

**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

NOW COMES, Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications – NNE (“Consolidated”) and hereby respectfully requests leave to amend its Petition filed in this proceeding on February 28, 2019. In support of this Motion, Consolidated states as follows:

1. On February 28, 2019, Consolidated filed a Petition in this proceeding seeking approval of certain modifications to the Wholesale Performance Plan (“WPP”) effective June 1, 2019 (the “Petition”).

2. The gravamen of Consolidated’s Petition was to obtain Commission authorization “to modify the WPP to eliminate any requirement to track and report performance measurements that pertain to certain products or services that the Federal Communications Commission (“FCC”) granted Section 271 forbearance to Bell Operating Companies (“BOCs”) and that are mutual obligations of all local exchange carriers (“LECs”) under section 251(b).” (Petition, ¶ 1.) The specific products and services include “resale, number portability, and directory listings.” (*Id.*) In addition, Consolidated proposed “a few substantive changes unrelated to the forbearance relief granted [by the FCC], such as to the

small sample rule, as well as certain administrative changes, such as to the company's name.”

(Id.)

3. The Petition explained that the FCC's Section 271 Forbearance Order¹ granted forbearance on 13 of 14 so-called “checklist items” from the section 271(c)(2)(B) competitive checklist, specifically items 1-2 (interconnection and access to UNEs), 7-9 (directory listings, white pages, numbering) and 11-14 (number portability, local dialing parity, reciprocal compensation, and resale). (Petition at ¶ 2.) In addition, the Petition stated that the FCC granted forbearance “from the independent unbundling items on the competitive checklist that do not reference or duplicate section 251 requirements,” including “access to local loops, transport, switching, and access to databases (checklist items 4 - 6 & 10) as required under sections 271(c)(2)(B)(iv), (v), (vi), and (x).” *(Id.)*

4. The Petition noted that, as of the time of the 271 Forbearance Order, the FCC had not granted forbearance as to “checklist item 3”, which provides an obligation and enforcement mechanism to provide access to poles, ducts, conduit, and rights-of-way in accordance with the requirements of Section 224.” *(Id. at ¶3.)*

5. The WPP contains the following Change of Law provision in Section 1, paragraph K:

K. CHANGE OF LAW

If any legislative, regulatory, judicial or other governmental decision, order, determination or action substantively affects any material provision of this WPP, FairPoint Communications 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.

¹ FCC's Memorandum Opinion and Order in WC Docket No. 14-192, 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, released December 28, 2015.

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 Commission(s) 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.

6. After Consolidated filed the Petition in this proceeding and similar petitions in proceedings that are now pending in Maine and Vermont, Consolidated met with the Commission's Staff, as well as Staff from the Maine Commission and members of the Vermont Department of Public Service ("DPS"), and Intervenors in the three state proceedings to discuss modifications to the WPP as described in the Petition to conform the WPP in part to the change of law effected by the FCC's 217 Forbearance Order.

7. Thereafter, Consolidated and the Intervenors met for confidential settlement negotiations without the Commissions' Staffs and members of the DPS. Ultimately, the parties were unable to reach an agreement to amend the WPP.

8. In Section 5 of the Petition, Consolidated observed that given the FCC's grant of forbearance as to 13 of the 14 section 271 checklist items it would be fair and reasonable to withdraw the WPP in its entirety, and Consolidated reserved its right to seek such relief at a later time:

Given the FCC's order forbearing from enforcing Section 271 competitive checklist items 1, 2, and 4 – 14, it would be fair and reasonable for Consolidated Communications to seek to withdraw the WPP in its entirety in the three NNE states. Consolidated Communications is not seeking to withdraw the WPP at this time, however, but reserves its right to seek such relief in the future.

