STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-4060-PET

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

SURREBUTTAL TESTIMONY OF

SARAH DAVIS

ON BEHALF OF CONSOLIDATED COMMUNICATIONS

April 28, 2022

SUMMARY OF TESTIMONY

Witness Sarah Davis responds to the Rebuttal Testimony submitted on behalf of the Department of Public Service.

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

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

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

Q2. Have you previously provided testimony in Case No. 21-4060-PET?

A2. Yes, I provided direct Prefiled Testimony on behalf of Consolidated Communications of Vermont Company, LLC ("CCVC") and Consolidated Communications of Northland Company ("CCNC") (both d/b/a "Consolidated Communications") (hereafter "Consolidated" or "Company") to describe Consolidated's proposed 2022-2024 Vermont Incentive Regulation Plan ("Proposed Plan" or "Proposed IRP"). I also provided Rebuttal Testimony to address the Direct Testimony submitted on behalf of the Department of Public Service ("Department" or "DPS").

Q3. What is the purpose of your testimony?

A3. I respond to the Rebuttal Testimony submitted on behalf of the Department.

Q4. Department witness August Ankum claims that Consolidated's references to FCC data on competition in Vermont supports the Department's proposed benchmark for competition (Rebuttal pages 8-9). Please respond and explain why Consolidated's benchmark is more appropriate for a successor IRP.

A4. In Dr. Ankum's testimony he claims that Consolidated wants "to have it both ways" by stating that over 99.9% of Vermonters have access to an alternative service yet rejecting the Department's 98% benchmark. Dr. Ankum is incorrect. Consolidated recognizes that the market is competitive on a statewide basis, hence the rapid decline in access lines, however, in recognition of the Department's concern regarding end users that may not have access to an alternative, Consolidated thought it appropriate to engage in a more granular analysis to ensure competition on a more discrete geography and used the Department's data to limit disputes over the data source. These smaller geographies lend themselves to a different showing of competition in terms of percentages. The Department's suggestion of 98% is setting the bar too high. Applying the Department's threshold to towns such as Williston and Brattleboro miss the mark at 95.3% and 97% respectively, while those towns have robust competition and those listed as unserved are scattered throughout the geography. Also, a number of small towns are excluded. If the benchmark is to be set as high as the Department wishes, it will be very difficult to ever achieve meaningful regulatory relief. On the one hand, the Department may say this is a positive outcome because it ensures the regulation of telecommunications service for nearly everyone in rural areas. The problem with that thinking is that requiring maintenance of thousands of miles of network at an artificially low rate with mandated service quality in competitive areas is a situation that will continue to put financial strain on the Company and could eventually lead to the inability to serve anyone in rural areas.

Q5. Department witness August Ankum also draws a comparison between deregulation in Maine and that proposed in Vermont claiming the fact that 22 municipalities are deregulated in Maine is a "sanity check" on the Department's proposal to deregulate 29 towns in Vermont (Rebuttal page 10). What is Consolidated's response to Dr. Ankum's position?

A5. Dr. Ankum's analysis fails to note some key differences in Maine. First, he ignores that the relief in Maine began more than 6 years before the proposed IRP will go into effect in Vermont. At the time, complete deregulation of basic service was a relatively new concept. Dr. Ankum ignores that nearly every service in Maine was deregulated in 2012 except the most basic local service and unlike Vermont, that service was only regulated if it was ordered on a standalone basis with no long-distance packages, no voicemail and no broadband, and the only thing that could be added to the line were standalone features. As a result, Consolidated has fewer than 8,000 regulated customers in the entire State of Maine.

Dr. Ankum also fails to mention that Maine adopted a very relaxed service quality regime which includes a troubles not cleared in 48-hour metric with a benchmark of 80% and did not require customer credits or any additional medical emergency metric reporting for the Price Cap ILECs. Dr. Ankum also fails to mention that there were no tariff requirements for any service in Maine for Price Cap ILECs. These distinctions are important. Consolidated has not analyzed or exercised its ability to deregulate in further municipalities because of the light touch regulation that currently exists in Maine.

Q6. Department witness August Ankum is critical of Consolidated's concern that under the Department's competitive benchmark threshold a small number of locations could prevent the entire municipality from meeting Tier 2 status, claiming that eventually with more build out, this concern "should diminish over time." (Rebuttal pages 11-12). Is this response sufficient from Consolidated's perspective?

A6. While in theory they could diminish over time, there is no guarantee they will. The Vermont Community Broadband Board (VCBB) is currently focused on build out to unserved locations but that could take an extended amount of time, likely years. Furthermore, it is unlikely that towns with only a small number of unserved locations will be targets for deployment. It would be difficult to be financially viable if a company were to build to only a few of the most remote locations in a municipality. The IRP should recognize substantial and market constraining competition, not setting the bar so high it is very difficult to achieve. Dr. Ankum notes that the Department's concern is for "customers," yet the Department performs no analysis to confirm that the locations listed as unserved at 25/3 are actually Consolidated BLES customers.

