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**State of Vermont
Public Utility Commission**

MEMORANDUM

To: Parties in PUC Case Number 18-3231-PET - Petition of the Vermont Department of Public Service for an investigation into the service quality provided by Telephone Operating Company of Vermont, Inc., d/b/a Consolidated Communications, Inc.

From: Judith C. Whitney, Clerk of the Commission *jcw*

Re: Technical Correction

Date: January 22, 2020

On January 13, 2020, the Public Utility Commission issued an order in this case. For consistency with previous orders in this case, we are replacing two specific references on pages 6 and 13 of the order with more general references.

Attached is a corrected order with updated information.

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 18-3231-PET

Petition of the Vermont Department of Public Service for an investigation into the service quality provided by Telephone Operating Company of Vermont, Inc., d/b/a Consolidated Communications, Inc.	Hearings at Montpelier, Vermont
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Order entered: 01/13/2020

PRESENT: Anthony Z. Roisman, Chair
Margaret Cheney, Commissioner
Sarah Hofmann, Commissioner

APPEARANCES: Sarah L. J. Aceves, Esq.
James Porter, Esq.
Vermont Department of Public Service

Debra L. Bouffard, Esq.
Sheehey Furlong & Behm
for Consolidated Communications, Inc.

ORDER RE: INVESTIGATION INTO SERVICE QUALITY

I. INTRODUCTION

In this Order, the Vermont Public Utility Commission (“Commission”) concludes its investigation, pursuant to 30 V.S.A. § 30, into the compliance of Telephone Operating Company of Vermont, Inc., doing business as Consolidated Communications, Inc. (“Consolidated”) with service quality standards for retail customers of telecommunications services. The Commission has determined to impose a penalty in the amount of \$120,000 or, in lieu of a penalty paid into the general fund, a commitment to invest \$150,000 in plant upgrades in rural areas in 2020.

II. PROCEDURAL HISTORY

On June 26, 2017, in Case No. 8881, the Commission approved the merger of Consolidated and FairPoint.¹ As part of that approval, Consolidated was required to follow the service quality metrics identified in Dockets 5903 and 8701.²

¹ In this Order, “FairPoint” refers to, collectively, 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.

² *Joint Petition of Consolidated Communications Holding, Inc.*, Case No. 8881, Order of 6/26/17 at 35.

On September 19, 2018, the Department of Public Service (“Department”) filed a petition with the Commission requesting that the Commission open an investigation into Consolidated’s failure to meet certain of the service quality standards that Consolidated assumed in Case No. 8881.

On September 26, 2018, the Commission issued an order opening this investigation into Consolidated’s compliance with service quality standards.

On October 11, 2018, the Commission held a scheduling conference in this matter.

On October 29, 2018, the Commission issued an order setting the schedule for this proceeding.

On November 26, 2018, and December 4, 2018, the Commission held public hearings in this matter.

On January 30, 2019, Consolidated filed a motion for approval of a protective agreement with the Commission.

On February 8, 2019, the Department filed a response to the January 30 motion.

On February 21, 2019, the Commission issued an order approving the protective agreement.

On February 22, 2019, the Department filed a motion to modify the schedule in the case.

On February 27, 2019, the Commission issued an order modifying the schedule for the case.

On March 26, 2019, the Department filed a motion requesting further modification of the schedule in the case.

On March 27, 2019, the Commission issued an order further modifying the schedule in the case.

On April 9, 2019, the Department filed a motion requesting further modification of the schedule in the case.

On April 12, 2019, the Commission issued an order further modifying the schedule in the case.

On April 25, 2019, Consolidated filed a motion for approval of a protective order.

On April 29, 2019, the Department filed a response to the April 25 motion.

On May 16, 2019, the Commission held a status conference in the case.

On May 23, 2019, Consolidated filed a motion to exclude certain testimony from the case.

On May 30, 2019, the Department filed a proposed procedural schedule for the remainder of the proceeding.

On June 6, 2019, the Department filed a response to Consolidated's May 23 motion.

On June 6, 2019, the Commission issued an order approving the proposed procedural schedule.

On June 6, 2019, the Commission issued an order granting in part and denying in part Consolidated's April 25 motion for approval of protective agreement.

