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

REPLY BRIEF PURSUANT TO PROCEDURAL ORDER

The CLEC Association of Northern New England ("CANNE") – which includes CRC Communications LLC and Mid-Maine Telplus LLC d/b/a OTELCO, FirstLight Fiber, Inc., and Biddeford Internet Corp. d/b/a Great Works Internet - together with Charter Fiberlink NH-CCO, LLC and Time Warner Cable Information Services (New Hampshire), LLC ("Charter") (collectively "Joint Commenters") - hereby submit this Reply to the Initial Brief submitted by Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications ("Consolidated" and "Consolidated's Initial Brief").

I. Introduction

In its Initial Brief, Consolidated bases its argument that the WPP should be eliminated in its entirety upon a string of unsupported legal arguments and distorted (or omitted) underlying facts – none of which should be relied upon by the Commission. For example, Consolidated asserts that the FCC "has determined that the Section 271 competitive checklist items are no longer in the public interest."[1] Tellingly, Consolidated provides no actual support or citation for this assertion. The reason is obvious: the FCC never made such a finding. Instead, the FCC made clear that its decision to forbear on Section 271 obligations did not mean that it was forbearing on identical

[1] Consolidated Initial Brief at pp. 2, 13 - 14.

obligations under Section 251. Throughout the *2015 Forbearance Order,*[2] the FCC noted that it was granting forbearance from the Section 271 requirements "for which other section 251 safeguards already address and duplicate the narrowband obligations at issue."[3] The FCC further noted that " . . . we expect that the substantive section 251 obligations will continue to be enforced through interconnection agreements and through complaints filed under section 208 of the Act."[4]

If the FCC had found that the underlying obligations of the 271 checklist requirements were "no longer in the public interest," it stands to reason that the FCC would have removed those requirements from RBOC obligations altogether by forbearing from the duplicate Section 251 obligations. It made no such finding.[5] Accordingly, the Commission should reject Consolidated's misleading argument that FCC forbearance of certain requirements that duplicate those found in other provisions of law is the same as finding that those underlying obligations are "no longer in the public interest."

As discussed below, the facts and caselaw cited by the Joint Commenters support a finding that there has been no change of law, as defined by the Wholesale Performance Plan ("WPP").

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[2] *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, Memorandum Opinion and Order, FCC 15-166, 31 FCC Rcd. 6157 (rel. Dec. 28, 2015) ("*2015 Forbearance Order*")

[3] *Id.* at ¶12.

[4] *Id.* at ¶18.

[5] In its *2019 Forbearance Order*, the FCC made clear it was eliminating *redundant* obligations in Section 271 – obligations that continue to exist under other sections of statute. *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks,* WC Docket No. 18-141, CC Docket No. 00-175, Memorandum Opinion and Order, FCC 19-31, 2019 WL 1651223 (rel. Apr. 15, 2019) ("*2019 Forbearance Order*") (FCC granted forbearance from redundant statutory requirement that BOCs provide nondiscriminatory access to poles, ducts, conduit, and rights-of-way.)

II. The WPP's Change of Law Provision Speaks for Itself

According to Consolidated, "the change of law provision in the WPP is unambiguous and must be given its plain meaning."[6] Joint Commenters agree with this assessment. But Consolidated is wrong that its interpretation of the WPP change of law provision is based on its "plain meaning." Consolidated conveniently ignores important language in the provision itself. The provision expressly states "when a legislative, regulatory, judicial or other governmental decision, order, determination or action substantively *affects any material provision* of this WPP, Consolidated . . . and the parties . . . *will promptly convene negotiations* in good faith concerning *revisions to the WPP that are required* to conform the Plan to applicable law."[7] The *Forbearance Orders* do not affect any material provision of the WPP or require revisions to conform the plan to applicable law because the FCC explicitly stated "it is within the states' authority to determine whether or not to modify the PAPs."[8] The fact that Consolidated cannot point to a single other RBOC that has used either *Forbearance Order* to request complete relief from all PAP obligations offers the Commission important perspective on how Consolidated's view of the impact of the Forbearance Orders diverges from that of all other similarly-situated carriers. Furthermore, and persuasively, the U.S. Court of Appeals for the First Circuit weighed in on an issue involving interconnection requirements similar to the present issue before this Commission. There, the First Circuit determined that no change of law occurred where the FCC made clear, as it did in the *2015 Forbearance Order*, that its decision does not trigger change of law provisions.[9]

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[6] Consolidated Initial Brief at pp. 8 – 12.

