

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 Consolidated Communications of Vermont Company LLC doing business as Consolidated Communications	
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Order entered: 08/22/2019

**PROTECTIVE ORDER FOR CONFIDENTIAL TREATMENT OF EVIDENCE**

**I. INTRODUCTION**

On April 25, 2019, Consolidated Communications of Vermont Company LLC doing business as Consolidated Communications (“Consolidated”) filed a motion with the Vermont Public Utility Commission (“Commission”) related to the confidential treatment of information contained in the prefiled testimony filed by the Vermont Department of Public Service (“Department”). Consolidated stated that certain information in the Department’s prefiled testimony is proprietary and competitively sensitive information that Consolidated has provided to the Department pursuant to the protective agreement in this case. Consolidated submitted averments to support its request for confidential treatment. On April 29, 2019, the Department filed a response stating that it did not oppose Consolidated’s motion.

On June 6, 2019, the Commission issued an order granting in part and denying in part Consolidated’s motion. The Commission explained that “[a]bsent a more substantial and persuasive argument from Consolidated,” it would not grant confidential treatment for certain numbers and statistics related to trouble tickets and average response times included in the Department’s prefiled testimony.

On June 12, 2019, Consolidated filed a second motion with the Commission seeking confidential treatment of the prefiled testimony of Consolidated witness Michael Schultz. Consolidated represented that Mr. Schultz’ testimony included competitively sensitive information that would harm Consolidated’s business if publicly disclosed. Consolidated submitted an averment to support its request for confidential treatment.

On June 26, 2019, the Department filed a response stating that it did not oppose the June 12 motion.

Also on June 26, 2019, Consolidated filed a supplemental motion renewing its request for confidential treatment of some of the evidence for which the Commission denied confidential treatment in the June 6 Order. Consolidated submitted updated averments to support its renewed request for confidential treatment.

On June 28, 2019, the Department filed a response stating that it did not oppose the June 26 renewed motion.

We have reviewed the motions and supporting materials, and conclude that Consolidated has made a *prima facie* showing that confidential treatment is warranted for some of the information at issue. Therefore, we grant-in-part Consolidated's motion for a protective order for a period of five years.

## II. DISCUSSION

To promote full understanding of the bases for its decisions, the Commission has actively taken steps to limit the amount of information subject to protective orders. The Commission has encouraged parties to remove material from that protection to the extent possible. The Commission requires 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.<sup>1</sup>

Generally, the Commission resolves disputes about information only when there is a disagreement about its confidential nature.<sup>2</sup> However, even when the motion is uncontested, the Commission will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under

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<sup>1</sup> *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 (“*Entergy Docket*”), Order of 11/9/01 at 5-6.

<sup>2</sup> *Id.* at 6.

seal. In determining whether to protect allegedly confidential information, the Commission considers three 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?<sup>3</sup>

**A. The June 12 Motion**

Consolidated maintains in its June 12 motion that information in the testimony of witness Michael Schulz should be protected because it includes pricing, revenues, and cost figures for Consolidated’s services. Consolidated argues that this information would provide the public and competitors with insight into Consolidated’s financial and pricing information and place Consolidated at a competitive disadvantage.

The information identified in Consolidated’s June 12 motion consists of financial information related to Consolidated’s services in specific areas and is similar to information that we have previously determined is commercially sensitive.<sup>4</sup> We have reviewed the motions and supporting materials, and we have applied the existing standard. We conclude that the redacted information identified in the June 12 motion is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information.

**B. The June 26 Renewed Motion**

In Consolidated’s June 26 renewed motion for confidential treatment, Consolidated identifies several categories of information in the Department’s prefiled testimony for which it seeks confidential treatment, including: (a) data from weekly reports provided to the Department as part of this case detailing the number of trouble tickets and installations in Consolidated’s queue; (b) trouble ticket volumes and the time it took Consolidated to clear those tickets; (c) the average number of trouble ticket repairs per technician per week; (d) repeat trouble areas; (e) the

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<sup>3</sup> See, e.g., *Entergy Docket*, Order of 3/29/02 at 2.

<sup>4</sup> *Joint Petition of Consolidated Communications Holding, Inc., et al.*, Case No 8881, Order of 5/4/17 at 2-3.

total number of trouble tickets reviewed by Department witnesses during this proceeding; and (f) Consolidated's repair and installation response times.

Consolidated maintains that these categories of information are not public and that their disclosure will result in competitive harm. According to Consolidated, its competitors could use the information against Consolidated by informing customers that they will experience repeated service problems and long wait times for repairs and installations with Consolidated's service.

As in our prior order, we conclude that some of the information identified in Consolidated's June 26 renewed motion is the same or similar to what is already disclosed in Consolidated's quarterly service quality reports. Specifically, the information identified as "trouble tickets and time cleared"<sup>5</sup> and "total tickets reviewed"<sup>6</sup> could be inferred from looking at Consolidated's service quality reports.

However, we agree that the remaining categories discussed in Consolidated's June 26 renewed motion consist of new data that Consolidated is not required to disclose as part of its service quality reporting obligations. We conclude that the new data warrant confidential treatment.

The service quality reporting requirements applicable to Consolidated were established in Docket 5903. In implementing the requirements, the Commission explained that the purpose was to "develop minimum service quality standards to ensure that Vermont consumers receive high quality service as local exchange competition commences."<sup>7</sup> In response to the requirements, local exchange providers expressed concern that they would be at a disadvantage if competitors such as cellular telecommunications service providers were not also required to disclose their service quality details. In response to these concerns, the Commission stated:

If cellular providers (or other providers offering basic exchange services in non-traditional manners, such as cable companies) begin offering the equivalent of basic service, displacing traditional land-line communications service, they will become subject to the [service quality] standards.<sup>8</sup>

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<sup>5</sup> This includes page 21, lines 5-7; page 22, lines 11, 13; page 23, lines 1, 7, 9, 11, 19-20, 22; page 24, lines 2, 9, 11, 13-14, 16-17; page 25, line 9; page 27, lines 2, 4, 8, 10, 11; page 28, line 1, and page 48, lines 5-7. This does not include page 27, lines 13 and 16, which pertain to repairs per technician.

