

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 18-3231-PET

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.	
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Order entered: 07/10/2019

ORDER DENYING MOTION TO EXCLUDE TESTIMONY

I. INTRODUCTION

This case involves an investigation, pursuant to 30 V.S.A. § 30, into the compliance of Telephone Operating Company of Vermont, Inc., doing business as Consolidated Communications, Inc. (“Consolidated”), with service quality standards for retail customers of telecommunications services. In today’s order we deny Consolidated’s motion to exclude certain testimony filed by the Department of Public Service (“Department”) from the evidentiary record in this case.

II. BACKGROUND

On April 26, 2019, the Department filed joint prefiled testimony sponsored by Fred Goldstein (“Goldstein”) and Barlow Keener (“Keener”).

On May 23, 2019, Consolidated filed a motion to exclude certain testimony from these witnesses from the evidentiary record in this proceeding.

On June 6, 2019, the Department filed a response to Consolidated’s motion.

On June 19, 2019 Consolidated filed a reply to the Department’s response to the motion.

III. POSITIONS OF THE PARTIES

Consolidated seeks to strike certain portions of the testimony of Goldstein and Keener because it argues that the testimony 1) does not meet the reliability standard of V.R.E. 702 and 703; 2) the testimony is based on hearsay; and 3) the testimony fails to meet the exception to admissibility standards of 3 V.S.A. § 810. Consolidated maintains that the expert opinions of the

witnesses regarding the views of Consolidated customers that are based on public comments of the customers are not sufficiently reliable and should be excluded from the evidentiary record. Consolidated also asserts that the joint testimony is inadmissible because it is based on hearsay statements of customers. Finally, Consolidated argues that the joint testimony is an attempt to “elevate one or two public comments to purportedly represent the general view of customers” and is, therefore, not reliable.¹

The Department contends that the joint testimony is relevant to the central issue in this proceeding and relies on the facts and data presented to the witnesses. The Department maintains that it would be premature to exclude the testimony before the evidentiary hearing and that Consolidated’s objections concern the weight of the evidence, not its admissibility. The Department argues that the joint testimony is based on public comments that are part of the record in this case and are of a type commonly relied upon by telecommunications experts when forming opinions on a telecommunications company’s service quality. Further, the Department asserts, the “Commission is a highly sophisticated and technically specialized quasi-judicial body that can make accurate judgments as to the credibility and weight to be afforded a witness.”²

IV. DISCUSSION

We do not find Consolidated’s arguments regarding the inadmissibility of the joint testimony persuasive. Consolidated is correct that the portions of joint testimony in question do contain descriptions of public comments made in this proceeding and relies on these comments. The testimony clearly describes the content and number of comments. We do not agree with Consolidated that merely citing examples of public comment that support an expert opinion somehow constitutes a sweeping generalization that renders that testimony inadmissible. Pursuant to V.R.E. 402, evidence that is relevant is generally admissible. The Commission has held in another case that “relevant evidence in some degree must advance the inquiry and thus have probative value.”³ Pursuant to V.R.E. 703 an expert may base an opinion or inference on facts or data that “need not be admissible in evidence in order for the opinion or inference to be admitted.” In this case, we conclude that the evidence in question is squarely relevant to our

¹ Consolidated motion to strike at 9.

² Department response at 5.

³ *Northstar Decommissioning Holdings*, Docket No. 8880. Order of 2/8/18 at 3.

inquiry related to service quality, has probative value, and is the type of facts on which the Department's experts may reasonably rely under V.R.E. 703. We also conclude that Consolidated's objections are more appropriately directed toward the weight of the testimony proffered and not its admissibility. Accordingly, Consolidated's motion to strike is denied.

SO ORDERED.

Dated at Montpelier, Vermont, this 10th day of July, 2019.

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Anthony Z. Roisman)	PUBLIC UTILITY
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)	
Margaret Cheney)	COMMISSION
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)	
Sarah Hofmann)	OF VERMONT

OFFICE OF THE CLERK

Filed: July 10, 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)

PUC Case No. 18-3231-PET - SERVICE LIST

Parties:

Sarah L. J. Aceves (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
sarah.aceves@vermont.gov

Debra L. Bouffard, Esq. (for Consolidated Communications, Inc.)
Sheehey Furlong & Behm
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
dbouffard@sheeheyvt.com

James Porter, Esq. (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State St
Montpelier, VT 05620
james.porter@vermont.gov

Michael Shultz (for Consolidated Communications, Inc.)
Consolidated Communications, Inc.
770 Elm Street
Manchester, NH 03101
michael.shultz@consolidated.com