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 for approval of a successor (2022-2024) Incentive Regulation Plan, pursuant to 30 V.S.A. § 226b	

Order entered: 10/03/2022

PROPOSED ORDER ADOPTING SUCCESSOR INCENTIVE REGULATION PLAN

This case involves a petition filed with the Vermont Public Utility Commission ("Commission") by Consolidated Communications of Vermont Company, LLC, and Consolidated Communications of Northland Company (collectively "Consolidated") for approval of a new incentive regulation plan ("Successor IRP") pursuant to 30 V.S.A. § 226b. In this "Proposed Order,"[1] we set out the terms and conditions of a Successor IRP that would govern the operations of Consolidated for the next three years.

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[1] Following the procedures in 30 V.S.A. § 226b(f), the Commission is issuing a "Proposed Order," rather than a final Order. That section provides that, if the Commission finds that a proposal for alternative regulation (based upon a petition) does not satisfy the statutory criteria, the Commission may disapprove the plan or issue a "proposed order approving alternative regulation with such modifications as the Commission determines necessary." Within 20 days of the proposed order, parties may submit comments or request additional hearings on the plan. The Commission's final order must issue within 45 days after the proposed order, unless the Commission holds hearings, in which case the order must be issued within 90 days.

I. INTRODUCTION

Consolidated and its predecessors have operated under reduced-regulation IRPs since 2000. From the first IRP in Dockets 6167 and 6189, Consolidated's incentive regulation plans have not been based on traditional rate-of-return regulation. Consolidated's current IRP allows Consolidated to change basic local exchange service ("BLES") rates by notice at any time, provided its annual rate increases are not more than specified limits.[2] As has also been required in past IRPs, Consolidated's current IRP imposes service-quality and reporting obligations on Consolidated.[3]

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[2] *Petition of Telephone Operating Company of Vermont, LLC, doing business as FairPoint Communications, for approval of Successor Incentive Regulation Plan*, Docket 8337, 2015-2019 Vermont Incentive Regulation Plan for FairPoint (redline version available as Exh. DPS-AA-3). Section II.B. of the current IRP limits annual price increases to the lesser of eleven percent or $2.00 absent a larger increase required for high-cost support pursuant to 47 C.F.R. §54.318(b).

[3] *Id.* at section VI.B.

In 2021, Consolidated submitted a proposed IRP to replace its current IRP. Consolidated's proposal modifies the current IRP by categorizing the municipalities in Consolidated's Vermont service territory as "competitive" or "non-competitive," using the availability of broadband Internet access in a municipality as a proxy for the availability of competing voice alternatives. Under the terms of Consolidated's proposed IRP, competitive municipalities are exempt from all regulation of BLES, including rates and service quality. BLES in non-competitive municipalities, where broadband Internet availability is less widespread, would continue to be rate and service-quality regulated under terms similar to the existing IRP. Business BLES rates and service quality would not be regulated in any municipality regardless of classification under Consolidated's proposed IRP.

The Vermont Department of Public Service ("Department") has proposed an alternative IRP. The Department's plan differs on the criteria used to identify municipalities with sufficient competitive alternatives, which it terms "Tier 1" and "Tier 2" municipalities, but still would eliminate regulation in municipalities with broadband Internet availability above a specified level. The Department's proposed IRP would also continue the regulation of business BLES in regulated municipalities as well as add several new requirements, as will be discussed in greater detail below.

Both proposals from Consolidated and the Vermont Department of Public Service represent a significant departure from the current and previous IRPs, which have always included limitations on rate increases. Both parties agree that some municipalities in Consolidated's service territory have achieved levels of competition sufficient to act as a price and service-quality constraint on Consolidated's BLES services, although they disagree on the criteria that should be applied.[4] The parties also agree that a return to traditional rate-of-return regulation is not appropriate for all municipalities in Consolidated's service territory.[5] The proposed IRPs reflect a continuation of the Commission's recognition in previous IRP orders that competition in telecommunications services is increasing, and that any IRP approved by the Commission should put Consolidated "on a relatively even playing field with its competitors from a regulatory

[4] The parties use different terminology in their proposed IRPs to identify municipalities where regulation would remain and municipalities where regulation would be removed. To simplify our discussion, we will use the terms "Regulated Municipality" and "Non-Regulated Municipality."

[5] August Ankum, Department pf. ("Ankum pf.") at 18; Sarah Davis, Consolidated pf. reb. ("Davis pf. reb.") at 4.

standpoint, while preserving necessary protections for consumers in areas where competition may not be adequate."[6]

We have considered the merits of both proposals and weighed them against the statutory criteria set out in Section 226b(c) of Title 30, including the requirement that the Successor IRP promote the general good of the State. Our conclusion continues to be that, with appropriate conditions to protect consumers and meet the criteria of 30 V.S.A. § 226b, alternative regulation will provide benefits to Vermont ratepayers. Competitive alternatives for voice services have increased in Vermont since the Commission authorized the first IRP in 2000. Competition from wireless carriers and Voice over Internet Protocol ("VoIP") has made significant progress, and Consolidated is now a minority provider in many areas, but not all.

The Successor IRP that we have proposed below provides Consolidated the ability to set its own rates for BLES in areas where competition is sufficient to keep prices at just and reasonable levels. Evidence shows that in other jurisdictions, rates for basic services have not increased significantly when deregulated in competitive areas.[7] To protect against a sudden increase in the rates for basic services, the Successor IRP includes stepped limits on rate increases over the three-year period of the Successor IRP. In municipalities where alternatives are not sufficient to provide a competitive check on basic services, the Successor IRP maintains the protections that have been in place since the current IRP was implemented in 2016. We expect that the freedom provided in the Successor IRP will be an incentive for Consolidated to invest in its network and offer new and improved services to remain a viable option in competitive areas, resulting in benefits to its Vermont customers in both regulated and non-regulated municipalities.

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[6] *Petition of Telephone Operating Company of Vermont LLC, doing business as FairPoint Communications, for approval of a Successor Incentive Regulation Plan, pursuant to 30 V.S.A. § 226b*, Docket No. 7724, Order of 1/18/12 at 2. *See also Petition of Telephone Operating Company of Vermont, LLC, doing business as FairPoint Communications, for approval of a Successor Incentive Regulation Plan*, Docket 8337, Order of 3/18/16 at 7-8; *Investigation into a Successor Incentive Regulation Plan for Verizon New England Inc., doing business as Verizon Vermont*, Docket No. 6959, Order of 9/26/05 at 5-6; *Investigation into an Alternative Regulation Plan for New England Telephone and Telegraph Company, doing business as Bell Atlantic-Vermont*, Docket 6167, Order of 3/24/00 at 58.

[7] Consolidated Responses to Commission Information Requests (4/6/22) at 4 (Davis).

