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STATE OF VERMONT

PUBLIC UTILITY COMMISSION

Docket No. 21-4060-PET

Petition of Consolidated Communications of Vermont	)
Company, LLC and Consolidated Communications of	)
Northland Company for approval of a successor Incentive	)
Regulation Plan, pursuant to 30 V.S.A. § 226b	)

PREFILED DIRECT TESTIMONY OF
AUGUST ANKUM, PH.D.
ON BEHALF OF THE
DEPARTMENT OF PUBLIC SERVICE

January 21, 2022

Summary: Dr. Ankum addresses Consolidated's prefiled testimony on current market conditions and presents some of the Department's proposals for its proposed 2022-2025 Vermont Incentive Regulation Plan. Among other things, Dr. Ankum discusses and demonstrates the continued need for rate regulation of basic local exchange service in areas where competitive alternatives are not ubiquitous and explains why enhanced bill credits are the best means through which to protect captive customers and incentivize Consolidated to make timely service repairs. Dr. Ankum also presents the Department's proposed Incentive Regulation Plan, which is designed to best meet the needs of captive customers and the criteria of 30 V.S.A. § 226b(c).

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Dr. Ankum Sponsors the Following Exhibits:

Exhibit DPS-AA-1	Tier 1 Areas
Exhibit DPS-AA-2	Department Proposed IRP

I. INTRODUCTION

Q1. Please state your name and title.

A1. My name is August Ankum. I am a founding partner of QSI Consulting, Inc. ("QSI") and currently serve as its Chief Economist. My business address is 626 Avenue B, Trevose, Pennsylvania 19053.

Q2. Please describe QSI and its areas of expertise.

A2. QSI is a consulting firm specializing in regulatory and litigation support in regulated network industries, with a special emphasis in the telecommunications sector. QSI's primary areas of expertise include economic and financial analysis, cost of service modeling, regulatory compliance and public policy development. Since its inception, QSI has assisted industry stakeholders on issues affecting local competitive entry, including alternative forms of regulation, network interconnection, pricing, contract negotiation and arbitration, service quality and service reclassification. QSI's clients include telecommunications carriers providing services, customers who purchase those services and those who represent the public interest and agencies that regulate carriers and services. QSI's consultants possess more than 180 years of combined experience in the telecommunications industry and QSI's consultants have testified as experts in hundreds of proceedings before state regulatory commissions and the Federal Communications Commission ("FCC").

Q3. Please describe your educational background and work experience.

A3. I have been employed as a consultant in the telecommunications industry for the past 25 years. Prior to practicing as a telecommunications consultant, I worked for MCI Telecommunications Corporation ("MCI") as a senior economist. At MCI, I provided expert witness testimony and conducted economic analyses for corporate decision-making purposes. Before I joined MCI, I worked for Teleport Communications Group, Inc. ("TCG") as a Manager in the Regulatory and External Affairs Division. In this capacity, I testified on behalf of TCG in proceedings concerning local exchange competition issues. From 1987 until 1994, I was employed as an economist by the Public Utility Commission of Texas ("PUCT") where I worked on a variety of electric power and telecommunications issues and testified as an expert witness in litigated proceedings. During my last year at the PUCT, I held the position of Chief Economist. Prior to joining the PUCT, I taught undergraduate courses in economics as an Assistant Instructor at the University of Texas. I received a Ph.D. in Economics from the University of Texas at Austin, an M.A. in Economics from the University of Texas at Austin, and a B.A. in Economics from Quincy College, Illinois.

Q4. Have you ever testified before the Vermont Public Utility Commission ("PUC") before?

A4. Yes. While employed by MCI, I testified before the PUC (then the Vermont Public Service Board) in Docket No. 5713.

Q5. What is the purpose of your testimony in this case?

A5. QSI Consulting, Inc. has been retained by the Vermont Department of Public Service ("Department") to review and assess the Incentive Regulation Plan ("IRP") proposed by Consolidated Communications[1] in this proceeding. To this purpose, I will address the prefiled testimony of Kenneth Martin regarding the competitive landscape in the state of Vermont and certain components of Consolidated's proposed IRP as discussed in the prefiled testimony of Sarah Davis. *See* October 22, 2021 Direct Testimony of Kenneth Martin ("Martin Direct"); October 1, 2021 Direct Testimony of Sarah Davis ("Davis Direct"). When addressing Consolidated's proposed IRP, I will identify proposals with which the Department agrees as well as proposals with which the Department disagrees. For areas of disagreement, I will explain the basis for the Department's disagreement and present an alternative proposal as warranted.[2]

Q6. Please summarize your testimony.

A6. My testimony will demonstrate that incentive regulation is the appropriate path forward for Consolidated in Vermont because this regulatory framework best meets the needs of Consolidated and its customers. Reverting to rate-of-return regulation would likely present serious problems for the company and its customers and is not advisable.

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1 The terms "Consolidated Communications," "Consolidated," or "the Company" as used in this testimony refer to Consolidated Communications of Vermont Company, LLC and Consolidated Communications of Northland Company.

2 Other Department witnesses are sponsoring testimony on certain issues related to the proposed IRP not covered in my testimony.

Similarly, it would be premature and harmful to entirely deregulate Consolidated's residential or business basic local exchange service ("BLES"). Thousands of customers throughout Consolidated's Vermont service territory continue to depend on these services, many of which do not have access to suitable, available competitive alternatives. There is no question that deployment of mobile wireless and broadband networks is reshaping the communications industry in Vermont and the country as a whole. The Department supports these developments because they bring benefits to customers and promote economic development in the state. However, Consolidated's analysis about competitive market conditions in Vermont glosses over critical distinctions and exaggerates the ubiquity of competitive alternatives for the Company's BLES service. As such, the information presented by Consolidated is not dispositive of the issue of how to best protect Consolidated's captive BLES customers.

A redlined version comparing the Department's Proposed Plan to the Current Plan is provided in **Exhibit DPS-AA-2.** I will explain in this testimony why certain components of the Department's IRP proposal comply with 30 V.S.A. § 226b(c) and why Consolidated's proposals on these issues do not. My testimony addresses the following aspects of the Department's proposal: (1) the term of the successor plan should be a minimum of three years; (2) business BLES should continue to be included in the plan; (3) a framework involving Tier 1 and Tier 2 Areas should be adopted to regulate the Company's residential and business BLES services; (4) enhanced bill credits should be issued to customers for service outages exceeding 48 hours; (5) customers should not lose access to BLES for purchasing other stand-alone services offered by Consolidated; and (6) additional reports should be added to the list required under Attachment A of the plan.

II. COMPETITION ANALYSIS

Q7. In your view, does Consolidated accurately portray the extent to which Vermont consumers within Consolidated's service territory have access to competitive alternatives to the Company's local exchange service offerings?

A7. No. There is no question that the growth of next-generation networks and services, particularly the spread of mobile wireless and broadband services, has had profound and lasting impacts on the telecommunications service landscape in Vermont and across the country. However, Consolidated overgeneralizes the extent to which these alternative communications media translate into actual alternative services available to Vermont consumers, particularly those who are current subscribers to Consolidated's BLES.

First, all of the information Consolidated presents is for the entire state as opposed to the specific service territory served by Consolidated. Consolidated is the largest incumbent local exchange carrier ("ILEC") in the state and certainly covers the most geographic area of any Vermont ILEC. However, Consolidated's service territory is not synonymous with the entire state. Consolidated provides service in portions of 222 Vermont towns (and not always 100% of those towns' areas), but there are dozens of towns that are outside of its service territory and served by other ILECs. To accurately understand how competition is impacting Consolidated and its customers, one must focus more directly on conditions within the Company's service territory.

Second, Mr. Martin's statement at page 3 of his prefiled testimony that "nearly all Vermont consumers have choice for voice services from dozens of operators" exaggerates the degree of competition, particularly for residential and small business customers. While it is true that at the statewide level there are dozens of service providers in addition to Consolidated, *none* of them have ubiquitous coverage of the entire state and many limit their service availability to very specific geographic areas or particular customer classes. From the perspective of any one Vermont consumer, they certainly will not have the ability to obtain alternative services from the "dozens of operators" that Consolidated contends are supplying options for them.

Q8. Please explain why the competitive service alternatives that are actually available to Vermont consumers are far more limited than portrayed by Consolidated.

A8. The most obvious example is that Vermont consumers do not have access to more than one ILEC at each location, since each ILEC only provides its regulated services within its defined local service territory and those territories do not overlap. In addition, Competitive Local Exchange Carriers ("CLECs") and cable companies generally do not build out their networks to every customer location in an ILEC's service territory (including Consolidated's), but instead focus on the higher-density areas that are more cost-effective to serve, and in turn, consumers outside of those core areas often cannot get service from those companies. Finally, while wireless networks tend to have greater coverage than CLECs and cable companies in any given area, they do not have ubiquitous coverage in Vermont.

Q9. Are there factors besides geographic coverage that impact the availability and attractiveness of the alternative services referenced by Consolidated?