On June 12, 2019, Consolidated filed a second motion seeking a protective order.

On June 19, 2019, Consolidated filed a reply to the Department's June 6 response.

On June 26, 2019, the Department filed a response to Consolidated's June 12 motion.

On June 26, 2019, Consolidated filed a supplemental motion renewing its request for a protective order.

On June 28, 2019, the Department filed a response to Consolidated's June 26 motion.

On July 10, 2019, the Commission issued an order denying Consolidated's May 23 motion.

On August 22, 2019, the Commission issued an order granting in part Consolidated's June 26 motion.

On October 7, 2019, Consolidated filed a motion requesting that the hearing in this case be postponed and that mediation be ordered.

On October 8, 2019, the Department filed a response to the October 7 motion.

On October 9, 2019, the Commission issued an order denying Consolidated's October 7 motion.

On October 11, 2019, the Commission held an evidentiary hearing in the case.

On October 23, 2019, the Department filed a correction to testimony provided by Carol Flint at the evidentiary hearing and attached Consolidated's service quality reports for the second and third quarters of 2019 as exhibits.

On November 1, 2019, both Consolidated and the Department filed initial briefs.

On November 22, 2019, both Consolidated and the Department filed reply briefs.

On December 3, 2019, Consolidated filed a motion for leave to file a surreply.

On December 4, 2019, the Department filed a response to Consolidated's December 3 motion. The Department states that it does not oppose the motion. Because there is no opposition to the motion and we find the surreply helpful in clarifying the issues in this case, we grant Consolidated's motion for leave to file its surreply.

The prefiled testimony and exhibits were admitted as a group at the evidentiary hearing as Commission Exhibit 1. We also admit exhibits 1 and 2 to the Department's transcript correction filed on October 23, 2019, which are Consolidated's publicly available service quality reports. In doing so, we have interpreted Consolidated's reference to these exhibits in footnote 1 of its Initial Brief and Proposed Findings and Conclusions as an objection to their admission, which is overruled.³

III. PUBLIC HEARING AND COMMENTS

The Commission conducted two public hearings in this case, one in Readsboro and one in St. Albans, Vermont. Eleven members of the public spoke at the hearing in Readsboro and two members of the public spoke at the hearing in St. Albans. The Commission has also received 33 written comments from members of the public.

The main issues described in the public comments focus on Consolidated's poor quality of service, unreliable service, persistent service outages, long and unpredictable repair times for outages, deteriorating plant, and poor customer service. These issues are addressed below.

IV. FINDINGS

Based upon the record in this proceeding, the Commission hereby makes the following findings of fact.

1. Consolidated is subject to the service quality metrics established in Docket No. 5903.⁴ Under the Docket 5903 requirements, a carrier's service quality is measured against a Baseline standard and an Action Level standard, with the Baseline standard representing the minimum service quality expected from the carrier. Purvis pf. at 3; Flint pf. at 4-5; Shultz pf. at 13.

³ Consolidated Communications' Initial Brief and Proposed Findings and Conclusions, filed 11/1/19, at 2 n.1.

⁴ *Investigation into Service Quality Standards*, Docket No. 5903, Order issued July 2, 1999.

2. One of the metrics included in Docket 5903, troubles cleared within 24 hours (“TC24”), requires service providers to repair service problems within 24 hours from when the customer reports the problem to the carrier. The TC24 metric is calculated separately for residential and business customers. Docket 5903, Attachment 1 at 8-9.

3. The Baseline standard for the TC24 metric is 70%, with an Action Level standard of 60%. Service quality performance reports for Consolidated show the annual rolling average for the TC24 metric at the end of 2016 at 61%, declining to 46% at the end of 2017 and falling to 26% at the end of 2018. Flint pf. at 8-9.

4. Pursuant to Docket 5903 requirements, companies must submit an action plan to address performance that falls below the Action Level standard. In the event companies required to make an action plan fail to bring their service quality performance up to a Baseline standard in a certain year, they are subject to penalties pursuant to 30 V.S.A. § 30. Flint pf. at 2.