Q7. Department witness August Ankum states in his Rebuttal that Consolidated has made "the same flawed claims" (Rebuttal page 16) regarding its request to eliminate the business BLES rate, claiming his rationale for retaining the business BLES rate has been ignored by Consolidated. What is Consolidated's response to the Dr. Ankum's claims regarding the need and justification for retaining a business BLES rate?

A7. Consolidated has not ignored Dr. Ankum's arguments it simply does not agree with them. Dr. Ankum states that Consolidated groups all business customers together and glosses over critical distinctions. He is correct that Consolidated does group all business customers together, because that is what is proposed by the Department in its continued regulation of business BLES. The Department requires regulation of a local service with no distinction in the size of customer, the number of lines or usage patterns. Additionally, Consolidated groups them all together because that is an appropriate distinction from a competitive perspective. The business market has been competitive for significantly longer than the residential market. Also, there are more competitors for business lines, even BLES lines, than for residential, as a result of the higher revenues associated with a business service than a residential. For instance, following the 1996 Act, competitive CLECs entered the market for BLES business services because they could purchase a UNE and make a decent return on a business BLES service for which they could charge significantly more than for than a residential local line. Many of those CLECs still exist today and still offer competitive business services of all flavors including business BLES.

Additionally, Consolidated had a difficult time responding to Dr. Ankum's testimony because it is inconsistent. At Page 16, Line 4 of his Rebuttal Dr. Ankum states, "Consolidated's reference to higher revenues associated with business services does not apply to business BLES." But then goes on at Page 17, Line 18 to state, "Consolidated's existing business BLES rate is twice the rate of residential BLES." Consolidated cannot respond to this argument because it does not understand these two completely inconsistent statements.

Finally, Dr. Ankum argues that regulators group small business and residential customers together from a regulatory perspective. Consolidated disagrees. Rate making is the core function of any regulatory body and every regulatory body that Consolidated is aware of allows much higher business rates than residential regardless of the size of the business customer.

Q8. The Department claims its request for enhanced bill credits is appropriate because another provider in another state agreed to a similar enhanced bill credit (Ankum Rebuttal, page 20). What is Consolidated's response to this claim and the proposed enhanced bill credits in general?

A8. What another provider in another state agreed to is irrelevant. Consolidated operates in Minnesota and it is not required to provide enhanced bill credits. Consolidated does not even report service quality in Minnesota. Furthermore, Consolidated is free to raise rates as it wishes in Minnesota. Simply implementing a piece of a regulatory scheme that you like for each state without examining the entire regulatory landscape is not a useful analysis. I discussed Consolidated's opposition to the enhanced bill credits in my Rebuttal testimony.

Q9. The Department claims that Consolidated is wrong when it says there is very little or no demand for intrastate special access (Ankum Rebuttal, page 21). What is Consolidated's response to this claim?

A9. Consolidated agrees that the information that it provides shows a substantial embedded base for special access and can understand that based on that, continued regulation may seem necessary. Consolidated notes that there is almost no new ordering. Furthermore, a customer should only be eligible for intrastate special access when less than 10% of the traffic is interstate in nature (which includes internet traffic). Based on today's usage patterns it seems unlikely that if audited the circuits would truly qualify. Consolidated is fine with continued regulation of special access, however, for the reasons stated above it seems unnecessary.

Q10. Department witness August Ankum disputes that Consolidated is losing revenue to provide BLES service, claiming there is inadequate and incomplete support provided by Consolidated. What is Consolidated's response to Dr. Ankum?

A10. This proceeding is not a traditional rate case whereby Consolidated must demonstrate through study and analysis the basis for the rates it seeks to charge. In Rebuttal testimony, Consolidated explained that providing BLES service, particularly residential BLES service, is already not profitable to respond to 1) Department witness Ankum's testimony about the need to maintain this affordable BLES service, with no consideration of how continuing to provide this low-cost service impacts Consolidated's bottom line, and 2) make the point that given Consolidated's continued obligation to maintain artificially low rates for BLES service, it is inappropriate to pile on to Consolidated's financial burdens a requirement to make infrastructure upgrades as the Department requests here through its proposed condition to remedy the longstanding host remote isolation issue.

That providing low-cost BLES service in the most remote corners of the State is a losing business proposition is a point that cannot credibly be contested. If providing voice service in the most rural pockets of Vermont was profitable, competition would be present in those areas. The fact that it is not, proves Consolidated's point that providing BLES service is not profitable particularly in the most remote areas. Indeed, Dr. Ankum acknowledges in his Direct Testimony (pages 6-7) that 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…"

Consolidated agrees that its analysis on BLES losses is somewhat dated, however, Consolidated believes that it is undisputed that BLES service is not producing a return. The last rate case performed by Consolidated's predecessor was in Maine in 2014. Based on that analysis Consolidated demonstrated a revenue deficiency of $47.7M. The problem was that this amount of money could not be made up in rates without further competitive losses likely producing greater revenue deficiencies. Since the state was unwilling to provide universal service support, it set the stage for deregulation. Consolidated believes that there is very little dispute that a traditional rate of return analysis would show a similar deficiency in Vermont, hence why an incentive regulation plan is necessary.