A9. Yes. For example, Consolidated includes over-the-top Voice over IP ("OTT VoIP") as an option available to "nearly all Vermont consumers." This category refers to VoIP services that are provided over a broadband internet connection but are not affiliated with the underlying broadband service provider. While as a technical matter these services can be accessed by any consumer that has a broadband connection with adequate bandwidth (generally at 4/1 Mbps or greater), they require that the consumer obtain and pay for that broadband connection as a prerequisite to using the VoIP service, which is another expense for the consumer. Mr. Martin's testimony indicates that only 3.4% of residential and business voice subscriptions in Vermont are OTT VoIP, Martin Direct, p. 19, Figure L. This suggests that OTT VoIP is not an attractive form of voice telephone service for the majority of Vermont consumers.

Another important consideration for consumers is the actual quality of service that they can receive. Broadband providers routinely advertise their services as delivering speeds that are far greater than consumers actually experience. Similarly, the coverage area maps found on mobile wireless providers' websites tend to exaggerate their coverage and do not reveal where localized gaps in coverage occur due to topographic factors such as mountains and valleys. These are important considerations in many areas of Vermont, including those areas served by Consolidated. The Department's 2018 Mobile Wireless Drive Test revealed considerable service quality variations even in more populous areas. This implies that not all consumers will have access to acceptable service quality for wireless options that are available from their homes and businesses.

Q10. Can the generalized, statewide statistics about the Vermont marketplace presented by Consolidated be used as a guide to understand the actual conditions that consumers face in Consolidated's service territory?

A10. No. Consolidated's analysis essentially ignores important differences within the towns the Company serves; chief among them is differences in population density, which is a very important variable relating to network deployment and competitive entry.

For example, compare Burlington in Chittenden County to Greensboro in Orleans County. Burlington has a population of 44,743 in a land area of 10.3 square-miles, for a population density of 4,116 persons per square-mile. U.S. Census Bureau "QuickFacts."

According to the Department's most current data on broadband service availability in the state, Burlington has 11,937 building locations within the city, of which 99.8% have access to broadband service at 25/3 Mbps or higher. These statistics indicate that Burlington has been an attractive market for alternative service providers to enter, and as a result, a majority of the city's residents have good-quality broadband as an alternative means of communication.

Greensboro presents a very different picture. It has a population of 811 in a land area of 37.6 square-miles, for a population density of 21.6 persons per square-mile – about two hundred times less than Burlington's density. U.S. Census Bureau "QuickFacts." According to the Department's most current data on broadband service availability in the state, Greensboro has 840 building locations within its borders (14 times fewer than Burlington), of which only 21.4% have access to broadband service at 25/3 Mbps or higher. These contrasting conditions strongly suggest that Greensboro is not an economically-attractive market for broadband service providers to enter and, consequently, the great majority of Greensboro's residents do not have good quality broadband as an alternative means of communication.

Despite the stark differences in population density and socioeconomic factors between these two towns, Burlington and Greensboro have similar levels of subscribership to Consolidated's residential BLES service – **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]**. It appears that the Burlington subscribers continue to choose Consolidated's BLES service even in the presence of broadband-enabled alternatives, either due to preference, customer inertia, or economic conditions (*e.g.,* the Census Bureau data indicates that the poverty rate in Burlington is 26.4%, nearly three times the statewide average of 9.3%). By contrast, many Greensboro BLES subscribers lack the near-ubiquitous availability of 25/3 Mbps or higher broadband that Burlington consumers have as an alternative to Consolidated's BLES service.

Q11. What is your recommendation regarding Mr. Martin's testimony addressing the status of competition in Vermont?

A11. I recommend that the Commission recognize that Mr. Martin's testimony is not dispositive of the issue of how to best protect Consolidated's captive BLES customers. While Mr. Martin's testimony supports notions that telecommunications markets in Vermont are dynamic and driven by the same technological and competitive forces at play in the rest of the country, it is of less relevance with respect to decisions on how to best structure Consolidated's successor IRP. The discussion of Burlington and Greensboro above demonstrates that relying on statewide average data and observations about competition in Vermont as a whole could lead to erroneous conclusions about the conditions that prevail in specific towns in Consolidated's service territory.

Notably, Consolidated itself appears to recognize the limitations of relying on statewide data. The Company's proposed "competitive" vs. "non-competitive" classification framework for towns is premised on town-specific conditions related to data speed availability. In other words, Consolidated's proposed plan recognizes the importance of using a geographic area much smaller than the entire state for purposes of analyzing competitive conditions for BLES.

III. THE ROLE OF TRADITIONAL, STAND-ALONE BLES

Q12. What role does Consolidated's traditional, stand-alone BLES play in the Vermont telecommunications marketplace?

A12. BLES remains an essential service for many of the Consolidated customers who continue to subscribe to it. Consolidated's own data shows that it still serves over **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]**. standalone residential BLES customers in Vermont throughout its service territory. The IRP should contain provisions to ensure that these consumers are protected when they do not have viable service alternatives that meet their needs.

Q13. Where are those residential BLES customers located?

A13. Consolidated provided data regarding the location of its residential BLES subscribership in response to Department discovery inquiry DPS.CC.1.24. That data shows that

Consolidated currently serves **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** customers/locations in the Consolidated-VT service territory and an additional **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** customers/locations in its Northland service territory, for a total of **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]**. However, the Department's analysis of that data found that **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** residential BLES customer location in the Northland data matched to a valid E-911 address, and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** residential BLES customer locations in Consolidated-Vermont's data did not match to a valid E-911 address. These mismatches resulted from having either no address information or errors in the address field. The Department also concluded that an additional **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** of the matched locations should not be considered buildings, based on their site-type field information. Finally, out of the remaining **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** matched locations, approximately **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were duplicates. For analysis purposes, therefore, the Department refined Consolidated's residential BLES dataset to a total of **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** known customers with a unique E-911 address. I have used the Department's dataset in the analyses presented in my testimony, including the table presented immediately below.

The table below shows that Consolidated's residential BLES customers are widely distributed throughout the 222 towns relevant to Consolidated's local service territory.

[*BEGIN CONFIDENTIAL**

[redacted]

END CONFIDENTIAL*]**

This table shows that there are significant numbers of Consolidated residential BLES customers dispersed throughout Consolidated's Vermont local service territory. For example, nearly **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** of the towns it serves have **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** or more residential BLES subscribers each, and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** of the towns have **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** or more subscribers.

Q14. In general terms, how does Consolidated's BLES service compare to other means of communications offered by service providers in the marketplace?

A14. Few, if any, of the alternative means of communication are direct substitutes for Consolidated's BLES service. Primary voice telephone service alternatives consist of either (1) mobile wireless service (with considerably different, generally improved features and functions, including data transmission in conjunction with smartphone handsets); or (2) a fixed broadband service that ordinarily will be offered as a bundle combining internet access, voice telephony and/or cable television service. Both mobile wireless service and broadband service bundles are available at considerably higher price levels than BLES.

The other "competitive" options that Mr. Martin has cited, *e.g.* satellite-based broadband service (when available) are priced even higher than these main alternatives. Importantly, satellite-based services have significantly less uptake by consumers, as evidenced by Mr. Martin's testimony, which cites a statistic from the U.S. Census Bureau's American Community Survey that only 4.6% of Vermont households have subscribed to satellite-based telephone service only. Martin Direct, p. 15, line 7.

Q15. How does this market structure affect the dynamics of customer choice for those customers that do have viable alternative service options at their location?

A15. One important consequence of this market structure is that the market lacks alternatives that could provide actual, price-constraining effective competition for Consolidated's BLES. The two most prevalent alternatives are mobile wireless, which would require a BLES customer to trade the lower-priced and more basic functionality of BLES for the higher-priced and expanded functionality of mobile wireless, and facilities-based VoIP, which would require a similar tradeoff between BLES and higher-priced broadband packages that include voice telephony (long-distance as well as local) as an add-on and also require additional equipment such as a cable modem, router, etc.

While it is difficult to assign specific numbers to these price points and translate that information to affordability for particular customers, what is clear is that neither would provide price-constraining competition to Consolidated's residential BLES (which is priced at \$24.11 per month for dial tone plus standard local usage). Consolidated Communications VT PUC No. 1, Basic Local Exchange Services Part M Section 1, 3rd revised page 6. Affordability is likely one reason we continue to see many residential BLES subscribers throughout Consolidated's Vermont service territory despite the existence of alternative means of communication. Given this market structure, the "pricing flexibility" that Consolidated is asking for in its IRP proposal is really permission to raise its residential BLES prices as opposed to lowering them "to meet competition," which is expected in a simpler marketplace where there is direct, head-to-head competition of more equivalent services.

Q16. What consequences does this have for those existing Consolidated BLES subscribers who actually have few or no viable competitive alternatives to BLES where they live?

A16. The Vermont 10-Year Telecommunications Plan recognized the lack of alternatives for captive customers in Vermont:

> Currently, the regulation of [BLES] through the IRP provides consumers with a low-cost option that could otherwise be unavailable. Because many residential premises in Vermont have no choice in phone service due to not being covered by either mobile voice service or a competitive [Internet service provider], it is crucial to continue to protect consumers' access to an affordable phone connection in future years.

June 2021 Vermont 10-Year Telecommunications Plan, p. 74.

Unfortunately, the consequence for those customers in areas for which Consolidated seeks deregulation will face whatever price increases Consolidated chooses to impose for those services. These captive customers will simply have to pay those higher rates or go without telephone service. Clearly, protecting these customers is a high priority for the Department, and is consistent with numerous requirements of Section 226(b)(c), including: "protecting or promoting universal service to residential users of telecommunications."