5. Consolidated began reporting under the Docket 5903 requirements in the third quarter of 2017. Consolidated did not achieve the Action Level for the residential TC24 metric in any quarter between when it began reporting the third quarter of 2017 and the first quarter of 2019. Flint pf. at 8-9.

6. Consolidated met the Baseline Level for the residential TC24 metric for the second quarter of 2019, but was again below the Baseline Level in September of 2019. Tr. 10/11/19 at 109-110 (Flint); Tr. 10/11/19 at 10-11 (Shultz); exh. 2 to the Department’s 10/23/19 transcript correction.

7. Consolidated’s annual rolling average for the residential TC24 metric for the 12-month period beginning with the third quarter of 2017 is approximately 30%. Consolidated’s annual rolling average for the residential TC24 metric for the 12-month period beginning with the third quarter of 2018 is approximately 35%. Flint pf. at 8-9; exh. 1 to the Department’s 10/23/19 transcript correction.

8. Consolidated’s poor performance under the residential TC24 metric is due to inadequate staffing, failure to make sufficient plant upgrades, failure to conduct due diligence prior to its purchase of the company, and weather-related events. Goldstein and Keener pf.; Goldstein and Keener reb. pf. at 7-8.

9. The TC24 metric ensures that residential customers receive reasonable service quality, particularly for those customers that live in rural areas without access to alternative service. A service outage for over 24 hours can represent a serious hardship and can be life-threatening in some cases. Goldstein and Keener reb. pf. at 3-4.

10. Alternatives to Consolidated's wireline voice service reach only 74% of addresses in Vermont, leaving 26% of addresses with no viable alternative to Consolidated's basic local exchange service. Goldstein and Keener reb. pf. at 4.

11. In the case of a service outage, Consolidated issues bill credits only to customers who have requested the credit. In the study period from July 3, 2017, to December 31, 2018, only a fraction of customers eligible for an out-of-service credit received a credit. Tr. 10/11/19 at 28-29 (Shultz); Goldstein and Keener pf. at 4-5, 38-39.

12. Consolidated has the capability to recognize outages at the neighborhood and street level in some cases. Tr. 10/11/19 at 30-31 (Waggoner).

13. Consolidated has undertaken some efforts to address its poor performance under the TC24 metric. These efforts include hiring additional technicians, structural and operational improvements, and improvements to its plant. Waggoner pf. at 5-9; Whitlock pf. at 6-7; Schultz pf. at 6-7.

14. Consolidated's investments and network improvements have yet to manifest. The service quality benefits for rural customers, especially those relying on over 30-year-old loop plant, are less certain. Goldstein and Keener reb. pf. at 2.

V. LEGAL STANDARDS

Pursuant to the stipulation adopted in Docket No. 5903, a company is subject to penalties when it triggers the Action Level for a particular metric and the company's 12-month average performance for that given metric is below the Baseline Standard. Specifically, Docket 5903 provides that:

Companies subject to the standards set forth in Exhibit 1 shall be measured against the Baseline Standards on an annual basis. The Parties further agree that if a provider triggers the Action Level Report in any quarter or in any 5 or more months in a calendar year, the provider must provide the [Commission] with a full explanation for the failure in addition to a plan and timetable for correcting the problem giving rise to the failure. A carrier required to make an Action Level Report will not be subject to the provisions of 30 V.S.A. § 30 for the

circumstances giving rise to the Action Level Report if it is able to bring its calendar-year performance up to the Baseline Standard for the year.⁵

The Commission subsequently concluded that the standards described in the Stipulation should be measured on a twelve-month rolling average rather than a calendar year.⁶ Further, the order provides that “[a]ny penalties assessed for failure to meet the Baseline Standards as described in Exhibit 1 will be assessed in accordance with 30 V.S.A. § 30.”⁷

Pursuant to Section 30, a company subject to the Commission’s supervision that “fails within a reasonable time to obey a final order or decree of the Commission, or who violates . . . a rule of the Commission, shall be required to pay a civil penalty . . . after notice and opportunity for hearing.”⁸ Penalties imposed under Section 30 are paid into the State’s general fund.⁹ In determining the amount of the fine imposed under Section 30, “the Commission may consider any of the following factors”:

(1) the extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers;

(2) whether the respondent knew or had reason to know the violation existed and whether the violation was intentional;

(3) the economic benefit, if any, that could have been anticipated from an intentional or knowing violation;

(4) the length of time that the violation existed;

(5) the deterrent effect of the penalty;

(6) the economic resources of the respondent;

(7) the respondent’s record of compliance; and

(8) any other aggravating or mitigating circumstance.¹⁰

After considering the factors above, the Commission may impose a penalty of up to \$40,000 for each violation under Section 30. Continuing violations may receive additional fines

⁵ Docket 5903 Final Order, Attachment 1, Service Quality Stipulation, ¶ 7.

