

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Joint Application of)
Consolidated Communications Holdings,)
Inc. and FairPoint Communications, Inc., For)
Approval of the Proposed Acquisition of the)
Common Stock of FairPoint)
Communications, Inc. By Consolidated)
Communications, Inc. and the Resulting) Docket No. 17-SFLT-283-ACQ
Transfer of Control of Bluestem Telephone)
Company, Inc., Sunflower Telephone)
Company, Inc., and FairPoint)
Communications of Missouri, Inc. and ST)
Long Distance, Inc. to Consolidated)
Communications Holdings, Inc.)

ORDER APPROVING JOINT APPLICATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On January 9, 2017, Consolidated Communications Holdings, Inc. (CCHI) and FairPoint Communications, Inc. (FRP) filed a Joint Application requesting approval of CCHI's acquisition of FRP's common stock, giving CCHI indirect control of Bluestem Telephone Company, Inc. (Bluestem), Sunflower Telephone Company, Inc. (Sunflower), FairPoint Communications Missouri, Inc. (FairPoint), and ST Long Distance, Inc (STLD). The Joint Applicants requested expedited treatment of their Application¹ and hoped to conclude the transaction by mid-year 2017.

¹ Joint Application, Jan. 9, 2017, ¶ 13.

2. The Application included a detailed description of the financial aspects of the transaction and was supported by the testimony of Michael J. Shultz, CCHI's Vice President for Regulatory and Public Policy. Mr. Shultz's testimony described the background of the transaction, the parties to the transaction, the financing for the transaction, and addressed each of the merger standards articulated by the Commission in its Order on Merger Standards issued August 9, 2016, in Docket No. 16-KCPE-593-ACQ.

3. CCHI, which is headquartered in Mattoon, Illinois, provides telecommunications and internet services in 11 states, with the majority of its revenue coming from broadband services.² CCHI owns Consolidated Communications Enterprises Services, Inc. (CCES); a certificated competitive local exchange (CLEC) and interexchange carrier (IXC), as well as a video service provider in Kansas.³ FRP, which is headquartered in Charlotte, North Carolina, provides telecommunications services in 17 states, and owns three Kansas rural incumbent local exchange carriers (RLEC and ILEC) - Sunflower, Bluestem, and FairPoint and STLD, a certificated IXC in Kansas.⁴ Combined, Sunflower, Bluestem, FairPoint, and STLD provide service to approximately 3,000 residential and single-line business customers.⁵

4. The proposed transaction is a stock-for-stock transaction, which will result in FRP shareholders owning 29% of the combined company.⁶ Under the terms of the transaction, CCHI will acquire all of the equity of FRP, which will become a wholly-owned indirect subsidiary of CCHI.⁷ CCHI will assume control of the RLECs and STLD.⁸

² Staff Report and Recommendation, May 1, 2017, p. 2.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*, p. 3.

⁷ *Id.*

⁸ *Id.*

5. Following a thorough review of the proposed transaction, on May 1, 2017, Commission Utility Staff (Staff) filed its Report and Recommendation (R&R), recommending approval of the transaction, conditioned on formalizing CCHI's assurances it would not recover any portion of the acquisition premium from the transaction from Kansas ratepayers, either through rates or the Kansas Universal Service Fund (KUSF).⁹

6. Based on CCHI's extensive history in the telecommunications industry, during which it managed profitable operating telecommunications businesses, Staff concluded CCHI has the requisite technical and managerial skills to operate and maintain the assets and operations of the companies it seeks to acquire through this proposed transaction.¹⁰ In addition to determining whether CCHI has the technical and managerial ability to operate the utilities it seeks to acquire, K.S.A. 66-2005(w) requires CCHI to demonstrate it has the financial wherewithal to operate the companies. Since CCHI will use net cash from operations to finance any new advanced services and has a \$110 million revolving credit line, if temporary financing needs arise, Staff found CCHI possesses the financial ability to own, operate and maintain the companies it seeks to acquire.¹¹ Staff also noted CCHI has a stronger financial history than FRP.¹²

7. CCHI pledges to maintain adequate staffing to maintain its eligible telecommunication carrier obligations and Staff believes CCHI should be able to continue to meet the Commission's Quality of Service standards for rural local exchange carriers (RLECs).¹³

8. In its R&R, Staff explained the Commission has determined merger and acquisitions involving Kansas utilities must provide positive benefits to be considered in the public

⁹ Report and Recommendation, Apr. 27, 2017, p. 2.

