

**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

REPLY TO THE DEPARTMENT OF PUBLIC SERVICE’S OPPOSITION TO CONSOLIDATED’S MOTION TO STRIKE PORTIONS OF JOINT PREFILED TESTIMONY OF DEPARTMENT WITNESSES GOLDSTEIN AND KEENER

Consolidated Communications of Vermont Company LLC (formerly Telephone Operating Company of Vermont LLC) d/b/a Consolidated Communications (“Consolidated”) hereby replies to the Department of Public Service’s (“Department” or “DPS”) June 6, 2019 Opposition to Consolidated’s Motion to Strike Portions of Joint Prefiled Testimony of Department Witnesses Goldstein and Keener. For the reasons outlined herein and in Consolidated’s May 23, 2019 Motion to Strike, Consolidated respectfully requests that the portions of the Joint Prefiled Testimony of Fred Goldstein (“Goldstein”) and Barlow Keener (“Keener”) filed April 26, 2019 (the “Testimony”) outlined in the May 23, 2019 Motion be stricken.

I. THE DEPARTMENT’S ARGUMENT THAT THE TESTIMONY SHOULD BE ADMITTED BECAUSE IT IS RELEVANT IS MISGUIDED BECAUSE EXPERT TESTIMONY MUST BE BOTH RELEVANT AND RELIABLE

In its opposition, the Department argues that the Testimony should be admitted because it is relevant to the question of whether Consolidated is meeting its service quality obligations. However, regardless of whether or not the Testimony is relevant pursuant to Rule 402 of the Vermont Rules of Evidence, it must also be reliable pursuant to Rule 702 and Rule 703 to be admissible. All evidence must be relevant pursuant to Rule 402. However, expert testimony

must meet the additional requirements of Rule 702. Here, even if the Testimony is relevant, it is not reliable. The portions of Goldstein and Keener's opinions that Consolidated seeks to have stricken do not meet the Rule 702 reliability standards because they are not based on sufficient facts and data and were not reached through the reliable application of reliable principles and methods.

II. CONSOLIDATED DOES NOT OBJECT TO THE ADMISSIBILITY OF PUBLIC COMMENTS, BUT RATHER TO GOLDSTEIN AND KEENER'S CHARACTERIZATION OF THE PUBLIC COMMENTS

The Department further argues that Goldstein and Keener's testimony is proper because it relies on public comments that are part of the public record in this proceeding. Consolidated does not object to and agrees that the Commission can consider the public comments that the Department refers to. However, Goldstein and Keener's reliance on very limited public comment to make sweeping conclusions presented as expert opinion is improper. Although V.R.E. 703 allows an expert to rely on facts or data provided to them in forming their opinion, it does not allow an expert to simply restate and mischaracterize facts or statements provided to them without providing any expert analysis. Here, the Testimony mischaracterizes the public comments without any application of reliable principles and methods to form an expert opinion required by V.R.E. 702.

III. CONSOLIDATED'S MOTION TO STRIKE IS NOT PREMATURE BECAUSE PUC RULE 2.216(C) REQUIRES THE MOTION TO BE MADE WITHIN THIRTY DAYS AFTER TESTIMONY IS PREFILED

The Department also contends that it is premature to exclude the Testimony before technical hearings are held. However, PUC Rule 2.216(c) provides that objections to the admissibility of prefiled testimony "shall be filed in writing not more than thirty days after such evidence has been prefiled or five days before the date on which such evidence is to be offered,

whichever is earlier.” Here, the Joint Prefiled Testimony was filed on April 26, 2019. Therefore, Consolidated was required to raise any objections to its admissibility in writing no later than May 26, 2019. Thus, Consolidated’s motion to strike is not premature.

IV. CONCLUSION

Wherefore, for the above reasons, the cited portions of the Testimony should be stricken from the record.

DATED at Burlington, Vermont, this 19th day of June, 2019.

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