Although the parties agree on many issues regarding the structure of a Successor IRP, there are also disputes that remain for us to resolve.[8] The Successor IRP described in this Proposed Order reflects our conclusions as to the appropriate resolution of the parties' disputes consistent with the requirements of Section 226b. The Proposed Order resolves the remaining disputes as follows:

- *Term of Successor IRP*. The Successor IRP includes a three-year term to allow time for the implementation and evaluation of the terms.
- *Rate Caps During Transition Period*. We adopt the Department's proposed transitional rate increase caps in Non-Regulated Municipalities.
- *Criteria for Non-Regulated Municipalities*. We adopt the alternative criteria proposed by Consolidated identify Non-Regulated Municipalities, requiring at least 95% availability of broadband Internet access with at least 25 Mbps download and 3 Mbps upload speeds, and 97% availability of broadband Internet access with at least 4 Mbps download and 1 Mbps upload speeds. Municipalities that do not meet both of these criteria will be Regulated Municipalities.
- *Regulation of Business Basic Local Exchange Service*. We do not adopt Consolidated's proposal to eliminate regulation of all business BLES, but instead maintain similar treatment for business and residential BLES depending on whether the business is located in a Regulated or Non-Regulated Municipality.
- *Enhanced Bill Credits and Troubles Cleared Metric*. We increase the time for restoring outages under the "Percentage of Troubles Cleared Within 24 Hours Residence and Business – Out of Service" ("Troubles Cleared Metric") from 24 hours to 48 hours. We do not adopt the Department's proposed enhanced bill credits.
- *Emergency Household Service-Quality Metric.* We do not adopt the Department's proposed Emergency Household service-quality metric.

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[8] Consolidated has indicated in its testimony that it is willing to agree to some of the Department's IRP proposals provided the Commission does not adopt certain other conditions that Consolidated deems "unreasonable." Davis pf. reb. at 7. Although not entirely clear in the testimony, we understand these "Opposed Conditions" to include the Department's proposals regarding enhanced bill credits, the remediation of host-remote isolation issues, and the accelerated completion of Consolidated's buildout obligations under the Federal Communications Commission's ("FCC") Rural Development Opportunity Fund. (The Department has withdrawn this last condition.)

- *Host-Remote Isolation Remediation*. We do not adopt the Department's proposed requirement that Consolidated remediate host-remote isolation issues during the Successor IRP term. Because the Successor IRP does not require the remediation of host-remote isolation issues, the Successor IRP also does not require Consolidated to report on its remediation progress.
- *Dedicated Transport and Special Access Services*. We retain the current IRP's regulation of intrastate dedicated transport and special access services.

II. PROCEDURAL HISTORY

On October 1, 2021, Consolidated filed a petition with the Commission pursuant to 30 V.S.A. § 226b for approval of a successor (2022-2024) Incentive Regulation Plan.

On January 21, 2022, the Department filed prefiled testimony and exhibits.

On January 21, 2022, the Department filed a request for judicial notice, and Consolidated responded on February 4, 2022.

On March 4, 2022, Consolidated filed rebuttal testimony and exhibits.

On March 8, 2022, the Commission issued an Order denying the Department's request for judicial notice.

On March 11, 2022, the Commission issued Information Requests to the parties.

On April 6, 2022, the parties filed responses to the Commission's Information Requests.

On April 14, 2022, the Department filed rebuttal testimony and exhibits.

On April 28, 2022, Consolidated filed surrebuttal testimony.

On May 5, 2022, the Commission held an evidentiary hearing.

On June 1, 2022, the parties filed initial briefs and proposed findings.

On June 15, 2022, the parties filed reply briefs.

On June 30, 2022, the Commission temporarily extended Consolidated's current incentive regulation plan until a successor plan is adopted.

At the evidentiary hearing, the Commission admitted Commission Exhibits 1 and 2, and all of the listed prefiled testimony and exhibits as a group. The Commission also admitted Exhibit CC-1. In this Order, the Commission has also taken judicial notice of the Department's

2021 Broadband Statistics and the 2021 Vermont Telecommunications Plan, both of which are referenced in witness testimony and exhibits.

III. PUBLIC COMMENTS

Three members of the public submitted comments on the proposed IRPs submitted by the parties. The primary concerns raised were the potential for cost increases to Consolidated's telephone service and service-quality issues related to Consolidated's Internet service.

IV. LEGAL FRAMEWORK

This matter is governed by 30 V.S.A. § 226b, entitled "Incentive regulation of basic exchange telecommunications providers." Section 226b authorizes alternative forms of regulation and allows local exchange carriers (or the Commission or Department) to propose alternatives to traditional rate-of-return regulation. The statute explains that "[a]lternative forms of regulation" "include incentive regulation, earnings sharing, categorization of services for the purpose of pricing, price caps, price indexing formulae, ranges of authorized returns, detariffing, and reduction or suspension of regulatory requirements."

Section 226b(c) contains eleven criteria that an alternative regulation proposal must meet. The Commission may approve a proposed IRP only if it finds, after notice and hearing, that such regulation, in its entirety:

(1) promotes the general good of the state;

(2) is consistent with the State telecommunications purposes established under Section 202c of [Title 30];

(3) is consistent with the State Telecommunications Plan adopted by the Department of Public Service under section 202d of [Title 30], or there exists good cause to approve alternative forms of regulation notwithstanding this inconsistency;

(4) is consistent with the public's interest 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 non-competitive 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.

An order establishing an alternative form of regulation may include the following: exemption from or reduction of the requirements of 30 V.S.A. §§ 218(a), 225, 226, 227 and 229; terms and conditions for establishing new services, withdrawing services, price changes to services, and contracted services; and other rates, terms, and conditions that the Commission finds to be consistent with the general considerations and standards under Section 226b.[9]

Because the parties submitted competing proposed IRPs, the Commission was required to resolve the parties' disputes applying the IRP criteria above. Pursuant to 30 V.S.A. § 226b(f), therefore, the Commission may not directly issue a final order, but must instead issue a proposed order and provide the parties with an opportunity to comment and to provide additional evidence. After reviewing the comments and conducting any additional hearings that are necessary, the Commission must issue its final order within 45 days of the issuance of the proposed order.[10]

V. Findings

A. Background

1. Consolidated's current IRP provides an alternative rate regulation plan for Consolidated's residential and business basic local exchange services ("BLES"). Clay Purvis, Department ("Purvis") pf. at 3; exh. DPS-AA-2.

2. Consolidated's current IRP was approved in March 2016 in Docket 8337 and was set to expire on December 31, 2019. *Petition of Telephone Operating Company of Vermont, LLC, d/b/a FairPoint Communications, for approval of a Successor Incentive Regulation Plan*, Docket 8337, Order of 3/18/16.

[9] 30 V.S.A. § 226b(h).

[10] 30 V.S.A. § 226b(f) allows the Commission 90 days from the date of the proposed order if additional hearings are held.

3. Consolidated became subject to the current IRP when the Commission approved its acquisition of FairPoint in 2017. *Joint Petition of Consolidated Communications Holding, Inc., Consolidated Communications, Inc., et. al, for approval of a transfer of control by merger, pursuant to 30 V.S.A. §§ 107, 108, 109, 231(a), and 311*, Case No. 8881, Order of 6/26/17.

4. The Commission extended the IRP twice in 2020, initially until July 31, 2021, and again through July 31, 2022. *Petition of Consolidated Communications Company of Vermont, LLC for extension of its current Incentive Regulation Plan until July 31, 2022,* Case No. 20-2684-PET, Order of 12/3/20; *Petition of Consolidated Communications Company of Vermont, LLC, doing business as Consolidated Communications, for extension of its current Incentive Regulation Plan until September 30, 2020*, Case No. 19-3408-PET, Order of 1/3/20.

5. On June 30, 2022, the Commission again extended Consolidated's current IRP to allow time to prepare an order and receive comments from the parties. Case No. 21-4060-PET, Order of 6/30/22.

B. <u>The Current State of Competition</u>

6. The Commission's previous orders approving IRPs have noted that competition is increasing for telecommunications providers in Vermont. Docket 8337, Order of 3/18/16 at 7-8.

7. Since the last IRP was approved, competition in the telecommunications market has continued to increase with the expansion of mobile wireless services and Voice over Internet Protocol ("VoIP"). Purvis pf. at 7-8; Sarah Davis, Consolidated ("Davis") pf. at 5-6; Kenneth Martin, Consolidated ("Martin") pf. at 17-20.

