

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of the Vermont Department of Public Service for an investigation into the service quality provided by Telephone Operating Company of Vermont, Inc., d/b/a Consolidated Communications, Inc.) Case No. 18-3231-PET

**MOTION FOR CONFIDENTIAL TREATMENT
OF PREFILED EVIDENCE OF THE DEPARTMENT OF PUBLIC SERVICE**

Telephone Operating Company of Vermont, LLC d/b/a Consolidated Communications (“Consolidated”) hereby moves the Public Utility Commission (“Commission”) for confidential treatment of portions of the Prefiled Direct Testimony and exhibits of the Department of Public Service (the “Department”). In support of this Motion, Consolidated relies on the following incorporated Memorandum of Law, as well as the attached Averments (**Attachment A**) and Proposed Order (**Attachment B**).

MEMORANDUM OF LAW

I. Introduction

On April 26, 2019, the Department will file redacted and confidential copies of prefiled direct testimony and confidential and non-confidential exhibits in the above captioned matter. In this Motion, Consolidated seeks confidential treatment of the nonpublic, confidential information contained in the Department’s prefiled direct testimony and exhibits. The confidential information is proprietary and competitively sensitive information that consists of data pulled from confidential Consolidated discovery attachments, and other confidential information, provided to the Department by Consolidated during the course of discovery in this proceeding, and subject to the Commission approved January 30, 2019 Protective Agreement.

II. Standard for Confidential Treatment

In determining whether to grant confidential treatment, the Commission considers the following:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information that should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown “good cause” for invoking the Commission’s protection?

Joint Petition of Consolidated Communications Holding, Inc., Consolidated Communications, Inc., Falcon Merger Sub, Inc., FairPoint Communications, Inc., Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, FairPoint Vermont, Inc., d/b/a FairPoint Communications, UI Long Distance, Inc., and Enhanced Communications of Northern New England, Inc., 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 (Vt. Pub. Serv. Bd. May 4, 2017); Petition of Green Mountain Power Corporation requesting a certificate of public good, pursuant to 30 V.S.A. Section 248, for the purchase of electricity from NextEra Energy Seabrook, LLC from 2012 through 2034, Docket No. 7742 (Vt. Pub. Serv. Bd. Sept. 8, 2011); Investigation into Treatment of Allegedly Confidential Information Submitted by Nine Vermont Independent Telephone Companies, Docket No. 6904 (Vt. Pub. Serv. Bd. Nov. 14, 2003); Joint Petition of VELCO and VEC for a certificate of public good, pursuant to 30 V.S.A. Section 248, authorizing the construction of: (1) a new VELCO 115/46 kV Substation in Jay, Vermont, to be located adjacent to VEC’s existing Jay Peak Switching Station; (2) modification of transmission lines; and (3) relocation of a residence drive and improvement of access road, Docket No. 7708 (Vt. Pub. Serv. Bd. June 27, 2011).

III. Description of the Information Sought to be Protected

Consolidated seeks confidential treatment of nonpublic, confidential financial, proprietary, and competitively sensitive information contained in portions of the Prefiled Direct Testimony of Department witnesses Fred Goldstein and Barlow Keener, Scott G. Wheeler, and Carol Flint, as well as Exhibit DPS-CF-2.¹

Fred Goldstein and Barlow Keener. The Prefiled Direct Testimony of Fred Goldstein and Barlow Keener contains redactions of confidential and proprietary information related to: the volume, nature, location (including regional concentration, town specific, and wire center specific information), expenditures, timing, clearance rates and repeat complaint rates for Consolidated repair tickets; the manner and efficacy of Consolidated's responses to those tickets; confidential and proprietary "fault" codes and "actual cause" codes used by Consolidated to process repair tickets; the effect of severe weather on repair ticket volume and clearance rates; the relationship between technician staffing levels and trouble ticket closure rates; amounts and levels of customer credits; and details relating to capital investment planning of Consolidated and Consolidated's corporate parents.

Carol Flint. The Prefiled Direct Testimony of Carol Flint contains redactions of confidential data provided to the Department in confidential discovery attachments related to timing of outage restoration and rates of repeat troubles. Additionally, Ms. Flint sponsors Exhibit DPS-CF-2, which includes specific and detailed confidential information related to Consolidated's service quality metrics data.

¹ The description of the prefiled testimony discussed herein is based upon communications with the Department, and is therefore submitted upon information and belief. If needed, Consolidated may supplement this motion following the Department filing its prefiled testimony.

Scott G. Wheeler. The Prefiled Direct Testimony of Scott G. Wheeler contains redactions of confidential information related to analysis of Consolidated's corporate parent's financial statements and cash flow.

