STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. ___________

Petition of Consolidated Communications of Vermont Company, LLC and Consolidated Communications of Northland Company (both d/b/a "Consolidated Communications") for approval of a Successor (2022-2024) Incentive Regulation Plan, pursuant to 30 V.S.A. § 226b	

PREFILED TESTIMONY OF

SARAH DAVIS

ON BEHALF OF CONSOLIDATED COMMUNICATIONS

October 1, 2021

SUMMARY OF TESTIMONY

Witness Sarah Davis describes current market conditions and why these conditions in general terms justify the proposed 2022-2024 Vermont Incentive Regulation Plan. She also describes the terms of the proposed plan. Finally, she explains how it differs from the currently-effective 2016-2022 Incentive Regulation Plan, and how the proposed plan meets the criteria of 30 V.S.A. § 226b(c).

**PREFILED TESTIMONY OF
SARAH DAVIS
ON BEHALF OF CONSOLIDATED COMMUNICATIONS**

I. INTRODUCTION

Q1. Please state your name, position, and business address.

A1. My name is Sarah Davis, I am Senior Director of Government Affairs at Consolidated Communications. My business address is 5 Davis Farm Rd., Portland, ME 04103.

Q2. Please describe your experience in the telecommunications industry and your educational background.

A2. I have a BA from Clark University and a JD from University of Maine School of Law. I have 13 years' experience in the telecommunications industry. I have handled a wide variety of telecommunications regulatory issues in Consolidated's territory as well as for its predecessor FairPoint. I have written and successfully lobbied major deregulation legislation in competitive markets in Maine and assisted on implementing regulatory changes in New Hampshire. I have first-hand experience with the changes in the regulatory landscape and traditional support mechanisms for universal service.

Q3. Have you previously testified before the Vermont Public Utility Commission ("Commission")?

A3. Yes, most recently I testified in Case No. 18-1543-PET, which involved the Petition of Vanu Coverage Co. for (a) an ex parte emergency order directing Consolidated Communications Holding Company, Inc. to immediately restore service to all of Petitioner's Vermont microcell sites; and (b) issuance of preliminary and permanent injunctions precluding Consolidated Communications Holding Company, Inc. from discontinuing service to Petitioner's sites absent an order of the Commission.

Q4. What is the purpose of your testimony?

A4. In my testimony, I briefly describe current market conditions and why those conditions in general terms justify the proposed 2022-2024 Vermont Incentive Regulation Plan ("Proposed Plan" or "Proposed IRP")) of Consolidated Communications, Inc's Vermont operating entities (Consolidated Communications of Vermont Company, LLC ("CCVC") and Consolidated Communications of Northland Company ("CCNC") (both d/b/a "Consolidated Communications"). Secondly, I describe the Proposed Plan and how it differs from the 2016-2022 Incentive Regulation Plan ("Current Plan") that expires on July 31, 2022. Finally, I explain how the Proposed Plan meets the criteria of 30 V.S.A. § 226b(c) for incentive regulation plans ("IRP").

Q5. Please summarize why the Proposed Plan should be approved by the Commission.

A5. The Commission should approve the proposed IRP because it promotes the general good of the State of Vermont. The changes to the plan represent a careful balance between ensuring that Vermont end users have necessary voice service to access the public switched telephone network including emergency services, while recognizing that the telecommunications market has changed significantly just in the last few years. The Proposed Plan acknowledges that there are no longer monopolies in the telecommunications industry and that the market is working in large portions of Vermont. In those areas, rate and service quality regulation is not only no longer necessary but it is harmful.

Q6. Please explain what you mean when you say existing regulation is harmful.

A6. Traditional utility regulation is meant for monopolies, however, monopolies no longer exist in the telecommunications market nationally or in Vermont.[1] Diverse and robust competition have eroded the regulatory bargain. Companies such as Consolidated no longer experience the implicit subsidies that previously existed, such as more densely populated areas subsidizing the rural areas and business customers subsidizing the residential customers. The more densely populated areas experience stiff competition from cable companies, CLEC's, other internet service providers ("ISPs"), VoIP providers, wireless providers, and Communications Union Districts ("CUDs"). Business services are highly competitive in all areas due to the higher revenues they generate. These market changes cause rural residential customers to have to shoulder more of the costs of the network that provides their voice service than previously when some of those costs were defrayed by others. Existing regulation also mandates service quality that is no longer economically feasible. Fewer customers, on the same extensive network that once generated significantly more revenue results in less money available to pay employees to maintain the same number of miles of network. Customers are spaced further apart and therefore take longer to repair. Couple this with the shift in universal service support mechanisms away from supporting universal telephone service to support for building broadband networks and the

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[1] https://www.fcc.gov/voice-telephone-services-report. See State Level Providers Vermont tab, there are 111 non-ILEC providers in Vermont reporting voice subscriptions. See also the State Level Subscriptions, Vermont tab, there are nearly four times as many mobile subscriptions as ILEC subscriptions and nearly as many VoIP subscriptions as there are ILEC subscriptions.

result is a regulatory mandate that is not aligned with the support mechanisms and therefore no financial underpinnings to support the mandate.