IV. INCENTIVE REGULATION REGULATORY FRAMEWORK

Q17. Is incentive regulation the appropriate regulatory framework for Consolidated for the foreseeable future? If so, why?

A17. Yes. Consolidated's IRP is a common form of "alternative regulation" intended to provide an alternative to traditional rate-of-return ratemaking. Prior to the emergence of competition in local exchange markets, ILECs generally possessed a monopoly over phone service in their service territories. At that time, those companies were regulated under a "cost-plus" method in which the companies' rates were determined so that the company recovered its costs, including a regulator-prescribed rate of return. However, as the telecommunications markets evolved to become more competitive – first in long-distance markets and later in local-exchange markets – the cost-plus method of regulation became less suitable to an increasingly dynamic industry. Most importantly, ILECs needed to respond to competitors who possessed relatively fewer regulatory obligations, were not locked into legacy network equipment and design topologies and did not have their prices set by regulators. Amidst these challenges, new approaches to regulation emerged to replace rate-of-return regulation – collectively, these approaches are often referred to as "alternative forms" of regulation.

While the use of alternative forms of regulation for ILECs has become widespread, the types and components of those plans tend to vary by company, state and type of service, mostly to fit the specific circumstances and needs of companies and their regulators. In general, however, the foundation of alternative forms of regulation is a regulatory bargain that better serves the public interest than traditional rate-of-return regulation. In this bargain, an ILEC is typically granted a certain degree of regulatory flexibility to respond to emerging competition and pursue profitable opportunities, while some regulatory oversight is imposed to ensure continued quality of service and protect against unreasonable price increases for "captive" customers – *i.e.*, those ILEC customers who have few or no realistic options to the ILEC's traditional regulated services, most notably BLES. In other words, under alternative regulation, regulatory oversight continues to play a role to ensure that an ILEC does not sacrifice the interest of certain customers in pursuit of narrow competitive interests and/or higher profits. In theory, alternative regulation is intended as a transition to a time where effective, price-constraining competition can replace the need for regulation altogether.

Q18. Should the Commission consider discontinuing incentive regulation for Consolidated and reverting back to rate-of-return regulation for the Company?

A18. No. Reverting back to a rate-of-return regulatory model for Consolidated at this time is not advisable and could harm both the Company and Vermont consumers. This is because it would likely have a chilling effect on Consolidated's ability to invest in its network and engage in innovation and could even result in service quality degradation and significantly higher prices for customers. It is for these reasons that, to the best of my knowledge, no multi-state telecommunications companies like Consolidated in the U.S.

still have significant ILEC operations subjected to rate-of-return regulation. In other words, reverting back to a traditional rate-of-return model would cause Vermont to be out of sync with a rapidly evolving telecommunications marketplace.

Q19. Have the telecommunications markets in which Consolidated operates in Vermont evolved to the point that the Commission should eliminate its regulation of Consolidated's services in the state altogether?

A19. No. Completely deregulating Consolidated would be premature and imprudent. There are still thousands of customers that subscribe to Consolidated's BLES services because they have few or no alternatives – otherwise known as "captive" customers. As a result, continued regulatory protections are warranted to ensure that BLES remains available to them with adequate service quality at reasonable rates. Therefore, continuing alternative regulation for Consolidated is the best option. The challenge in this proceeding is to develop an IRP that strikes the best regulatory bargain and properly balances the interests of Consolidated and its customers. As discussed below, the Department's proposals best achieve this objective.

Q20. Have some other states gone in the direction of complete deregulation?

A20. Yes. Some public utility commissions no longer have authority to regulate the local exchange services of ILECs. This lack of authority often has been the result of legislation as opposed to a fact-finding, evidence-based proceeding showing effective, price-constraining competition that justifies deregulating the ILEC.

For example, the National Regulatory Research Institute ("NRRI") released results of a 2018 study that showed thirty-five "states had passed legislation limiting direct oversight of the retail wireline telecommunications services provided by the large incumbent price cap service providers." *See* "Telecommunications Oversight: A State Perspective," *NRRI Report No. 18-03*, p. iii. Consolidated provided information in response to Discovery Inquiry DPS.CCI.1.26 indicating that Consolidated ILEC affiliates in numerous other states are deregulated as a result of legislation. The fact that the Vermont Legislature has not followed suit is instructive in this case. It indicates that lawmakers in Vermont envision a continued role for the Commission and Department in establishing appropriate regulatory oversight of Consolidated and protecting consumers.

Q21. What criteria must the IRP satisfy?

Q21. Section 226(b)(c) of Title 30 contains a list of criteria that the Commission must find are satisfied before approving an alternative form of regulation. Those criteria are as follows:

1. Promotes the general good of the state;
2. Is consistent with the State telecommunications purposes established under Section 202c of this title;
3. Is consistent with the State Telecommunications Plan adopted by the Department of Public Service under Section 202d of this title, or there exists

good cause to approve alternative forms of regulation notwithstanding this inconsistency;

4. Is consistent with the public's interests relating to appropriate quality telecommunications services;
5. Is consistent with the goal of protecting or promoting universal service to residential users of telecommunications;
6. Provides reasonable incentives for the creation of a modern telecommunications infrastructure and the appropriate implementation of new cost-effective technologies;
7. Reasonably supports economic development in the affected service territory;
8. Adequately protects consumer privacy interests;
9. Supports reasonable competition;
10. Includes adequate safeguards to ensure that charges for noncompetitive services do not subsidize competitive services; and
11. Is just and reasonable and would not produce unjust discrimination between users of the public switched network in the pricing, quality, or availability of the network functions or services offered.

In the remainder of my testimony, I will explain why some of Consolidated's proposals for its successor IRP should be rejected and describe why the Department's proposed IRP best meets the requirements of Section 226(b)(c).

V. PROPOSED MODIFICATIONS TO IRP

a. Term of IRP

Q22. What is Consolidated's proposal for the term of the successor IRP?[3]

A22. Consolidated proposes a two-year term, which would extend from August 1, 2022 through July 31, 2024. Consolidated acknowledges that two years is shorter than the term of the existing IRP, but it contends that a shorter term is warranted because the "speed at which the telecommunications market is changing as well as the Vermont state policy with respect to funding [Communications Union Districts ("CUDs")] seems to necessitate more frequent reviews and revisions." *See* Davis Direct, p. 8, lines 1-10.

Q23. Does the Department agree with Consolidated's proposed two-year term?

A23. No. The Department believes that two years is too short.

[3] The term "successor IRP" as used in my testimony refers to the IRP that will (if adopted by the Commission) replace the IRP currently in effect.

Q24. What is the Department's proposal for the term of the successor IRP?

A24. The Department recommends a term of at least three years, which would extend from August 1, 2022 through July 31, 2025.

Q25. Why is a three-year term preferrable to a two-year term?

A25. A two-year plan is simply too short a timeframe to operate given the length of time it takes to implement the plan and evaluate its impacts on the Company and its customers. Consolidated is proposing to, consistent with the existing IRP, (a) confer with the Department regarding renewal of the plan or negotiation of a successor plan at least one year prior to the conclusion of the IRP; and (b) not less than 10 months prior to the conclusion of the plan, convey to the Commission and Department the Company's intention regarding renewal or negotiation of a successor plan.

This timeframe will create two problems when applied to a two-year term. First, it is inefficient. Under the proposed two-year term, Consolidated would be conferring with the Department just 12 months after the new IRP begins and informing the Commission and Department of its decision just two months later. Therefore, unless Consolidated decides to simply extend the plan, the Department, Consolidated and the Commission would be required to expend significant resources to undertake another investigation like this one within a very short timeframe.

Second, allowing Consolidated to decide to replace the plan just 14 months after these changes in the IRP occur (some of which will take time to implement) does not provide sufficient time to evaluate the effectiveness of the IRP provisions. In fact, the Commission and the Department might know little more about its impacts than is known now.

Q26. Do you agree with Consolidated's reasoning for adopting a shorter, two-year term?

A26. No. Consolidated cites to the speed at which the telecommunications industry is changing, but local telecommunications markets have been changing since at least 1996 when the Telecommunications Act was passed and first opened those local markets to competition. For context, the existing IRP under which Consolidated currently operates took effect in March 2016 and expires on July 31, 2022. *See* Docket 8337, Order of 3/18/16 at 1; Consolidated response to DPS.CC.1.13; and Case No. 20-2684-PET, Order of 12/3/2020 at 1. The existing plan will have been in effect for approximately 76 months (more than six years). There has been significant change in the local telecommunications marketplace in Vermont during that timeframe – including Consolidated acquiring FairPoint – but the existing plan has, for various reasons, continued to be extended.

In addition, Consolidated points to funding of CUDs as support for more frequent reviews. However, under either Consolidated's proposed successor IRP or that proposed by the Department, the areas where Consolidated is granted a greater degree of regulatory flexibility can be updated annually based on the most recent data. As such, to the extent that CUD network investments (or additional infrastructure investments from FCC's Rural Digital Opportunity Fund ("RDOF") program, etc.) change the competitive landscape in Consolidated's service territory during the term of the IRP, those changes will be considered through corresponding adjustments to the degree of regulatory flexibility provided to Consolidated. In fact, this self-correcting aspect of Consolidated's proposal is an important innovation compared to the existing plan, which is why the Department has adopted that principle with important caveats. There is no need to shorten the IRP term in order to incorporate changing conditions in Consolidated's local exchanges.

