.”<sup>14</sup> The Department argues that Consolidated’s “bare-minimum response has not consistently ensured compliance with service quality metrics in

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<sup>12</sup> Joint Petitioner Reply Brief at 4-5.

<sup>13</sup> Department Brief at 2.

<sup>14</sup> Department Brief at 8.

the past and Consolidated has not provided details about new steps they plan to take to improve in the future, outside of general commitments to increase fiber deployment.”<sup>15</sup>

Based on these concerns, as noted above, the Department proposes that the Commission adopt eight discrete conditions if we approve the Transaction. Most of the Department’s proposed conditions include reporting requirements directed at staffing levels, infrastructure investments in Vermont, and service quality performance. The Department argues that these reporting requirements will not be overly burdensome and are largely consistent with Consolidated’s current regulatory reporting obligations and the conditions that were included in the Commission’s approval order in Case No. 20-3451-PET (which involved our approval of Searchlight’s initial investment into Consolidated). The Department’s recommended conditions also include a proposed “enhanced bill credit” requirement that would require Consolidated to compensate customers for extended outages above the amount currently required under Commission rules. The Department argues its proposed conditions “would enable meaningful and continued regulatory engagement to protect Vermont, are within the Commission’s authority under the governing statutes, and are tailored to minimize the risks and maximize the attainment of benefits resulting from Transaction approval.”

We discuss each of the Department’s recommended conditions and the Joint Petitioners’ responses to each condition below.

### 3. VCUDA

Like the Department, VCUDA recommends that the Commission approve the Transaction subject to a series of conditions.<sup>16</sup> VCUDA argues that “[p]romotion of the public good requires utilizing all reasonable efforts to expand the rollout of broadband to underserved and unserved Vermonters.”<sup>17</sup>

VCUDA’s proposed conditions all relate to pole attachments and the make-ready process under Commission Rule 3.700. VCUDA’s testimony argues that Consolidated has been deficient in satisfying its make-ready obligations under Commission 3.700 in recent years, which in turn results in delays for broadband rollout in unserved and underserved areas of Vermont.

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<sup>15</sup> Department Brief at 8.

<sup>16</sup> VCUDA’s briefing in this case was supported by Deerfield Valley Communications Union District, CVFiber, East Central Vermont Telecommunications District, and NEK Community Broadband.

<sup>17</sup> VCUDA Brief at 1.

VCUDA presents a series of proposed conditions relating to pole attachments and make-ready work, which it asserts mirror requirements included in a memorandum of understanding between the CUDs and Green Mountain Power Corporation (“GMP”).

We address VCUDA’s proposed conditions and Consolidated’s response to each condition below.

**4. Southern Vermont Communications District (“SVCD”)**

SVCD filed a single-sentence post-hearing brief in support of the Transaction. It states that SVCD “supports the [Commission’s] approval of the Joint Petition.”<sup>18</sup>

**5. Lamoille FiberNet Communications District (“LFCUD”)**

LFCUD filed a short brief post-hearing brief with the Commission in support of the Transaction. It writes that LFCUD “supports the Commission’s approval of the Joint Petition without any conditions.”<sup>19</sup>

**6. IBEW**

IBEW does not oppose the Transaction. It did not file a post-hearing brief, but its testimony represents that it does not oppose the Commission’s approval of the Transaction provided that the “Joint Petitioners demonstrate their commitment to employing a stable and appropriately sized workforce in the region.”<sup>20</sup> IBEW’s testimony raised concerns about decreasing employee counts and work-safety issues that have arisen in recent years. IBEW seeks to ensure that Consolidated’s employees “are equipped with the tools necessary to perform the work needed to serve the customers and residents of Vermont.”<sup>21</sup> IBEW also requests that the “Joint Petitioners further demonstrate their commitment to ensuring the health and safety of the workforce and the public at large.”<sup>22</sup>

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<sup>18</sup> SVCD Brief at 1.

<sup>19</sup> LFCUD Brief at 1.

<sup>20</sup> Direct Testimony of Sandra Tumosa, IBEW (“Tumosa pf.” at 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

**B. Public Good and Approvals Under Sections 107, 109, and 311****i. Introduction**

The Joint Petitioners seek approval of an upstream change in ownership of Vermont's largest incumbent landline telephone company. Their joint petition was filed under 30 V.S.A. §§ 107, 109, and 311, which require that we conclude that the Transaction will promote the public good. As noted above, our consideration of the public good standard in cases involving the change of ownership of a regulated utility includes consideration of the following factors: (1) competence of management; (2) the financial strength of the company; (3) its reputation and conduct in dealing with the citizens of Vermont; (4) any expected efficiencies that will benefit the company's customers; (5) and the impacts of the acquisition on competition. As discussed below, we find that the Transaction satisfies each of these factors.

