

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 19-041**

**CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND  
COMPANY, LLC d/b/a CONSOLIDATED COMMUNICATIONS-NNE**

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

**Order Approving Joint Settlement Stipulation**

**ORDER NO. 26,384**

**July 27, 2020**

This order approves Consolidated Communications' motion for approval of a joint settlement stipulation among all of the parties that provides for modification of Consolidated's Wholesale Performance Plan and resolves all of the open issues in this proceeding.

**I. PROCEDURAL HISTORY**

On February 28, 2019, Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications-NNE (Consolidated), filed petitions in New Hampshire, Maine, and Vermont proposing modifications to its Wholesale Performance Plan (WPP) (Original Petition), pursuant to WPP Part H, the "Biennial Review" provision.

The Commission issued an Order of Notice on March 8, 2019, and a prehearing conference and technical session were held on March 27, 2019. The Commission granted requests for intervention by the CLEC Association of Northern New England (CANNE), whose membership includes CRC Communications LLC d/b/a OTELCO, FirstLight Fiber, and Biddeford Internet Corp. d/b/a Great Works Internet, and by the Charter Companies (Charter), which are Charter Fiberlink NH-CCO, LLC and Time Warner Cable Information Services (New Hampshire), LLC. The CANNE companies are excepted local exchange carriers (ELECs) under New Hampshire law, and the Charter companies are registered telecommunications carriers

under N.H. Admin. R., Puc 413. For convenience, all of the above intervenors will be collectively referred to herein as the “CLEC Intervenors.”

On May 14, 2019, Consolidated filed an Amended and Restated Petition for Approval of Modifications to the Wholesale Performance Plan (Amended Petition), in which Consolidated stated that it had met with the CLEC Intervenors for confidential settlement negotiations but was unable to reach an agreement to amend the WPP. *See* Amended Petition at 10. Consolidated proposed to withdraw the WPP in its entirety based on WPP Part H, the “Change of Law” provision. *Id.* at 3.

Following unsuccessful negotiations between the parties, on October 14, 2019, the Commission issued Order No. 26,299 Addressing Questions of Law and Directing Parties to Reopen Negotiations. Similar orders were issued by the Maine Public Utilities Commission (Maine PUC) and the Vermont Public Utility Commission (Vermont PUC). The parties once again entered into negotiations, providing regular status reports regarding the progress of those negotiations. On June 5, 2020, the parties filed a Joint Settlement Stipulation and Request for Approval Thereof (Joint Stipulation) and an Amended WPP, together with Consolidated’s Memorandum in Support of Approval of Joint Settlement Stipulation (Consolidated Memorandum). Consolidated made similar filings with the Maine PUC and the Vermont PUC. On July 1, Commission Staff (Staff) filed a memorandum summarizing its review of the Joint Stipulation and the Amended WPP and recommended their approval.

The Original Petition, the Amended Petition, and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-041.html>.

## II. POSITIONS OF PARTIES AND STAFF

In the Joint Stipulation, Consolidated and the CLEC Intervenors represented that their agreement would resolve the issues in this proceeding through the adoption and implementation of an Amended WPP. Joint Stipulation at 4. According to the parties, the Amended WPP: (1) eliminates certain metrics; (2) revises certain metrics; and (3) subjects certain metrics to the so-called Federal Communication Commission (FCC) sunset period, whereby those metrics automatically will be eliminated as of August 2, 2022. *Id.* The Amended WPP also corrects certain technical issues that are of a non-substantive nature. *Id.* Clean and tracked changes versions of the Amended WPP were filed as attachments to the Joint Stipulation. *See id.; see also* Attachments A and B. The parties recommended and moved the Commission to issue an order that “approves, accepts, and adopts” in its entirety the Joint Stipulation, including all Attachments, as just and reasonable and in the public interest. *Id.*

In the Consolidated Memorandum, Consolidated asserted that the Amended WPP implements certain provisions of the FCC’s Forbearance Orders<sup>1</sup> while ensuring that there is a WPP “in place for New Hampshire’s current competitive carriers as well as future entrants to the competitive telecommunications market.” Consolidated Memorandum at 4. According to Consolidated, its delivery of wholesale services to New Hampshire’s competitive local exchange carriers (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.” *Id.* Consolidated maintained that 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

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<sup>1</sup> According to Consolidated, 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).

outcome for this docket by Consolidated vis-à-vis its requested relief versus the desired outcome by the CLECs vis-à-vis their respective objections to Consolidated's requested relief.