[7] *See* Section 1, Part K of the WPP (emphasis added).

[8] *2015 Forbearance Order* at ¶ 17. "PAP" is short for "Performance Assessment Plan," the name commonly used at the time to refer to wholesale performance and remedy plans like the WPP.

[9] *See Puerto Rico Telephone Co., Inc. v. SprintCom, Inc.*, 662 F.3d 74 (2011) and Joint Commenters' discussion of same in their Initial Brief at p 3.

Moreover, when there is a relevant change of law, Consolidated and interested parties are to "*promptly* convene negotiations."[10] Consolidated's argument that "the CLECs . . . have been on notice for over five years that FCC forbearance of any checklist item would constitute a change of law that triggers the Change of Law provision in the WPP,"[11] is disingenuous because Consolidated not only had the practical obligation and self-interest to assert that a change of law had taken place, but it is Consolidated itself which has waited *five years* to assert this purported change of law in an attempt to eliminate the WPP in its entirety. This lengthy delay strongly suggests that neither Consolidated nor its predecessor believed a relevant change of law had taken place. The Commission should therefore reject Consolidated's suggestion that a delay of five years constitutes "promptly convening negotiations."

III. The WPP's Original and Continuing Existence Does Not Depend on RBOC 271 Obligations - Consolidated's Distorted Recitation of State Commission 271 Orders Must Be Rejected

A. The WPP Exists Independently of Section 271

The validity of, and need for, the WPP does not depend on Section 271 obligations.[12] Consolidated argues that this Commission's *Section 271 Inquiry* was narrowly focused on Verizon's Section 271 obligations under federal law.[13] Consolidated further asserts that "Having determined that the PAP arose from the Section 271 competitive checklist, there is no room for doubt that the current WPP did as well."[14] What Consolidated fails to say is that this Commission's

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[10] Section 1, Part K of the WPP. (emphasis added).

[11] Consolidated Initial Brief at 16.

[12] *See* Initial Brief of Joint Commenters at 7-10.

[13] Consolidated Initial Brief at pp. 12 – 13.

[14] *Id.* at p. 13.

review of the Section 271 checklist necessarily included a review of compliance with Section 251 unbundling obligations. Indeed, Section 271(c)(2)(B)(ii) specifically requires "nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1)." Any assertion that the PAP or WPP was intended to measure performance solely under Section 271 deliberately and mistakenly omits obligations found in the same law, albeit in a different section, and ignores state authority altogether.

Consolidated also fails to recognize that the state commissions' consultative role concerning Section 271 applications differs greatly from state commissions' authority and obligation to enable and foster local competition and review and supervise the provision of wholesale services pursuant to Sections 251, 252 and 261 of the Telecommunications Act of 1996 (the "Telecommunications Act") and other law. Sections 251 and 252 clearly contemplate that state commissions will play a critical role in enforcing compliance with Section 251's requirements. Indeed, states are given the authority to arbitrate the terms, conditions, and pricing included in interconnection agreements between the RBOC and individual CLECs.[15] Further, Section 261(c) explicitly states:

> Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

47 U.S.C. § 261.

The justification and need for the WPP arise from Consolidated's wholesale obligations that continue independent of Section 271 approval. Consolidated has, and will continue to have,

[15] 47 U.S.C. § 252(b)(4).

unbundling and other wholesale obligations under Section 251.[16] These obligations are implemented through a combination of interconnection agreements, SGATs, and wholesale tariffs and requirements which the states, not the FCC, administer.

B. Consolidated Misrepresents Decisions Made by this Commission as well as the Other Northern New England Commissions

State Commissions' authority to regulate the behavior of incumbent telecommunications carriers comes from state law as well as authority delegated to states under Sections 251 and 252. The Vermont Supreme Court explained the state/federal partnership as well as the duality of obligations under both state and federal law:

> . . . the regulatory scheme remains a partnership between federal and state authorities, in which states are granted broad power to regulate telecommunications as long as the states do not act inconsistently with federal law.[17]

Nothing in the *2015 Forbearance Order* or the *2019 Forbearance Order* changed this regulatory scheme, nor do the conclusory statements in Consolidated's Petition and Initial Brief prove otherwise.