Q7. How does the Proposed IRP better protect Consolidated and its customers?

A7. The IRP is the vehicle to make changes to regulation that are more appropriate in the changing telecommunications market and more consistent with state universal service priorities. The proposed changes to Consolidated's Current IRP represent light touch regulation, which offers protections to customers that do not currently have a competitive wireline market to ensure rates and service quality while allowing market conditions to regulate in areas where there is competition.

II. MARKET CONDITIONS

Q8. Please describe the changes in market conditions since the Current Plan was approved.

A8. The telecommunications market in Vermont will be addressed in more detail by Altman Solon. However, the summary conclusion is that the Vermont telecommunications market is competitive in many areas of the state. Consumers in more densely populated areas have many choices of competitors. These choices allow the market to function as an appropriate backstop with respect to rates and quality of service. As a result, consumers do not require the protection regulation affords, because they have options and can make their own choices.

In addition to the pressure of intense competition in densely populated areas, competitors are being subsidized in rural areas through universal service programs such as the FCC's Rural Digital Opportunities Fund ("RDOF") and the Vermont Connectivity Initiative, as well as other state and federal programs that provide grants to telecommunications providers to build broadband networks. The Covid Relief money and the American Recovery Plan Act ("ARPA") are two recent examples. The result is consumer choice throughout much of the state.

Additionally, through recently enacted legislation, the telecommunications policy in the State of Vermont has changed to one that focuses on communications union districts and expansion of telecommunications networks through those entities as opposed to reliance on providers to support the State's telecommunications infrastructure.[2] Vermont Act 71, enacted in 2021, establishes the Vermont Community Broadband Board to oversee and manage the newly created Vermont Community Broadband Fund. This legislation will distribute $150 million of the stimulus money received by the State of Vermont from ARPA. One of the Vermont General Assembly findings to support this legislation states that, "The goal of universal broadband needs to be elevated as a top priority of the State to meet the economic, health, safety, educational, and social needs of Vermonters."

III. DESCRIPTION OF THE PROPOSED PLAN

Q9. Please describe the Proposed Plan and how it differs from the Current Plan.

A9. The Proposed Plan is provided in **Exhibit CC-SD-1**. A redlined version comparing the Proposed Plan to the Current Plan is provided in **Exhibit CC-SD-2**. Consolidated

[2] The purpose of this new legislation is stated as follows: "In recognition of the historic level of broadband funding currently available to the State and the critical need for broadband access and adoption, it is the purpose of this chapter to establish the Vermont Community Broadband Fund to support policies and programs designed to accelerate community efforts that advance the State's goal of achieving universal access to reliable, high-quality, affordable, fixed broadband and to establish the Vermont Community Broadband Board to coordinate, facilitate, support, and accelerate the development and implementation of universal community broadband solutions." 30 V.S.A. § 8081.

Communications' Proposed Plan tracks to the current plan with four substantive changes to the IRP:

1. The Proposed Plan would eliminate rate regulation for basic business service in Vermont;
2. The Proposed Plan would eliminate regulation of residential voice service in areas (municipalities) where there is broadband sufficient to allow for a voice alternative to over 97% of the locations in the area, as well as a cable or fiber competitor available to over 91% of the locations in the municipality;
3. The Proposed Plan would eliminate rate regulation on "bundled services" in all areas of the state thereby keeping regulation limited to only a "basic service," which acts as a backstop to ensure customers in non-competitive areas have a rate regulated option to access the public switched telephone network;[3] and
4. The Proposed Plan would change the metric for troubles not cleared residential from a 24 hour period to a 48 hour period, increase the Baseline Level to 80% and the Action Level to 70%, and eliminate the measurement of troubles not cleared for business.

[3] In the Current Plan it is not clear that the regulated service was limited to only the basic telephone service unbundled from other offerings, although that is how Consolidated understood the previous plan. For avoidance of any doubt, Consolidated is making this clarification.

Q10. What is the term of the Proposed Plan and how does it differ from the Current Plan?

A10. The term of the Proposed Plan is August 1, 2022 through July 31, 2024, which is shorter than the term of the Current Plan. There is a renewal option in the Proposed Plan, consistent with the Current Plan.

Q11. Why has Consolidated proposed a shorter plan?