In assessing these criteria and the evidence presented in this case, we are mindful of the degree of competition that Consolidated faces in the modern telecommunications industry. Unlike Vermont's electric distribution utilities, Consolidated does not have exclusive authority to provide service in its territory. As a legacy ILEC, it is obligated to provide wireline service to all customers located in its service territory. However, it faces direct competition from wireless carriers, competitive landline and VoIP telephone companies, cable providers, and other broadband carriers, particularly in suburban and urban exchanges where the marginal cost to provide service to a new customer is comparatively low. Consolidated will need to continue to invest in and upgrade its legacy systems to remain viable and competitive, and new sources of capital will be necessary for those investments.

We also note that all parties to this proceeding recommend that the Commission approve the Transaction. Although the Department and VCUDA have raised discrete concerns about Consolidated's historical performance with respect to service quality and make-ready obligations (and proposed corresponding conditions), none of the parties to this case opposes the Transaction.

We also recognize that the Transaction is significantly more limited, particularly with respect to customer impacts, than the transactions that involved FairPoint's acquisition of Verizon and Consolidated's subsequent acquisition of FairPoint, which we reviewed in Case

Nos. 7270 and 8881, respectively. Both of those cases involved the direct acquisition and replacement of the operating companies. They also included complete overhauls of the management teams and network operations. In this case, the proposed Transaction will maintain the existing Consolidated entities in Vermont, including their current management teams and workforce. We will not have to issue new CPGs or analyze detailed technical issues associated with a network cutover. Existing Consolidated customers in Vermont also will not experience any direct impacts as a result of the Transaction—all of Consolidated’s existing tariffs, rates, and customer billing systems will remain in place. Therefore, our review is more narrowly focused on whether the change in the corporate-ownership structure, which will result in Consolidated changing from a publicly owned company to a privately held company, will promote the public good of Vermont. Below, we address each discrete factor that is relevant to this public good analysis.

## **2. Competence of Management**

We are satisfied that the Joint Petitioners have demonstrated that Consolidated will be competently managed post-merger. As discussed above, the Transaction will not result in a change in management of the Consolidated entities in Vermont. Although we share the Department’s concerns about Consolidated’s service quality performance (which are discussed in more detail later in this order), we recognize that Consolidated’s existing management team has the appropriate level of technical knowledge, experience, and ability to operate Consolidated’s networks in Vermont. We also note that the current management team has overseen the deployment of substantial fiber upgrades in recent years, which appears to have been completed successfully and improved Consolidated’s revenues from its Vermont operations.

## **3. Financial Strength of the Company**

From our perspective, improving Consolidated’s financial strength is the primary benefit of this Transaction. Consolidated operates in a highly competitive, capital-intensive marketplace. It faces direct competition from other telecommunications, broadband, and cable television providers throughout much of its service territory. However, as a legacy ILEC and Eligible Telecommunications Carrier (“ETC”), it carries the obligation to provide service to all locations in its service territory, including many of the most remote locations in Vermont. It is

imperative that Consolidated remains adequately capitalized not just to upgrade its network in areas where it faces competition, but to maintain an adequate level of service for customers that wholly rely on Consolidated for communications and emergency connectivity.

We are persuaded that the Transaction will improve Consolidated's financial position. As noted above, the Transaction will result in a \$380 million equity investment into Consolidated, which will enable the company to make network upgrades without subjecting its Vermont operations to any new debt obligations. Our review of the financial documentation and excerpts from credit agencies' rating reports provided in this case (much of which was filed confidentially) also indicates that the Transaction will improve Consolidated's revenue position, which is largely attributable to network upgrades that will better enable the company to compete.

#### **4. Reputation and Conduct Dealing with Citizens of Vermont**

The Transaction has the potential to improve Consolidated's reputation and conduct dealing with the citizens of Vermont. The Transaction will not negatively affect Vermont customers, who will continue to have access to Consolidated's service offerings without any immediate changes to their rates or conditions of service.

Although evidence in this case demonstrates that consumer complaints filed with the Department's Consumer Affairs and Public Information Division ("CAPI") against Consolidated have decreased from their historic high in 2018, the company still routinely fails to meet the Baseline and Action levels for its troubles-cleared metric and that it struggles with delayed repairs.<sup>23</sup>

Our expectation is that the Transaction will position Consolidated to improve its service quality, including for customers that rely on the legacy copper network for their service. By improving the company's access to capital and its ability to make necessary network upgrades, we anticipate that Consolidated's current substandard service quality will improve. To be clear, we share the Department's concerns regarding service quality. Therefore, as we discuss below, our approval of the Transaction will be conditioned on several reporting obligations. Our intent with these reporting obligations is to have a greater degree of insight and transparency into how Consolidated is responding to its service quality challenges in Vermont.

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<sup>23</sup> Direct Testimony of Carol Flint, Department ("Flint pf.") at 6-10.

