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	

REBUTTAL TESTIMONY OF
SARAH DAVIS
ON BEHALF OF CONSOLIDATED COMMUNICATIONS

March 4, 2022

SUMMARY OF TESTIMONY

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

**REBUTTAL 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") to describe Consolidated's proposed 2022-2024 Vermont Incentive Regulation Plan ("Proposed Plan" or "Proposed IRP"). In my Direct Testimony, I also briefly described current market conditions, why those conditions justify Consolidated's Proposed IRP, how the Proposed IRP differs from the 2016-2022 Incentive Regulation Plan ("Current Plan") that expires on July 31, 2022, and how the Proposed Plan meets the criteria of 30 V.S.A. § 226b(c) for incentive regulation plans ("IRP").

Q3. What is the purpose of your testimony?

A3. I respond to the Direct Testimony submitted on behalf of the Department of Public Service ("Department" or "DPS"). First, I address the Department's testimony regarding the state of competition in Vermont. Second, I address the Department's proposed IRP ("DPS

Proposed IRP"). Third, I respond to the other conditions the Department recommends the Vermont Public Utility Commission ("Commission") order in this Case.

Q4. From Consolidated's perspective, what aspects of the Vermont telecommunications market are important to understand when evaluating the Consolidated Proposed IRP?

A4. In evaluating the Proposed IRP it is important that the Vermont Commission evaluate the impact of regulation on Consolidated and lack of regulation on the entire competitive market. On the one hand it is easy to rely on a "captive company" like Consolidated to continue to be responsible for incurring higher costs than it sees in returns to continue to provide basic local exchange services ("BLES"), largely because it has always been that way. There are several problems with this: 1) it is not sustainable; and 2) it does not promote the State's or 30 V.S.A. § 226b's goal of providing "reasonable incentives for the creation of a modern telecommunications infrastructure and the appropriate implementation of new cost-effective technologies."

To the extent Consolidated is required to continue to provide a dated and declining technology everywhere throughout its statewide footprint, at below cost, it will inappropriately divert resources away from Consolidated's efforts to create a modern telecommunications infrastructure offering cost-effective services through expansion of its fiber network. Furthermore, it continues to stifle the market. As long as cable companies are able to compete with BLES, they will continue to charge what they wish for more robust technologies. Only through the introduction of more robust technologies, such as Consolidated's fiber to the premise service, will the market be constrained. In order for Consolidated to be able to deploy more robust technologies in more places, Consolidated needs reduced regulation of BLES service and regulatory parity with Consolidated's competitors. Through its Proposed Plan, Consolidated has sought to eliminate regulation in those areas of the State where competition exists.

Consolidated's Proposed Plan uses reasonable proxies for competition: 97% of customers have a broadband option of at least 4/1 and 91% have a broadband option of at least 25/3M. In contrast, the Department's IRP proposal raises the bar too high for what is required to be deemed competitive, and it adds conditions with substantial costs that would reduce or eliminate any benefits gained through regulatory relief. In short, the Department asks that Consolidated bear even more costs to provide a service already offered at below market rates.

In evaluating the Proposed IRP, we ask the Commission to 1) keep in mind that if the BLES rate was set using a traditional cost of service approach that rate would be increased, and adding further costs through such conditions as significant infrastructure upgrades, as the Department recommends here, would likely generate a BLES rate so high that it could not serve the public interest, and 2) recognize and credit Consolidated for its ongoing commitment to keep the low BLES rate, despite the revenue loss it creates for the Company, in those few areas of the State where competition does not exist.

Q5. Department witness August Ankum states in his Direct Testimony at page 5[1] that Consolidated has "overgeneralized" the extent to which alternative services are available to Vermont consumers. Does Consolidated agree with witness Ankum's opinions on competition in Vermont?

[1] Pages references are to the Public Redacted version of August Ankum's testimony.