Q27. Are there IRP provisions associated with the plan's term on which Consolidated and the Department do agree?

A27. Yes. The existing plan, as well as both Consolidated's and the Department's proposed plans require Consolidated to: (a) confer with the Department regarding renewal/replacement of the IRP at least one year prior to its conclusion; and (b) convey to the Commission and Department its decision about renewal/replacement not less than ten months prior to its conclusion. This will keep the Department and Commission apprised of Consolidated's plans and provide for an orderly transition should Consolidated seek changes.

b. Business Services

Q28. Does the Department agree with Consolidated's proposal to deregulate business services entirely?

A28. No. The Department proposes to maintain inclusion of business BLES in the IRP.

Q29. What is the basis for Consolidated's proposal to deregulate business BLES and remove it from the IRP?

A29. Consolidated states "business services are fully competitive" and "[t]here are a substantial number of providers that provide business services due to the typically higher revenues associated with business service." Davis Direct, p. 8, lines 14-15.

Q30. Do you agree with Consolidated's assessment of the degree of competition for business services?

A30. No. Consolidated groups all business services together and glosses over critical customer class distinctions. The category of business services that needs the most scrutiny in this proceeding from a consumer protection standpoint is business BLES. This basic service is purchased by *small* business customers. These small business customers typically have less sophisticated communications needs that are more comparable to a residential customer than a medium/large business customer. In fact, due to similarities in communications services and usage patterns as well as competitive alternatives, small business customers have often been grouped together with residential customers for regulatory purposes and referred to collectively as "mass market" customers. For instance, the FCC has stated:

> The Commission has previously found that residential and very small businesses have similar patterns of demand, are served primarily through mass marketing techniques, purchase similar volumes and communications services, and would likely face the same competitive alternatives within a geographic market. Thus, we conclude that an analysis of market share of residential customers is likely to accurately represent SBC's position in the mass market. Cf. Bell Atlantic/NYNEX Order…(discussing similarities between residential and small business customers); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking…(discussing similarities between residential and small business customers in the context of unbundling rules); (including residential and small business customers in the same market).

In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, 20 FCC Rcd 18290, rel. November 17, 2005, ¶ 307. *See also*, *In the Matter of Call Authentication Trust Anchor,* WC Docket No. 17-97, 36 FCC Rcd 8827, rel. May 21, 2021, ¶ 67. ("identifying 'mass market' customers as 'residential and small business customers' that purchase standardized offerings of communications services.")

Consolidated has not provided support for its statement that "business services are fully competitive," and that is particularly true when it comes to the Consolidated BLES services purchased by small business customers in its service territory. Given the prior findings of the FCC, there is no reason to believe that Consolidated's business BLES faces any higher level of competition than Consolidated's similarly-situated residential BLES. Consolidated's reference to higher revenues associated with business services is more applicable to services targeted to medium/large business services such as ISDN-PRI, Digital PBX, WAN and cloud-based services – not business BLES (which is currently priced at $36.76 per month for a dial tone line and $9.05 per month for a standard local usage package). For example, Consolidated's catalog stand-alone rate for an ISDN-PRI Local Distribution Channel (not including a port, local usage, etc.) is $750.00 – over 20 times higher than the stand-alone rate for a BLES line. *See* Consolidated Communications Vermont Catalog, Digital Communications Services, Part M, Section 3, page 21.

Q31. What is the Department's proposal for business BLES?

A31. The Department proposes to retain business BLES in the successor IRP and treat it similar to residential BLES for regulatory purposes. This is consistent with how business BLES has been treated in prior IRPs and is consistent with long-standing FCC policy of treating residential and small business telephone customers similarly for regulatory purposes.

c. Competitive/Noncompetitive Versus Tier 1 and Tier 2 Areas

Q32. Consolidated proposes to change the way BLES is regulated under the IRP by establishing "competitive" and "noncompetitive" areas. Please describe your understanding of Consolidated's proposal.

A32. Consolidated proposes a new regulatory model under the IRP by distinguishing between "competitive" and "noncompetitive" areas (*i.e.*, towns or municipalities).[4] Under Consolidated's proposal, a "competitive" market is any municipality with: (1) at least 97% availability of broadband with speeds of 4Mpbs downstream and 1Mbps upstream (4/1) *and* (2) at least 91% availability of broadband with speeds of 25Mbps downstream and 3 Mbps upstream (25/3). *See* Davis Direct at p. 9. Consolidated proposes to eliminate regulation of residential BLES in "competitive" municipalities. This is in addition to Consolidated's separate proposal to deregulate business BLES throughout Consolidated's entire Vermont local service territory. For municipalities that do not meet the 97% at 4/1 plus 91% at 25/3 criteria, Consolidated proposes that (a) those areas are considered "noncompetitive;" and (b) residential BLES in those areas continues to be regulated much like it is under the existing IRP – with certain modifications that I will describe later in this testimony.

[4] My use of these terms in this testimony is not meant to signal agreement with Consolidated that any particular municipality is competitive or not competitive.

Q33. Under Consolidated's proposal, how many of the municipalities that it serves in Vermont would be classified as "competitive"?

A33. According to Consolidated's prefiled testimony, there are 36 municipalities that meet this "competitive" classification. *See* Davis Direct at p. 10 and Consolidated **Exhibit CC-SD-3**. This represents 16% of the 222 towns included (in whole or in part) within Consolidated's local service territory.[5] However, Consolidated used Department data from December 31, 2019 to perform its analysis and derive the count of 36 municipalities. The Department has since revised its dataset to be current as of October 31, 2021. Using the more recent dataset and Consolidated's method of identifying "competitive" areas (97% at 4/1, plus 91% at 25/3), 61 municipalities would be deemed "competitive" (compared to 36 municipalities referenced in Consolidated's prefiled testimony).

Q34. Does the Department agree with Consolidated's proposed new IRP regulatory model?

A34. Only in part. Consolidated's proposal attempts to distinguish areas where competition for voice services is prevalent from those where it is not in order to apply an appropriate level of regulatory oversight to the latter. I agree with the intent behind this proposal –

[5] Telephone exchange boundaries do not align with town boundaries. Based on analysis conducted by the Department, there are 230 towns where there are Vermont business and residential E911 locations in Consolidated territory. However, eight of those towns have de minimis locations, leaving 222 of those towns with an appreciable number of locations in Consolidated's territory. For the purposes of my testimony, I will use 222 as the number of total Vermont towns within Consolidated's local service territory.

i.e., to apply regulatory oversight where it is needed and to provide regulatory flexibility where it is not. However, I disagree with (a) the criteria Consolidated utilizes to distinguish between competitive and noncompetitive municipalities; and (b) its proposal to completely deregulate voice service in "competitive" municipalities.

Q35. Please elaborate on your disagreement with the criteria used by Consolidated to distinguish between competitive and noncompetitive municipalities.

A35. The 97% at 4/1 trigger is not useful for this purpose. The 4/1 deployments are primarily reflective of Consolidated's own Digital Subscriber Line ("DSL") service, which is a distance-sensitive data service provided over Consolidated's legacy network. As such, it is not indicative of facilities-based investment by alternative service providers or locations where they will focus their efforts to compete for voice customers. In addition, 4/1 speeds are much lower than the 25/3 speeds that serve as the FCC's benchmark for advanced telecommunications capability. *See* FCC 2020 Broadband Deployment Report, GN Docket No. 19-285, rel. April 24, 2020 at paragraph 13. The limited capability of DSL is likely one of the reasons why ILECs, like AT&T, are moving away from DSL. *See* "AT&T No Longer Selling DSL Internet Services," October 5, 2020, by Jess Barnes. As will be discussed in more detail below, the Department's proposal, like Consolidated's, utilizes the 25/3 speed criteria, but adopts a higher availability rate (98%) than that proposed by Consolidated (91%).

Q36. Please explain your disagreement with completely deregulating voice services in "competitive" municipalities.

A36. The IRP should ensure that BLES remains available as a service offering for both residential and business customers throughout Consolidated's local service territory in Vermont during the term of the plan. Many customers, but especially captive customers, still rely on BLES throughout Consolidated's service territory and the Commission and Department should make sure it continues to be available. While we do not know what Consolidated's plans are, the IRP should not grant the Company the ability to at will eliminate BLES.

In addition, the IRP should ensure that BLES customers do not experience rate shock as a result of massive rate increases. Consolidated's proposal would permit unlimited BLES price increases immediately following approval of its proposed IRP (assuming that Consolidated chooses not to withdraw the service, which would be a possibility under its proposal). This may create a severe financial hardship on many customers who continue to rely on BLES service instead of other broadband-enabled or wireless voice services. This is most likely for elderly customers who are oftentimes on a fixed income or customers who reside in rural communities.

Q37. Please elaborate on your statement that customers who rely on BLES instead of wireless and broadband-enabled voice services are oftentimes older citizens or reside in rural communities.

A37. Data from the Pew Research Center supports this point. Regarding Internet usage in the year 2021, 75% of adults aged 65+ reported using the Internet compared to between 96% and 99% in all other age categories; 86% of adults with income levels below $30,000 reported using the Internet compared to between 91% and 98% in all other income levels; and 90% of adults in rural communities reported using the Internet, compared to 95% in urban areas.