1. Consolidated Distorted the Meaning of the New Hampshire PUC's Order Approving the WPP.

Consolidated disingenuously argues that CLECs are "well aware and have been on notice for over five years that FCC forbearance of any checklist item would constitute a change of law that triggers the Change of Law provision in the WPP," citing this Commission's January 2014 order approving the WPP.[18] Significantly, Consolidated does not assert that the Commission

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[16] *See* Order, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (June 18, 2019) (FCC accepts US Telecom's withdrawal of forbearance request related to dark fiber transport unbundling requirement).

[17] *Petition of Verizon New England, d/b/a/ Verizon Vermont*, 173 Vt. 327, 332, 795 A.2d 1196, 1200 (2002).

[18] *Northern New England Telephone Operations, LLC d/b/a FairPoint Communications – NNE, Petition for Approval of Simplified Metrics Plan and Wholesale Performance Plan,* Docket No. DT 11-061, Order Approving Wholesale

actually held or made any finding to that effect, because the Commission did not make such a finding. In that proceeding, the CLECs and Consolidated were unable to agree on a change of law provision, specifically whether such a provision should be self-effectuating (Consolidated's preference) or should require Commission approval before any modification to the WPP is made (the CLECs' preference). The Commission was asked to resolve the issue. In the Approval Order, the Commission adopted the language proposed by the CLECs, agreeing that Consolidated should not be allowed to determine for itself when and how to incorporate any changes of law in to the WPP.[19] As a concession to Consolidated, the Commission also included language that would allow for retroactive application of the change of law *after* the Commission adjudicated any proposed modifications.

In explaining its rationale for the modification, the Commission made reference to the financial impact of "any service or product delisting." Citing this language, Consolidated makes the leap, without explanation, that the only "delisting" the Commission could have intended is the FCC's forbearance from enforcement of Section 271 competitive checklist items. Likewise, without explanation, Consolidated would give the language the same effect as a holding because, it asserts, the CLECs have been "well aware" and "on notice" of the Commission's intention.

The term "delisting" is not one that appears in the Telecommunications Act or in any of the regulations promulgated thereunder. Neither is it defined in the *FCC Forbearance Orders* or in the Approval Order. When the Commission colloquially referred to "any service or product delisting," it made no reference to any federal law or regulation. At the time of the Approval

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Performance Plan and Resolving Outstanding Issues, Order No. 25,623 (N.H. P.U.C. Jan. 24, 2014) ("Approval Order").

[19] Approval Order at pp 24 – 25. The wisdom of the Commission's approach is apparent in the current circumstances; if Consolidated's approach had prevailed, it would have eliminated the entire WPP in all three states by fiat.

Order, before the issuance of the forbearance orders relied upon by Consolidated, the FCC had already issued a number of orders "delisting" products and services from Section 251 unbundling requirements, and the parties and Commission were well aware of and understood those orders. Contrary to the unsupported assertion made by Consolidated, and considering the lack of definition, the Approval Order refers to delisting as one example of a type of change in law that *might* require retroactive relief *if* the Commission finds that the change necessitates a change in the WPP.[20] The language most certainly does not, as Consolidated suggests, mean that any change in FCC enforcement of Section 251 or 271 would *require* a change to, or elimination of, the WPP.

2. New Hampshire Decision

The New Hampshire Public Utilities Commission has affirmed its authority under state law to impose performance assurance metrics and payments outside the context of the PAP enacted in anticipation of the § 271 approval process. In its March 2002 order adopting the Verizon PAP, the Commission cited three bases of authority to order payments or penalties: reparations under RSA 365:29, civil penalties under 365:41, and the acceptance of a voluntary commitment by Verizon under 365:3. [21] The Commission noted that it had the authority to make these three types of remedies cumulative.[22] The Commission confirmed its authority and Consolidated's

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[20] Furthermore, the use of the term in the context of the relevant section of the N.H Approval Order can be viewed as providing an example of why economic impact is avoided by the Commission's revision to the change of law provision to make it retroactive to the date of some change (such as a delisting event) and consequently give the PUC Commission adequate time to rule upon a disagreement over a change of law assertion without economically harming a party such as Consolidated in the event of delay.