A5. No. There is robust competition and substantial alternative services available to the vast majority of Vermont customers. Witness Martin will address the competition in Vermont in more detail. However, based on access lines trends over the last 20 years, which show a constant and steady decline, it is clear that many customers chose alternatives to landline service to meet their voice needs. National cord cutting trends demonstrate that many people, including many Vermont customers, have chosen non-wireline alternatives for service. If there were not alternatives as Mr. Ankum states, Consolidated would have far more than approximately 70,000 access lines, a number that continues to decline every month.

Q6. Department witness August Ankum states in his Direct Testimony at page 15 that, "[a]ffordability 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." Do the fees collected from Vermont customers for BLES service cover the cost to Consolidated to provide BLES service to these residential customers?

A6. No. Based on Consolidated's review of its loop costs per exchange compared with its estimated local revenue per exchange (including both subscriber line charge (SLC) and access recovery charge (ARC)), Consolidated loses over $5.5M on an annual basis. **CONFIDENTIAL Exhibit CC-SD-4** shows the average cost per line per exchange and shows the amounts that Consolidated earns or loses per customer. Based on access line declines, these losses will only increase for BLES service on the copper network. As more technologies become available and in more locations, BLES customers will continue to decline but the miles of cable that will need to be maintained will stay the same. A sustainable business model does not support continued investment in new facilities to support traditional BLES service because there will be no return or a grossly inadequate return.

Mr. Ankum's testimony appears to acknowledge the market problem, as Mr. Ankum points out in his testimony at page 7, lines 1-2, competitors focus "on the higher-density areas that are more cost-effective to serve." What he does not say, but logically follows, is that they do that because there is actually a return in those markets, as opposed to the areas where competition chose not to expand. Mr. Ankum also points out that competitive services are much more expensive than BLES. So logic would tell us if competitors cannot expand because of the lack of return and they charge much more for their services than BLES, then BLES cannot be a profitable endeavor.

Q7. How did this situation arise where Consolidated is required to provide BLES service at a loss to Consolidated?

A7. The story begins with the changes to the Telecommunications Act in 1996. The United States Congress attempted to open the local telecommunications market to encourage competition. The 1996 Act required unbundling and infrastructure sharing to reduce the cost of deployment for competitors. The results were, in hindsight, very predictable. Over the next 26 years competition flourished, the problem was, it only flourished in lucrative portions of the market. CLEC competition grew exponentially, but largely only targeted business customers. Cable competition expanded but only in more densely populated areas. This created a problem for the ILECs. Traditionally, ILECs relied on these more densely populated areas and higher priced business services to subsidize their residential customers in more rural areas that were paying the same price. The loss of market share in the competitive markets created a need for very high prices to achieve returns, but since ILECs were offering interstate and other non-regulated services, it became impossible to perform traditional rate of return analysis and states like Vermont turned to alternative forms of regulation. These mechanisms either prohibited or set caps on price increases, therefore, rates have remained artificially low.

The following demonstrates the BLES rates over the last 20 years. Since January 1, 2002, the low use residential access line has increased $4.24, the Standard Residential access line has increased $5.11, and both low use business line and standard use business line has increased $4.76. These increases represent less than a $0.26 raise per year over the last 20 years.

Q8. The Department has proposed that the term of the IRP be for three years instead of the two year term proposed by Consolidated (page 23 of Ankum testimony). Is Consolidated willing to agree to a three-year term for the IRP? If not, please explain Consolidated's position.

A8. Yes, in general, Consolidated sees no issue with a three year IRP, as long as it does not include the Department's more unreasonable conditions, discussed in more detail below. If the Commission were to order those conditions, Consolidated would need to seek a successor plan as soon as possible.

Q9. The Department has also requested that the IRP continue to include business BLES (page 28 of Ankum testimony). What is Consolidated's response to this request from the Department?

A9. There is no reason the plan needs to continue to include business service, and the Department points to no evidence of a continued need in this market. There is a robust and competitive business market, there are dozens of providers that serve business customers. CLECs offer business service over unbundled network elements ("UNEs") that will constrain voice prices, making regulation unnecessary.