⁶ Docket 5903 Final Order at 87.

⁷ Docket 5903 Final Order, Attachment 1, Service Quality Stipulation, ¶ 8.

⁸ 30 V.S.A. § 30(a), (b).

⁹ *Joint Petition of Green Mountain Power Corporation et al.*, Docket No. 7628, Order of 8/2/13 at 3.

¹⁰ 30 V.S.A. § 30(b).

of \$10,000 per day, not to exceed \$100,000 for each violation or one-tenth of the company's Vermont revenues whichever is less.

Commission Rule 7.609(C) provides, in part: “[c]arriers shall provide customers with a credit allowance for service interruptions lasting more than twenty-four hours. The credit will be provided to customers who contact the carrier reporting the outage and *also to customers that the carrier knows are affected by the outage.*”¹¹

VI. DISCUSSION

A. Positions of the Parties

Department

With respect to Consolidated's failure to achieve the Baseline standard for the TC24 metric, the Department recommends that the Commission require Consolidated to provide customers residing in high-cost exchange areas with automatic bill credits of five dollars per day for troubles not cleared within 24 hours. According to the Department, imposing an automatic five-dollar credit will increase the incentive for Consolidated to implement more effective remedial measures targeting the TC24 metric. The Department explains that existing regulatory requirements, such as the Docket 5903 service quality metrics and network capital investments required as a condition of the Commission's merger approval in Docket 8881, have not been enough to ensure that Consolidated provides an adequate quality of service to all of its service areas, particularly those with no competitive voice alternatives to Consolidated's service.

Consolidated

Consolidated maintains that its efforts to improve its performance under the service quality metrics have been effective and disagrees that the Department's proposed five-dollar credit is needed for Consolidated to further improve service quality performance. Instead, Consolidated continues, the Department's proposed credit will only make rural service areas more expensive than they already are to serve. Regardless of whether the proposed credit would be effective, Consolidated argues that the Department's proposal is impermissible under 30 V.S.A. § 30 because it applies prospectively and penalizes future potential violations of the service quality standards. Consolidated also argues that the Department's proposed credit

¹¹ Rule 7.609(C) (emphasis added).

effectively amends the credit formula included in Commission Rule 7.609(c), which would require a formal rulemaking proceeding or an alternative measure such as modifying Consolidated's incentive regulation plan or the Docket 5903 service quality standards. In lieu of the Department's proposal, Consolidated has offered to make a \$25,000 investment in plant improvements in a rural area that has experienced higher trouble incidents, conditioned on the Commission not imposing an additional penalty under 30 V.S.A. § 30 paid into the State general fund.

B. The Proposed Credit Penalty

The Department's proposed five-dollar credit does not fall within the Commission's penalty authority under Section 30. As discussed below, we have concluded that Consolidated violated both Rule 7.609(C) and the service quality standards established in the Commission's order in Docket 5903. While Section 30 permits us to impose a penalty for those violations, any penalty under Section 30 must be paid into the State's general fund. The Department's proposed five-dollar credit would not be paid into the general fund, but would instead be paid to Consolidated's customers.

We acknowledge that returning penalty payments to individuals that suffer prolonged outages in their telephone service is an intuitive remedy for Consolidated's repair delays. The penalties available under Section 30, however, are limited. The Department's proposed credit would penalize Consolidated every time it failed to meet the TC24 metric for any of its customers and would apply without any opportunity for a hearing. The TC24 metric has a 70% Baseline performance standard, meaning that Consolidated can take longer than 24 hours to clear up to 30% of its out-of-service trouble tickets without violating the metric. An automatic five-dollar credit would penalize Consolidated even if it were meeting the Baseline standard.