## **5. Expected Efficiencies from the Transaction**

As discussed in our findings of fact above, the Transaction will have ancillary efficiency benefits for Vermonters, particularly those that benefit from better access to new broadband connections. To the extent that the Transaction will involve increased capitalization for deeper penetration of fiber connections into Consolidated's network in Vermont it will improve remote work capabilities and tele-medicine access for a broader population of Vermonters. In addition to the direct benefit to consumers, the expanded fiber buildout should offer businesses a more robust network to participate in an ever-increasing online marketplace. These benefits will occur, however, only if Consolidated completes these investments in locations in Vermont that are currently unserved or underserved.

## **6. Impacts of the Transaction on Competition**

The Transaction will enhance competition and access to modern telecommunications services for Vermonters. In recent years Consolidated has substantially expanded its fiber network in Vermont, which has improved many Vermonters' access to competitive options for modern telecommunications and broadband connectivity. The Transaction will enable Consolidated to continue the deployment of new fiber connections throughout Vermont.

## **7. Summary of Public Good Factors**

On balance, we conclude that the Transaction will promote the public good. We are persuaded that the Transaction will improve Consolidated's financial position and enable new network upgrades in Vermont, which will improve Vermonters' access to modern communications services. However, we agree with the Department that the Transaction is not without risk, and we remain concerned about Consolidated's relatively poor service quality performance in recent years, particularly for Consolidated customers that live in areas that do not have access to competitive providers. Therefore, although we have decided to approve the Transaction, our approval will be subject to a series of conditions. Below, we address each of the parties' proposed conditions.

**C. The Parties' Proposed Conditions**

**1. The Department's Proposed Conditions**

The Department proposes that we adopt eight separate conditions as part of any approval of the Transaction. The Department asserts that these conditions are “designed to address the uncertainties within the Joint Petitioners’ case while permitting the appropriate level of regulatory oversight.”<sup>24</sup> Below, we address each of the Department’s proposed conditions, including the Joint Petitioners’ response to the conditions.

**i. Department's Proposed Condition No. 1**

*Semi-annual reports on Consolidated headcount for employees and subcontractors supporting Vermont operations (by job title/category) for a three-year period following approval of the Transaction.*

The Department argues that the purpose of this reporting requirements is two-fold. First, the Department argues that it will provide oversight and substantiate “Consolidated’s claims that management will remain the same and that it has no plans to reduce, eliminate, or increase the employee headcount at the Vermont Operating Entities over the next three years.”<sup>25</sup> Second, the Department asserts that “headcount data is a useful metric for understanding Consolidated’s performance.”<sup>26</sup> The Department also argues that this proposed condition is consistent with a reporting requirement that was included in the Commission’s approval order in Case No. 20-3451-PET.

The Joint Petitioners oppose this proposed condition. They argue that the condition is unnecessary because the Transaction will not affect Consolidated’s management or day-to-day operations. They also assert that there is no evidence in the record to support the Department’s position that employee headcount directly correlates to service quality.

We have decided to adopt the Department’s proposed condition. We agree with the Department that it will be necessary to closely monitor Consolidated’s operations in Vermont following the Transaction. It will be important to verify the Joint Petitioners’ assertions regarding management and day-to-day operations in Vermont following the Transaction. We

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<sup>24</sup> Department Brief at 22.

<sup>25</sup> Department Brief at 12 (internal quotation omitted).

<sup>26</sup> Department Brief at 13.



also disagree with the Joint Petitioners regarding service quality concerns. We intend to closely monitor Consolidated's service quality following the Transaction because from our perspective, there may be a correlation between service quality and staffing levels. Additionally, as noted by the Department, this reporting requirement, which is consistent with our authority under 30 V.S.A. § 18, closely mirrors a requirement that we included in our final order in Case No. 20-3451-PET.<sup>27</sup>

**ii. Department's Proposed Condition No. 2**

*Semi-annual reports to the Commission and Department for three years following Transaction closing regarding fiber buildout, including budget and actuals, by category. These reports will include a forecast of planned fiber buildout for the following six months and identify the number of customers migrated from Consolidated's legacy copper network to fiber by exchange and the rate of churn on FTTP services.*

The Department argues that because fiber buildout is one of the primary benefits of the Transaction, Consolidated should be required to submit status reports on fiber installations in its Vermont service territory following the Transaction for three years. The Department asserts that these reports should include the dollar amounts earmarked for Vermont, the types of locations passed and internet speeds involved, and plans for tentative future builds for the following six months.