Price flexibility with respect to business customers may result in higher prices consistent with market conditions, but those prices should be higher, as the ILEC rate structure has always relied on business services to subsidize the residential customers. Limiting business service price increases in the Department's Tier 1 municipalities to the same $2 that applies to residential customers does not make sound business sense. Finally, I note that in the statute authorizing incentive regulation plans, the only mention of universal service specifically references only residential customers.

Q10. The Department disagrees with the threshold proposed by Consolidated to deem a municipality competitive, and the Department proposes that only those towns with at least 98% availability of broadband speeds of 25/3 would be competitive (page 36 of Ankum testimony). Does Consolidated agree with the Department's new proposed threshold for deeming a municipality competitive? If not, please explain Consolidated's response to this proposal.

A10. No, this rate proposed by the Department is too high and therefore too restrictive in terms of designating municipalities as competitive. Most of the large municipalities in Vermont exceed both the Department's threshold and Consolidated's, so many of the remaining municipalities are small. When dealing with low numbers the threshold needs to be set such that a very small number of remote locations do not prevent the entire municipality from being considered competitive. As an example, consider that there are 20 municipalities in Vermont listed by the Department as having less than 200 locations, 17 of which are served by Consolidated. All of these locations would not be considered competitive if only 4 locations in the municipalities did not have access to broadband service at 25/3. Many of these municipalities would not be considered competitive if only 3 locations did not have access to broadband service at 25/3. The Department's threshold is so restrictive it would allow a few very remote locations to disqualify the entire town from being designated as competitive, such that Consolidated could never achieve regulatory relief in certain areas despite the availability of competitive alternatives. By all accounts, serving three or four locations in an entire town is a pretty tough business model.

There are 54 municipalities that have less than 500 people and that number skyrockets to nearly double at 101 that have less than 700 people. In its Proposed Plan, Consolidated tried hard to provide a delicate balance between ensuring real competition in areas to be de-regulated and not allowing a few outlying locations from removing that municipality in its entirety. There is no perfect solution but from Consolidated's perspective, 91% at 25/3 and 97% at 4/1 provides a reasonable and fair proxy for competition.

Q11. What does Consolidated propose as the threshold for deeming a municipality competitive for purposes of a new IRP?

A11. Consolidated proposed 91% of locations in a municipality have access to 25/3 broadband speed and 97% have access to broadband speeds of 4/1. Even a more moderate 95% threshold at 25/3 for the three year period, and to be reevaluated each year, would add another 14 municipalities to the Department's Tier 2 municipalities. This would include larger competitive areas such as Brattleboro, Williston, Hartford, and Shelburne.

Q12. When the Consolidated proposed competitive area threshold is applied what is the difference from the Department's proposal in terms of the number of municipalities that would be deemed competitive?

A12. Under the Department's proposal 32[2] municipalities would be deemed competitive, under Consolidated's proposal 74 would be deemed competitive.

Q13. The Department has also proposed that in areas deemed competitive (Tier 2 of the DPS proposal) there be continued regulation of rate increases in Tier 2 areas for the first two years of the new IRP (page 36 of Ankum testimony). Does Consolidated agree with this proposal? If not, please explain Consolidated's position.

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[2] The Department shows this number at 29 because they do not include Athens, Danby and Springfield where Consolidated serves a very small number of customers. Consolidated serves 1 customer in Athens, 4 in Danby and 21 in Springfield.

A13. In general, Consolidated does not agree with continued rate regulation in competitive areas. However, Consolidated would not oppose this if conditions, which Consolidated does oppose, were not ordered here.

Q14. The Department witness August Ankum discusses at page 37 of his testimony that the DPS Proposed IRP protects against charges for non-competitive services being used to subsidize competitive services. Would fees from non-competitive services ever be used to subsidize competitive services?