8. Broadband Internet service contributes to competition in the telecommunications market by enabling VoIP services. A 2021 survey by the Department found that 80% of all locations in Vermont and 81% of locations in Consolidated's service area have access to Internet service with speeds of at least 25 Mbps download and 3 Mbps upload ("25/3 Mbps"). 96.2% of all locations in Vermont and Consolidated's service area have access to speeds of at least 4 Mbps download and 1 Mbps upload ("4/1 Mbps"). Martin pf. reb. at 6-7.

9. VoIP services can be provided as dedicated facilities-based services, such as VoIP services provided by cable operators, or as "over-the-top" ("OTT") services provided over an

existing broadband connection. 4/1 Mbps Internet service is sufficient to support OTT VoIP services. Martin pf. at 17, 20; Davis pf. at 9; Tr. (5/5/22) at 75-76 (Martin).

10. The adoption of mobile wireless services as a percentage of the population in Vermont has also increased from 81% to 95% over the last 10 years. Wireline usage has declined from 59% to 47% in the same period. As of late 2018, approximately 48% of Vermont households use only mobile wireless services for voice communications. Martin pf. at 21-23.

11. In 2019, mobile wireless services accounted for 67% of the voice lines in Vermont. For the 33% of fixed voice landlines, 47% were VoIP lines. The remaining 53% were traditional switched lines, which is down from 83.5% in 2008. Incumbent local exchange carriers, such as Consolidated, provided 16% of the total business and residential voice lines in 2019 in Vermont. Martin pf. at 18; Martin pf. reb. at 19; Purvis pf. at 7-8.

12. Competition in the telecommunications market will continue to change due to recent federal and state funding for broadband Internet expansions into underserved and unserved areas of Vermont, including support for Communications Union Districts and the Rural Digital Opportunity Fund. Purvis pf. at 8-9; Martin pf. at 31-32; Davis pf. at 5-6.

13. Other regional jurisdictions in which Consolidated provides telecommunications services no longer regulate BLES. New Hampshire does not regulate rates, require tariffs, or impose service-quality requirements on BLES. Maine has also implemented a partial deregulatory scheme in certain municipalities specified by statute, with an option to expand the municipality list if a municipality list was shown to have sufficient competition. Consolidated Responses to PUC Information Requests (4/6/11) at 2-3 (Davis); Department Response to PUC Request for Information (4/6/22) at 1-5.

C. <u>The Current IRP</u>

14. The current IRP maintains BLES as a rate-regulated service and provides Consolidated relief from tariffing all other retail telecommunications services. Purvis pf. at 3.

15. The current IRP provides Consolidated with the flexibility to change BLES rates through a notice procedure provided that any rate increase does not exceed the lesser of 11% or $2.00. Purvis pf. at 3; exh. DPS-AA-3.

16. The current IRP also specifies that Consolidated must comply with the service-quality standards established in Docket 5903 and specifies certain reporting obligations during the term of the IRP. Purvis pf. at 3.

D. The Proposed IRPs

i. Term of Successor IRP

17. The term of the Department's proposed IRP is three years. Consolidated initially proposed a two-year IRP term but agreed to a three-year term if the Opposed Conditions proposed by the Department are not adopted. August Ankum, Department ("Ankum") pf. at 23; Davis pf. at 8; Davis pf. reb. at 7.

18. A three-year term will allow time to implement the Successor IRP and evaluate its impacts on Consolidated and its customers. Ankum pf. at 23.

ii. Transition Period for Non-Regulated Municipalities

19. The Department's proposed IRP includes a phase-in period and limits the maximum rate increases in Non-Regulated Municipalities to $5.00 in the first year, $10.00 in the second year, and no limit in the third year of the Successor IRP. Consolidated does not oppose the proposed phase-in period if the Opposed Conditions proposed by the Department are not adopted. Ankum pf. at 32, 36; exh. DPS-AA-3; Davis pf. reb. at 10-11.

20. A phase-in period on maximum rate increases will gradually increase the flexibility available to Consolidated and provide a measure of consumer protection during the transition period in Non-Regulated Municipalities. Ankum pf. at 32, 44.

iii. Regulated and Non-Regulated Municipalities

21. Both the Department and Consolidated are proposing to remove regulation of residential BLES in certain municipalities ("Non-Regulated Municipalities") in Consolidated's service territory and maintain regulation under terms similar to the current IRP in other municipalities ("Regulated Municipalities"). Davis pf. at 7; Ankum pf. at 30-31; Ankum pf. reb. at 5.

22. Returning to a rate-of-return regulatory model for Consolidated could result in service-quality degradation and higher rates and would likely be a disincentive to Consolidated investing in its network. Ankum pf. at 18; Davis pf. reb. at 4.

23. Removing regulation in areas where competitors are present provides Consolidated with additional flexibility to compete and is an incentive for Consolidated to invest in its telecommunications network with new equipment and modern technologies. Ankum pf. at 64; Davis pf. at 14.

24. The Department's proposed plan would eliminate rate regulation for residential BLES in municipalities with at least 98% availability of Internet speeds of at least 25/3 Mbps. Ankum pf. at 36.

25. Consolidated's proposed plan would eliminate all regulation of BLES, residential and business, in municipalities with at least (a) 91% availability of Internet speeds of at least 25/3 Mbps and (b) 97% availability of Internet speeds of 4/1 Mbps. Consolidated would agree to an increase of the 25/3 Mbps threshold from 91% to 95% if the Opposed Conditions proposed by the Department are not adopted. Davis pf. at 9-10; Tr. 5/5/22 at 28 (Davis).

26. Consolidated's 91%, 25/3 Mbps threshold would result in 74 Non-Regulated Municipalities. The Department's 98%, 25/3 Mbps threshold would result in 29 Non-Regulated Municipalities. A 95%, 25/3 Mbps threshold would result in 57 Non-Regulated Municipalities. Ankum pf. reb. at 9-10, 15; Davis pf. reb. (corrected) at 10; exh. Joint-2; Department's Initial Br. at 16 n.2.

27. As the threshold percentage of 25/3 Mbps availability decreases, the number of Consolidated customers without access to mobile wireless service and 4/1 Mbps broadband speeds increases. Ankum pf. at 44.

28. Data gathered by the FCC on a per-census-block level shows that 100% of Vermont residential households are in census blocks with two or more providers advertising at least 25/3 Mbps broadband Internet availability, including satellite providers. Martin pf. reb. at 4.

29. Data gathered by the Department on a per-household level show that 82% of Vermont residential households are served by 25/3 Mbps broadband Internet, excluding satellite

providers. The percentage rises slightly to 82.7% in Consolidated's service territories. Martin pf. reb. at 7-8.

30. A 95%, 25/3 Mbps threshold would include larger municipalities where competition is present, including Brattleboro, Williston, Hartford, and Shelburne in the Non-Regulated Municipality category. Davis pf. reb. at 10.

31. Under both the Department's and Consolidated's proposed plans, residential BLES in municipalities that do not meet the broadband Internet threshold requirements would remain rate-regulated under terms similar to the current IRP, which limits annual price increases to the lesser of 11% or $2.00 per year. Ankum pf. at 44; exh. DPS-AA-3; exh. CC-SD-2.

32. BLES rate regulation applies only to basic BLES service, and it does not apply to residential bundled services. The Successor IRP will include language to clarify that a customer could purchase BLES service and other stand-alone voice services, which is different from a bundled service. Davis pf. at 7; Davis pf. reb. at 12.