¹⁰ *Id.*, p. 5.

¹¹ *Id.*, pp. 5-6.

¹² *Id.*, p. 6.

¹³ *Id.*

interest.¹⁴ To determine whether an acquisition is in the public interest, the Commission applies its Merger Standards.¹⁵ In 1991, in consolidated Docket Nos. 172,745-U and 174-155-U, the Commission adopted a list of factors to weigh and consider in determining whether a transaction promotes the public interest. In 1999, the Commission reaffirmed the merger standards in Docket No. 97-WSRE-676-MER. The Commission has acknowledged the standards provide a helpful framework for its analysis of the public interest, but may be supplemented by other consideration relevant to the unique facts and circumstances of each proposed merger.

9. Applying the merger standards to the proposed transaction, Staff believes the proposed transaction promotes the public interest, in part because CCHI is more financially stable than FRP and intends to connect the newly acquired RLECs to CCHI's network.¹⁶ Staff recommended any approval of the transaction include a formal statement that CCHI will not recover any portion of the acquisition premium it paid in the acquisition from Kansas ratepayers or the KUSF.¹⁷

10. On May 3, 2017, Mr. Shultz filed a letter with the Commission, confirming that no portion of the acquisition premium incurred as a result of the transaction would be recovered from Kansas ratepayers whether through rates or the KUSF.¹⁸

11. Based on its review of the evidence, the Commission concludes: (1) after the transaction, CCHI will continue to possess the necessary financial, managerial, and technical experience to provide sufficient and efficient service in the State of Kansas; (2) subject to the Merger Conditions, the transaction satisfies the merger standards; and (3) subject to the Merger

¹⁴ *Id.*, p. 4.

¹⁵ *Id.*

¹⁶ *Id.*, p. 17.

¹⁷ *Id.*

¹⁸ Michael J. Shultz letter, May 3, 2017.

Conditions, the transaction will promote the public interest. Accordingly, the Commission approves the transaction subject to CCHI's assurances that it will not seek recovery of any portion of the acquisition premium it paid in this transaction from Kansas ratepayers.

Merger Standards

(a) The effect of the transaction on consumers, including:

(i) The effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur.

12. Staff believes the transaction will improve FRP's financial health, and that of the RLECs and STLD.¹⁹ As a stock-for-stock transaction, CCHI does not have to issue any debt to acquire FRP's common stock.²⁰ Since CCHI has a higher credit rating than FRP, following the transaction, CCHI can refinance FRP's existing debt at lower interest rates.²¹ Since Kansas consumers will benefit from a financially stronger company, better positioned to update its facilities and expand services,²² the Commission finds the proposed transaction satisfies merger standard (a)(i).

(ii) Reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range.

13. Staff expects cost savings as a result of the transaction once CCHI connects its network with FRP's network via 10 gigabyte per second (Gbps) links and the companies consolidate uplinks and cybersecurity functions.²³ The stock-for-stock nature of the transaction causes less concern about the premium paid for FRP because CCHI shareholders are entirely

¹⁹ *Id.*, p. 7.

²⁰ *Id.*, p. 8.

²¹ *Id.*

²² *Id.*, p. 9.

²³ *Id.*, p. 10.

responsible for the acquisition premium, which CCHI confirms will not be allocated to the Kansas RLECs or STLD.²⁴ Since the transaction is the sale of an entire company, with a significant portion of the value derived from non-regulated operations, the Commission does not need to address a gain on the sale of assets. Given CCHI's commitment not to seek recovery of the acquisition premium from Kansas ratepayers, the Commission finds the transaction satisfies item (a)(ii) of the merger standards.

(iii) Whether ratepayer benefits resulting from the transaction can be quantified.

14. In addition to consumers benefitting from being served by a more financially stable company, there are quantifiable financial benefits associated with the reduced interest expense from CCHI refinancing RFP's outstanding debt.²⁵ Therefore, the Commission finds the transaction satisfies item (a)(iii) of the merger standards.

(iv) Whether there are operational synergies that justify payment of a premium in excess of book value.

