

**BEFORE THE
NEW HAMPSHIRE**

PUBLIC UTILITIES COMMISSION

Consolidated Communications of Northern New England Company, LLC

Docket - DT 19-041

Petition for Approval of Modifications to the Wholesale Performance Plan

Joint Settlement Stipulation and Request for Approval Thereof

Consolidated Communications of Northern New England Company, LLC (“Consolidated”), the CLEC Association of Northern New England, Inc.¹ (“CANNE”), Time Warner Cable Information Services (New Hampshire), LLC, and Charter Fiberlink NH-CCO, LLC (with the Time Warner Cable and Charter entities being “Charter,” and Charter together with Consolidated and CANNE, collectively being the “Parties” and individually each being a “Party”) hereby agree, stipulate, and move the New Hampshire Public Utilities Commission (the “Commission”) for approval of this Joint Stipulation of Settlement (this “Stipulation”) pursuant to NH RSA 541-A:31(V)(a) and Puc. 203.20(b) as follows:

I. Purpose

The purpose of this Stipulation (this “Stipulation”) is to resolve all of the issues in Docket DT 19-041 between the Parties. The provisions agreed to in this Stipulation have been reached as a result of information filed in this proceeding and from various Orders of this Commission, Orders of the Federal Communications Commission (the “FCC”), and discussions and negotiations among the Parties in this case. The Parties agree that the terms of this Stipulation are joint and reasonable, and in the public interest. The Parties commit to working together to obtain Commission approval of this Stipulation and the implementation of the Amended WPP (hereinafter defined).

¹ CANNE consists of the following parties to this Docket: CRC Communications LLC d/b/a OTELCO, FirstLight Fiber, Inc., and Biddeford Internet Corp. d/b/a Great Works Internet.

II. Procedural History and Background

This Commission's October 14, 2019 Order entered in this proceeding² contains a detailed procedural history of Consolidated's Wholesale Performance Plan (the "WPP"). Without repeating the entirety of the Commission's Order or the history of the WPP, the Parties hereby summarize the pertinent background of the WPP and procedural history of this proceeding as the context for their Stipulation.

A. The History of the WPP

The origins of the WPP relate back to the Commission's approval in 2002 of a Carrier-to-Carrier Performance Assurance Plan ("PAP"), as a requirement for the entry of Verizon New England Inc. d/b/a Verizon ("Verizon") into the New Hampshire long-distance market.³ Through a series of proceedings and transactions described in the Commission's Order, the PAP was renegotiated and approved as the WPP and Consolidated assumed its predecessor's WPP obligations.⁴

B. The History of this Proceeding

On February 28, 2019, Consolidated initiated this Docket and filed a petition requesting that the Commission approve modifications to the WPP. Similar petitions were filed with the Maine Public Utilities Commission (the "MEPUC") and the Vermont Public Utility Commission (the "VTPUC"). Among the modifications sought by Consolidated were the elimination of any requirement to track and report performance measurements for resale, number portability, directory listings, and voice grade loops. Consolidated also sought other substantive and administrative changes. Consolidated proposed these changes pursuant to the: (i) FCC Forbearance Orders⁵ and (ii) Biennial Review Provisions in Part H of the WPP.⁶

² See *Order Addressing Question of Law and Directing Parties to Reopen Negotiations*, October 14, 2019, in Docket DT 19-041, at p. 16 ("... we find that the FCC Forbearance Orders do constitute a change of law as contemplated by the WPP Change of Law Provision").

³ Order at ps. 3-4.

⁴ Order at ps. 3-4.

⁵ The FCC Forbearance Orders at issue are: "2015 Forbearance Order" (*Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. §160(c) from Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of*

Thereafter, all parties to the Docket engaged in good faith negotiations during early 2019. The negotiations proved unsuccessful. Thereafter, on May 14, 2019, Consolidated filed an amended petition in this proceeding seeking to withdraw the WPP in its entirety. Consolidated's justification for withdrawing the WPP rests, among other things, on its interpretation of the FCC Forbearance Orders and their application to the "change of law" provisions in Part K of the WPP.⁷ Similar amended petitions were filed with the MEPUC and the VTPUC.