33. Consolidated and the Department will annually review the list of Non-Regulated Municipalities and will adjust the list if new municipalities meet the broadband Internet requirements to qualify as a Non-Regulated Municipality. Exh. CC-SD-1; Exh. DPS-AA-3.

iv. Regulation of Business BLES

34. Consolidated's proposed plan would also eliminate all regulation of business BLES throughout Consolidated's entire service area. The Department's proposed plan would treat business BLES the same as residential BLES and eliminate regulation only where the threshold levels of Internet speeds are satisfied as described in findings 21 through 31, above. Davis pf. at 7; Ankum pf. at 26; exh. DPS-AA-3; exh. CC-SD-2.

v. Reporting and Service-Quality Requirements

35. The required reports contained in Attachment A to the current IRP will be included in any Successor IRP. The required reports include: (1) Wholesale Service Quality reports as specified in Docket No. 6255; (2) Rule 7.600 Disconnection Reports; and (3) Annual Reports required by 30 V.S.A. § 22. Ankum pf. at 53; exh. DPS-AA-3.

36. The Department's proposed IRP would add the following reports to the list of required reports: (4) Service Quality Performance Index Reports per Docket 5903; and (5)

quarterly status reports detailing mitigation/resolution efforts regarding host-remote isolation vulnerabilities in Consolidated's Vermont wireline telephone network. Ankum pf. at 53; Ankum reb. at 22; exh. CC-SD-1; exh. DPS-AA-3.

37. Consolidated and the Department agree that the Service Quality Performance Index Reports per Docket No. 5903 should be included in any Successor IRP as a required report for residential BLES customers in Regulated Municipalities. The Department would also maintain service-quality requirements for business BLES customers in Regulated Municipalities. Service Quality Performance Index Reports per Docket No. 5903 would not be required for any BLES customers in Non-Regulated Municipalities. Davis pf. reb. at 13; Flint pf. at 11-12; Ankum pf. at 36; exh. DPS-AA-3; exh. CC-SD-1.

38. The Department and Consolidated agree that the "Percentage of Troubles Cleared Within 24 Hours Residence and Business – Out of Service" metric ("Troubles Cleared Metric") in the service-quality standards established in Docket 5903 should be increased from a 24-hour period to a 48-hour period, the baseline performance standard increased from 70% to 80%, and the action-level performance standard increased from 60% to 70%. Flint pf. at 11-12; Davis pf. at 11-12.

39. The Department proposes to add a new service-quality metric to the service-quality standard reporting requirements addressing Emergency Households, which the Department defines as a household of residential customers that notify Consolidated of a medical or other emergency condition that could place the customers at risk of suffering serious harm if there is a loss of telecommunications services. Flint pf. at 3-5; exh. DPS-AA-3.

40. The Emergency Household Trouble Report Rate provides a ratio of the total reported Emergency Household troubles due to Comcast infrastructure divided by the total number of Consolidated access lines servicing Emergency Households, multiplied by 100 to obtain the rate. The Emergency Household Trouble Report Rate has a baseline standard of two troubles per 100 access line per month and an action-level standard of four troubles per 100 access lines per month. Flint pf. reb. at 2-3; exh. DPS-AA-3.

vi. Enhanced Bill Credits

41. The Department's proposed IRP also would require Consolidated to provide enhanced bill credits to customers that experience outages longer than 48 hours in the following amounts: $5 for residential customers and $10 for business customers for each day after 48 hours that an outage is reported; and $10 for residential customers and $20 per day for business customers for each day after 10 days that customer is without service. Ankum pf. at 50-51; Ankum pf. reb. at 18-21; Purvis pf. at 6; exh. DPS-AA-3.

42. The cost of basic residential voice service is approximately $30. Tr. 5/5/22 at 34 (Davis).

vii. Remediation of Host-Remote Isolation Risks

43. The Department's proposed IRP would require Consolidated to address host-remote isolation risks in its network by reducing the number of exchanges with partial diversity by 8 and the number of exchanges with no route diversity by 3 within the three-year IRP term. Purvis pf. reb. at 4; Tr. 5/5/12 at 84, 90 (Purvis); exh. DPS-AA-3.

44. Host-remote isolation is a specific type of wireline telephone system outage that arises in the Public Switched Telephone Network. It occurs when the link between a remote switching unit controlled by a host switching unit is severed, usually due to a fiber cut or other single point of failure. Purvis pf. at 9.

45. Host-remote isolation events leave a landline telephone user in an impacted area with dial tone and the ability to complete local calls to numbers within that user's exchange, but with the inability to place calls outside of the exchange, including 911 calls. Purvis pf. at 9.

46. The incidence of host-remote isolation events is reduced because fewer people call 911 from land lines. Davis surreb. at 10; Tr. 5/5/22 at 94-95 (Purvis).

47. The estimated cost of resolving host-remote isolation issues in 11 exchanges is approximately $2,420,000 to $9,900,000. Tr. 5/5/12 at 85 (Purvis).

48. The Commission has an open investigation into host-remote isolation issues in Case No. 19-0869-INV. Purvis pf. at 10.

E. Other Findings

49. Consolidated will continue to provide a basic service to all of its residential customers in Regulated and Non-Regulated Municipalities. Consolidated 4/6/22 Responses to Commission Information Requests at 6 (Davis); Tr. 5/5/22 at 49-50 (Davis).

50. As a carrier of last resort, Consolidated is not permitted to discontinue voice service in its service territory. Tr. 5/5/22 at 25, 38-39 (Davis).

51. Since January 1, 2002, Consolidated's low-use residential access rate has increased by $4.24, the standard residential access rate has increased by $5.11, and business line access rates have increased by $4.76. Davis reb. at 7.

52. Consolidated has agreed that the current IRP's provisions addressing intrastate special access service will remain in any Successor IRP. Davis pf. surreb. at 8; Tr. 5/5/22 at 19 (Davis).

VI. Discussion of Disputed Issues

A. Term of Successor IRP

Consolidated initially proposed a two-year term for the Successor IRP, while the Department proposed a three-year term to provide additional time for evaluation of the operation of the Successor IRP terms. Consolidated has indicated that it will agree to a three-year term provided some of the Department's other proposed requirements are not adopted.

We agree with the Department that a three-year term will provide a better opportunity for the Commission and the parties to observe and evaluate the operation of the Successor IRP. Accordingly, we adopt the Department's recommendation of a three-year term.

B. Rate Caps During Transition Period

The Department proposes a transition period for the removal of rate regulation by limiting potential price increases in the first year of the Successor IRP to $5.00 and $10.00 in the second year. Consolidated has indicated that it will agree to the Department's proposed stepped transition period provided some of the Department's other proposed requirements are not adopted.

According to the evidence in this proceeding, Consolidated's rates in deregulated jurisdictions for basic voice services have not increased significantly after being deregulated. However, in light of Consolidated's agreement, and to ensure that Consolidated's customers do not experience substantial increases in service rates, we adopt the Department's proposed limitations on rate increases during the first and second year of the Successor IRP.

C. Regulated and Non-Regulated Municipalities

Both parties agree that municipalities with sufficient availability of competitive alternatives to Consolidated's voice service should no longer be regulated for rates and service quality. The parties disagree, however, on the criteria for determining whether the competition in a municipality is sufficient to remove the need for regulation of rates and service quality.

