

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 19-041**

**CONSOLIDATED COMMUNICATIONS OF  
NORTHERN NEW ENGLAND COMPANY, LLC**

**Petition for Approval of Modifications to the Wholesale Performance Plan**

**RESPONSE TO MOTION TO AMEND PETITION**

The CLEC Association of Northern New England, Inc., which includes CRC Communications LLC d/b/a OTELCO, FirstLight Fiber, and Biddeford Internet Corp. d/b/a Great Works Internet (collectively, “CANNE”) along with Charter Fiberlink NH-CCO, LLC and Time Warner Cable Information Services (New Hampshire), LLC (“Charter”), (collectively the “CLECs”) respectfully submit these comments in response to the Motion to Amend Request for Modification of the Wholesale Performance Plan (“Request”) filed by Northern New England Company, LLC d/b/a Consolidated Communications – NNE (“Consolidated”).

**I. BACKGROUND**

On April 4, 2019, the staffs of the Maine, New Hampshire and Vermont Public Utilities Commissions (“Staff”) held a joint conference call with Consolidated and the parties<sup>1</sup> actively participating in the three dockets<sup>2</sup> (“Parties”) opened after Consolidated filed its Request at each Commission. Each Staff had already held a preliminary case conference in its respective state.

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<sup>1</sup> CLEC Coalition of Northern New England, Biddeford Internet Corporation, d/b/a GWI, CRC Communications LLC d/b/a OTELCO, FirstLight Fiber Inc., the Vermont Public Service Department and the Charter companies (Time Warner Cable Information Services (Maine), LLC; Charter Fiberlink VT- CCO, LLC; and Charter Fiberlink NH-CCO, LLC and Time Warner Cable Information Services (New Hampshire), LLC).

<sup>2</sup> See, Maine PUC Docket No. 2019-0045, New Hampshire PUC Docket No. 19-041, and Vermont PUC Docket No. 19-603-PET.

At the behest of Consolidated, the parties and the Staff agreed that Consolidated and the CLECs would conduct confidential negotiations in an attempt to reach a settlement.

During the month of April, several calls took place between Consolidated and the CLECs. By the end of April it became apparent, however, that a negotiated settlement was unlikely to result from the discussions. On May 14, 2019, Consolidated filed its current Motion and Amended Request and proposed a briefing schedule to be used by the Commissions.

While there are several technical objections to Consolidated's Motion that the CLECs could make, we choose not to litigate them at this time because we believe the end result would be the same: Consolidated would file a new petition with the Commission seeking the exact same relief. Nonetheless, as explained below, the CLECs do object to Consolidated's assertion that its Amended Request can be resolved solely on the basis of written briefs. Accordingly, the CLECs propose a different approach for the Commission's handling of Consolidated's Amended Request.

## **II. THERE HAS BEEN NO CHANGE OF LAW AND REGARDLESS THESE ISSUES CANNOT BE ADDRESSED WITHOUT A FULL EXAMINATION**

Consolidated's Amended Request seeks two possible remedies: (1) a complete rescission of the Wholesale Performance Plan ("WPP"); or, in the alternative, (2) relief from the obligation to report on, and pay penalties associated with, certain WPP metrics. Consolidated argues that the basis for either form of relief lies in the "change of law" provisions as provided for in Section 1, Paragraph K of the WPP. Amended Request at 8. Consolidated withdraws its previous request to make changes pursuant to the Biennial Review process contained in the WPP. *Id.* at 9. More specifically, Consolidated argues that certain decisions by the Federal Communications Commission ("FCC") related to the forbearance of RBOC obligations under Section 271 of the

Telecommunications Act of 1996<sup>3</sup> constitute a change of law under the WPP requiring the Commission to relieve Consolidated of its WPP obligations as a matter of law. *Id.*

The CLECs agree that *two* of the fundamental issues presented by Consolidated's Amended Request require legal briefing and analysis. Specifically, the Commission must determine: (1) whether the FCC decisions cited by Consolidated constitute a change of law within the meaning of the WPP; and (2) whether any change in law requires the Commission to take action related to the WPP. The CLECs' position is that any changes to RBOC 271 obligations do not constitute a change in law under the WPP and, even if they did, they do not require the Commission to modify the terms of the WPP, as a matter of law. Indeed, the current WPP underwent its last Biennial Review in 2017, two years after the *271 Forbearance Order* and there was no argument made then that the WPP could not or should not be renewed. Also, as even Consolidated noted in its Request, the FCC acknowledged that it was within states' authority to determine whether to modify plans like the WPP in light of that decision. *Id.* at *fn.* 4, ("Nothing in this Order prevents states from enforcing existing state requirements and/or adopting new provisions similar or equivalent to any of those from which we forbear here based on authority they have under state law."); *see also*, ¶ 17 "US Telecom explains that it is not directly seeking forbearance from the PAPs, but that if the Commission grants relief from the duplicative checklist items, BOCs will have a basis for asking any states still requiring the plans to reduce or eliminate them."). Nothing in the FCC's more recent forbearance order changes this because the issue was not even raised.<sup>4</sup>

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<sup>3</sup> See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, Lifeline and Link Up Reform and Modernization, Connect America Fund*, WC Docket Nos. 14- 192, 11-42, 10-90, FCC 15-166, at ¶ 46 (rel. Dec. 28, 2015) (271 Forbearance Order).

<sup>4</sup> See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, 200 Biennial Regulatory Review*

If the Commission agrees with the CLECs on the narrow questions presented above, Consolidated's Amended Request should be denied and the current WPP remain in place until the next Biennial Review occurs or a true change in law occurs. If, however, the Commission finds that a change of law has occurred which requires that the Commission consider the merits of Consolidated's Amended Request, i.e. whether particular metrics should be removed from the WPP, the Commission should set a schedule to consider evidence regarding Consolidated's performance under the WPP and its impact on CLECs. Given important policy considerations, legal briefs alone cannot provide a sufficient basis for any Commission decision other than a complete dismissal of Consolidated's Amended Request.

Thus, the CLECs disagree with the truncated schedule proposed by Consolidated and, instead, request that the Commission, in coordination with the other two Commissions, schedule a conference with the Parties to develop a procedural schedule that allows full consideration of the issues raised by Consolidated's Request. The CLECs respectfully request that the three commissions establish a coordinated schedule by which each Commission can consider Consolidated's Amended Request, at approximately the same time, and conduct any evidentiary hearings in a staggered manner to avoid scheduling conflicts.

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*Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, WC Docket No. 18-141, FCC 19-31 (rel. April 15, 2019)

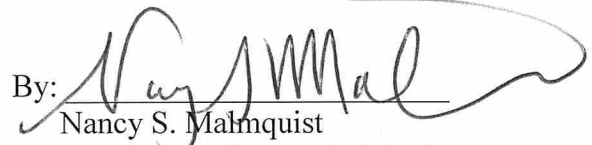
Respectfully submitted,

**CANNE**

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