Ultimately, after this Commission requested briefing related to Consolidated's request to withdraw the WPP, the Commission issued its Order on the change of law issue. The Commission's ordering paragraphs state, in relevant part:

... that Consolidated is not authorized to withdraw or terminate its Wholesale Performance Plan based on the Change of Law provision of that Plan as a result of the FCC Forbearance Orders; and it is

FURTHER ORDERED, that the parties shall reopen negotiations with respect to modification of the WPP pursuant to Consolidated's Amended Petition and the WPP Change of Law Provision, and it is

FURTHER ORDERED, that, should the Parties successfully negotiate modifications, they shall present the results of their negotiations to the Commission for approval...⁸

The Commission's Order, along with similar orders from the MEPUC and the VTPUC,⁹ led to further negotiations among the Parties and, ultimately, this Stipulation. The Parties hereby represent that the process leading to stipulation was fair to all parties. Leading up to the filing of this Stipulation, the Parties discussed potential settlement on multiple occasions over the course

Next Generation Networks, Memorandum Opinion and Order, 31 FCC Rcd 6157 (FCC rel. Dec. 28, 2015)) and the "2019 Forbearance Order" (*Petition of U S Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Memorandum Opinion and Order, FCC 19-31 (FCC rel. April 15, 2019)).

⁶ The biennial review provisions were extended as a result of the Stipulation in the Consolidated Merger. *See generally Joint Petition for Findings in Furtherance of the Acquisition of FairPoint Communications, Inc. and its New Hampshire Operating Subsidiaries by Consolidated Communications Holdings, Inc.*, Order No.26,022 (May 31, 2017).

⁷ *See* Consolidated's Motion to Amend Petition, dated May 14, 2019.

⁸ Order at ps. 17-18.

⁹ *See* MEPUC Order, Docket No. 2019-00045, dated January 13, 2020, and VTPUC Order of Hearing Officer Michael E. Tousley, issued in Case No. 19-0603-PET, October 2, 2019.

of more than a full year. This Stipulation ensures that a wholesale performance plan will remain in place for today's competitive carriers (including Charter and the CANNE companies) and competitive carriers that enter the market in the future. This Stipulation also provides adequate relief to Consolidated in that it reduces the burdens of the WPP consistent with the intent of the FCC Forbearance Orders. The negotiations produced an amended WPP (described below) that will replace the current WPP upon approval of the Stipulation.

III. Recommended Approvals and Findings.

The Parties agree, recommend, and move this Commission to issue an order that approves, accepts, and adopts this Stipulation (including the Amended WPP), as just and reasonable and in the public interest, including the provisions described below. Attachment A to this Stipulation is an amended WPP reflecting the agreement among the Parties (the "Amended WPP"). The Amended WPP: (i) eliminates certain metrics; (ii) revises certain metrics; and (iii) subjects certain metrics to the FCC's so-called sunset period, whereby these metrics automatically will be eliminated as of August 2, 2022.¹⁰ Attachment B to this Stipulation is a Microsoft Word "track changes mode" version of the Amended WPP that compares the Amended WPP to the WPP to allow the Commission, its Staff and the Parties to easily identify the modifications to the WPP that have resulted in the agreed upon, final, Amended WPP.

The Parties agree, recommend, and move this Commission to issue an order that approves, accepts, and adopts this Stipulation (including all Attachments), as just and reasonable and in the public interest. This Stipulation represents the full agreement among the Parties to this Stipulation to fully and finally resolve all issues in this proceeding, and rejection of any material provision or term of this Stipulation by the Commission constitutes a rejection of the whole. If not accepted by the Commission, the MEPUC, and the VTPUC in full and according to its terms, this Stipulation shall be void and have no further force or effect.

¹⁰ The Amended WPP also corrects certain technical issues that are of a non-substantive nature.

CONCLUSION

For all of the reasons stated above, the Commission should find that the Stipulation is just, reasonable and in the public interest and should approve the Stipulation and Amended WPP as negotiated among the parties.

Dated at Manchester, New Hampshire, this 4th day of June, 2020

Dated: June 4, 2020

CONSOLIDATED COMMUNICATIONS OF
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Dated: June 4, 2020



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Dated: June 2, 2020

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