Consolidated's proposed IRP would remove rate and service-quality regulation in municipalities where: (a) at least 91% of locations have access to broadband Internet at speeds of 25/3 Mbps or greater; and (b) at least 97% of locations in the municipality have access to broadband Internet at a speed of 4/1 Mbps or greater.[11] Speeds of 4/1 Mbps are sufficient to support OTT VoIP services. During the proceeding, Consolidated proposed an alternative threshold of 95% availability of 25/3 Mbps Internet (increased from 91%) and maintaining the 97%, 4/1 Mbps availability, as a middle ground. Consolidated explained that at 95%, 25/3 Mbps availability, larger municipalities with competitive alternatives such as Brattleboro, Williston, Hartford, and Shelburne would be included in the Non-Regulated Municipality category.[12]

The Department's proposed IRP would require the availability of 25/3 Mbps broadband Internet to 98% of locations in a municipality before that municipality qualified for deregulated rate and service-quality treatment.[13] Under both proposals, municipalities that do not meet the criteria would remain regulated under terms similar to the existing IRP, with rate increases limited to the lesser of $2.00 or 11% in a 12-month period and continued service-quality reporting. The Department asserts that focusing on the availability of 25/3Mbps broadband

[11] Finding 25.
[12] Finding 30.
[13] Finding 24.

Internet is a reasonable proxy for identifying areas in Consolidated's service territory where facilities-based alternative communications providers are investing in fiber networks.[14]

Under Consolidated's initial criteria of 91%, 25/3 Mbps availability and 97%, 4/1 Mbps availability, 74 municipalities would be Non-Regulated. At 95%, 25/3 Mbps and 97%, 4/1 Mbps availability, 57 municipalities would be Non-Regulated. Under the Department's 98%, 25/3 threshold, 29 municipalities would be Non-Regulated. Under the Department's proposed 98%, 25/3 Mbps threshold, all tested locations in municipalities qualifying as Non-Regulated would have access to mobile wireless or data speeds of at least 4/1 Mbps.[15] As the percentage of 25/3 Mbps availability decreases, the number of locations without access to either mobile wireless or 4/1 Mbps Internet alternatives increases.[16] These figures refer only to tested locations and do not account for locations that have not been tested for wireless or broadband availability.[17]

Removing regulation for Consolidated's voice services based on the availability of alternatives is a significant step for Vermont. Given the decline in rate-regulated access lines in Vermont and the corresponding growth of voice alternatives, however, we believe that it is a necessary step. The proposed IRPs presented by both parties seek to balance Consolidated's ability to compete in areas where competition is present with protecting captive customers in municipalities where significant competition has not yet developed.

We agree that relaxing regulation in municipalities with substantial competition will benefit consumers by providing Consolidated with the flexibility to compete for customers in larger municipalities where alternative voice providers are offering service, such as by offering new services and investing in its network.[18] Allowing Consolidated regulatory flexibility will also benefit Consolidated's captive customers. As Consolidated explains, densely populated areas have historically subsidized the cost of providing service in less populated rural areas, and the loss of customers to competitors in the densely populated areas is affecting Consolidated's ability to provide service in rural areas.[19] Allowing Consolidated to pursue an expanded

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[14] Ankum pf. at 38.

[15] Ankum pf. at 44.

[16] Finding 27.

[17] Some locations in the Department's data have not been tested for access to mobile or broadband Internet services, so the availability of those services is not known. *See* Tr. (5/5/22) at 136-137 (Ankum).

[18] Ankum pf. at 64; Davis pf. at 14.

[19] Davis pf. at 4.

customer base with new and improved services in densely populated municipalities will help Consolidated balance the cost of its diverse service territory.

We conclude that the middle-ground approach of 95%, 25/3 Mbps proposed by Consolidated provides a reasonable starting point for the Successor IRP, balancing the flexibility that Consolidated needs to respond to competition with the State's interest in protecting consumers where competitive voice alternatives are not available. At 95%, 25/3 Mbps availability, the Successor IRP adopts a similar standard to other jurisdictions in which Consolidated provides service. Consolidated explains that the Maine legislature has deregulated 21 municipalities and that additional municipalities may be deregulated if 95% of the municipality has another wireline alternative and 97% have a wireless alternative.[20] Here, under the Department's explanation that broadband speeds of 25/3 Mbps or greater are indicative of competing facilities-based alternatives, 95%, 25/3 Mbps availability is similar to the standard adopted by Maine.[21]

Although the Department's proposal of 98%, 25/3 Mbps availability would be more protective by reducing the number of Non-Regulated Municipalities, it would do so at the cost of excluding larger municipalities where the number of captive voice customers is low, such as Brattleboro (97.5%, 25/3 Mbps and 99.4%, 4/1 Mbps availability) and Williston (96.3%, 25/3 Mbps and 99.7%, 4/1 Mbps availability).[22] The Department's proposal also fails to account for the availability of OTT VoIP alternatives by excluding consideration of the availability of 4/1 Mbps. To provide Consolidated a full opportunity to succeed in its competitive path forward and to maximize the benefits that will accrue to all Consolidated customers, we believe that any standard for identifying competitive areas should include these larger municipalities as long as adequate voice alternatives are available.

Under the Successor IRP, Consolidated will have an incentive to modify its existing services and offer new services to compete with the offerings from other voice providers in Non-

[20] Consolidated Responses to PUC Information Requests (4/6/11) at 2 (Davis); Department Response to Commission Request for Information at 2-3.

[21] Ankum pf. at 38. Although the parties have not submitted evidence showing the percentage availability of wireless alternatives per municipality, confidential data provided by the Department also show that more than 97% of Consolidated's current customers lacking 4/1 Mbps Internet do have a wireless alternative. *See* Ankum pf. at 40 (Table 2)(confidential).

[22] https://publicservice.vermont.gov/sites/dps/files/documents/Broadband_Statistics_2021_v2.xlsx.

Regulated Municipalities, as well as invest in its infrastructure as needed to offer those competitive services. We also recognize that some customers in Non-Regulated Municipalities may not have an alternative to Consolidated's service. As Consolidated explained during this proceeding, Consolidated has no ability to discontinue service to any location under federal and state law.[23] Consolidated will continue to provide a basic voice service in all of its service territories, and customers without alternative voice options, as well as those simply wishing to retain their familiar landline, will not lose telephone service because they are located in a Non-Regulated Municipality.

We also recognize that customers could see rate increases as a result of the removal of rate regulation from Consolidated's basic voice service. Consolidated has explained that, despite the deregulation of the voice services market in Maine, the rates for residential and business services have increased at a rate less than what is permitted by the current IRP since 2012.[24] As discussed above and to provide additional protection against sudden rate increases, we also adopt the Department's recommendation of a phased approach to removing rate regulation, permitting a maximum of a $5.00 increase in rates in the first year of the Successor IRP and a maximum $10.00 increase in the second year of the Successor IRP.

Consolidated and its predecessors have operated under reduced-regulation IRPs since 2000 against a backdrop of steadily increasing competition. While the Successor IRP embodies a significant step in that process, it is limited in scope and duration, and provides adequate safeguards to protect consumer interests and ensure that the Department and the Commission can intervene to remedy any problems that arise. At the end of the three-year IRP term, the Commission will consider whether further deregulation is warranted.

D. Regulation of Business Basic Local Exchange Service

Consolidated's proposed IRP would remove all business BLES from regulation in both Regulated and Non-Regulated Municipalities. According to Consolidated, business services are fully competitive due to the higher revenues associated with business services and do not need to

[23] Tr. 5/5/22 at 25 (Davis).
[24] Consolidated Responses to PUC Information Requests (4/6/11) at 4 (Davis).

be regulated. Consolidated states that it will continue to provide a basic business service, but that service should no longer be rate-regulated in any municipality.