15. In the proposed transaction, a significant portion of the value of the target company relates to its non-regulated operations, making it difficult to apply merger standard (a)(iv).²⁶ Similarly, a comparison of the purchase price for this company to its book value of equity (or assets) is less relevant than if FRP was a fully-regulated entity.²⁷ Since the transaction is a stock-for-stock transaction resulting in no additional leverage for the newly created company,

²⁴ *Id.*

²⁵ *Id.*, pp. 9-10.

²⁶ *Id.*, p. 13.

²⁷ *Id.*

payment above book value is less of a concern.²⁸ Regardless, Staff finds the premium can be justified rather easily on a net present value basis.²⁹

16. Since Staff believes the premium is easily justified and CCHI has committed not to seek recovery of the acquisition premium from ratepayers, the Commission finds the transaction satisfies item (a)(iv) of the merger standards.

(v) The effect of the proposed transaction on the existing competition.

17. Since the Joint Applicants do have any overlapping territories, the transaction should have no effect on existing competition.³⁰ Therefore, this merger standard has no bearing on the proposed transaction.

(b) The effect of the transaction on the environment.

18. Since the telecommunications industry is not subject to the same level of environment regulation as natural gas or electric utilities, this factor is not applicable to the proposed transaction.

(c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.

19. Currently, the Joint Applicants have a minor presence in Kansas with only five positions in Dodge City at the Sunflower RLEC.³¹ The Joint Applicants expect to retain those positions.³² CCHI states it can maintain the level of community donations made by FRP.³³

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*, pp. 13-14.

³¹ *Id.*, p. 15.

³² *Id.*

³³ *Id.*

Conditioned on these commitments, the Commission finds the transaction satisfies item (c) of the merger standards.

(d) Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility regulations in the state.

20. The Joint Applicants and Staff agree the Commission's authority over the RLECs, STLD, and Consolidated Communications Enterprises Services, Inc. will not change as a result of the transaction.³⁴ The RLECs will continue to be required to file Annual Reports, notify the Commission of any changes in their structure or operations, pay Commission assessments, meet intrastate access rate and local service rate requirements pursuant to K.S.A. 66-2005, and file tariffs.³⁵ The Companies will continue to be required to report their revenues and pay the related KUSF assessments.³⁶ The RLECs and STLD will maintain their current COCs and approved tariffs.³⁷ Accordingly, the Commission finds the transaction satisfies item (d) of the merger standards.

(e) The effect of the transaction on affected public utility shareholders.

21. On March 28, 2017, both FRP's shareholders and CCHI's shareholders voted in favor of the acquisition.³⁸ The Commission is reluctant to second guess the majority of both FRP and CCHI shareholders. Therefore, the Commission finds the proposed transaction satisfies merger standard (e).

(f) Whether the transaction maximizes the use of Kansas energy resources.

22. This factor is not applicable to the proposed transaction.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

(g) Whether the transaction will reduce the possibility of economic waste.

23. Joint Applicants and Staff agree the transaction should reduce the possibility of economic waste.³⁹ Accordingly, the Commission finds the transaction satisfies item (g) of the merger standards.

(h) What impact, if any, the transaction has on the public safety.

24. Joint Applicants stated there will be no change to their 911 services as a result of the transaction.⁴⁰ Staff has no concerns with regards to CCHI's ability to continue to meet required public safety standards and believes the transaction will not directly impact the RLECs' requirements to meet their Quality of Service Standards.⁴¹ Accordingly, the Commission finds the transaction will not impact public safety and satisfies item (h) of the merger standards.

25. The Commission finds the proposed transaction satisfies the Commission's merger standards and promotes the public interest. Therefore, the Commission grants the Joint Application and approves the proposed transaction subject to CCHI's commitment not to recover the acquisition premium from Kansas ratepayers, either through rates or the KUSF. The Commission directs the Joint Applicants to provide notice of closing to the Commission within 10 days of the closing of the transaction.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Application is approved, conditioned on CCHI not recovering any portion of the acquisition premium incurred as a result of the transaction from Kansas ratepayers, either through rates or the KUSF.

³⁹ *Id.*, p. 17.

⁴⁰ *Id.*

⁴¹ *Id.*

B. Joint Applicants must provide notice of the closing to the Commission within 10 days of the closing of the transaction.

C. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.⁴²

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner.

Date: JUN 06 2017



Lynn M. Retz
Secretary to the Commission

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JUN 06 2017

⁴² K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

17-SFLT-283-ACQ

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on JUN 06 2017.

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