[21] *In re Verizon New Hampshire — Petition to Approve Carrier to Carrier Performance Guidelines and Performance Assessment Plan,* DT 01-006, Order Regarding Metrics and Plan, Order No. 23,940 at 67-72 (March 29, 2002). In that order, the New Hampshire Commission stated that civil penalties under RSA 365:41 are limited to $25,000 per violation and they must be paid to the state treasurer. Order 23,940 at 69-70, 72, 88. That description no longer is accurate in light of subsequent amendments to the statute. Now, the penalty may be up to the lesser of $250,000 or 2.5% of intrastate revenues. Also, importantly, civil penalties now generally "shall" be in the form of bill credits to affected customers. RSA 365:41.

[22] *Id.* At 91-92.

predecessor's understanding of the same: "As Verizon conceded in its comments during the hearing on its section 271 filing, its proposed performance assurance plan 'does not reduce the Commission's authority in any way. So, whatever other authority the Commission has, it would retain. The PAP does not take away from the Commission's authority.' Transcript, DT 01-151, February 6, 2002, p. 67."[23]

Verizon sought reconsideration of the Commission's decision to impose cumulative, state-based performance remedies. Reaffirming its state-law authority, the Commission rejected Verizon's challenge in no uncertain terms. "[W]e particularly reject Verizon's request not to make the remedies under the NHPAP and state law cumulative."[24] The Commission explicitly reaffirmed its multiple sources of authority to impose performance remedies under state law: "[A]rguments suggesting that we should evaluate the NHPAP as if state law did not exist are mere casuistry."[25]

3. Maine and Vermont Decisions

The findings and facts associated with both the Maine and Vermont Section 271 approval orders and adoption of the PAP are very similar and support the same conclusion. The Maine Public Utilities Commission clearly asserted its authority to impose wholesale performance measures outside the context of the PAP enacted in anticipation of the § 271 approval process. In its April 10, 2002 Findings Report, the Maine Commission discussed the adoption of a modified version of the PAP proposed by Verizon. The Maine Commission noted the lengthy negotiations

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[23] *Id.* at 87.

[24] *In re Verizon New Hampshire — Petition to Approve Carrier to Carrier Performance Guidelines and Performance Assessment Plan,* DT 01-006, Order Regarding Motion for Reconsideration, Rehearing and/or Clarification, Order No. 23,976 at 13 (May 24, 2002).

[25] *Id.* at 12.

and litigation related to the PAP and that alternate structures, including one recommended by the Staff based on the New Jersey PAP, had been considered carefully.[26] While ultimately adopting the PAP proposed by Verizon (in a modified form that met the conditions set forth in a Commission in its March 1, 2002 Letter to Edward Dinan, President and CEO of Verizon Maine), the Maine Commission made several important clarifying statements:

> To be clear, we believe that the PAP Verizon has proposed is sufficient to meet the public interest standard under Section 271. However, we also believe that there are many different ways to structure a PAP and that our continued examination of issues related to the PAP may bring to light additional facts or concerns that necessitate updating or changing the PAP we recommend today. *We do not believe that Verizon's concurrence is required for the implementation and enforcement of changes to the PAP that are authorized or required by the TelAct, Maine law, or the terms of the FCC's order granting Section 271 relief.*[27]

This exact statement was reiterated by the Maine Commission in its April 10, 2002 Comments of the Maine Public Utilities Commission on Verizon-ME's 271 Application.[28]

When the FCC approved Verizon-ME's 271 application, the FCC pointed out the differences in the Maine PAP from others similar to it.[29] The FCC also noted that Verizon acknowledged the Commission's authority to redistribute the penalty monies as it saw fit (and without Verizon's consent).[30] Finally, the FCC stated that it "took great comfort in the

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[26] *Inquiry Regarding the Entry of Verizon-Maine Into the InterLATA (Long Distance) Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996,* (Docket No. 2000-849), Findings Report at 85-86.

[27] *Id.* at 87 (emphasis added).

[28] ME PUC Recommendation to the FCC at 88.

[29] *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services In Maine,* CC Docket No. 02 – 61, Memorandum Opinion and Order, FCC 02-187, ¶¶ 62-63 (rel. June 19, 2002) ("FCC Maine 271 Order").