The Joint Petitioners partially oppose the Department's proposed condition. They state that Consolidated has agreed to provide the following information in semi-annual reports:

the number of locations passed by fiber and the broadband speeds available at such locations using the following categories: 4 Mbps/1 Mbps (download/upload) or less, greater than 4 Mbps/1 Mbps but less than 25 Mbps/3 Mbps, 25 Mbps/3

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<sup>27</sup> The requirement from Case No. 20-3451-PET reads as follows: "If Consolidated is required by the Docket 5903 metrics to provide an action report for not meeting the action level for either the Cleared-in-24 or Calls-Answered metrics, Consolidated agrees to include in that action report, along with other required information, the following: (1) the headcount for personnel (employees and contractors) for the last two quarters; and (2) projected staffing levels for next quarter. This information will be provided for the respective group; for example, if the Cleared-in-24 metric is missed, Consolidated will provide staffing numbers at the technician level. If the Calls-Answered metric is missed, staffing numbers for customer service will be provided." Case No. 20-3451-PET, Order of 6/1/21, at 14-15.

Mbps or greater but less than 100 Mbps/20 Mbps, 100 Mbps/20 Mbps or greater but less than 100 Mbps/100 Mbps, and 100 Mbps/100 Mbps or greater.<sup>28</sup>

The Joint Petitioners argue that the Department's proposed condition will "require a substantial increase in the amount of information provided (and therefore would increase the cost of furnishing such report), including describing future fiber builds."<sup>29</sup> The Joint Petitioners also state that no other ILECs, cable television operators, or CUDs are required to provide this information to the Commission.

We have decided to partially adopt the Department's proposed reporting requirement. Our approval of the Transaction is based, in large part, on expectations that new ownership of the Consolidated entities and the corresponding infusion of new equity capital will improve service offerings in Vermont. Accordingly, we agree with the Department that it will be important to closely monitor Consolidated's post-Transaction investments and upgrades in Vermont. However, we are more concerned about the amount, location, and number of customers to be served by new fiber installations in Vermont than Consolidated's underlying budgets and actual build costs. Therefore, we will adopt a condition that more closely mirrors Consolidated's proposed alternative to the Department's condition. This reporting requirement will enable increased transparency into the company's post-Transaction operations and allow for verification that Vermont ultimately receives benefits from the Transaction. We also note that Consolidated already provides much of this information to the Department based on requirements included in our final order in Case 20-3451-PET, and it should not be a significant burden for Consolidated to provide this information for three years following the Transaction.

**iii. Department's Proposed Condition No. 3**

*Notification of payment of Transaction fees that involve Consolidated's Vermont entities.*

The Department requests that the Joint Petitioners be required to provide advanced notice to the Department and Commission before any Transaction fees, which are anticipated to be \$24,583,000, impact Consolidated's operating companies in Vermont. The Department asserts that this requirement will protect Vermont ratepayers from unanticipated and uncertain impacts of the Transaction.

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<sup>28</sup> Joint Petitioner Brief at 5-6.

<sup>29</sup> Joint Petitioner Brief at 6.

The Joint Petitioners oppose this proposed condition. They argue that all transaction fees will be paid by CCHI and will not be paid by or otherwise have any impact on the Vermont companies.

We decline to adopt the Department's proposed condition. We agree with the Joint Petitioners that the proposed condition is not supported by the evidentiary record in this case. It is also unclear to us whether we would be able to take any action on such an advanced notice. We are not convinced that there is any regulatory benefit to this proposed requirement, and therefore do not adopt this reporting requirement.

**iv. Department's Proposed Condition No. 4**

*Enhanced bill credits to customers for service outages exceeding 48 hours, capped at a customer's monthly service charges.*

The Department recommends that the Commission adopt a requirement that Consolidated be required to provide its customers with an enhanced bill credit for extended outage events. The credit would apply for failure to restore basic telephone service beginning 48 hours after the report or discovery of a service outage. The credit would be capped at the customer's monthly service charges. The Department argues that this requirement is necessary based on Consolidated's history of poor service quality, including the failure to "meet the Baseline standard for the *Troubles Cleared* metric 72 in 14 out of 21 quarters . . . and . . . the Action Level in five quarters."<sup>30</sup> The Department expresses concern that "there is a trend of increasing clearing time for service outages while Consolidated takes more or less the same approach to addressing service quality failures as it has since around 2018 or 2019."<sup>31</sup>

Consolidated opposes this condition. Consolidated argues that the Commission recently reviewed and rejected a similar proposal from the Department in Case No. 21-4060-PET, which involved our review of Consolidated's Incentive Regulation Plan.<sup>32</sup> It notes that Commission Rule 7.609 includes a formula that sets out the calculation for bill credits for service interruptions. Consolidated argues that it would violate the Vermont Administrative Procedure

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<sup>30</sup> Department Brief at 15-16.

<sup>31</sup> Department Brief at 16.

<sup>32</sup> Consolidated Brief at 6-7 (citing *Petition of Consolidated Communications of Vermont Co. for Approval of a Successor (2022-2024) Incentive Regulation Plan, Pursuant to 30 V.S.A. § 226b*, Case No. 21-4060-PET, Order of 11/16/22).