A14. No, in fact, the opposite is true and will continue to be. Consolidated's Vermont regulated (non-competitive) services operate at a loss, and Consolidated must rely on revenue from its competitive services to offset this revenue shortfall for regulated services.

Q15. The Department also proposes that Consolidated continue to be required to report the OOS Troubles Cleared metric for business BLES. Does Consolidated agree with this proposal (page 47 of Ankum testimony)? If not, please explain Consolidated's position.

A15. No, as stated above, business services throughout the state are competitive, and therefore, should not be subject to any service quality metrics. Consolidated's performance with respect to business BLES is already subject to market pressure so regulation is not needed. The Department argues that it needs visibility to business service in order to determine if business repairs are impacting residential repair. Consolidated concedes that business repair is prioritized over residential, as business customers expect very fast restoral and since the business market is competitive, it is required for Consolidated to continue to maintain those customers. If

Consolidated did not prioritize those repairs it would lose all of its business customers. The purpose of service quality reporting is to ensure good quality service, in the case of business services, the market will ensure that, therefore service quality reporting is not necessary.

Q16. The Department has proposed that the Commission order in this Case that Consolidated be required to provide enhanced bill credits (pages 50-51 of Ankum testimony). Please explain Consolidated's response to the request for enhanced bill credits.

A16. Consolidated does not agree with enhanced bill credits for out of service conditions. Providing enhanced bill credits seems to ignore the obvious issue, i.e., Consolidated continues to provide BLES at a loss. Providing enhanced bill credits just puts further financial strain on the Company. If the Commission were to order enhanced bill credits they should be low amounts, not to exceed a customers' monthly charges, and not include business BLES. At $10 per day, Consolidated could very quickly begin paying its customers to provide service.

Q17. The Department has requested that the IRP clarify that a customer can purchase BLES service and other stand-alone services (page 52 of Ankum testimony). What is Consolidated's response to this request?

A17. Consolidated does not take issue with this clarification.

Q18. The Department recommends that the Commission condition approval of a successor IRP on a commitment from Consolidated to address host-remote isolation, specifically by reducing the number of exchanges subject to partial diversity by half and

the number of exchanges with no diversity by three. Further the Department recommends that this work should be completed during the Department's proposed term of the IRP (page 10 of Purvis testimony). What is Consolidated's response to this recommendation from the Department?

A18. The long-standing host remote isolation issues in the Vermont network are issues that occur infrequently. Additionally, the Docket that is exploring these issues is only examining a small portion of the 911 calls that occur in the state as opposed to investigating the network as a whole. Consolidated also believes it is inappropriate to address issues in the host remote docket through this IRP proceeding. In addition, the network changes proposed by the Department in this Case are prohibitively expensive. Finally, this sort of condition is not an appropriate requirement for approving an IRP, which is targeted at addressing rate relief through an alternative form of regulation. As discussed above, Consolidated is already providing BLES service at a loss to it. Stated another way, BLES customers, not Consolidated, benefit from the rate cap in the IRP, and therefore, burdening Consolidated with further costly conditions is unjustified and punitive.

Q19. The Department has requested that the IRP include three additional reporting requirements (page 53 of Ankum testimony). First, the Department requests that for the new service quality metrics proposed by the Department, quarterly retail service reports should be filed consistent with the terms and conditions of Docket 5903. What is Consolidated's response to this request?

A19. Consolidated agrees these reports should be added.

Q20. The Department has also requested that Consolidated submit quarterly status reports detailing ongoing mitigation/resolution efforts regarding host-remote isolation vulnerabilities in Consolidated's Vermont network (page 53 of Ankum testimony). What is Consolidated's response to this request?

A20. As stated above Consolidated does not believe the IRP should contain the costly host-remote condition, so a report on such condition should not be necessary.

Q21. The Department has requested that Consolidated submit semi- annual reports detailing locations built out pursuant to RDOF and Fiber-to-the-Home ("FTTH") deployments (page 53 of Ankum testimony). What is Consolidated's response to this request?