Although we conclude that we lack authority to implement the Department's proposed credit under Section 30, other remedies are available. The Department's proposed credit could, for example, be imposed as part of Consolidated's incentive regulation plan, which is up for renewal. As discussed below, we conclude that Consolidated has violated both a Commission rule and order and has now had a hearing. This allows for the imposition of conventional Section 30 penalties.

C. Consolidated's Violations

Consolidated does not dispute that it failed to meet the TC24 metric in 2017 and 2018.¹² As the evidence in the record shows, Consolidated did not meet the 60% Action Level for the TC24 metric for seven consecutive quarters, from the third quarter of 2017 through the first quarter of 2019. Although Consolidated met the 70% Baseline requirement for the second quarter of 2019, Consolidated fell back below the Baseline and the Action Level in the third quarter, supporting the conclusion that Consolidated had not actually fixed the underlying problems. Consolidated's rolling average for the entire 27-month period from the third quarter of 2017 through the third quarter of 2019 is below the Baseline performance requirements and the Action Level.¹³ Accordingly, penalties under Section 30 are warranted.

The next question is how many separate violations Consolidated has incurred for its failure to meet the TC24 metric over a two-year period. No party has argued for more than two violations. On one reading of the TC24 metric, there are only two violations—one for each 12 months of violations—since the applicable standard refers to measurements “on an *annual* basis,”¹⁴ which we interpret as a twelve-month rolling average.¹⁵ That said, the TC24 metric also refers to quarterly measurements. This implies that each quarter in which Consolidated fails to meet the TC24 metric is a separate violation if it is not corrected through the rolling average incorporating the 9 months immediately following that quarter. Thus, when Consolidated has failed to bring its performance up to the Baseline Standard, we arguably have authority to impose a separate penalty for each quarter in which Consolidated failed to meet the standard. Here, that could mean seven or more separate violations, each of which would be subject to a penalty of up to \$40,000. While Consolidated is now on notice that this may be how we interpret the TC24 metric in future proceedings, no party has argued for more than two TC24 violations here and we therefore determine not to address whether more violations occurred.

We have assessed Consolidated's violations on two separate rolling 12-month periods. The first 12-month period begins with Consolidated's failure to meet the Action Level requirements in the third quarter of 2017. The second 12-month period begins with

¹² Consolidated initial brief at 28.

¹³ See Finding 7; exh. 2 to the Department's 10/23/19 transcript correction.

¹⁴ Docket 5903 Final Order, Attachment 1, Service Quality Stipulation, ¶ 7 (emphasis added).

¹⁵ Docket 5903 Final Order at 87.

Consolidated's failure to meet the Action Level requirements in the third quarter of 2018. We note that Consolidated has failed to meet the Action Level requirements for the third quarter of 2019, triggering a third 12-month period in which Consolidated must improve its annual average TC24 performance to Baseline levels to comply with its Docket 5903 obligations or be subject to additional penalties under Section 30.

In assessing the penalty, we consider the relevant factors listed under Section 30(c) in determining the appropriate amount of the penalty.

- *§ 30(c)(1): The extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers.* The service outages have the potential to cause harm to public safety and welfare. Although there is no direct evidence in this case that shows any specific harm resulted from the outages, public safety concerns were raised repeatedly by Consolidated customers during this proceeding. And there can be no dispute that Consolidated's slow repair times harm the reliability of Consolidated's service and the interests of its customers.
- *§ 30(c)(2): Whether the respondent knew or had reason to know the violation existed and whether the violation was intentional.* Although there is no evidence that Consolidated's failure to meet the metric was intentional, Consolidated knew that it was not meeting its service quality obligations and filed quarterly reports stating as much.
- *§ 30(c)(3): The economic benefit, if any, that could have been anticipated from an intentional or knowing violation.* There is no evidence of the degree to which Consolidated's violation of its service quality obligations were economically beneficial to Consolidated. However, one of the primary causes of Consolidated's failure—inadequate staffing—would likely have resulted in cost savings by reducing Consolidated's salary and contractor expenses.
- *§ 30(c)(4): The length of time that the violation existed, and § 30(c)(7): Consolidated's record of compliance.* Consolidated failed to achieve Action Level performance requirements for the TC24 metric for seven consecutive quarters and achieved the Baseline Level of performance for only one quarter out of the nine quarters that Consolidated has been reporting.