Act<sup>33</sup> to expose the company to a financial penalty that exceeds the formula set out in Commission Rule 7.609. Consolidated further asserts that if the Department wants the Commission to adopt an enhanced bill credit mechanism, it would be appropriate to do so through a formal rulemaking that would apply to all providers.

We decline to adopt the Department's proposed condition regarding enhanced bill credits at this time. As an initial matter, we conclude that the Department's proposal for enhanced bill credits exceeds the scope of this proceeding. It also is not fully supported by the evidentiary record developed by the parties in this case. Although the Department has presented evidence regarding Consolidated's service quality, which we agree is deficient, this proceeding is more directly focused on assessing the public good standard under Sections 107, 109, and 311. Before adopting a requirement for enhanced bill credits, we would need to be presented with an evidentiary record that more exhaustively examines the underlying causes of Consolidated's service quality deficiencies and demonstrates that enhanced bill credits would be a viable solution to improving service quality. We expect that this type of information, which was not presented in this case, would be more appropriate within the context of a rulemaking or a service quality investigation, which is likely to be necessary if Consolidated's service quality does not improve following the Transaction.

Like the Department, we remain concerned about the overall trajectory of Consolidated's service quality. Although we recognize that increased storm activity contributed to Consolidated's poor performance in 2023, Consolidated should anticipate that severe storms are likely to continue to affect the company's operations for the foreseeable future. We expect all Vermont utilities with overhead infrastructure to be prepared for more damaging storm activity.<sup>34</sup> We will continue to closely monitor Consolidated's performance following the Transaction. Consolidated should anticipate that continued failure to meet the Docket 5903 metrics is likely to result in another service quality investigation or the imposition of monetary fines under 30 V.S.A. § 30.

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<sup>33</sup> 3 V.S.A. Chapter 25.

<sup>34</sup> We encourage the Joint Petitioners to review our recent order in Case No. 23-3501-PET, which addressed a petition from GMP for approval for funding for grid-resiliency upgrades. *Petition of Green Mountain Power for approval of its zero outages initiative as a strategic opportunity pursuant to 30 V.S.A. § 218d and GMP's multi-year regulation plan*, Case No. 23-3501-PET, Order of 10/18/24.

v. **Department's Proposed Condition No. 5**

*Semi-annual reports on capital investment and maintenance/repair for Consolidated's legacy copper network in Vermont for a three-year period following approval of the Transaction.*

The Department states that one of its concerns with the Transaction and emphasis on new fiber buildouts is that the existing copper network will face further neglect and deterioration, which in turn will lead to worse service quality for customers that are dependent on Consolidated. The Department recommends that the Commission adopt a proposed condition to track whether Consolidated is directing adequate attention and investment into its copper network following the Transaction. The Department states that the proposed condition would require Consolidated to file semi-annual reports with the Department and Commission that “detail capital investment, maintenance/repair budgets, and actual spend amounts for Consolidated’s legacy copper network in Vermont by exchange, including whether there are fiber deployments in the area, and expected and actual copper retirements (or discontinuations) in Vermont by exchange, for three years following the Transaction’s closing.”<sup>35</sup>

The Joint Petitioners did not directly address this condition in their briefing. In the Joint Petitioners’ rebuttal testimony, a witness stated that “Consolidated will agree to provide the Department with a confidential annual report on capital investment and maintenance/repair for Consolidated's legacy copper network in Vermont for a two-year period following approval of this Transaction.”<sup>36</sup> During cross-examination, the Joint Petitioners’ witness proposed modifying the Department’s proposed condition to include copper discontinuations instead of retirements.<sup>37</sup>

We have decided to adopt the Department’s proposed condition. The disagreement among the parties appears to relate to the duration and frequency of the reporting requirement, but we agree with the Department that three years will provide the Department and Commission with better data to assess Consolidated’s post-Transaction operations. Therefore, we adopt the condition as proposed by the Department.

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<sup>35</sup> Department Brief at 17.

<sup>36</sup> Shultz reb. at 11.

<sup>37</sup> Tr. 07/10/24 at 39, 41, 42 (Shultz).

**vi. Department's Proposed Condition No. 6**

*The adoption of any beneficial conditions applicable to approval established in other Northern New England states.*

The Department recommends that the Commission adopt a so-called “most favored state” condition that would incorporate any conditions imposed by New Hampshire or Maine as part of the merger on Consolidated in Vermont. The Department argues that this requirement is necessary to ensure that “Vermont also benefits from any applicable conditions that Consolidated has agreed to or was ordered to comply with in other states.”<sup>38</sup>

The Joint Petitioners oppose this requirement. They challenge that the Department’s recommendation is not based on evidence in the record for this case. They also assert that there were no proposed conditions in New Hampshire and that any conditions adopted in Maine would not be applicable in Vermont.<sup>39</sup>

We decline to adopt the Department’s proposed condition. The Department has not identified any conditions that were proposed or ordered by regulators in Maine or New Hampshire as part of the review or approval of the Transaction. Therefore, there is no evidentiary basis to approve the Department’s proposed condition.

