

**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

PROTECTIVE ORDER

I. INTRODUCTION

On April 25, 2019, Telephone Operating Company of Vermont, LLC d/b/a/ Consolidated Communications (“Consolidated”) filed a Motion for Confidential Treatment of portions of the confidential Prefiled Direct Testimony and one Exhibit submitted by the Vermont Department of Public Service (“Department”). Specifically, Consolidated states that the confidential prefiled testimony and exhibit of the Department contains nonpublic, confidential information that is competitively sensitive and which should be maintained as confidential. Consolidated submitted Consolidated’s Averments Nos. 1–3 in support its request for confidentiality. No party opposed Consolidated’s motion.

II. DISCUSSION

We have reviewed the motion and supporting materials, and we conclude that Consolidated has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant Consolidated’s motion for confidential treatment.

To promote full public understanding of the basis for its decisions, the Public Utility Commission (“Commission”) has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the

relevant confidentiality factors, as they relate to the specific document or information at issue.¹ Generally, however, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.²

In determining whether to protect confidential information, we consider the following issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which 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?³

Consolidated seeks confidential treatment of 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. The information redacted from the Prefiled Direct Testimony and Exhibit DPS-CF-2 consists of data pulled from Consolidated discovery attachments listed in Consolidated Averments Nos. 1–3, and other confidential information, all of which was provided to the Department by Consolidated during the course of discovery in this proceeding and is subject to the January 30, 2019 Protective Agreement approved by the Commission on February 21, 2019.

Consolidated asserts that the information contained in the confidential portions of the Prefiled Direct Testimony and Exhibit of the Department contains confidential Consolidated financial information and capital investment planning for Vermont and for Consolidated’s corporate parent more generally, and confidential 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. Consolidated asks that this information be treated as confidential because public disclosure

¹ *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) at 2.

² *Id.*

³ *Id.*

would harm Consolidated's business by allowing competitors to compete more effectively against Consolidated, placing Consolidated at a competitive and bargaining disadvantage. Further detail regarding the need for confidentiality is set forth in Consolidated Averments Nos. 1-3.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that Consolidated has made a *prima facie* showing that the subject information is competitively sensitive, and therefore, warrants confidential treatment.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the confidential information contained in the Department's Prefiled Direct Testimony and Exhibit DPS-CF-2 (as described more fully in Consolidated's Motion and listed above) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Commission except by Order of the Commission. Notwithstanding such a statement, the members of the Commission, any employee or consultant specifically authorized by the Commission to assist the Commission in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, to the extent conducted, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in this Docket, and those whom the Commission has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Commission stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Commission stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential

information. Such transcription shall be marked “Confidential” and shall be sealed and filed with the Clerk of the Commission, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Commission retains jurisdiction to make such amendments, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

5. Any party or other person may apply to the Commission for an amendment, modification or addition of this Order.

SO ORDERED.

Dated at Montpelier, Vermont, this ____ day of _____ 2019.

_____)
) PUBLIC
) UTILITY
) COMMISSION
) OF
) VERMONT
)
)

OFFICE OF THE CLERK

FILED: _____, 2019

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 thirty days. Appeal will not stay the effect of this Order, absent a 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 ten days of the date of this decision and order.