Q11. Department witness August Ankum states that "[a]n affordable basic service is increasingly important given rising inflation," and claims that BLES customers are "less likely to switch to higher-priced voice alternatives…" (Rebuttal page 29). What is Consolidated's response to Dr. Ankum?

A11. Dr. Ankum has provided no support for the claims that alternatives are necessarily "higher priced" or that people are "less likely to switch." In fact, access lines declines tell a different story. Furthermore, inflation equally impacts Consolidated. Dr. Ankum seems to suggest that Consolidated should be responsible for curing the ills of inflation and should not have the ability to make itself whole for rising costs it may incur.

Q12. Department witness August Ankum claims that the FCC's delayed implementation of the phase-out of Lifeline support for voice only services (Rebuttal page 30-31) demonstrates that "protecting BLES remains an important public policy objective." What is Consolidated's response to Dr. Ankum?

A12. One is not related to the other. The FCC did delay the phase out of Lifeline support, but it did not eliminate the phase out. If protecting BLES were really an important policy objective for the FCC they would not have phased down the support or ever ordered its elimination. It is actually quite the opposite, the FCC sees diminishing value in BLES service, which is why the FCC provides greater subsidy to broadband service, and they allow for Lifeline subsidy on wireless and VoIP service. Similarly, the Vermont Legislature's recent singular focus has also been on expanding broadband throughout the State.

Q13. The Department recommends that the Commission condition approval of a successor IRP on a commitment from Consolidated to address host-remote isolation ("HRI"), claiming it is a "compelling public safety issue that should be part of any successor IRP." (Purvis Rebuttal, page 3) What is Consolidated's response to the Department's claim about the need for this condition?

A13. Consolidated disagrees. Consolidated does not see how the Department can now claim that the host remote isolation issue is a compelling public safety issue that merits immediate attention through this IRP proceeding. This condition has existed for many, many years, there have been relatively few events, and the likelihood of more events declines as people rely less and less on landlines to make 911 calls. With its request to open Case 19-0869-PET, the host-remote isolation investigation, the Department included a letter to the Department from the Executive Director of the Vermont Enhanced 911 Board, dated March 22, 2019. In that letter, the Executive Director noted that, "Isolation vulnerabilities have existed in the wireline network since the inception of the statewide 911 system in 1998." In the Commission's April 16, 2019 Order opening Case No. 19-0869-PET, it observed that in 2006, a rulemaking on the HRI topic was opened but no rule was ever formally proposed, and it noted this issue had come up in Docket 8850. In Comments filed in Docket 8850 on January 23, 2019, the Department stated the following, "the Department believes that the Commission should allow for the E-911 Board to continue its efforts to resolve this issue as it relates to E-911 service." Consolidated does not believe that anything has changed that would merit addressing this longstanding issue in this proceeding. These issues should be addressed in a proceeding involving the E-911 Board and other impacted telecommunications providers. This Docket is not the place for resolution of this longstanding industry-wide issue.

Moreover, over time, Consolidated expects these issues will be addressed. First, Consolidated has standalone capability in these remotes. Which means that calls can be routed locally to emergency personnel. With new and emerging technologies there are new and different ways to address diversity on next generation 911 systems and with Consolidated's fiber deployment.

Q14. The Department now claims that investing in network improvements that reduce or eliminate HRI is <u>not</u> cost prohibitive. (Purvis Rebuttal, pages 3-4) What is Consolidated's response to the Department's claims?

A14. Consolidated disagrees. Requiring Consolidated to incur over $1.605M in costs to solve or partially resolve an issue that relates to something less than 1.38% of all 911 calls made in Vermont, and where there is standalone capability to address issues with 911 calls, is certainly cost prohibitive. In order to recover just the cost of creating three new diverse routes would require at least a $2 increase on all Consolidated BLES customers. The Department makes no recommendation to allow Consolidated to recover the cost of imposing this condition.

Q15. What is Consolidated's understanding of the Department's new proposed metric for Emergency households (Flint Rebuttal, pages 2-3)?

A15. Consolidated understands that the Department is proposing a metric that requires Consolidated to report a metric that applies to troubles known or reported that exist for households that are known by Consolidated to have a medically vulnerable household member. More than 2% trouble reports for medically vulnerable household would exceed the baseline for a rolling 12-month average. More than 4% trouble reports for medically vulnerable households would exceed the action level for a rolling 12-month average.

Q16. Is Consolidated agreeable to adding the new service quality metric proposed by the Department for Emergency households as described by Carol Flint on pages 2-3 of her Rebuttal Testimony? If not, please explain Consolidated's position.

A16. No, this would require a new report for a metric that has traditionally not been a problem for Consolidated. Through this IRP there should be recognition that the competitive landscape requires less regulation. There is no need to create a new service quality report for a subset of customers that are already part of the existing service quality regime. Consolidated has had no time to analyze the cost to measure and produce this report and it has had no time to determine what the denominator would be and how frequently it changes. At the present time Consolidated takes the customers word for their condition and escalates the trouble report if it is a medically vulnerable customer. It has always done it that way, and there is no need to change this system that is working.

Q17. Does this conclude your testimony?

A17. Yes.