

**Presentation to the House Committee on Energy and Technology and the House Committee on
Commerce and Economic Development**

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Set forth below is an excerpt of the order of the Public Service Board outlining the standard of review it applied when it considered FairPoint's acquisition of Verizon's Northern New England properties in Docket No. 7270 in December of 2007. While there are substantive differences between that transaction and the proposed merger of FairPoint with Consolidated Communications, the standard of review will, as a matter of Public Service Board precedent, essentially be the same.

LEGAL STANDARD

Standard of Review

Review of the Transaction

Before the transactions contemplated by the Merger Agreement may be executed, approval from this Board is required under 30 V.S.A. §§ 107, 109, 311 and 231. Section 107 requires advance approval for acquisition of a 'controlling interest in any company subject to the jurisdiction of the public service board.' Section 109 requires prior approval of a substantial sale or lease of a utility's corporate property.³² Section 311 applies to mergers.³³ The general standard for applying these statutes is whether the transaction would promote the public good of the state.³⁴ The Board has previously stated that fifteen criteria are used to examine change of control transactions under 30 V.S.A. §107. These are:

1. Legal authority for the transaction from the Federal Communications Commission;
2. Availability of emergency services;
3. Compatibility with neighboring systems;
4. Just and reasonable terms and conditions of service;
5. Service quality;
6. Customer Service;
7. Quality of the facilities;
8. Rate of capital investment;

9. Financial stability and soundness;
10. Control of affiliate interests;
11. Competence of management;
12. Technical knowledge, experience and ability;
13. Business reputation;
14. Transaction should produce efficiencies; and
15. Transition should not impair competition.³⁵

The Board has also held that not all fifteen criteria are of equal importance, and the five criteria regarding the surviving entity are of primary interest (Criteria Nos. 9, 12, 13, 14, and 15).³⁶ The Board concluded that '[w]hile each of the fifteen items may be considered in reaching a decision, that decision, finally, consists of determining whether, based on the record, and balancing all of the factors, the public good standard is satisfied.'³⁷

The Board has previously determined that these same standards apply for reviews under section 109.³⁸ Also, under section 311, the Board must find that the transactions will not 'result in obstructing or preventing competition in the purchase or sale' of a regulated 'product, service or commodity.'³⁹ The Board has previously determined that the fifteenth criterion of the section 107 review also addresses the standard under section 311.⁴⁰

In reviewing acquisitions, the Board has typically grouped the preceding 15 requirements into five principal areas. These are:

1. Whether the surviving company is technically competent;
2. Whether the surviving company is financially sound;
3. Whether the surviving company will act as a fair partner in business transactions with the citizens of Vermont;
4. Whether the surviving company will create efficiencies that will benefit customers; and
5. Whether the transaction will cause impairment of or obstruct competition.⁴¹

The Board has also made clear that its analysis of both the five considerations noted above, as well as the 15 specific factors, is directed fundamentally towards meeting the requirements that an acquisition must promote the public good.⁴²

Applicable Standard

Based on the preceding discussion, we apply the following standard in determining in this proceeding whether the proposed transaction promotes the public good of the state. FairPoint carries the burden of proof on all of the following questions:

1. Whether the new company is competent. This includes examining whether:
 - a. the new company's management is competent;
 - b. the new company is technically competent;

- c. the new company has a good business reputation; and
 - d. the new company has obtained all necessary regulatory approvals.
2. Whether the new company is financially sound.
 3. Whether the new company will act as a fair partner in business transactions with the citizens of Vermont. This includes examining whether:
 - a. terms and conditions of service will be fair and reasonable;
 - b. service quality will be adequate;
 - c. customer services will be adequate;
 - d. emergency services will be adequate; and
 - e. investment will be adequate.
 4. Whether the new company will create new benefits for the state. This includes examining whether the proposal will:
 - a. provide a better, stronger, more capable or more ubiquitous network;
 - b. produce efficiencies in operation; and
 - c. provide economic benefits to the state economy or other benefits.
 5. Whether the transition from the old company to the new company will be adequately managed.
 6. Whether the transaction will impair or obstruct competition.