The Department's proposed IRP would treat business BLES the same as residential BLES, removing business BLES from regulation in Non-Regulated Municipalities and maintaining regulation in Regulated Municipalities. The Department disagrees with Consolidated's assertion that business services in Vermont are fully competitive and argues that there are many small businesses in the state with no facilities-based alternative outside of Consolidated. According to the Department, small businesses typically have less sophisticated communications needs that are similar to residential BLES customers and should continue to receive the same protections as captive residential customers under the Successor IRP.

Consolidated relies on data gathered by the FCC and data vendor InfoUSA to argue that 99.9% of small business locations in Vermont are in census blocks that have access to broadband Internet at speeds greater than 25/3.[25] Consolidated notes that there are differences between the data gathered by the FCC and data gathered in 2019 and 2021 by the Department:

> FCC Form 477 data is self-reported at the census block level, meaning that if an operator provides broadband to any location within the census block, the entirety of the locations within that census block are assumed to have access. While this is a less precise definition of broadband availability than the Vermont study, it is very granular since the average census block contains about 20 households, and is used throughout the US as the standard approach for determining the level of broadband availability, number of providers, speeds, and technologies.[26]

Consolidated explains that the FCC data "requires an assumption of 100% coverage of the locations within it, however, an ISP's service may be to only a portion of those buildings, whereas the [Department's] data is based on coverage of actual locations."[27] Consolidated also explains that the data may also be different because the FCC and the Department use different definitions of service availability: "Form 477 reports on presence of advertised service within a specific census block, whereas Vermont's service coverage is defined as presence of a physical

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[25] Martin pf. reb. at 5-6.
[26] Martin pf. at 7.
[27] *Id.* at 10-11.

wireline route within 500 feet of a physical address."[28] Additional differences may also result from the different treatment of multi-unit buildings by the FCC and the Department.[29]

The different data gathered by the FCC and the State result in different estimates of broadband Internet availability in Vermont. On a statewide basis, the FCC data show that 92.3% of residential and business addresses (aggregated by census block) have access to broadband Internet at speeds of 25/3 Mbps or better (not including satellite). The Vermont data shows that only 77.3% of buildings, residential or business, have access to broadband Internet at speeds of 25/3 Mbps or better.[30] Data provided by Consolidated show that broadband availability statewide is generally similar to broadband availability in Consolidated's service territory.[31] The data differences discussed above affect both residential and business locations, meaning that Consolidated's estimate that 99.9% of small businesses have access to 25/3 Mbps based on federal data could be a substantial overestimate both on a statewide and per municipality basis.

We agree with the Department that small business customers of Consolidated's business BLES are likely to face the same lack of competitive alternatives as residential BLES customers and should be similarly treated. While Consolidated argues that competitive local exchange carriers ("CLEC") are more likely to offer service to business customers through unbundled network elements due to the higher rates charged for business, Consolidated has not shown that the difference between residential and business BLES rates—approximately $30 for residential BLES and $40 for business BLES according to the evidence presented in this proceeding—is a sufficient incentive for a CLEC to provide service to a captive business BLES customer on Consolidated's network, particularly where that small business customer is in a rural area without the potential for an interested CLEC to find other nearby business customers.

Because we conclude that small residential and business BLES customers will face similar challenges in the availability of voice alternatives, we also conclude that the same protections should apply to both in the Successor IRP. Therefore, we do not remove regulation for business BLES in Regulated Municipalities in the Successor IRP.

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[28] *Id.* at 11.
[29] *Id.*
[30] *Id.* at 13.
[31] Martin pf. reb. at 3-4.

E. Enhanced Bill Credits and Troubles Cleared Metric

The Troubles Cleared Metric in Docket 5903 measures the percentage of service outages that Consolidated repairs within a 24-hour period of when the outage is reported or discovered.[32] The metric sets a "Baseline" performance level of 70% and an "Action" performance level of 60%.[33] Service-quality performance is measured against the Baseline performance level, and a company's failure to meet the Action level of performance can result in Commission investigation and potential penalties.[34]

Under both proposed IRPs, service-quality requirements will continue to apply in Regulated Municipalities, with service quality in Non-Regulated Municipalities ensured by the availability of alternative competitor services. Consolidated's proposed IRP would modify the Troubles Cleared Metric established in the Docket 5903 service-quality standards to increase the time for repairing service outages from a 24-hour period to a 48-hour period. According to Consolidated, the additional time to resolve outages is necessary because the removal of Non-Regulated Municipalities from service-quality reporting reduces the metric to measuring mostly rural areas where outages are more difficult to reach geographically and, therefore, take longer to resolve. To address consumer concerns, Consolidated also proposes to increase the Baseline and Action performance level standards to 80% and 70%, respectively.

The Department agrees that the time for performance under the Troubles Cleared Metric should be increased to 48 hours and that the Baseline and Action performance level standards should be increased, but conditions its agreement on reducing the time for performance on including enhanced bill credits for outages lasting more than 48 hours. The Department acknowledges that there are some issues with the 24-hour period required by the current metric, even as it currently applies to Consolidated's service territory.[35] The Department also states that it does not typically receive complaints for service outages lasting less than 48 hours.[36]

Under the Department's proposal, Consolidated would be required to provide a daily $5.00 bill credit to residential BLES customers experiencing outages longer than 48 hours, and a

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[32] *Investigation into Service Quality Standards, Privacy, and other Consumer Safeguards for Retail Telecommunications Service*, Docket 5903, Order of 7/2/99 at 13.

[33] *Id.* at 15.

[34] *Id.*

[35] Tr. 5/5/22 at 157-158 (Purvis).

[36] Flint pf. at 12.

daily $10.00 credit for outages lasting beyond 10 days. Bill credits for business BLES customers would be double the residential amount. The Department's proposed enhanced bill credits are in addition to the existing pro-rata Interrupted Service Credit required by Commission Rule 7.609(c). The Department does not support a reduction in the Troubles Cleared Metric time period if enhanced bill credits are not also adopted as part of the Successor IRP.

Consolidated opposes the Department's proposed enhanced bill credits. Consolidated argues that the Department's enhanced bill credit proposal should be rejected because bill credits are already specified by rule and imposing enhanced credits would penalize Consolidated by potentially requiring it to pay customers in excess of a customer's service cost. Consolidated also objects to the proposed bill credit enhancement as lacking any economic analysis of its incentive effect.

We agree that the time for performance under the Troubles Cleared Metric should be extended from 24 hours to 48 hours in the Successor IRP. Removing service-quality requirements from Non-Regulated Municipalities under the Successor IRP will exacerbate the problems with the Troubles Cleared metric by removing the more densely populated areas, while leaving the less populated Regulated Municipalities that are more difficult to access and repair during an outage. As a result, the more difficult repair areas in Regulated Municipalities will make up a larger percentage of the metric base, reducing Consolidated's ability to meet its service-quality obligations even if repair times in the Regulated Municipalities do not increase.

Increasing the time for repairs from 24 to 48 hours will provide Consolidated with additional flexibility in its efforts to promptly restore service in challenging areas without being subjected to the risk of service-quality violations. Increasing the time for performance to 48 hours is also consistent with the approach taken by other jurisdictions and accommodates the challenges associated with serving customers in rural areas.[37] We also agree that the Baseline performance level should be increased from 70% to 80% and the Action performance level increased from 60% to 70%, which will ensure that Consolidated remains focused on restoring service in Regulated Municipalities in a timely manner.

[37] Davis pf. surreb. at 4; Consolidated Responses to PUC Information Requests (4/6/11) at 3 (Davis).