Regarding broadband adoption in 2021, 64% of adults aged 65+ reported having broadband at home, compared to between 70% and 86% for all other age groups; 57% of adults with incomes below $30,000 reported having broadband at home, compared to between 74% and 92% for all other income levels; and 72% of adults in rural communities reported having broadband at home compared to 77% in urban areas.

See Pew Research Center, "Internet/Broadband Fact Sheet."

Similarly, older adults are more likely to live in a household with a landline and less likely to "cut the cord." For example, 40.8% of adults aged 65+ live in wireless-only households and 65.9% of adults aged 45-64 live in wireless-only households, compared to between 75.9% and 86.1% of all other age groups living in wireless-only households. *See* Jan-June 2021 "Wireless Substitution Report, National Center for Health Statistics.

Q38. Is the Department proposing an alternative to Consolidated's "competitive/noncompetitive" market proposal?

A38. Yes. The Department proposes a solution that grants Consolidated a certain level of regulatory flexibility in those areas where alternative providers are making significant investments in communications networks while simultaneously providing consumers certain continued regulatory safeguards.

Q39. What are the useful attributes of Consolidated's proposal that the Department utilizes in its proposal?

A39. There are two. One attractive attribute of Consolidated's proposal is that it attempts to apply regulatory oversight based on a level of facilities-based competitive entry in a particular geographic region, using broadband service availability as a proxy for competitive entry.

A second attractive attribute is that Consolidated's test for distinguishing between competitive and noncompetitive areas uses broadband data that has been compiled, analyzed and authenticated by the Department; it is, therefore, highly reliable. *See* June

2021 Vermont 10-Year Telecommunications Plan, p. 1: “The Vermont Department of Public Service’s broadband availability data is among the best state-level broadband data in the country…” Furthermore, this data is updated periodically to reflect more recent investment in broadband networks throughout the state.

The Department’s proposal, likewise, attempts to apply regulatory oversight of voice services based on the level of competitive entry in a particular geographic region and uses the same highly-reliable data compiled and vetted by the Department.

Q40. Please describe the Department’s proposal.

A40. The Department proposes to develop two categories of municipalities served by Consolidated – they are referred to as Tier 1 and Tier 2 Areas. Tier 1 Areas are akin to what Consolidated labels as “noncompetitive areas,” or areas where a higher degree of regulatory oversight is applied. Tier 2 Areas are similar to what Consolidated labels as “competitive areas,” or areas where Consolidated is granted more regulatory flexibility. The Department uses different terminology (*i.e.,* Tier 1/Tier 2) because the criteria used to categorize the areas consider where alternative providers have focused on entry via facilities-based investment in broadband networks and do not necessarily indicate effective competition for Consolidated’s BLES services (as Consolidated’s “competitive” and “noncompetitive” nomenclature implies).

The Department proposes to establish Tier 2 Areas as those towns with at least 98% availability of broadband speeds of 25/3. All other towns not meeting this criterion are categorized as Tier 1 Areas. How Consolidated's voice services are regulated in Tier 1 and Tier 2 Areas is summarized below.

Tier 1 Areas. In Tier 1 Areas, residential and business BLES service offerings will continue to be available. Consolidated's upward pricing flexibility remains as it is in the existing IRP (*i.e.*, $2 or 11% in a 12-month period). Price changes must be implemented uniformly throughout Tier 1 Areas. Prices may be decreased at any time and changes to BLES terms and conditions require Commission approval. Retail service quality obligations are retained except as modified by the successor IRP and discussed in the testimony of Department witness Carol Flint.

Tier 2 Areas. In Tier 2 Areas, residential and business BLES service offerings will continue to be available. Consolidated's upward pricing flexibility is greater than in Tier 1 Areas: $5 in year 1 of the IRP, $10 in year 2 and no cap in year 3. Prices may be decreased at any time and changes to BLES terms and conditions require Commission approval. Retail service quality obligations do not apply in Tier 2 Areas, as discussed in the testimony of Department witness Carol Flint.

Similar to Consolidated's proposal, a list of Tier 1 Areas will be attached to the IRP and Consolidated and the Department will review that list on an annual basis and update it as appropriate. If that review determines that towns that were previously Tier 1 have achieved the 98% at 25/3 criteria, the list would be amended accordingly.

Q41. Please explain how the Department's proposed plan includes safeguards to ensure that charges for noncompetitive services do not subsidize competitive services.

A41. Cross-subsidization – or subsidizing competitive services with noncompetitive services – negatively impacts customers of noncompetitive services because they pay higher prices for basic services for which they do not have viable alternatives. Cross-subsidization is also harmful to competition because it gives an incumbent providing both noncompetitive and competitive services an advantage over its competitors by pricing competitive services at artificially low levels (due to the subsidy from its noncompetitive services). To address these concerns, 30 V.S.A. § 226b(c) requires alternative forms of regulation to include safeguards to ensure that charges for noncompetitive services do not subsidize competitive services. The Department's proposed plan satisfies this requirement by capping the rate increases for BLES service in Tier 1 Areas consistent with the prior plan at $2 or 11% in a 12 month period. These modest increases help ensure that Consolidated is using the revenues derived from BLES to support BLES, and substantially limits its ability to use those revenues for other purposes such as to subsidize competitive services. While the caps in Tier 2 Areas are higher than in Tier 1 Areas, they still provide a degree of protection against cross-subsidization by limiting Consolidated's ability to subsidize competitive services with noncompetitive service revenues.

Q42. How many municipalities would be categorized as Tier 1 and Tier 2 under the Department's proposal?

A42. Out of 222 total towns covered at least in part by Consolidated's service territory, 193 (87%) would be categorized as Tier 1 and 29 (13%) categorized as Tier 2 under the Department's proposal. This is based on the most recent data available dated October 31, 2021. The Tier 1 Areas are listed in **Exhibit DPS-AA-1**. The list of Tier 1 Areas will be reviewed by Consolidated and the Department one time per year during the life of the IRP and updated if additional towns meet the Tier 2 criteria. In this way, the IRP will keep up with the pace of competitive investment either through CUDs, RDOF funds or fiber-to-the-home deployment made in Consolidated's service territory.

Q43. Why has the Department proposed the Tier 1/Tier 2 Area structure for regulating voice services under the IRP?

A43. Because it is a reasonable proxy for identifying areas within Consolidated's local service territory where facilities-based alternative communications providers are focusing their investments in fiber networks. As a result (and consistent with the regulatory bargain inherent in alternative regulation plans), Consolidated would be granted a certain level of additional regulatory flexibility in those areas in order to respond to the network investment by other companies. That is not to say, however, that the Tier 2 Areas are fully competitive for voice services or that every Consolidated BLES customer in the area has a suitable alternative. That is why the Department opposes full deregulation in

Tier 2 Areas and proposes to maintain certain regulatory backstops in these areas, such as retaining BLES service.

Q44. Why did the Department select 98% broadband availability at 25/3 speeds as the Tier 2 "trigger"?

A44. The 25/3 speed threshold serves as the FCC's current speed benchmark by which to measure whether a fixed service is providing advanced telecommunications capability. *See* FCC 2020 Broadband Deployment Report, GN Docket No. 19-285, rel. April 24, 2020, ¶ 13. The 25/3 speed threshold also serves as the minimum broadband speed for RDOF projects. *See* FCC RDOF Fact Sheet, available at https://www.fcc.gov/auction/904/factsheet. Regarding the 98% benchmark, the Department analyzed a number of options in this regard and determined that 98% strikes the best balance between the need to safeguard the interests of captive customers and to provide Consolidated with better ability to respond to competitive investment. The following chart demonstrates this point:

[*BEGIN CONFIDENTIAL**

[redacted]

END CONFIDENTIAL*]**

Results of utilizing 98% availability at 25/3 as a Tier 2 "trigger" are shown in Column A and compared to using lower benchmarks of 95% (Column B) and 91% (Column C).

98% threshold (Column A): Under this scenario, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** towns would be classified as Tier 2 Areas. In those [***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** Tier 2 Areas, there are [***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** Consolidated residential customers and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** of those customers do not have access to broadband speeds of 25/3. Out of those customers lacking 25/3, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** customers have been identified that would lack mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** are identified as having poor mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** are identified as having good mobile wireless service and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were not tested for mobile wireless service quality. Additionally, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** customers in the **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** towns were identified as not having access to the slower 4/1 data speeds and out of those customers, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** customers were identified as having no or poor mobile wireless service while **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were identified as having good service and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were not tested.

<u>95% threshold (Column B)</u>: Under this scenario, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** towns would be classified as Tier 2 Areas. In those **[***BEGIN CONFIDENTIAL**[redacted] **END CONFIDENTIAL***]** Tier 2 Areas, there are **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** Consolidated residential customers and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** of those customers do not have access to broadband speeds of 25/3. Out of those **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** customers lacking 25/3, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** have been identified as lacking mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** are identified as having poor mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** are identified as having good mobile wireless service and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were not tested for mobile wireless service quality. Additionally, [***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** customers in the [***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** towns were identified as not having access to the slower

4/1 data speeds, and out of those customers, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were identified as having no mobile wireless service, [***BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL***] were identified as having poor mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were identified as having good service and [***BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL***] were not tested.