*Id.* at 4-5.

Staff, in its memorandum, summarized its review of the Joint Stipulation and the Amended WPP and recommended they be approved. Staff noted that the Amended WPP includes numerous housekeeping edits in addition to substantive revisions to many metrics, primarily to remove metrics for resale and for services either no longer required under the Telecommunications Act or not widely ordered by competitive carriers. According to Staff's memorandum, the Amended WPP also provides for the sunset of 18 metrics, effective August 2, 2022, and calls for Consolidated to file an updated WPP no later than September 1, 2022. Staff included with its memorandum a list of the substantive revisions included in the Amended WPP. Staff recommended that the Commission approve the Joint Stipulation and Amended WPP as filed, without hearing and without any further process.

### **III. COMMISSION ANALYSIS**

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. Under N.H. Admin. R., Puc 203.20(b) the Commission must determine, prior to approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest.

In general, the 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. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order

No. 25,202 at 18 (March 10, 2011). Even where all parties join a settlement agreement, however, the Commission cannot approve it without independently determining that the result comports with the underlying applicable standards. *Id.*

The WPP is effectively a self-executing plan that was created to replace the Performance Assurance Plan originally implemented by Verizon. The WPP was developed and offered by FairPoint Communications, as successor to Verizon and immediate predecessor to Consolidated, to ensure that it would provide services to CLECs consistent with: (1) requirements of the Communications Act of 1934; (2) state laws and regulations; and (3) stipulations between CLECs and FairPoint. The relevant state laws and rules now include RSA 362:8, I and III and N.H. Admin. R., Part Puc 407. In enacting RSA 362:8 in connection with telephone industry deregulation, the legislature expressly preserved the Commission's regulatory authority over ILECs under the federal Communications Act of 1934, as amended (including Section 251 obligations), and also with respect to "obligations that relate to the provision of services to [CLECs], interexchange carriers, and wireless carriers, regardless of technology." *See* RSA 362:8, I and III. The purpose and design of the WPP falls squarely within the scope of that regulatory authority.

Consistent with that retained regulatory authority, we required Consolidated to negotiate with the CLEC Intervenors to attempt to reach agreement regarding any necessary revisions to the WPP. *See* Order No. 26,299 at 16-18 (October 14, 2019). The parties successfully negotiated modifications to the WPP and have presented the results of those negotiations to the Commission for approval in the Joint Stipulation.

The Joint Stipulation ensures that a wholesale performance plan will remain in place, while reducing burdens on Consolidated consistent with FCC Forbearance Orders. For those

reasons we find the Joint Stipulation and the Amended WPP to be just and reasonable and in the public interest, and we therefore approve them.

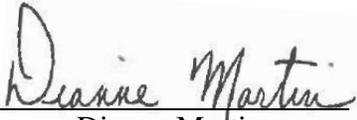
**Based upon the foregoing, it is hereby**

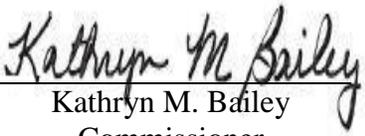
**ORDERED**, that the Joint Stipulation is approved and the Amended WPP is adopted; and it is

**FURTHER ORDERED**, that the Amended WPP shall be effective for all competitive local exchange carriers in New Hampshire that purchase relevant wholesale services from Consolidated; and it is

**FURTHER ORDERED**, that, upon effectiveness of the specified sunset provisions, Consolidated shall file an updated WPP no later than September 1, 2022.

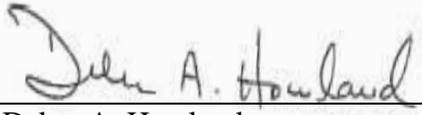
By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of July, 2020.

  
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Dianne Martin  
Chairwoman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director

## Service List - Docket Related

Docket# : 19-041

Printed: 7/27/2020

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