**vii. Department's Proposed Condition No. 7**

*Monthly reports with the Commission and the Department detailing the Troubles Cleared within 48 Hours and Calls Answered within 20 Seconds metrics for one year following the Transaction's closing.*

The Department recommends that Consolidated be required to file monthly reports for the *Troubles Cleared within 48 Hours* and *Calls Answered within 20 Seconds* service quality metrics for one year following the Transaction’s closing. The Department states that this requirement “stems from Consolidated’s documented difficulty meeting these particular service quality metrics in the past, and the lack of information supporting Consolidated’s expectations for improvement.”<sup>40</sup>

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<sup>38</sup> Department Brief at 19.

<sup>39</sup> Joint Petitioner Brief at 8 (citing Tr. 07/10/24 at 48-49 (Shultz)).

<sup>40</sup> Department Brief at 19.

The Joint Petitioners oppose this proposed condition. They argue that the monthly information that the Department seeks is already included in Consolidated's quarterly reports. The companies further argue that the quarterly reporting cadence provides timely and ample information regarding Consolidated's service quality.

We decline to adopt the Department's proposed monthly service quality reporting. Consolidated's service quality performance for these metrics has been substandard. However, we agree with Consolidated that quarterly reporting on these metrics provides timely data and insight into the company's operations. To the extent that service quality performance does not improve following the Transaction, we will consider re-visiting whether more frequent service quality reports from Consolidated are appropriate.

**viii. Department's Proposed Condition No. 8**

*Consolidated be required to address its missing corrective action plans under its Docket No. 5903 requirements, and also be required to continue to abide by the "side letter" pertaining to the prioritization of medically vulnerable customers post-Transaction.*

The Department represents that Consolidated has filed the missing action plans. Therefore, the Department no longer requests this aspect of the proposed condition.<sup>41</sup>

The "side letter" refers to an agreement that was initially filed in Case No. 8390, which involved a service quality investigation into FairPoint.<sup>42</sup> It has been refiled as Exhibit DPS-CMF-1 in this case. The letter sets out a process by which Consolidated will prioritize medically vulnerable customers in completing repairs.

Consolidated has agreed to continue adhering to the process set in Exhibit DPS-CMF-1. Based on the agreement of the parties, we will include this requirement as a condition of our approval of the Transaction.

**2. VCUDA's Proposed Conditions**

VCUDA proposes a series of conditions related to pole attachments and make-ready work. In support of these proposed conditions, a VCUDA witness testified that "of the 188 [pole

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<sup>41</sup> Department Brief at 21.

<sup>42</sup> *Petition of Vermont Department of Public Service for an investigation into the adequacy of Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, provision of service quality*, Case No. 8390, Order of 10/31/2024.

attachment] applications completed to date [by the CUDs], 114 (61%) were not completed within the timeframes required by PUC Rule 3.700.”<sup>43</sup> The witness also testified that Consolidated has experienced delays responding to conduit requests. VCUDA asserts that delays in the make-ready and pole-attachment process burden the CUDs’ ability to satisfy their missions to bring broadband internet to unserved and underserved Vermonters. Therefore, VCUDA proposes a series of conditions related to the make-ready process that it asserts are “needed to ensure that the acquisition is consistent with the public good in helping ensure the timely buildout of broadband to unserved and underserved Vermonters.”<sup>44</sup> VCUDA represents that its proposed conditions are based on an MOU between its members and GMP.<sup>45</sup>

In its rebuttal testimony, VCUDA recommended that the Commission require that Consolidated enter into an MOU with VCUDA’s members that includes the following conditions as part of an order approving the Transaction:

1. Consolidated agrees to make reasonable efforts to jointly schedule and attend survey ride outs, to ensure that both parties agree on the work that needs to be performed;
2. Consolidated agrees that make-ready costs not exceed the agreed-upon estimate so long as the project proceeds on the timeline and route as originally estimated;
3. Consolidated agrees to designate individuals among whose primary responsibilities will be reviewing and engineering make-ready requests and who shall be referred to as the “Designated Agent.” The Designated Agent and VCUDA shall meet at least twice per year to prepare and review trends across VCUDA’s member applications;
4. Consolidated will work with VCUDA’s members to allow temporary attachments when timelines warrant it, unless safety and National Electrical Safety Code requirements would not allow for attachments before corrections are made, and will utilize escalation and review process for estimates; and
5. Consolidated will work with the CUDs to review and resolve issues that may arise regarding make-ready projects. Consolidated will identify and designate duly authorized management and executive level contacts to resolve issues promptly.<sup>46</sup>

In its briefing, VCUDA recommended that the Commission adopt the following additional requirements:

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<sup>43</sup> Rebuttal Testimony of Ellie de Villiers, VCUDA (“de Villiers reb.”)