91% threshold (Column C): Under this scenario, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** towns would be classified as Tier 2 Areas. In those **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** Tier 2 Areas, there are **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** Consolidated residential customers and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** of those customers do not have access to broadband speeds of 25/3. Out of those **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** customers lacking 25/3, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** have been identified that would lack mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** are identified as having poor mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** are identified as having good mobile wireless service, and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were not tested for mobile wireless service quality. Additionally, **[***BEGIN CONFIDENTIAL** [redacted]

END CONFIDENTIAL*]** customers in the **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** towns were identified as not having access to the slower 4/1 data speeds, and out of those **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were identified as having no mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were identified as having poor mobile wireless service, **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were identified as having good service and **[***BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL***]** were not tested.

Relative to other available 25/3 benchmarks, 98% does the best job of balancing the interests of Consolidated and its customers. For instance, the 98% benchmark ensures that of the customers lacking 25/3 broadband speeds, all customers tested had access to mobile wireless and/or data speeds of 4/1. Table 2 shows that as the benchmark is reduced (*e.g.*, 95%, 91%), the numbers of customers without access to 25/3 increases, as does the number of customers without access to mobile wireless service and 4/1 data speeds. While 99% or 100% could be used, the 98% benchmark by comparison provides consumer protections without being overly restrictive in terms of geographic scope.

Q45. How did the Department establish its proposals regarding upward pricing flexibility in Tier 1 and Tier 2 Areas?

A45. In Tier 1 Areas, the upward pricing flexibility for residential and business BLES is capped at the lesser of eleven percent or $2.00 per year. This is consistent with the cap in the existing IRP.

For Tier 2 Areas, the Department proposes a greater degree of upward pricing flexibility that increases each year of the plan - $5 in year one, $10 in year two, and no cap in year three. The intent of the proposed graduated flexibility is to provide a glide path to pricing flexibility in Tier 2 Areas while avoiding significant rate shock for customers.

Q46. Are the caps contained in the glide path for Tier 2 consistent with what is experienced in the industry at large?

A46. Typically, when an ILEC's services or geographic areas are deregulated, the ILEC is granted unlimited pricing flexibility. The theory is that competition will constrain the ILEC's ability to increase prices and avoid supracompetitive pricing. Here, a controlled approach to pricing flexibility is recommended, which will simultaneously give Consolidated the ability to respond to competitive investment overbuilding its service territory and provide a degree of protection for BLES customers where fiber or wireless voice services do not impose price-constraining competition on Consolidated's BLES service.

In addition, if Consolidated were to increase its BLES rates in Tier 2 Areas by the maximum amount allowed under the Department's proposal, the rates would still be under the current tariffed monthly caps for the first two years of the plan. For instance, Consolidated's BLES tariff states that "[w]ith either low use or standard use, the total of the rates involved is capped." Consolidated Communications VT PUC No. 1 (Basic Local Exchange Services), Part A, Section 5, page 1. The tariff also defines "Standard Use" as providing "a dial tone line and a local usage package which provides for a monthly local usage allowance expressed in a dollar amount." *Id*. The table below shows BLES Standard Use arrangement rates for residential and business customers and how those rates would compare to existing tariffed caps if Consolidated increased BLES rates by the maximum amount in Tier 2 Areas (rates and caps taken from Consolidated Communications VT PUC No. 1, (BLES), Part M, Section 1, 3rd revised page 6).

	Residence	**Business**
Dial Tone Line	$18.26	$36.76
Standard Local Usage	$5.85	$9.05
Current Total	$24.11	$45.81
Increase Yr ($5)	$29.11	$50.81
Increase Yr 2 ($10)	$39.11	$60.81
Tariffed Monthly Cap	$39.40	$75.27

As shown above, for at least the first two years of the proposed three year IRP, Consolidated's residential and business BLES rates would remain under the currently-tariffed cap. This supports the notion that the proposed graduated upward pricing flexibility for Tier 2 Areas strikes a reasonable balance between additional pricing flexibility for Consolidated in Tier 2 Areas and protection against rate shock for customers.

Q47. Given that Tier 1 and Tier 2 Areas would have different rate caps, does this mean that BLES could be priced at different levels in Tier 2 Areas compared to Tier 1 Areas?

A47. Yes. While BLES pricing would continue to be uniform throughout Tier 1 Areas, if Consolidated chooses to increase rates according to the greater upward pricing flexibility granted in Tier 2 Areas, BLES prices in Tier 2 Areas could be different (*i.e.*, higher) compared to Tier 1 Areas. This is consistent with the regulatory bargain inherent in alternative regulation plans that regulatory oversight should be applied commensurate with the degree of competitive activity. Allowing Consolidated additional pricing flexibility while ensuring that BLES is maintained as a service offering and a protecting against customer rate shock for Tier 2 Areas strikes a rational balance of interests.

d. Service Quality and Enhanced Bill Credits

Q48. What is Consolidated's proposal for retail service quality standards?

A48. Consolidated's proposal regarding retail service quality is described at pages 11-12 of Ms. Davis's testimony. *See also,* Consolidated **Exhibit CC-SD-2**, pp. 3-4. Consolidated proposes to modify the Out of Service ("OOS") Troubles Cleared metric from OOS Troubles Cleared within 24 hours with a Baseline Level of 70% and Action Level of 60%

to OOS Troubles Cleared within 48 hours with a Baseline Level of 80% and Action Level of 70%.[6] Two other notable changes to the retail service quality metrics under Consolidated's proposal are: (1) business BLES would be removed from this service quality metric and (2) the retail service quality metrics would not apply in municipalities deemed "competitive" (or Tier 2). *See* Davis Direct, p. 12, line 3 and p. 11, lines 20-22.

Q49. Does the Department agree with Consolidated's proposal for retail service quality standards?

A49. The Department's proposal regarding retail service quality, including the OOS Troubles Cleared metric, is addressed in the testimony of Carol Flint. However, for reasons discussed elsewhere in my testimony, the Department opposes Consolidated's proposal to remove business BLES from the IRP, and as such, opposes Consolidated's proposal to remove business BLES from the OOS Troubles Cleared metric.

Q50. Is there another reason why business BLES should not be excluded from the OOS Troubles Cleared metric?

A50. Yes. Currently Consolidated reports OOS Troubles Cleared w/in 24 hours metrics separately for three categories: Residential, Business and Total (*i.e.*, both residential and

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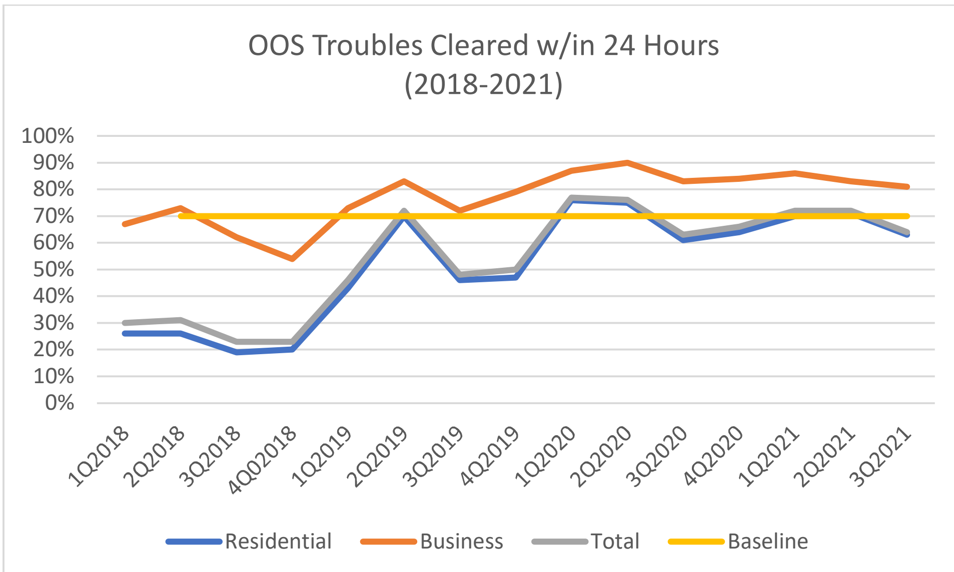
6 "Baseline Level" and "Action Level" are benchmarks that define an acceptable base level of service quality to retail consumers. The Baseline level is the benchmark against which the retail service quality is measured. In other words, currently Consolidated must clear 70% of out of service conditions within 24 hours to meet the applicable OOS metric. If the (relatively lower) Action Level is triggered in any quarter (or 5 or more months in a calendar year) the provider must provide a full explanation for the failure along with a plan and timetable for corrective action. Docket No. 5903, Order of 7/2/99, Attachment 1 Service Quality Stipulation.

business). The table below shows Consolidated's performance for the OOS Troubles Cleared metric for the three categories for the time period 2018 – 2021.



As the above graph demonstrates, Consolidated consistently clears OOS troubles for business customers quicker than for residential customers. This is an important observation because it indicates that Consolidated may be more focused on clearing troubles for business customers than it is for residential customers, in which case, Consolidated should dedicate additional resources to the residential customer class. However, without reporting the data separately for business customers, this important piece of information would be unavailable.

Q51. Are there other important observations that can be taken from the above graph?