However, we are not convinced that enhanced bill credits as significant as what the Department has proposed are necessary to incentivize Consolidated to meet its service-quality obligations. The evidence in this proceeding shows that, although Consolidated has struggled with its service quality, it has made strong efforts to improve in recent years.[38] Testimony at the evidentiary hearing showed that the amounts chosen for the bill credit enhancement were based on a stipulated bill credit by a different utility in a different state, with no independent economic analysis of the incentive effect on Consolidated that would result from the credit amounts.[39] While avoidable, the bill credit amounts, if imposed, could quickly exceed a customer's monthly bill for service.[40]

We conclude that the better approach is to retain the existing regulatory provision in Commission Rule 7.609(c) and service-quality standard framework, as modified with respect to the Troubles Cleared Metric, for regulating Consolidated's performance. Commission Rule 7.609(c) is the product of the rulemaking process, which provides ample opportunity for public input and discussion. The Department's proposal would disturb the product of the deliberative rulemaking process, and subject only Consolidated to the special bill credit enhancement. The incentive effects of the enhanced bill credits are unknown, and the potential costs to Consolidated are unconstrained. Those costs could be significant if a severe weather event caused an extended and widespread outage in Regulated Municipalities in Consolidated's service territory.

In contrast to the proposed enhanced bill credits, the Interrupted Service Credit in Commission Rule 7.609(C) is based on and limited to a customer's monthly charges. The service-quality standards of Docket 5903 allow for additional penalties if Consolidated does not meet its Baseline and Action performance level standards, but also contain waiver provisions for exceptional circumstances, such as force majeure.[41] To the extent that service-quality issues develop for captive customers in Regulated Municipalities, the Department or the Commission can initiate penalty proceedings under 30 V.S.A. § 30, as occurred in Case No. 18-3231-PET.

[38] Flint pf. at 10-11; Purvis pf. at 3-4; tr. 5/5/22 at 158-159 (Purvis).

[39] Tr. 5/5/22 at 155-156, 160-161 (Purvis).

[40] Tr. 5/5/22 at 30-31, 34 (Davis); Davis pf. reb. at 12.

[41] *Investigation into Service Quality Standards, Privacy Protections, and other Consumer Safeguards for Retail Telecommunications Service*, Docket 5903, Order of 7/2/99 at 15.

F. Emergency Household Service-Quality Metric

We also do not adopt the Department's requested Emergency Household service-quality metric in the Successor IRP. Emergency Households are residential customers that notify Consolidated of a medical or other emergency condition that could place the customer at risk of serious harm if telecommunications services are lost.[42]

The proposed Emergency Household metric would monitor Consolidated's response to outages at Emergency Households. The Department states that the metric is necessary in the Successor IRP: (1) to better protect vulnerable households in a reduced regulatory regime; and (2) to permit the Department to more closely monitor all troubles to ensure they are cleared as promptly as possible.

Consolidated opposes the new service-quality metric, arguing that it is unnecessary. Consolidated states that only two incidents affecting Emergency Households have occurred since 2018, and that the Department acknowledges that "Consolidated is immediately responsive to repairs at Emergency Households when CAPI brings an out-of-service complaint to the company's attention."[43]

In light of Consolidated's performance with regard to service issues affecting Emergency Households, it does not appear that any additional monitoring is needed. When notified of an issue, the Department agrees that Consolidated responds promptly. That there have been only two instances in the past four years further demonstrates that Consolidated is prioritizing issues affecting Emergency Households when made aware of them. We conclude that an additional reporting metric on Emergency Households is not warranted at this time.

G. Host-Remote Isolation Remediation

The Department has proposed that the approval of a Successor IRP be conditioned upon Consolidated working to remediate host-remote isolation issues in the state by reducing the number of exchanges subject to partial diversity by eight and the number of exchanges with no route diversity by three.[44] The Department estimates that the proposed remediation of host-

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[42] Findings 39-40.

[43] Consolidated Brief at 14-15 (quoting Flint pf. at 3).

[44] "Route diversity," or "physical diversity," refers to the availability of multiple paths for communications and data to travel. If one communications path is cut, the communications traffic can be directed over a different route. *See* exh. DPS-CP-2 at 2.

remote isolation issues would cost between $2.4 million and $9.9 million. The Department's estimate is based on information provided by Consolidated in the Commission's investigation into host-remote isolation issues in Case No. 19-0869-INV.

Consolidated opposes the Department's proposal. Consolidated argues that the Department's proposed host-remote isolation remediation requirement should not be adopted because: (1) it is beyond the scope of this proceeding and subject to the jurisdiction of the Vermont Enhanced 911 Board; (2) the Department did not show that the proposal is reasonable or could be implemented; and (3) the Department has not demonstrated that the costs of complying with the requirement would maintain just and reasonable BLES rates.

We recognize that host-remote isolation issues are a significant concern in Vermont and have been for some time. However, we agree with Consolidated that this IRP proceeding is not the appropriate venue for addressing host-remote isolation issues. There was little development of the record on host-remote isolation issues in this proceeding, with the primary piece of evidence being a status update letter submitted by Consolidated's counsel in the 19-0869-INV investigation.[45] Testimony during the evidentiary hearing also showed that many unknowns remain with regard to the implementation of the Department's proposal, including the ultimate cost, the availability of outside funds to support the remediation efforts, possible alternative approaches to solve the host-remote isolation issues, the effect of compliance with the proposed requirement on Consolidated's regulated services, and the number of incidents that have resulted from host-remote isolation vulnerabilities.[46]

These unknowns can and should be explored before imposing a substantial cost obligation on Consolidated as a condition of the successor IRP. Without additional information, we are not able to evaluate the impact of the proposed requirement on the successor IRP under the factors of 30 V.S.A. § 226b(c).

Case No. 19-0869-INV was opened to investigate these issues, and other stakeholders, such as the Vermont Enhanced 911 Board, are participants in that proceeding allowing for a more complete discussion of the issues and potential solutions. We therefore do not adopt the Department's proposed remediation requirement for host-remote isolation issues as part of the

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[45] Exh. DPS-CP-2.
[46] Tr. (5/5/22) at 84-90, 91-92, 94-96 (Purvis).

Successor IRP. Because we have not required remediation of host-remote isolation issues, we also do not require the Department's proposed quarterly status reports detailing mitigation/ resolution efforts regarding host-remote isolation vulnerabilities in Consolidated's Vermont wireline telephone network.

H. Dedicated Transport and Special Access Services

Consolidated initially proposed to remove language in the current IRP excluding intrastate special access services, which the Department opposed. Consolidated responded that, although continued regulation is likely unnecessary given that there is limited new ordering of the services and that most existing circuits do not likely qualify as intrastate, it does not oppose continued regulation of intrastate special access services.

We have retained the current IRP's regulatory provisions directed to dedicated transport and special access services as agreed by the parties.

VII. FINDINGS UNDER 30 V.S.A. § 226b(c)

Based on the findings and discussion above, the Commission concludes that the Successor IRP described in this Proposed Order, in its entirety, satisfies the requirements for alternative regulation contained in 30 V.S.A. § 226b(c).

Promotion of the General Good:

53. The Successor IRP adopted by the Commission in this Order will promote the general good. The Successor IRP provides Consolidated with the regulatory flexibility necessary to compete in municipalities where sufficient competition is present, allowing the competitive market for voice services to check rate increases, enhance service quality, and encourage the introduction of new infrastructure and services. The Successor IRP also retains rate and service-quality protections for customers that lack competitive alternatives, ensuring that captive customers will continue to have an affordable option for voice service. Discussion Section V.C.