A11. The speed at which the telecommunications market is changing as well as the Vermont State policy with respect to funding CUDs seems to necessitate more frequent reviews and revisions.[4]

Q12. Please describe why Consolidated is proposing elimination of rate regulation on business services.

A12. Business services are fully competitive. There are a substantial number of providers that provide business services due to the typically higher revenues associated with business service. Due to the competitive nature of these business services, Consolidated proposes they be removed from rate regulation in order to ensure Consolidated can react to the competitive market as opposed to being hampered by strict rate regulation.

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[4] Consolidated Communications is already aware of 3 CUD's that have selected other providers to overbuild within the Consolidated footprint. These municipalities should be added to the list of competitive areas as that buildout commences.

Q13. Please describe Consolidated's proposal with respect to eliminating rate regulation in competitive areas.

A13. Consolidated proposes to eliminate regulation of residential voice service in areas where 1) there is broadband available at a speed of 4 Mbps download and 1 Mbps upload (4M/1M) to 97% of the locations in the municipality, and 2) where cable or fiber broadband service is available at 25 Mbps download 3 Mbps upload to at least 91% of the locations in the municipality, based on data produced by the Department of Public Service ("Department").

Consolidated defines these municipalities as "competitive areas" because of the alternatives available to customers in the municipalities.[5] With broadband service availability of at least 4M/1M the customers have voice alternatives. Voice service can be delivered via a VoIP solution with broadband service of at least 4M/1M and there are dozens of choices for over the top voice service available to consumers.[6] Utilizing a percentage of 97% is incredibly conservative and ensures that deregulation is limited to areas where robust competition exists.

Furthermore, the availability of 25M/3M service to at least 91% of the locations in a municipality ensures that there is a true fixed wireline competitor. The Department data on the availability of 25M/3M includes only cable and fiber, and therefore, represents competitive alternatives to Consolidated.[7] Where at least 91% of locations have a true wireline competitive

[5] Consolidated Communications has typically referenced its service areas by reference to the exchange, which can cover more than one municipality. However, for purposes of the Proposed Plan, Consolidated Communications chose to define competitive areas by reference to municipalities, rather than exchanges 1) in order to utilize the Department's data, which is municipality-based, and 2) because we expect it will be an easier reference from a consumer perspective.

[6] See https://www.fcc.gov/voice-telephone-services-report, as of June 30, 2019 there are 85 non-ILEC over the top interconnected VoIP providers reporting subscriptions in Vermont.

[7] Based on the timing of the most recent data (December 31, 2019), Consolidated did not have fiber available in any of the competitive municipalities. Consolidated does not provide cable service in Vermont.

alternative available, there is a fully competitive market, which will act to constrain Consolidated's rates in the entire municipality.

Q14. Under this approach how many municipalities in Vermont are considered competitive?

A14. Please see **Exhibit CC-SD-3** for a list of the municipalities considered competitive based on the above definition. There are 36 municipalities in the State that would be considered competitive. These are not surprisingly the largest and most densely populated areas of the State served by Consolidated.

Q15. How did Consolidated go about determining the list of 36 municipalities where full competition exists?

A15. Consolidated reviewed the Department of Public Service's data on broadband availability by town. Consolidated eliminated from the list any municipality which was not in its ILEC service territory. Then Consolidated eliminated any municipality that did not have at least 97% broadband availability at a level of 4M/1M. It then eliminated any municipality that did not have at least 91% availability of broadband (25M/3M). The result is the remaining 36 towns listed in Exhibit CC-SD-3. Those "competitive" towns were then removed from the list of all towns we serve to arrive at the list of "Non-competitive Municipalities" attached to the Proposed Plan.

Q16. Please describe why bundled services are excluded from the Proposed Plan.

A16. Bundled services are excluded in the Proposed Plan because they include an unregulated component bundled with the basic voice service. To the extent the consumer bundles a basic service with a broadband or a long distance package the customer is receiving a service that is not regulated by the Vermont Public Utility Commission and is subject to rate increase at any time. The customer is typically receiving discounts on certain services as a result of subscribing to multiple services, and therefore, has made choices and chosen to purchase additional services based on the rates for those services.

If the customer needs a low cost regulated option, that customer has a standalone BLES service available to him/her as a backstop to ensure that no consumer in a Non-competitive Municipality is left without access to the PSTN and emergency services.

In addition, regulating the basic service within a bundle creates a problem for Consolidated customers because when additional recovery is needed beyond the BLES cap amount, the company is forced to seek recovery through non-regulated services, which creates artificially high rates for non-regulated service, which in turn harms consumers that desire broadband services.

Q17. What are the Proposed Plan's service quality terms and how do these differ from the Current Plan?