A51. Yes. Consolidated has consistently struggled to meet the OOS Troubles Cleared within 24 hours service quality metric – particularly for the residential and total categories. For instance, Consolidated has failed to meet the Baseline Level (70%) for the Residential and Total OOS categories of the last 15 quarters, including missing the benchmark for both categories as recently as 3Q2021. While Consolidated has met the Baseline Level for the business category each quarter since 1Q2019, there has been a modest downward trend in this category since its high point in 2Q2020.

Q52. Does the Department's IRP proposal for retail service quality account for Consolidated's performance on the OOS Troubles Cleared metrics?

A52. Yes. The Department recommends that, if the OOS Troubles Cleared time is lengthened from 24 hours to 48 hours, Consolidated should be required to issue enhanced bill credits to those customers who experience outages longer than 48 hours. The intent of the enhanced bill credit proposal is to establish a financial incentive to ensure that Consolidated does not abuse the additional time granted by the modified OOS Troubles Cleared metric and allow its retail service quality to backslide.

Q53. Please describe the Department's enhanced bill credit proposal.

A53. The Department proposes for Consolidated to issue enhanced bill credits to customers for outages longer than 48 hours. Should Consolidated fail to reinstate basic primary residential or business telephone service within 48 hours of being reported to or discovered by Consolidated, Consolidated will provide the customer a daily credit of $5 for a residential customer or $10 for a business customer beginning 48 hours after report/discovery of the outage. This is in addition to the Interrupted Service Credit Consolidated already provides to customers pursuant to Board Rule 7.609. For telephone service outages lasting longer than 10 days, a credit of $10 per day for residential customers or $20 per day for business customers will be provided for the 11th and succeeding days.

The enhanced bill credit will ensure that basic service customers affected by a service outage lasting longer than 48 hours will automatically receive a bill credit in the amount of $5 for residential customers and $10 for business customers for each day the outage extends past 48 hours. Additionally, the bill credit escalates for outages extending more than ten days to $10 per day for residential customers and $20 per day for business customers (starting on the 11th day).

Q54. The Department has proposed enhanced bill credits previously that were not adopted. Why is now the appropriate time to adopt this proposal?

A54. There are several reasons why the appropriate time is now to adopt an enhanced bill credit proposal. First, when declining to adopt an enhanced bill credit proposal in the proceeding investigating Consolidated's service quality (Case No. 18-3231-PET), the

Commission expressly envisioned such a proposal being raised within the context of this IRP proceeding: “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.” Case No. 18-3231-PET, Order of 1/31/20 at 9. Second, to the extent the OOS Troubles Cleared time is changed from 24 hours to 48 hours, a financial incentive should be put in place to protect against any backsliding by Consolidated in its service quality performance. Third, given the inconvenience and public safety concerns associated with telephone service outages, an enhanced bill credit is a reasonable method for providing a degree of compensation to affected customers. Fourth, the provisions of the Department’s enhanced bill credit proposal (*e.g.*, amounts and escalation procedure) is patterned after an enhanced bill credit proposal to which the Minnesota ILEC, Frontier Communications, consented. The Frontier-Minnesota bill credit was implemented under similar circumstances to those that exist in Vermont, specifically problems with substandard service quality performance that include difficulty meeting the OOS Troubles cleared metric. The fact that another ILEC agreed to a substantially similar enhanced bill credit proposal to address similar circumstances demonstrates the reasonableness of the Department’s enhanced bill credit proposal.

e. Bundles

Q55. Please comment on Consolidated's proposal to expressly exclude bundles from the IRP.

A55. Bundled services typically refer to service offerings that combine basic voice service and other services not regulated by the Commission (like long distance calling) for a monthly price. Consolidated offers bundled services out of its Vermont Catalog, such as the "Exchange Choice II" and "Exchange Essentials II." *See* Consolidated Communications, Vermont Catalog, Exchange and Network Services, Part A Section 15, original page 48. These services are not included in or offered out of Consolidated's Basic Local Exchange Services Tariff (Vermont PUC No. 1). The Department does not oppose including language in the IRP that excludes from the plan these non-tariffed bundled services.

However, the IRP should clarify that a customer who purchases tariffed BLES service is entitled to purchase other stand-alone services from Consolidated's tariffs/catalogs. In other words, a BLES customer would not lose access to the BLES service simply for purchasing other stand-alone services. This is not a service bundle as discussed by Consolidated and the stand-alone BLES service in this scenario should be subject to the IRP.

f. Required Reports

Q56. What is Consolidated's proposal for "Required Reports" associated with the successor IRP?

A56. Attachment A to the IRP contains a list of required reports that Consolidated must file during the term of the IRP. Consolidated proposes to maintain the list in the existing plan which contains three reports: (1) Docket No. 6255 (or successor proceedings) Wholesale Service Quality; (2) Rule 7.600 Disconnection Report; and (3) Annual Report filed pursuant to 30 V.S.A. § 22(a).

Q57. Does the Department agree with Consolidated's proposal regarding "Required Reports"?

A57. The Department agrees that the existing reporting requirements should be maintained for the successor IRP. However, the Department proposes additional reporting requirements that include (1) for the new service quality metrics proposed by the Department, quarterly retail service quality reports to be filed consistent with the terms and conditions in Docket 5903; (2) quarterly status reports detailing ongoing mitigation/resolution efforts regarding host-remote isolation vulnerabilities in Consolidated's Vermont network; and (3) semi-annual reports detailing locations built out pursuant to RDOF and Fiber-to-the-Home ("FTTH") deployments.

Q58. Why should these three reports be added to the Required Reports (IRP, Attachment A)?

A58. The three subject areas that these reports cover – *i.e.*, retail service quality, host-remote isolation vulnerabilities, and network investments – are important elements of the Department's IRP proposal.

Q59. Please explain why retail service quality reports filed consistent with the terms and conditions in Docket 5903 should be added to the list of Required Reports.

A59. One significant change that would occur, if either of the parties' IRP proposals are adopted by the Commission, would be that the retail service quality metric for OOS clearing time would change from 24 hours to 48 hours (with Baseline standard increasing from 70% to 80% and Action Level increasing from 60% to 70%). This is a significant change from the OOS metric established in the Docket 5903 and could conceivably lead to longer average service restoral times for Consolidated customers. While the Department's proposal attempts to guard against longer restoral times by increasing the baseline/action percentages and introducing enhanced bill credits for substandard OOS performance, it is even more important to monitor Consolidated's retail service quality (particularly OOS Troubles Cleared) performance during the IRP term so that any backsliding performance can be addressed immediately.

Although Consolidated is required to report its Service Quality Performance Index on a quarterly basis pursuant to Docket 5903, an independent requirement should be established to ensure that Consolidated's obligation to report retail service quality is maintained under the IRP. This is particularly true given that the modification to the OOS metric (if adopted) would manifest out of Consolidated's successor IRP.

Q60. Please explain why quarterly reports addressing host-remote isolation vulnerabilities should be added to the list of Required Reports.

A60. Case No. 19-0869-PET was initiated to investigate host-remote isolation vulnerabilities in Consolidated's Vermont wireline network and potential remedies to mitigate the risk of isolation events. Host-remote isolation events are telephone system outages that occur when the link between a remote switching unit and its host switching unit is severed. This event effectively "isolates" wireline service customers in an affected area and they are unable to make calls outside their home exchange, including emergency calls to 911. *Department of Public Service Request for Workshop Regarding Host-Remote Isolation* Case No. 19-0869-PET, Petition of 3/27/19 at 1.

This is a long-standing, serious public safety issue facing customers in areas vulnerable to host-remote isolation events. On November 5, 2021, Consolidated provided a status report on its efforts to decrease the number of Vermont communities susceptible to host-remote isolation events. A fair reading of that status report indicates that Consolidated may not intend to take any further action to address vulnerable communities and requests that Case No. 19-0869-PET be closed. The Department, however, believes more work is needed in this area. Accordingly, as discussed in the testimony of Department witness Clay Purvis, the Department recommends that Consolidated take further action to reduce the number of vulnerable communities. The Department recommends that Consolidated submit quarterly reports to the Commission and Department (much like the status reports submitted in Case No. 19-0869-PET) to monitor Consolidated's progress and address any questions/concerns in a timely manner.

Q61. Please explain why semi-annual reports addressing network investments should be added to the list of Required Reports.

A61. Consolidated has indicated its commitment to deployment of fiber network facilities as support for its IRP proposal. Davis Direct, p. 14, lines 14-20; Consolidated response to Discovery Inquiry DPS.CCI.1.1. Consolidated explains that it has plans to invest over $165 million in private dollars in Vermont through 2025, but that its fiber deployments are contingent upon several factors and subject to change. *See* Consolidated response to discovery inquiry DPS.CC.1.15. Consolidated also discusses a plan to invest $60 million in fiber builds using RDOF monies over the next six years, but that its build schedules for RDOF-related projects are in the nascent stages. *See* Consolidated response to discovery inquiry DPS.CC.1.15.

Given the importance of fiber investments to Consolidated's proposed IRP – as well as the benefits that such investments could produce for consumers and the state – monitoring Consolidated's progress in this area via periodic reports is extremely useful.[7] This is particularly true given that Consolidated has stated that its fiber build out plans for non-RDOF and RDOF projects are either not yet developed or are subject to change over time. These reports will allow the Commission and Department to identify and address any questions or concerns about investment backsliding or under-investment in particular areas during the IRP term.

g. Miscellaneous Provisions

Q62. Would you like to comment on any other proposed modifications to the IRP?