IV. The Need for Confidential Treatment

The prefiled testimony and exhibits for which Consolidated seeks confidential treatment involve two types of nonpublic, confidential information: 1) Consolidated's financial information and capital investment planning for Vermont and for Consolidated's corporate parent more generally; and 2) Consolidated service quality and staffing details, including specific information about numbers and types of trouble tickets, response times, and specific geographic references to impacted towns and identification of wire centers. This information should be granted confidential treatment because it is propriety and competitively sensitive. Public disclosure of the information would cause cognizable harm to Consolidated's business, and place Consolidated at an unfair disadvantage in various bargaining positions, allowing competitors and other third parties to compete or negotiate more directly and effectively with Consolidated.

A. Confidential Consolidated Financial Information and Capital Investment Planning

Consolidated seeks to protect testimony containing confidential financial information related to Consolidated's parent corporation in general and with respect to Vermont, including the redacted portions of the Prefiled Direct Testimony of Department witnesses Scott G. Wheeler, Fred Goldstein and Barlow Keener. The financial information contained in the prefiled testimony was provided to the Department during discovery and is subject to the parties' Protective Agreement. This information includes confidential Consolidated financial information and capital investment planning. Consolidated seeks protection of this financial information because disclosure would result in harm to Consolidated's business. If disclosed, the information

would provide the public and competitors with insight into Consolidated's financial health and investment planning, thereby placing Consolidated at a competitive and bargaining disadvantage.

Further detail regarding the need for confidentiality of this information is set forth in Consolidated Averment Nos. 1-3, which are Attachment A to this Motion.

B. Confidential Consolidated Service Quality and Staffing Detail

Consolidated also seeks confidential treatment of prefiled testimony and exhibits containing proprietary and confidential information related to Consolidated service quality metrics and staffing levels, including specific information about numbers and types of trouble tickets, response times, and specific geographic references to impacted towns and identification of wire centers. The service quality and staffing information contained in the prefiled testimony and exhibits was provided to the Department during discovery and is subject to the parties' Protective Agreement. The information includes nonpublic, recent and specific Consolidated service quality details, staffing level data, call center and restoration statistics and coding, credits provided, repair and installation times, and additional details regarding repairs including geographic concentration of service and repair complaints.

Consolidated seeks protection of this information because it is highly sensitive in the competitive marketplace Consolidated operates in, and disclosure of this information could be detrimental to Consolidated's business. Disclosure would give competitors an unfair advantage by enabling competitors to use the information to more effectively market their services to Consolidated customers. It would allow competitors to create and employ better business strategies designed to retain existing customers and attract customers away from Consolidated, and could enable competitors to replicate Consolidated's customer service and maintenance systems. Public disclosure of specific geographic information would allow competitors to

evaluate and make strategic assessments regarding strengths and weaknesses in Consolidated's network capabilities. Disclosure of information relating to the effect of staffing levels on Consolidated's trouble ticket closure rates would permit Consolidated's competitors to make strategic assessments regarding strengths and weaknesses in Consolidated's workforce. Information allowing competitors to target weaknesses in Consolidated's network capabilities and workforce would provide those competitors with an unfair competitive advantage.

Further detail regarding the need for confidentiality is set forth in Consolidated Averment Nos. 1-3 (see Attachment A).

V. Good Cause Exists for Invoking the Commission's Protection.

For the above-stated reasons and those set forth in further detail in Consolidated's Averment Nos. 1-3, there is good cause for the Commission to issue a Protective Order according confidential treatment to the confidential information described above and in the manner described in the attached Proposed Order (Attachment B).

The Commission has previously granted confidential treatment of information in similar circumstances. See *In re Renewal of the Certificate of Public Good of Comcast of Connecticut/ Georgia/ Massachusetts/ New Hampshire/ New York/ North Carolina/ Virginia/ Vermont, LLC, d/b/a Comcast*, Docket No. 8301 (Vt. Pub. Serv. Bd. Aug. 4, 2016); *Joint Petition of Consolidated Communications Holding, Inc., et al.*, Case No. 8881 (Vt. Pub. Serv. Bd. May 4, 2017).

Consolidated will continue to review the confidential information, and to work with the Department in this regard, to determine whether any of it can be reclassified and will advise the Commission and the parties of the results of its review. To the extent that any party disputes the designation of the redacted passages and exhibits as confidential and Consolidated and the party

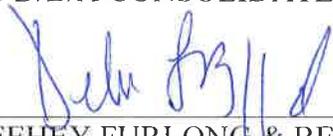
are unable to resolve the dispute, Consolidated seeks an opportunity to present additional information for the Commission's consideration specific to the disputed redacted passages and exhibit in connection with this Motion.

VI. Conclusion

For the above-stated reasons, Consolidated respectfully requests that the Commission issue a Protective Order substantially in the form provided as Attachment B to accord confidential treatment to certain information in the Department's prefiled testimony and exhibits.

Dated: April 25, 2019

RESPECTFULLY SUBMITTED,
TELEPHONE OPERATING COMPANY OF VERMONT,
LLC D/B/A CONSOLIDATED COMMUNICATIONS

By: 

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