<sup>44</sup> VCUDA Brief at 3.

<sup>45</sup> VCUDA Brief at 6.

<sup>46</sup> De Villiers reb. at 6-7.



6. Consolidated providing electronic records or maps of its utility poles so VCUCA's members know where to direct make-ready requests;
7. Allowing temporary attachments, unless it causes safety issues, while waiting for more complicated make-ready work to be completed; and
8. Access to conduits, easements, and the ability to co-locate central offices.<sup>47</sup>

During the evidentiary hearing, the Joint Petitioners' witness testified that Consolidated would agree to conditions related to the following make-ready issues: (1) designating a Consolidated employee among whose primary responsibilities will be reviewing and engineering make-ready requests; (2) Consolidated's designated make-ready agent would meet with VCUDA twice per year to prepare and review trends across VCUDA's member applications for make-ready work; and (3) identify and designate a duly authorized representative in management with executive level contacts to resolve make-ready issues.<sup>48</sup>

The Joint Petitioners otherwise opposed the VCUDA's proposed make-ready conditions. They argue that adopting VCUDA's proposed conditions would "be inconsistent with Rule 3.700, which already provides all requirements related to pole attachments and 'make-ready' work and would unreasonably discriminate against Consolidated compared to other pole owners."<sup>49</sup> The Joint Petitioners cite Consolidated's agreements with three different CUDs to demonstrate Consolidated's support of the CUDs' efforts in Vermont. They also assert that "VCUDA's proposed conditions regarding make ready costs and temporary attachments are not Transaction specific as there is no nexus between VCUDA's proposal and the Transaction."<sup>50</sup> Finally, Consolidated challenges the proposed conditions included in VCUDA's brief on the basis that it is "inconsistent with basic rules of evidence and fairness to consider entirely new condition language after the hearing has closed."<sup>51</sup>

The Department states that "the conditions recommended by VCUDA are designed to ensure that Consolidated and VCUDA make reasonable and collaborative efforts to achieve timely completion of make-ready work" and that the Department "supports the adoption of the

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<sup>47</sup> VCUDA Brief at 10.

<sup>48</sup> Tr. 07/10/24 at 30-31.

<sup>49</sup> Consolidated Brief at 9.

<sup>50</sup> Consolidated Brief at 10.

<sup>51</sup> Consolidated Reply Brief at 7.

conditions VCUDA recommends.”<sup>52</sup> The Department, however, also states that “[i]n the alternative . . . Commission Rule 3.700 provides . . . the procedures and requirements for make-ready work, including remedies . . . such as self-help or filing a complaint with the Commission under Rule 3.710.”<sup>53</sup> The Department notes that VCUDA can pursue its pole-attachment concerns through the mechanisms included in Rule 3.700.

We will adopt the pole-attachment and make-ready conditions that the Joint Petitioners have agreed to. Otherwise, we decline to adopt VCUDA’s proposed conditions as part of this proceeding. We agree with the Department and the Joint Petitioners that Commission Rule 3.710 includes a process under which the CUDs can pursue alleged violations of our pole-attachment rules.

We are concerned about the recurring delays that the CUDs have experienced, and we hope that the conditions that we impose on Consolidated today will improve the make-ready process for the CUDs. However, to the extent that the CUDs continue to experience delays that result from violations of Rule 3.700, we strongly encourage them to pursue relief through the mechanisms included in Rule 3.700. Additionally, as with issues related to service quality, we retain authority to investigate Consolidated’s compliance with Rule 3.700 and its pole-attachment tariff generally. Therefore, we ask the CUDs to bring to our attention any recurring or repeated violations of this order, our rules, or Consolidated’s pole-attachment tariff.

## **VII. CONCLUSION**

Subject to the conditions detailed below,<sup>54</sup> we approve the Transaction. Based on the evidence in the record, which shows that the Transaction will improve Consolidated’s financial strength and enable new investments in its Vermont operations, we conclude that the Transaction will promote the public good. The Joint Petitioners, however, are cautioned about the concerns we note throughout this order regarding Consolidated’s service quality performance and its ability to meet its pole-attachment obligations. We will closely monitor Consolidated’s performance following the Transaction and the company should anticipate that we will consider

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<sup>52</sup> Department Brief at 22.

<sup>53</sup> Department Brief at 22.

<sup>54</sup> We note that our conditions of approval may require that Consolidated file information with the Commission that Consolidated may allege to be confidential. To the extent Consolidated seeks confidential treatment of any information filed with the Commission, it must follow the procedures set out in Commission Rule 2.226.

the imposition of statutory penalties or investigations into the company's practices if its performance does not show improvement.