<sup>6</sup> This includes page 5, lines 3, 10; page 9, line 17; and page 17, lines 9, 12, 14.

<sup>7</sup> *In re Service Quality Standards, Privacy Protections, and other Consumer Safeguards for Retail Telecommunications Service*, Docket 5903, Order of 7/2/99 at 114.

<sup>8</sup> *Id.* at 115.

In 2016 in Docket 8337, the Commission acknowledged that competition and the displacement of traditional land-line communications were growing:

During the period of June 2010 to June 2013, market conditions became more competitive for all telecommunications providers in Vermont. . . . [A] large part of the retail local telephone service connections consist of wireless or interconnected VoIP, representing a technology shift where many customers are choosing wireless only or preferring to purchase bundles of services in the residential and business market from cable companies like Comcast that offer fixed VoIP.<sup>9</sup>

Service quality standards, however, have not been extended to the new competitive entities as the Commission stated would occur in Docket 5903. In areas where Consolidated faces competition, Consolidated “continues to be the only carrier . . . with ubiquitous infrastructure and service requirements.”<sup>10</sup>

We are persuaded that requiring Consolidated to disclose information beyond what is already required for quarterly service quality reports could harm Consolidated’s ability to compete in areas where customers have alternative choices.<sup>11</sup> The service quality standards established in Docket 5903 already provide enough information to “allow the public to objectively and validly assess the quality” of Consolidated’s service.<sup>12</sup> Requiring the disclosure of more non-public information about Consolidated’s service quality is not needed for public evaluation, but would provide Consolidated’s competition with additional information that could be used to compete for Consolidated’s customers.

We recognize that Consolidated does not face competition everywhere. However, as a company offering services in both competitive and non-competitive markets, Consolidated’s loss of customers in areas that competition has decided to enter will affect Consolidated’s services to customers in the areas that competitors have decided to avoid. In the areas without competition, which include some of the more rural and difficult-to-serve markets, Consolidated’s customers have no alternatives.

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<sup>9</sup> *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 at 7-8.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *See id.* (“FairPoint’s [now Consolidated’s] ability to successfully compete for customers and invest in its network will be enhanced by a regulatory environment that affords the necessary flexibility to compete in the retail marketplace.”).

<sup>12</sup> *In re Service Quality Standards, Privacy Protections, and other Consumer Safeguards for Retail Telecommunications Service*, Docket 5903, Order of 7/2/99 at 16.

Based on the discussion above, we conclude that the redacted information identified in the table below is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information:

<b>Witness</b>	<b>Page: Line</b>	
Flint	<b>10:</b> 2 <b>11:</b> 1-16 (table) <b>12:</b> 4	<b>14:</b> 18-19 <b>15:</b> 1 (table) Exhibit DPS-CF-2
Goldstein & Keener	<b>10:</b> 5, 7, 9, 11, 13, 14, 16, 18 <b>11:</b> 1-3 (chart), 8 <b>12:</b> 11, 14, 15 <b>13:</b> 1, 4, 5, 8, 10, 12, 13, 16, 17, 19, 20 <b>14:</b> 1, 2, 4, 6, 7, 12-14 (chart) <b>15:</b> 11-13 (chart)	<b>16:</b> 8 <b>22:</b> 3-5 (chart) <b>27:</b> 13, 16 <b>29:</b> 4, 5, 7, 9, 11, 13 <b>30:</b> 20

### **III. ORDER**

IT IS HEREBY ORDERED that the redacted portions of the direct testimony of witness Michael Shultz in response to question 28 for the Telephone Operating Company of Vermont, LLC doing business as Consolidated Communications (“Consolidated”) and the redacted portions of the prefiled testimony of the Vermont Department of Public Service (“Department”) witnesses Fred Goldstein, Barlow Keener, and Carol Flint, as identified in the table 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 testimony or 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 case 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. Despite 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 in this case 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, no persons, other than those who have agreed to be bound by this Order and any Protective Agreement approved in this case, 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 any amendments, modifications, and additions to this Order as it may, from time to time, deem appropriate, including any amendments, modifications, or additions resulting from a motion made pursuant to the Protective Agreement.

5. In any future proceeding, the burden of establishing that the confidential treatment of this information is warranted is on the party seeking to avoid disclosure.

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

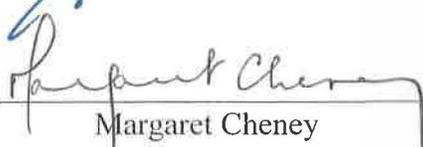
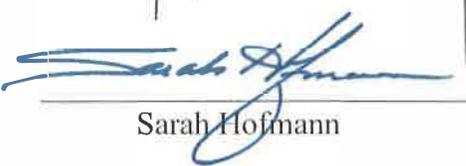
7. The confidential treatment of evidence provided for in this Order shall expire five years from the date of this Order.

8. Consolidated shall provide the Department with revised redactions for the testimony of the Department's witnesses for filing in ePUC.

9. Consolidated's motion dated June 14, 2019, requesting additional time to supplement its request for confidential treatment in response to the Commission's June 6, 2019, Order is dismissed as moot.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 22nd day of August, 2019

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

OFFICE OF THE CLERK

Filed: August 22, 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](mailto:puc.clerk@vermont.gov))*

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

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