- *§ 30(c)(5): The deterrent effect of the penalty.* A penalty will have some deterrent effect, although the level of that effect was not addressed by the parties. We note that penalty amounts set in Section 30 do not appear to have been adjusted for inflation and are therefore capped at a level that may be too low to have a significant deterrent effect.
- *§ 30(c)(8): Any other aggravating or mitigating circumstance.* As a mitigating factor, Consolidated has attempted to improve its poor performance through measures including implementing changes throughout its organization to address the problem. As an aggravating factor, Consolidated's performance during most of this time period came nowhere near meeting the TC24 metric and therefore impacted many customers, strongly suggesting that Consolidated's efforts to address the underlying problems were inadequate.¹⁶

Based on these factors, and primarily the risk to public safety and welfare and the continuing nature of Consolidated's failure to meet the TC24 metric over an extended period of time, we conclude that a monetary sanction of \$40,000—the maximum amount allowed under the most restrictive reading of Section 30—is appropriate for each of the 12-month periods in which Consolidated has failed to achieve its average Baseline performance for the TC24 metric. We also conclude that Consolidated's proposed \$25,000 investment in plant upgrades is inadequate.¹⁷ That level of investment would not address the scope of Consolidated's violations or the impact of those violations on Consolidated's customers, even though it may have a more direct benefit to those customers. We therefore impose a total of \$80,000 in penalties for Consolidated's failure to achieve the average Baseline performance for the TC24 metric for two consecutive rolling 12-month periods.

In addition to Consolidated's failure to satisfy the TC24 metric, we also find that Consolidated has violated the Commission's rules regarding bill credits. Commission Rule 7.609(C) is intended to protect consumers by ensuring that they do not pay for telephone services they have not received. The Rule specifically requires providers to issue a bill credit where the provider knew the customer was without service. The Commission explained to Consolidated's

¹⁶ For instance, its performance in the third and fourth quarters of 2018 was 19% and 20%. Flint pf. at 9.

¹⁷ The Commission has previously accepted stipulated offers as alternatives to penalty payments under Section 30. See *Investigation pursuant to 30 V.S.A. §§ 30 and 209 regarding the alleged taking of harsh sunflower plants*, Case No. 8791, Order of 5/25/17 at 14. This, however, is not a stipulation, but rather a unilateral offer.

predecessor, FairPoint, that the rule “contemplates that there will be instances in which a repair is required or when a credit may be due but the customer never called the Company to report the outage or did not specifically request a credit.”¹⁸ Consolidated’s practice of issuing bill credits only to customers that request a credit contravenes the spirit and the plain language of the Rule and is therefore clearly in violation of the Rule. In determining the amount of the penalty for this violation under Section 30, we again look to the factors listed under Section 30(c).

- *§ 30(c)(1): The extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or the other interests of utility customers.* Consolidated’s failure to issue required credits resulted in direct harm to the welfare of those customers that did not receive the credits to which they were entitled.
- *§ 30(c)(2): Whether the respondent knew or had reason to know the violation existed and whether the violation was intentional.* Consolidated withheld issuing credits to customers that it knew or should have known had experienced service outages. Using Consolidated’s data, the consultants that analyzed Consolidated’s performance on behalf of the Department were able to determine the number of customers that were eligible for credits due to outages but did not receive one.¹⁹ Consolidated could have performed the same analysis.
- *§ 30(c)(3): The economic benefit, if any, that could have been anticipated from an intentional or knowing violation.* The violation resulted in an economic benefit to Consolidated by reducing the amount of credits that it issued. According to the Department’s consultants, only a fraction of customers entitled to receive a credit received a credit during the study period. If the average refund amount owed to the customers that did not receive refunds is the same, and assuming those customers were known or knowable, Consolidated saved a substantial amount of money.
- *§ 30(c)(4): The length of time that the violation existed, and § 30(c)(7): Consolidated’s record of compliance.* Consolidated appears to have limited bill credits to customers who

¹⁸ *Petition of Telephone Operating Company of Vermont LLC, doing business as FairPoint Communications to open a proceeding investigating Docket No. 5903 service quality reporting requirements, Docket No. 8701, Order of 6/2/17 at 7-8.*

¹⁹ Goldstein and Keener pf. at 39.

specifically request them for the entire study period in this proceeding, which began shortly after the Commission approved Consolidated's acquisition of FairPoint in 2017.