9. On April 15, 2019, after Consolidated filed its Petition in this proceeding, the FCC released its Memorandum Opinion and Order in WC Docket No. 18-141, Petition of US Telecom

For Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next Generation Networks (“April 15, 2019 Memorandum Opinion and Order”) . In its April 15, 2019 Memorandum Opinion and Order, the FCC granted forbearance, among other matters, as to checklist item 3 (the sole remaining section 271 checklist item):

We grant U.S. Telecom’s request for forbearance from the essentially duplicative requirement imposed as a condition of the BOC’s provision of in-region long-distance service that a BOC provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way.¹⁵⁸ We find that this remaining long-distance entry checklist item is redundant with section 224 obligations (including state-certified obligations pursuant to section 224(c)(2)), which remain in full force and effect, and that eliminating this obligation will remove any competitive distortions that may occur in the marketplace as a result of the disparate treatment of BOCs vis-à-vis other LECs. *Id* at ¶ 42.

10. Thus, when the 271 Forbearance Order and the April 15, 2019 Memorandum and Opinion and Order in WC Docket No. 18-141 are considered together, the FCC has granted forbearance as to all 14 of the section 271 competitive checklist items. Thus, Consolidated believes it has good grounds to amend its Petition in this Docket.

11. Because the FCC has now granted forbearance as to the entirety of the section 271 competitive checklist items, Consolidated believes that the 271 Forbearance Order and the April 15, 2019 Memorandum and Opinion and Order in WC Docket No. 18-141 constitute changes of law under the WPP and that WPP is no longer necessary to achieve the telecommunication policy goals of section 271.

12. The Commission’s Chapter Puc 200 Rules govern procedure before the Commission. Pursuant to Puc 202.01 and Puc 203.07, Consolidated seeks leave to file an Amended Petition, in the form of Attachment A hereto, which requests authorization from the Commission to withdraw the WPP in its entirety.

13. Puc 203.10(a) states, in pertinent part:

(a) The commission shall permit the amendment of any document filed with the commission provided:

(1) The party requesting the amendment shall give notice of the request to all persons on the service list for the proceeding; and

(2) The commission determines that the amendment shall encourage the just resolution of the proceeding and will not cause undue delay.

See, e.g., Hampstead Area Water Co., Inc., 020813 NHPUC 25, 463 (Feb. 8, 2013) (finding that amendment of filing for temporary and permanent rates would not cause undue delay and would encourage just resolution of proceeding).

14. The Commission should grant Consolidated's Motion to amend its Petition because it will not unreasonably delay this proceeding or unreasonably adversely affect the rights of any party. The proceedings on Consolidated's Petition, and its similar petitions in Maine and Vermont, are in their early stages, and amending at this time will not cause any substantial disruption or delay of the proceedings. Furthermore, Consolidated believes that the proposed Amended Petition will not adversely affect the rights of any party and the parties will have adequate time and opportunity to consider the proposed Amended Petition. Therefore, the proposed amendment is warranted under the Commission's rules of practice and procedure.

15. Accordingly, for all of the foregoing reasons, Consolidated respectfully requests that the Commission grant it leave to file the Amended Petition attached hereto as Exhibit A. In addition, Consolidated believes that the central issue raised by the Amended Petition is purely a question of law (*i.e.*, whether the FCC's orders granting forbearance as to all 14 of the section 271 checklist items constitute change in law under the WPP and therefore permit complete

withdrawal of the WPP) and should be considered by the Commission on briefs. Therefore, Consolidated requests that the Commission schedule a conference for the purpose of developing a briefing schedule for the issues identified in Consolidated's Amended Petition.

WHEREFORE, Consolidated respectfully requests that the Commission:

1. Grant this motion and allow the Company to amend its Petition; and
2. Grant such further relief as may be just and appropriate.

Respectfully submitted:

CONSOLIDATED COMMUNICATIONS OF VERMONT
COMPANY, LLC

By: 

Patrick C. McHugh, Esq.

Certificate of Service

I hereby certify that on this 14th day of May, 2019, the undersigned caused a copy of the within Motion to be hand-delivered and/or sent via electronic mail to the Intervenors in this Docket and the Commission's Staff.

By: 

Patrick C. McHugh, Esq.