Consistency with 30 V.S.A. 202c:

54. The Successor IRP is consistent with Vermont's telecommunications purposes under 30 V.S.A. § 202c. It maintains affordable rates and service quality for basic voice service in municipalities lacking alternatives, promotes investment in modern advanced

telecommunications infrastructure by relaxing regulation in competitive areas, and supports competitive choice for consumers. Discussion Section V.C.

Consistency with the Vermont Telecommunications Plan:

55. The Successor IRP is consistent with the Department's 2021 Telecommunications Plan. The 2021 Telecommunications Plan includes a section addressing Consolidated's current IRP and explains that it is "meant to protect consumers who have no choice for phone service while also allowing [local exchange carriers] to remain competitive as more customers have greater choice in phone service and technologies." The 2021 Telecommunications Plan also states that "it is crucial to continue to protect consumers' access to an affordable phone connection in future years" and contemplates the possibility of "ending rate regulation in areas with competitive choice from other wireline carriers." Exh. CC-1 at 74.

56. Consistent with the discussion in the 2021 Telecommunications Plan, the Successor IRP balances Consolidated's interest in remaining competitive in areas where competition is present while protecting consumer interests in areas where competition is not yet sufficiently developed to constrain rates and enhance service quality. The regulatory flexibility provided by the Successor IRP also encourages advances in Consolidated's network technology in areas where fiber investments have been made by competitors. Discussion Section V.C; Vermont 10-Year Telecommunications Plan at Sections 4.3, 5.1.[47]

Service Quality:

57. The Successor IRP is consistent with the public's interest relating to appropriate quality telecommunications. In Non-Regulated Municipalities, service quality will by ensured by the availability of competitor voice service alternatives. In Regulated Municipalities, the service-quality standards of Docket 5903, as modified in this order, will continue to apply. Finding 35; Discussion Section V.E.

Universal Service:

58. The Successor IRP is consistent with the goal of protecting or promoting universal service to residential users of telecommunications services by ensuring that a basic

[47] Available at https://publicservice.vermont.gov/content/10-year-telecommunications-plan.

voice option will continue to be available to consumers in Regulated and Non-Regulated Municipalities. Finding 48; Discussion Section V.C17 at 20.

Telecommunications Infrastructure:

59. The Successor IRP provides reasonable incentives for investment in a modern telecommunications infrastructure and the implementation of new cost-effective technologies by allowing Consolidated the regulatory flexibility to compete with other voice providers overbuilding Consolidated's service area in Non-Regulated Municipalities. Additionally, the Successor IRP provides Consolidated with an incentive to expand its broadband Internet infrastructure to increase the number of municipalities that satisfy the Non-Regulated Municipality criteria. Finding 12; Discussion Section V.C at 20.

Economic Development:

60. The Successor IRP reasonably supports economic development in Consolidated's service territory by ensuring that an affordable basic voice service remains available in Regulated Municipalities and establishing a regulatory model that encourages improvements to Consolidated's network in areas where alternative voice service providers are also investing in advanced telecommunications networks. Finding 12; Discussion Section V.C at 20; Ankum pf. at 65; Davis pf. at 14-15.

Protection of Consumer Privacy Interests:

61. The Successor IRP adequately protects consumer privacy interests. The privacy protections adopted by the Commission in Docket 5903 continue to apply unchanged. Ankum pf. at 6; Davis pf. at 15.

Competition:

62. The Successor IRP supports reasonable competition by relaxing regulatory requirements in municipalities where Consolidated faces existing competition. Ankum pf. at 65-66; Davis pf. at 15.

Competitive Safeguards:

63. The Successor IRP includes adequate safeguards to ensure that charges for noncompetitive services do not subsidize competitive services by retaining annual limits on Consolidated's rate increases for BLES in municipalities where competition is not adequate to act as a constraint. Allowing Consolidated additional regulatory freedom to compete for a larger

customer base in Non-Regulated Municipalities will help Consolidated offset costs in Regulated Municipalities. Discussion Section V.C at 18; Ankum pf. at 66; Davis pf. at 15; Davis pf. reb. at 6-7.

Fairness:

64. The Successor IRP is just and reasonable and will not produce unjust discrimination between users of the public switched network in the pricing, quality, or availability of the network functions or services offered. A basic voice option will continue to be available to all consumers in Regulated and Non-Regulated Municipalities, and BLES service will continue to be uniformly priced in regulated areas. Finding 48; Discussion Section V.C17 at 20; Ankum pf. at 67; Davis pf. at 15.

Discussion

We conclude that the Successor IRP, as described in this Order, satisfies the criteria set out in 30 V.S.A. § 226b.

VIII. COMMENTS ON THE PROPOSED ORDER AND HEARINGS

Section 226b of Title 30 establishes a structure for review of alternative regulation plans that differs from most other Commission proceedings, as we discuss in Footnote 1 and Section V. Specifically, subsection (f) states that, where a telecommunications provider or the Department files an alternative regulation plan and the Commission finds that it does not meet the statutory criteria, the Commission may reject the proposal or issue a proposed order approving a modified version of the plan. Parties then may comment on the modified plan within 20 days and may request further hearings. The Commission must issue its final decision within 45 days of the Proposed Order, unless it holds additional hearings, in which case the Commission must issue its decision within 90 days of the Proposed Order.

Here, the parties submitted competing proposed IRPs and were unable to resolve their disagreements. Although the Commission has not found that either proposed IRP failed the statutory criteria of Section 226b, the Commission was required to resolve the parties' disagreements regarding the terms of the Successor IRP and did so according to the guidance provided by those criteria. Because the Successor IRP described in this Proposed Order incorporates elements from both parties' proposals, it is a "modified version of the plan" that requires circulation under Section 226b(f) and an opportunity for the parties to comment.

The schedule below sets out the statutory timeline for the parties to submit comments and request additional hearings, and for the Commission to issue its final order. We remind parties that, in subsequent hearings on the Proposed Order, the Commission may exclude evidence if we determine that the evidence "reasonably should have been introduced at hearings prior to the Proposed Order."[48]

October 24, 2022	Parties may file comments on the Proposed Order. Requests for additional hearings must be accompanied by prefiled testimony of all witnesses.
October 31, 2022	Parties submit reply comments and, if hearings are requested, rebuttal testimony.
November 17, 2022	Deadline for issuance of Final Order (if no additional hearings).
November 18, 2022	Hearings (if needed).
November 28, 2022	Parties submit post-hearing memoranda (if needed).
January 3, 2023	Deadline for issuance of Final Order (if additional hearings are held).

IX. <u>ORDER</u>

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

1. All parties to this proceeding shall have an opportunity to file comments on this Proposed Order on or before October 24, 2022, and reply comments by October 31, 2022. After consideration of the parties' comments, we will issue a Final Order by November 17, 2022, unless we conduct additional hearings, in which case we will issue the Final Order by January 3, 2023.

2. Consolidated Communications of Vermont Company, LLC, and Consolidated Communications of Northland Company (collectively "Consolidated") shall file an updated Successor IRP with its comments that reflects the terms described in this Order.

[48] 30 V.S.A. § 226b(f).

Dated at Montpelier, Vermont, this 3rd day of October, 2022.

Anthony Z. Roisman	)	PUBLIC UTILITY
	)	
	)	
Margaret Cheney	)	COMMISSION
	)	
	)	OF VERMONT
J. Riley Allen	)	

OFFICE OF THE CLERK

Filed: October 3, 2022

Attest: ______________________
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

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

PUC Case No. 21-4060-PET - SERVICE LIST

<u>Parties:</u>

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