- *§ 30(c)(5): The deterrent effect of the penalty.* Even at the maximum amount, a penalty will have limited deterrent effect because the penalty is less than the benefit to Consolidated.
- *§ 30(c)(8): Any other aggravating or mitigating circumstance.* As a mitigating factor, Consolidated states that it empowers its customer service agents to satisfy customers who call in about outages with refund amounts that can exceed the credit amounts required by Commission Rule 7.609(C).

Based on our consideration of the Section 30 factors, including the extended period of time over which this violation occurred and the estimated credit amounts that Consolidated has not paid to eligible customers, we again find that a penalty of \$40,000 to be paid into the general fund is appropriate for Consolidated's violation of our Rule governing bill credits.

Under Section 30, we therefore impose a total penalty of \$120,000 for Consolidated's violations. We further note that Consolidated has offered to invest in system upgrades in lieu of penalties under Section 30, although in an amount far below what we conclude is adequate. We recognize that adequate plant upgrades could actually improve service to customers in rural areas that have been affected by Consolidated's poor performance under the TC24 metric. Accordingly, we offer Consolidated the option of investing \$150,000 in plant upgrades in rural areas in lieu of the penalties discussed above. We welcome efforts to improve the service quality that Consolidated provides to its customers. It is our hope that these investments, along with the other improvements that Consolidated has made and continues to make to its operations, will result in improved service to Consolidated customers, especially those customers in rural areas.

VII. ORDER

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

1. Telephone Operating Company of Vermont, Inc., d/b/a Consolidated Communications, Inc. ("Consolidated") is ordered to pay \$120,000 into the general fund of the State of Vermont within 30 days of the date of this order, or it may set aside \$150,000 in addition


to other planned Vermont outside plant improvements and direct those funds to be used for plant improvements in 2020 in a rural area of the state that has experienced a high number of reported troubles.

2. If Consolidated opts to pay \$120,000 into the general fund, it shall make payment in full settlement of this investigation by sending to the Commission at 112 State Street, Montpelier, VT 05620-2701, a check in that amount made payable to the State of Vermont within 30 days of the date of this Order. The Clerk of the Commission shall deliver the check for deposit into the State of Vermont general fund.

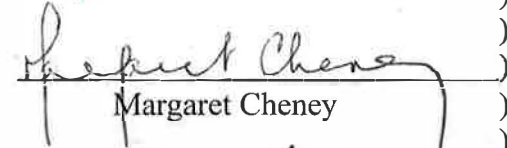
3. If Consolidated opts to invest \$150,000 in outside plant improvements in 2020, then before beginning the additional plant improvements, Consolidated shall submit a plan describing the proposed improvements to the Department of Public Service for review, with a copy to the Commission. The Department of Public Service shall have four weeks to provide comments to Consolidated on its proposal, with a copy of any comments to the Commission. If there is any dispute over the proposed improvements, either party may bring that dispute to the Commission. In the first quarter of 2021, Consolidated shall make a written report to the Department of Public Service, with a copy to the Commission, detailing the plant improvements that were installed.

4. In the first quarter of 2021, Consolidated shall make a written report to the Department of Public Service, with a copy to the Commission, explaining all efforts that Consolidated has made to ensure that it provides credits to all customers who, after the date of this Order, are known by Consolidated to have been impacted by outages, regardless of whether the customer requested a credit.

Dated at Montpelier, Vermont, this 13th day of January, 2020.


Anthony Z. Roisman)

PUBLIC UTILITY


Margaret Cheney)

COMMISSION


Sarah Hofmann)

OF VERMONT

OFFICE OF THE CLERK

Filed: January 13, 2020

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)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 18-3231-PET - SERVICE LIST

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