

**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**

**Consolidated's Memorandum in Support of Approval of Joint Settlement Stipulation**

This Memorandum is filed by Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications – NNE (“Consolidated”) in support of the Stipulation filed in the above-captioned proceeding on June \_\_, 2020 (the “Stipulation”). Pursuant to Puc 203.20(b) of the Commission’s Administrative Rules: [t]he [C]ommission “...shall approve a disposition of any contested case by stipulation, [or] settlement ... if it determines that the result is just and reasonable and serves the public interest.” This memorandum includes the following information related to the stipulation:

- i. the major provisions agreed upon; and
- ii. why the provisions are just and reasonable, and in the public interest.

**BACKGROUND**

Consolidated initiated this proceeding<sup>1</sup> to revise the Wholesale Performance Plan (“WPP”) pursuant to the Change of Law provision in Section 1(K) of the WPP<sup>2</sup> and as a result of

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<sup>1</sup> Consolidated filed its initial Petition on February 28, 2019, and thereafter filed a Motion to Amend the Original Petition (the “Motion”) and an Amended and Restated Petition, both dated May 14, 2019. The Commission granted the Motion via Secretarial Letter, dated June 10, 2019.

the so-called FCC Forbearance Orders.<sup>3</sup> On October 14, 2019, the Commission issued an Order finding that the FCC Forbearance Orders triggered the Change of Law provision in the WPP and directed the parties to this proceeding to engage in negotiations pursuant to the requirements of the WPP. *See Order Addressing Question of Law and Directing Parties to Reopen Negotiations*, Order No. 26,299, at ps. 16-17 (October 14, 2019).

As directed by the Commission, the parties participated in negotiations pursuant to the requirements of the WPP, and those negotiations resulted in the Stipulation. The Stipulation was entered into among Consolidated, the CLEC Association of Northern New England, Inc. (“CANNE”)<sup>4</sup>, and Charter Fiberlink NH-CCO, LLC and Time Warner Cable Information Services (New Hampshire), LLC (collectively, “Charter” and together with Consolidated and CANNE, the “Stipulating Parties”). No other interventions were sought in this proceeding and there is no opposition to the request for relief in the Stipulation or the terms of the Amended WPP.

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<sup>2</sup> Section 1(K) states:

If any legislative, regulatory, judicial or other governmental decision, order, determination or action substantively affects any material provision of this WPP, FairPoint and the parties to the respective Commission and Board dockets will promptly convene negotiations in good faith concerning revisions to the WPP that are required to conform the Plan to applicable law.

Upon agreement, such revisions will be submitted jointly by the parties participating in the negotiations to the Commissions and Board for approval. Should the parties fail to reach agreement on revisions to the WPP within 90 days, the matter may be brought to the Commissions and Board. Upon Commission or Board approval or resolution of such revisions, the revisions to the Maine or New Hampshire or Vermont WPP performance metrics and related bill credits will be retroactive to the effective date of the change in law, unless otherwise expressly ordered by the Commission or Board when the revisions to the WPP are approved.

<sup>3</sup> The FCC Forbearance Orders at issue are: *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 Next Generation Networks*, Memorandum Opinion and Order, 31 FCC Rcd 6157 (FCC rel. Dec. 28, 2015) and *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).

<sup>4</sup> CANNE consists of CRC Communications LLC d/b/a OTELCO, FirstLight Fiber, and Biddeford Internet Corp. d/b/a Great Works Internet.

## **DISCUSSION**

### **1. The Major Provisions of the Stipulation.**

The Stipulation represents the Stipulating Parties' agreement as to certain revisions to the WPP. Those revisions, which are reflected in an Amended WPP provided as Attachment A to the Stipulation, can be grouped into three categories: (i) elimination of certain metrics (immediately); (ii) revision of certain metrics (immediately); and (iii) retention of certain metrics until a sunset date of August 2, 2022.<sup>5</sup>

Attachment B to the Stipulation is an electronic comparison of the Amended WPP to the current version of the WPP. Thus, Attachment B shows the revisions to the WPP in Microsoft Word "track-changes mode" that were negotiated among the Stipulating Parties and included in the Amended WPP. The Stipulating Parties agree that the Commission should approve the Stipulation and the Amended WPP.

After the Commission issued its October 2019 Order finding that the FCC Forbearance Orders trigger the Change of Law provision in the WPP, the Stipulating Parties engaged in negotiations as required by the WPP and the Order. The result of those negotiations is embodied in the Amended WPP. As the product of a negotiation among the stakeholders that are affected by the WPP, the Stipulating Parties urge the Commission to approve the Amended WPP.

### **2. The Stipulation is Just, Reasonable and Serves the Public Interest.**

Pursuant to RSA 541-A:31(V)(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default. Puc. 203.20(b) requires the Commission to approve the disposition of a contested case by settlement if it determines that the settlement results are just and reasonable

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<sup>5</sup> The Amended WPP also corrects certain technical issues that are of a non-substantive nature.

and serves the public interest. In general, this Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise, as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation. *See EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 17 (March 10, 2011). *See also 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 at p. 31-32 (May 31, 2017).

Here, the Commission more than encouraged the Stipulating Parties to resume negotiations and attempt to reach a settlement in the October 2019 Order. The Commission's Order was similar to orders issued by the Vermont Public Utility Commission<sup>6</sup> and the Maine Public Utilities Commission.<sup>7</sup> The Stipulating Parties resumed negotiations as directed by all three commissions and reached a comprehensive settlement of all issues. The Stipulating Parties agree that the Stipulation is just and reasonable, and serves the public interest.

The Amended WPP implements certain provisions of the FCC's Forbearance Orders while ensuring that there is a wholesale performance plan in place for New Hampshire's current competitive carriers as well as future entrants to the competitive telecommunications market. Consolidated's delivery of wholesale services to New Hampshire's CLECs will continue to be monitored in many respects and will be subject to penalty credits in the event Consolidated's services to CLECs are deficient. The Amended WPP reflects a carefully, negotiated balance between: (1) competing business interests among New Hampshire's dominant ILEC and its CLECs; and (2) the desired outcome for this docket by Consolidated vis-à-vis its requested relief

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<sup>6</sup> *Procedural Order Granting Consolidated's Motion to Amend and Ruling that the Wholesale Performance Plan's Change of Law Provision is Applicable*, VTPUC Order in Case No. 19-0603-PET, entered October 2, 2019.

<sup>7</sup> *Order*, MEPUC in Docket No. 2019-00045, January 13, 2020.

versus the desired outcome by the CLECs vis-à-vis their respective objections to Consolidated's requested relief. For all of these reasons, the Stipulation is in the public interest, and it is just and reasonable.

## 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.

CONSOLIDATED COMMUNICATIONS OF  
NORTHERN NEW ENGLAND COMPANY, LLC  
D/B/A/ CONSOLIDATED COMMUNICATIONS  
– NNE

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Certificate of Service

I hereby certify that on this \_\_\_\_ day of June, 2020, the undersigned caused a copy of the foregoing to be hand-delivered and/or sent via electronic mail to the Intervenors in this Docket and the Commission's Staff.

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Patrick C. McHugh, Esq.