A17. The Proposed Plan continues to require compliance with the service quality standards currently applicable to Consolidated Communications' Vermont operating entities providing residential service in all Non-competitive Municipalities. However, it modifies the troubles not cleared metric from a measurement of not cleared in 24 hours to a measurement of not cleared in 48 hours and changes the Baseline Level from 70% to 80% and Action Level from 60% to 70%, and removes business services from this measurement.

Q18. Why is Consolidated proposing these changes to the service quality metrics?

A18. Consolidated is proposing these changes because of the nature of the market in Vermont. In the competitive areas, service quality monitoring is no longer required because the competition will control service quality. If Consolidated is not meeting consumer expectations those consumers will select an alternative provider.

The change to cleared in 48 hours is necessitated by the removal of the more densely populated areas. Once you remove the densely populated areas, you are removing the opportunity to clear a substantial amount of troubles at once, as well as the opportunity to repair more troubles in a short period of time due to the proximity of the locations due to less travel time. In recognition of consumer concerns, Consolidated is proposing to increase the Baseline and Action Levels to ensure that while more time is provided, most customers are repaired within that timeframe.

Q19. Please describe any other changes from the Current Plan.

A19. All other changes from the Current Plan relate to provisions that are no longer relevant such as high cost support for loops, business services being above SGAT prices and FCC rate floor concerns. Once the plan begins, Consolidated will no longer receive traditional high-cost support. Consolidated will receive support through the Rural Digital Opportunity Fund

("RDOF"). The use of those funds is very specific and monitored by the FCC. Consolidated is no longer required to unbundle new voice grade loops. As of August 2, 2022, Consolidated will no longer be required to unbundle existing voice grade loops, therefore, this provision is no longer relevant. Finally, Consolidated is at or above the FCC rate floor in Vermont.

IV. SECTION 226b(c) CRITERIA

Q20. How does the Proposed Plan meet the requirements of 30 V.S.A. § 226b(c)?

A20. The Proposed Plan meets the Section 226b(c) criteria as detailed below:

a. The Proposed Plan promotes the general good of the State because the changes to the plan represent a careful balance between ensuring that Vermont end users have necessary voice service to access the public switched telephone network including emergency services, while recognizing that the telecommunications market has changed. It acknowledges that there are no longer monopolies in the telecommunications industry and that the market is working in large portions of Vermont. In those areas where competition is robust, rate and service quality regulation is not only no longer necessary but it is harmful.

b. The Proposed Plan is consistent with the state telecommunications purposes established under section 202c of this title because it maintains affordable rates for basic service and continues the service quality standards currently applicable to Consolidated Communication's Vermont operating entities pursuant to Docket 5903 with minor modifications in areas defined as Non-competitive.

c. The Proposed Plan is consistent with the June 2021 Vermont 10-Year Telecommunications Plan because it is consistent with the state of competition and expectations for network modernization and investment, allows for pricing flexibility, while providing a low cost basic service option to Vermont customers without a competition alternative.

d. The Proposed Plan is consistent with the public's interests relating to appropriate quality telecommunications services because it continues the currently-applicable incentives for provision of high quality service through the marketplace in competitive areas and through regulation of basic service in the Non-competitive Municipalities.

e. The Proposed Plan is consistent with the goal of protecting or promoting universal service because it ensures a rate capped voice service in areas of the state without a competitive alternative.

f. The Proposed Plan provides reasonable incentives for the creation of a modern telecommunications infrastructure and the appropriate implementation of new cost-effective technologies because, through reduced regulation, it allows Consolidated Communications to focus on further expanding its fiber footprint in Vermont, which will provide consumers the high quality broadband and voice infrastructure they desire while also allowing Consolidated to better compete in the marketplace.

g. The Proposed Plan reasonably supports economic development in the affected service territory by assuring Consolidated Communication's basic telecommunications service is available in Non-competitive Municipalities at just and reasonable rates, as well as enabling further fiber deployment which is important to continued economic development in this technological era.

h. The Proposed Plan adequately protects consumer privacy interests by requiring continued compliance with Commission privacy protections adopted in Docket 5903.

i. The Proposed Plan supports reasonable competition because it eliminates regulation in areas that are competitive allowing the market to perform as it should.

j. The Proposed Plan includes adequate safeguards to ensure that charges for noncompetitive services do not subsidize competitive services because the rate increases for BLES have been capped for all Non-competitive Municipalities in a manner consistent with the Current Plan.

k. The Proposed Plan is just and reasonable and does not produce unjust discrimination between users of the public switched network in the pricing, quality, or availability of the network functions or services offered as a result of the ceilings on BLES rates in Non-competitive Municipalities and the prohibition against deaveraging of BLES rates.

Q21. Does this conclude your testimony at this time?

A21. Yes.