A62. Yes. Consolidated proposes to modify certain miscellaneous language that resides in the existing IRP. First, Consolidated proposes striking language referring to using Federal High Cost Universal Service Funds to upgrade local loop plan or infrastructure. Consolidated **Exhibit CC-SD-2**, p. 4, former Section VI(A)(3). Likewise, Consolidated proposes to strike language discussing the FCC's rate floor relating to high cost support. Consolidated **Exhibit CC-SD-2**, p. 2, Section B. Consolidated explains that "Federal High Cost Universal Service Funds have been eliminated via the FCC's transformation order in 2011" and that "Connect America Funding ("CAF") and now [RDOF] have

7 RDOF awardees are required, as a condition of receiving RDOF funds to file and certify deployment data annually detailing all locations built out in the prior year. https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund/

replaced the traditional federal universal service funding the Company once received." Consolidated response to discovery inquiry DPS.CC.1.19(d); Davis Direct, pp 12-13. Consolidated also notes that it is at or above the FCC rate floor in Vermont. Davis Direct, p. 13, line 4.

Second, Consolidated proposes to replace outdated references to previous proceedings including Docket 7270 (which refers to the acquisition of Verizon by FairPoint) with a reference to Docket 8881 (which refers to the more recent acquisition of FairPoint by Consolidated). Consolidated **Exhibit CC-SD-2**, p. 4, Section VI(A).

Third, Consolidated proposes to strike language related to the pricing and filing of special contracts. Consolidated explains that it "has not had a special contract for BLES service in the term of the current IRP." Consolidated response to discovery inquiry DPS.CC.1.19(b). The Department does not oppose these proposed language modifications.

Q63. Please explain whether the Department supports Consolidated's proposal to strike language discussing dedicated transport and special access services.

A63. The Department opposes this language change. Consolidated's proposed language modification is as follows: "Section 218(a) shall not apply, except as specified herein ~~and~~

~~for dedicated transport and special access services, including but not limited to intrastate DS-1 and intrastate DS-3 point to point services~~." Consolidated states that the "FCC has detariffed and deregulated special access" and that "[m]ost state circuits ordered have more than 10% of their traffic being interstate which makes the circuits interstate." Consolidated response to discovery inquiry DPS.CC.1.19(c). Since the language Consolidated proposes to strike applies to *intra*state – not *inter*state – services, the regulatory regime the FCC applies to interstate special access circuits does not justify striking the language.

Consolidated goes on to state that "[w]hether state or interstate, DS1 and DS3 point to point services are competitive." Consolidated response to discovery inquiry DPS.CC.1.19(c). It is the position of the Department that this statement is not sufficient support for striking the language. For example, High Capacity DS1 special access services are still included in Consolidated's intrastate access tariff, which suggests that at a minimum, Consolidated's proposal (which refers to both intrastate DS1 and DS3) is too broad. Consolidated Communications, Access Tariff VT PUC No. 3, Section 30, Pages 17.

h. Satisfaction of Section 226b(c) Criteria

Q64. Please explain why the Department's IRP proposal is best suited to satisfy the 30 V.S.A § 226(b)(c) criteria.

A64. I explain below why the Department's proposed IRP meets each of the §226(b)(c) criteria.

1. <u>Promotes the general good of the state</u>

The Department's proposed IRP promotes the general good by establishing a regulatory model that carefully and fairly balances the interests of Consolidated (recognizing the changes occurring in the Company's service territory) and the interests of customers who continue to rely on residential and business BLES. The plan simultaneously recognizes (1) that Consolidated is facing competitive pressures from other carriers overbuilding next-generation networks in its service territory; and (2) that broadband-enabled and wireless communications alternatives are not suitable or not yet available to a significant group of captive BLES customers.

The proposed plan also provides enhanced incentives for Consolidated to restore customers' voice services in a timely manner – which in the past has proven to be a challenge for the Company. In addition, the proposed plan addresses important public safety concerns by prioritizing service restoration for Emergency Households and reducing the number of communities vulnerable to host-remote isolation events.

Furthermore, the proposed plan seeks to bring cutting edge advanced services capabilities to Vermont communities more rapidly by accelerating Consolidated's RDOF investment projects, which are expected to bring symmetrical 1Gbps broadband speeds.

2. <u>Is consistent with the State telecommunications purposes established under Section 202c of this title</u>

The Department's proposed plan is consistent with the State telecommunications purposes established under Section 202(c) because (1) it recognizes the rapid pace at which the telecommunications industry is changing in Vermont (including infrastructure investment from private and public sources); (2) it encourages advances in telecommunications technology by granting flexibility in areas where significant fiber investments have been made; and (3) it brings the benefits of additional infrastructure investment sooner than currently anticipated, all while ensuring the availability of high-quality BLES services to Vermont residents and businesses.

3. <u>Is consistent with the State Telecommunications Plan adopted by the Department of Public Service under Section 202d of this title, or there exists good cause to approve alternative forms of regulation notwithstanding this inconsistency</u>

The Department's proposed plan is consistent with the 10-Year Telecommunications Plan because it promotes the statewide broadband goals. The proposed plan also focuses on increased resiliency and redundancy of the telecommunications network to address existing public safety concerns.

4. <u>Is consistent with the public's interests relating to appropriate quality telecommunications services</u>

The Department's proposed IRP is consistent with the public's interests relating to appropriate quality telecommunications services because it retains (with one modification) the service quality standards established in Docket No. 5903 in Tier 1 Areas. The proposed modifications to the OOS Troubles Cleared metric are designed to ensure that more customers have outages resolved within the designated time period. The proposed plan also establishes additional safeguards against backsliding performance by providing financial incentives (in the form of enhanced bill credits) to ensure that basic service outages are restored in a timely manner. Additionally, the Department's proposed IRP includes a plan to address Vermont communities vulnerable to host-remote isolation events and will help mitigate the quality of service and serious public safety issues caused by such events. By contrast, Consolidated's proposal eliminates completely business BLES from service quality oversight (which could lead to service quality degradation) and is silent on host-remote isolation vulnerabilities.

5. Is consistent with the goal of protecting or promoting universal service to residential users of telecommunications

The Department's proposed IRP protects/promotes universal service to residential users of telecommunications by maintaining residential BLES throughout Consolidated's Vermont service territory, including Tier 1 and Tier 2 Areas. Should Consolidated's proposal be adopted, it could result in residential BLES being eliminated in areas the Company has designated as "competitive" without a showing that each and every residential customer has a BLES alternative.

6. Provides reasonable incentives for the creation of a modern telecommunications infrastructure and the appropriate implementation of new cost-effective technologies

The Department's proposed plan provides reasonable incentives for the creation of a modern telecommunications infrastructure and the appropriate implementation of new cost-effective technologies in several ways. First, it provides Consolidated regulatory flexibility in Tier 2 Areas, where other service providers are overbuilding fiber in Consolidated's service territory. This provides additional means for Consolidated to respond to these investments with fiber investments of its own and also produces a regulatory model that fosters investment in modern telecommunications networks from private sources, RDOF-funded projects and CUDs. The plan also promotes network infrastructure investment and implementation of new technologies by accelerating investment in communities covered by Consolidated's RDOF projects, which will bring symmetrical 1Gbps to more than 10,000 locations in Vermont. *See* Consolidated's response to discovery inquiry DPS.CC.1.22.

7. Reasonably supports economic development in the affected service territory

The Department's proposed plan supports economic development in the affected service territory by retaining BLES service throughout Consolidated's Vermont service territory and establishing a regulatory model that encourages competitive forces in areas where service providers are investing in advanced telecommunications networks. As discussed above, the plan also promotes network investment by accelerating investment in communities covered by Consolidated's RDOF projects.

8. Adequately protects consumer privacy interests

The Department's proposed IRP retains the privacy protections established in Docket No. 5903.

9. Supports reasonable competition

The Department's proposed plan supports reasonable competition by identifying areas in which facilities-based providers of fiber networks/services are focusing efforts to overbuild Consolidated's service territory and, in light of those conditions, granting additional regulatory oversight in Tier 2 Areas. However, supporting reasonable competition does not necessarily mean that those areas should be completely deregulated, and as such, the Department's proposal provides a regulatory backstop for BLES customers in Tier 2 Areas.

10. <u>Includes adequate safeguards to ensure that charges for noncompetitive services do not subsidize competitive services</u>

The Department's proposed IRP includes safeguards to ensure that charges for noncompetitive services do not subsidize competitive services by establishing caps on rate increases for BLES. For Tier 1 Areas, those caps are consistent with the existing IRP. Although the proposed Tier 2 caps are higher than in Tier 1 Areas, they still provide a degree of protection against cross-subsidization.

11. <u>Is just and reasonable and would not produce unjust discrimination between users of the public switched network in the pricing, quality, or availability of the network functions or services offered</u>

The Department's proposed IRP is just and reasonable because it best balances the interests of Consolidated and its customers. The plan would not produce unjust discrimination between users in the pricing, quality or availability of the network functions or services offered because it retains the availability of residential and business BLES throughout Consolidated's Vermont service territory, requires uniform BLES pricing throughout Tier 1 Areas and establishes a fact-based "test" using highly-reliable data for determining areas where additional regulatory flexibility should be granted.

Q65. Does this conclude your testimony?

A65. Yes, it does