A21. Consolidated does not believe this is necessary. Consolidated submits address level data to the Department annually for mapping. That data provides all locations that have been upgraded to fiber to the premise. Preparing a separate report containing the same information is not necessary and simply adds further administrative burdens to Consolidated.

Q22. The Department has opposed Consolidated's proposal to remove language from the IRP that references "dedicated transport and special access services, including but not limited to intrastate DS-1 and intrastate DS-3 point to point service" (pages 58-59 of Ankum testimony). What is Consolidated's response to the Department's claim that Consolidated's proposal to strike this language is too broad?

A22. Consolidated does not believe that intrastate special access is a product that is ordered anymore. A circuit containing 10% or more of interstate traffic (including data traffic) is considered interstate, therefore, every service that is ordered is likely interstate in nature. Consolidated removed this from regulation because there should be very little or no demand.

Q23. The Department has recommended that Consolidated complete its RDOF-funded construction in four years instead of the six years during which Consolidated plans to complete this work (pages 10-11 of Purvis testimony). What is Consolidated's response to this recommendation?

A23. Consolidated does not agree with this recommendation. The RDOF construction is an expensive endeavor. The locations which Consolidated is required to build fiber to are very rural and very high cost locations. Building to these locations will be costly and require a lot of construction with a very small revenue return. The only sensible way to proceed with this build is to build a small number of locations each year over the entire six year period, in conjunction with its broader fiber expansion plans. If Consolidated were required to build more RDOF locations in the four remaining years of its fiber expansion plans then it will need to expend precious capital resources to expand to a high cost area rather than to build fiber to a lower cost area that will produce a return. This will put unplanned financial strain on the Company. The auction was competitive, the prices were low and the program provided for the opportunity to build over six years. Consolidated does not believe there is any justification for accelerating a federal commitment in the context of this IRP. Consolidated believes it will need all six years that the RDOF program allows to build to RDOF locations. To the extent practical, Consolidated intends to accelerate its deployment, however, it has capital and resource constraints that make the two year acceleration impractical.

Q24. What is Consolidated's understanding of how the Department's new proposed service quality metric for Emergency households will work (page 5 of Flint testimony)?

A24. The Department proposes a new service quality metric that measures Out of Service conditions for Emergency Households and requires 100% performance.

Q25. Is Consolidated agreeable to adding the new service quality metric proposed by the Department for Emergency households? If not, please explain Consolidated's position.

A25. No. Any proposal that requires 100% performance is inherently unreasonable. Things happen, issues come up when operating a statewide telecommunications business. It is not reasonable to hold a company to perfect performance for anything. As noted by the Department, Consolidated takes its obligation to medical emergency customers seriously and does everything it can to ensure these customer's service is repaired in short order. By the Department's own admission, Consolidated's performance with respect to medical emergency customers is near perfect, therefore, there is no reason to change the status quo.

Furthermore, under the Department's proposal Consolidated would track and report on Emergency Households. The Department's proposal defines Emergency Households as:

> *Emergency households are those residential customers that notify Consolidated of a medical or other emergency and/or condition which could place the customer at risk of suffering serious harm during a telecommunications service outage.*

This is a self-certifying endeavor with no real evaluation criteria, that is ripe for potential misunderstandings and therefore missed metrics. For instance, in the Department's testimony one of the two times since 2018 that the Department claims Consolidated failed to escalate a medical emergency involved a gentleman who lost service and did not receive a call about his mother's stroke. While this is incredibly unfortunate, since any person at any time could receive a call about a loved one having a medical emergency, by definition, this would make every Consolidated customer a medical emergency. A self-certifying standard and a requirement to meet 100% is just not practical. Moreover, Consolidated remains committed to continued prioritization of medical emergencies so this metric is not needed.

Q26. Does this conclude your testimony?

A26. Yes.