[30] *Id. at 63.*

Commission's expressed intent to continue to examine issues related to the PAP and to update or change the PAP as needed."[31]

As pointed out earlier, Consolidated repeatedly ignores the fact that compliance with Section 271 necessarily required compliance with Sections 251 and 252. The Maine Commission submitted 18 pages of analysis to the FCC regarding Verizon's compliance with Checklist Item No. 2, i.e. whether Verizon had provided non-discriminatory access to network elements and its operational support system *as required by Sections 251(c)(3) and 252(d)(1).*[32] For Consolidated to now claim that any measurement of its wholesale performance excludes measurement of Section 251/252 compliance ignores the plain language of the Telecommunications Act and the clear intent of both the Maine Commission and the FCC at the time the PAP was adopted.

The Vermont Public Utility Commission (previously referred to as to the Vermont Public Service Board) explained numerous times that it possesses authority under state law to regulate the service quality of wholesale providers over and above the remedies enacted in the PAP at the time of Verizon's entry into the long-distance market under section 271. In a January 2002 letter from the Commission to Consolidated's predecessor, Verizon New England Inc. ("Verizon") in Docket No. 6533 setting forth certain conditions under which the Commission was prepared to recommend that Verizon be granted Section 271 authority in Vermont, the Commission wrote:

> By a letter of today's date, Verizon VT is acknowledging in writing that the Board's adoption of the Vermont PAP does not constitute a waiver of any Board authority under Title 30, V.S.A, to regulate and enforce (through appropriate remedies and/or penalties) requirements applicable to Verizon VT's provision of wholesale services, or to audit Verizon VT's performance data or otherwise to obtain information under 30 V.S.A. § 206 or other applicable authority.[33]

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[31] *Id.*

[32] ME PUC Recommendation to the FCC at 10-28.

[33] Ltr. to V. Louise McCarren, President & CEO, Verizon New England Inc., d/b/a Verizon Vermont, at 7 (Jan. 16, 2002) in Docket No. 6533, copied to Parties of Record. The letter further set forth the Board's intention to continue investigating Verizon's wholesale service quality under state law over and above the PAP. "Although the Board

In its order and consultative comments to the FCC, the Vermont Commission informed the FCC both that it had authority under state law to impose remedies in addition to the PAP and that Verizon had acknowledged that authority.[34] In its order and consultative comments to the FCC, the Vermont Commission made clear "[w]hile the existing PAP is sufficient to support an application under section 271, it can be further improved. The Board has authority under state law to mandate such further improvements."[35] Two years later, the Vermont Commission again stated that the PAP did not set the limits of its ability to impose wholesale service quality standards and remedies, reiterating its ability under state law to impose such remedies above and beyond those established in the PAP. In an April 2004 final order in Docket No. 6255, the Vermont Commission declined at that time to impose additional remedies beyond the PAP but left no doubt about its authority to do so if circumstances warranted.[36]

Accordingly, all three Northern New England states have determined that their authority to augment the original PAPs or otherwise to regulate wholesale services and impose wholesale

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adopts Verizon VT's PAP, we will continue to investigate appropriate mechanisms for ensuring Verizon VT's continued provision of high quality service to its competitors in Docket 6255."

[34] *Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. § 271,* Docket No. 6533, Order and Comments on Federal Proceeding at Fn 11 (Feb. 6, 2002) (filed with the FCC in *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont,* CC Docket No. 02-7, Feb. 6, 2002) (*Footnote 11 provides "Verizon acknowledged that its approval of this PAP does not decrease the Board's state law authority. The Board believes that these powers, as set out in Title 30 V.S.A., include supervision of the terms and conditions of service provided by telephone companies in Vermont, including both wholesale and retail offerings.")*

[35] *Id.* at 9 (VT PUC Docket No. 6533, 2002 WL 535313, at 9).

[36] *Investigation into the Establishment of Wholesale Service Quality Standards for Providers of Telecommunications Services,* Dkt. No. 6255, Order re Changes to Verizon's Performance Assurance Plan at 11 (Apr. 15, 2004) ("We have never considered the PAP to represent the sole mechanism for ensuring adequate wholesale service quality...We kept this docket open as one vehicle for considering such improvements to the PAP or for developing an alternative plan for protecting service quality for competitors....the existence of the PAP does not obviate the need for further adjustments when it proves inadequate or for other proceedings to address wholesale service quality issues.")

performance remedies did not rest solely upon its consultative role under Section 271 but, instead, included other legal grounds including independent state law authority.

