

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 18-3231-PET

Petition of the 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.)

**DEPARTMENT OF PUBLIC SERVICE RESPONSE TO
CONSOLIDATED MOTION FOR LEAVE TO FILE SURREPLY AND SURREPLY**

The Vermont Department of Public Service (“Department”) hereby responds to the December 3, 2019 Motion for Leave to File Surreply and Surreply (“Motion”) filed by Consolidated Communications of Vermont, LLC d/b/a Consolidated Communications (“Consolidated”). The Department disagrees with Consolidated that new issues were raised in its Reply Brief that merit a surreply. A reply does not raise a new matter where it is directly responsive to arguments made in the opposition brief.¹ The Department’s Reply Brief explicitly responded to assertions made by Consolidated in its Initial Brief well within the bounds of a proper reply.² The Department recognizes that surreplies may be allowed to the extent they are helpful in clarifying the arguments,³ but asserts that such clarification is not necessary here

¹ See *U.S. ex. Rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, 238 F. Supp. 2d 270, 276-77 (D.D.C. 2002) (“A surreply may be filed...only to address new matters raised in a reply”; “[t]he matter must be truly new.”). See also *Banner Health v. Sebelius*, 905 F. Supp. 2d 174, 188 (D.D.C. 2012) (“[a]s Courts consistently observe, when arguments raised for the first time in reply fall ‘within the scope of the matters [the opposing party] raised in opposition,’ and the reply ‘does not expand the scope of the issues presented, leave to file a surreply will rarely be appropriate.’”) (citations omitted).

² *Banner Health*, 905 F. Supp. 2d at 188 (“the [movant] was well within the bounds of a proper reply brief in raising this [purportedly new] argument in response”).

³ See *New Eng. Youth Theatre, Inc. v. Envtl. Compliance Serv., Inc.*, No. 138-4-12 WMCV, 2013 WL 1866895, at *4 (Vt. Super. Feb. 26, 2013) (“The Court allows the Plaintiff’s surreply and Defendant’s response to the surreply to the extent it is helpful in clarifying the arguments.”).

because the arguments have already been briefed and no new issues have been raised.

Notwithstanding the foregoing, the Department does not oppose Consolidated's Motion.

DATED at Montpelier, Vermont this 4th day of December, 2019.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: /s/ Sarah L. J. Aceves
Sarah L. J. Aceves, Special Counsel
112 State Street
Montpelier, VT 05620
802-828-3167
sarah.aceves@vermont.gov

cc: Service List