### **VIII. ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission ("Commission") that:

1. The joint petition filed by Consolidated Communications Holdings, Inc. ("CCHI"); Consolidated Communications Enterprise Services, Inc. ("CCES"); Consolidated Communications of Northland Company ("Consolidated Northland"); Consolidated Communications of Vermont Company, LLC ("Consolidated Vermont") (together "Consolidated"); and Condor Holdings LLC, a wholly-owned subsidiary of Searchlight III CVL, L.P. ("Condor") (collectively the "Joint Petitioners"), pursuant to 30 V.S.A. §§ 107, 109, and 311, for approval of a transaction that will result in Condor acquiring all issued and outstanding stock in Consolidated is approved (the "Transaction").

2. For three years following the Transaction, Consolidated must file a semi-annual report with the Commission and the Vermont Department of Public Service ("Department") that details headcount for its employees and subcontractors supporting its Vermont operations (by job title/category). The report must include at minimum the following information: (1) the headcount for personnel (employees and contractors) for the last two quarters; and (2) projected staffing levels for next quarter. These reports must be filed in the compliance subcase of this case in ePUC by January 15 and July 15 of each of the next three years, with the first report due by July 15, 2025.

3. For three years following the Transaction, Consolidated must file a semi-annual report with the Commission and the Department that details Consolidated's fiber network buildouts in Vermont for the previous year. The report must include the total number of route miles of new fiber installed, the locations of the installations, and the number of locations passed by fiber and the broadband speeds available at such locations using the following categories: 4 Mbps/1 Mbps (download/upload) or less, greater than 4 Mbps/1 Mbps but less than 25 Mbps/3 Mbps, 25 Mbps/3 Mbps or greater but less than 100 Mbps/20 Mbps, 100 Mbps/20 Mbps or greater but less than 100 Mbps/100 Mbps, and 100 Mbps/100 Mbps or greater. These reports

must be filed in the compliance subcase of this case in ePUC by January 15 and July 15 of each of the next three years, with the first report due by July 15, 2025.

4. For three years following the Transaction, Consolidated must file a semi-annual report with the Commission and the Department that details capital investment, maintenance, and repair for Consolidated's legacy copper network in Vermont. The reports must include the following information: detail on capital investments, maintenance and repair budgets, and actual spend amounts for Consolidated's legacy copper network in Vermont by exchange, including whether there are fiber deployments in the area, and expected and actual copper discontinuations in Vermont by exchange. These reports must be filed in the compliance subcase of this case in ePUC by January 15 and July 15 of each of the next three years, with the first report due by July 15, 2025.


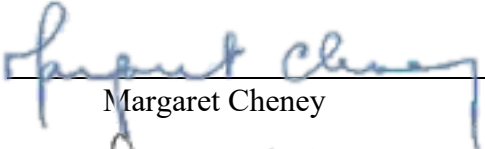
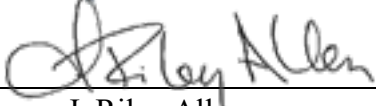
5. Consolidated must adhere to the agreements included in Exhibit DPS-CMF-1, which requires that Consolidated give priority to the following customer groups when responding to complaints and requests (in this order): (1) services that affect public safety, including services with Telecommunications Service Priority designation; (2) customers with medical issues (if Consolidated has reason to believe that a customer is wrongly asserting a medical issue, the customer can be required to provide Consolidated with proof of a medical emergency (as defined in Commission Rule 7.623 as may be amended from time to time)); and (3) customers that contact Consolidated and indicate they have a pending repair request for more than seven (7) days.

6. Consolidated must designate an individual or individuals among whose primary responsibilities will be reviewing and engineering make-ready requests and who will be referred to as the "Designated Agent." The Designated Agent must meet with a representative or representatives of the Vermont Communications Union District Association ("VCUDA") at least twice per year to prepare and review trends across VCUDA's member applications for pole attachments and make-ready work. Consolidated must also identify and designate a duly authorized representative in management with executive-level contacts to resolve make-ready issues with VCUDA members.

7. Consolidated must inform the Commission and the Department of any material change in the terms and conditions of the transactions.

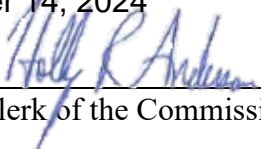
8. Consolidated must notify the Commission within 30 days after the final closing of the transactions. This notification must be filed in the compliance subcase of this case in ePUC.

Dated at Montpelier, Vermont, this 14th day of November, 2024.

 _____ )	) PUBLIC UTILITY ) ) ) COMMISSION ) ) OF VERMONT
Edward McNamara )	
_____ )	
 _____ )	) COMMISSION ) ) OF VERMONT
Margaret Cheney )	
_____ )	
 _____ )	) OF VERMONT
J. Riley Allen )	

OFFICE OF THE CLERK

Filed: November 14, 2024

Attest:   
\_\_\_\_\_  
Clerk of the Commission

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)*

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\*\*Motion to appear *pro hac vice* pending.