IV. Public Interest Demands Rejection of Consolidated's Request and Finding No Relevant Change of Law

The Vermont Department of Public Service ("VT PSD" or "Department"), the state agency that is charged with public advocacy on behalf of the State of Vermont and its ratepayers filed a brief ("VT PSD Brief") in the Vermont proceeding examining Consolidated's proposed withdrawal of the WPP. The VT PSD argues, as the Joint Commenters do that:

> . . . the forbearance Orders issued by the Federal Communications Commission ("FCC") in 2015 and 2019 (the "FCC Orders") do not constitute a change of law under . . . Consolidated Communications' ("Consolidated") Wholesale Performance Plan ("WPP") because neither the FCC Orders nor other legal authority preclude states from individually exercising their authority to enforce wholesale performance obligations.[37]

In support of its position, the VT PSD discusses the history of the WPP,[38] the way the Vermont Public Utility Commission and the Courts have evaluated the authority of the Vermont Commission,[39] and the PSD's assessment of whether the change of law provision of the WPP comes into play in light of the *2105 Forbearance Order* and *2019 Forbearance Order*, concluding, as the Joint Commenters do, that those orders do not, in fact, constitute a relevant change of law.[40]

The Department also raised concerns about the potential negative effects to the public interest if the WPP were eliminated.

> [T]here is no change of law that precludes the Commission from exercising its authority to continue to enforce the WPP and it is in the public interest to do so. Vermont still has a significant number of CLECs serving customers within the state.

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[37] VT PSD Brief at p. 1 (footnotes omitted).

[38] *Id.* at pp. 2 – 4.

[39] *Id.* at pp. 4 – 5.

[40] *Id.* at pp. 6 – 7.

> Lacking networks of their own, CLECs must purchase UNEs or complete services for resale to serve their customers. Were the Commission to find that the FCC Orders are a change of law under the WPP and the WPP is eliminated in its entirety, it would have a negative effect on the CLEC's ability to adequately serve their customers. Furthermore, Consolidated's obligations under the WPP provide a baseline or safety net to ensure that all carriers have reasonable market access and operate on a level playing field, which ultimately benefits end users. Were the Commission to find that the FCC Orders are a change of law under the WPP and the WPP is subsequently eliminated, it would likely result in a stifling of competition, raising of prices and further reduction in already very limited telecommunications choices for consumers.[41]

As Consolidated acknowledges, the WPP is the same in Maine, New Hampshire and Vermont.[42] In particular, the change of law provision is identical in all three. The public interest in the retention of the WPP as a means of ultimately protecting consumers and promoting competition through the regulation of Consolidated's wholesale service quality is the same in all three states. Given that, and the concerns articulated by the VT PSD, this Commission should determine there has been no change of law[43] and that Consolidated's assertions are not supported or in the public interest.

V. Conclusion

For the reasons discussed above, the Commission should reject Consolidated's request to eliminate the WPP in its entirety. As the Joint Commenters and the VT PSD have shown,

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[41] VT PSD Brief at 5.

[42] *See* Consolidated Initial Brief at 6 noting "The WPP in its current form went into effect in June 2015 in Maine, New Hampshire and Vermont."

[43] All three state commissions have had active investigations into Consolidated's retail service quality since the purchase of the properties from Verizon. Consolidated's unwillingness or inability to meet basic retail service quality standards provides convincing evidence that its wholesale performance would slide to levels low enough to seriously impede competition in its markets if this Commission were to eliminate the WPP. *See Petition of the Vermont 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. (VT PUC Case No. 18-3231-PET); Investigation of Northern New England Telephone Operations LLC d/b/a Consolidated Communications – NNE Service Quality and Repair Response (NH PUC DT IR 19-023).*

Consolidated's position rests upon erroneous interpretations of both of the FCC *Forbearance Orders* and the WPP's change of law provision. The Commission should deny Consolidated's Petition and continue to enforce the WPP as it exists today.

Dated: July 12, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2019, a copy of the foregoing Letter and Reply Brief Pursuant to Procedural Order was sent by electronic mail to persons named on the Service List of this Docket #19-041.

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