

1                                   **STATE OF NEW HAMPSHIRE**  
2                                   **PUBLIC UTILITIES COMMISSION**

3  
4 **March 27, 2019 - 2:06 p.m.**  
5 **Concord, New Hampshire**

6  
7                   RE: **DT 19-041**  
8                   **CONSOLIDATED COMMUNICATIONS:**  
9                   **Petition for Approval of**  
10                   **Modifications to the Wholesale**  
11                   **Performance Plan.**  
12                   **(Prehearing conference)**

NHPUC 10APR19PM1:01

13  
14                   **PRESENT:**       Chairman Martin P. Honigberg, Presiding  
15                   Commissioner Michael S. Giaimo

16                   Doreen Borden, Clerk

17                   **APPEARANCES:**   **Reptg. Consolidated Communications:**  
18                   Patrick H. McHugh, Esq.

19                   **Reptg. Charter Fiberlink NH-CCO, LLC**  
20                   **and Time Warner Cable Information**  
21                   **Services:**

22                   Nancy S. Malmquist, Esq. (Downs...)

23                   **Reptg. CLEC Association of Northern**  
24                   **New England (CANNE):**

Gregory M. Kennan, Esq. (Fagelbaum...)

**Reptg. PUC Staff:**

David K. Wiesner, Esq.

Mary Schwarzer, Esq.

Kath Mullholand, Dir./Regulatory  
Innovation & Strategy

Court Reporter:   Steven E. Patnaude, LCR No. 52

**CERTIFIED**  
**ORIGINAL TRANSCRIPT**

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**QUESTIONS BY:**

Chairman Honigberg	18
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**P R O C E E D I N G**

1  
2 CHAIRMAN HONIGBERG: We are here this  
3 afternoon in Docket DT 19-041, a Petition by  
4 Consolidated Communications for Approval of  
5 Modifications to the Wholesale Performance  
6 Plan. This is a prehearing conference. I know  
7 we're going to have one preliminary matter we  
8 need to deal with.

9 But before we do that, let's take  
10 appearances.

11 MR. MCHUGH: Good afternoon, Mr.  
12 Chairman, Commissioner. Pat McHugh, for  
13 Consolidated Communications. With me is Robert  
14 Meehan, the Director of Regulatory Affairs for  
15 New Hampshire, and on the phone is Michael  
16 Shultz, Vice President of Regulatory and Public  
17 Policy for Consolidated.

18 MS. MALMQUIST: Good afternoon. I'm  
19 Nancy Malmquist, Downs, Rachlin, Martin, PLLC,  
20 for Charter Fiberlink New Hampshire-CCO, LLC  
21 and Time Warner Cable Information Services (New  
22 Hampshire), LLC, and I'll refer to them  
23 collectively as "Charter". Thank you.

24 MR. KENNAN: Good afternoon, Mr.

1 Chairman and Commissioner. Gregory Kennan, of  
2 counsel from the law firm Fagelbaum & Heller,  
3 LLP, and I'm here representing the CLEC  
4 Association of Northern New England, commonly  
5 known as "CANNE".

6 MR. WIESNER: Good afternoon,  
7 Commissioners. David Wiesner, for Attorney  
8 Staff. With me are Kath Mullholand, Director  
9 of the Regulatory Innovation and Strategy  
10 Division, which has responsibility for  
11 telecommunications matters; and Mary Shwarzer,  
12 also with the Legal Division.

13 CHAIRMAN HONIGBERG: All right. The  
14 preliminary matter, you're familiar with most  
15 of it, Commissioner Bailey filed a letter  
16 yesterday explaining her experience as a member  
17 of the Staff in dealing with the issues that  
18 are presented here today, and her intention to  
19 honor the disqualification that would require,  
20 unless the parties waive. And that waiver  
21 would have to be done without the presence of  
22 the Commissioners or Staff, you all would have  
23 to do that on your own.

24 But there's another factor that came

1 into play yesterday afternoon, and I have a  
2 statement to read. Commissioner Bailey will  
3 not be partaking -- I'm sorry. Commissioner  
4 Bailey will not take part in today's prehearing  
5 conference. Yesterday, Commissioner Bailey  
6 filed a letter disclosing her prior  
7 participation in a number of Performance  
8 Assurance Plan dockets, noting her  
9 disqualification, and directing the parties and  
10 their lawyers to consider waiving her  
11 disqualification in the proceeding.

12 After Commissioner Bailey filed her  
13 letter, the Commission received a motion to  
14 intervene from CANNE, filed by its attorney,  
15 Trina Bragdon. Commissioner Bailey informed me  
16 that, in addition to have a professional  
17 relationship, she also has a current personal  
18 friendship with Attorney Bragdon. Commissioner  
19 Bailey stated that this friendship does not  
20 cause her to have a personal bias or prejudice  
21 for or against Attorney Bragdon or CANNE, and  
22 she has decided not to recuse herself under  
23 Cannon 2, Rule 2.11(A)(1) on the basis of that  
24 friendship.

1                   We will allow the parties until  
2                   Friday, April 8th, to inform the Commission  
3                   whether they waive the disqualification  
4                   described in Commissioner Bailey's letter, they  
5                   wish to file a motion to disqualify with  
6                   respect to her relationship with Attorney  
7                   Bragdon.

8                   Does anybody have questions about  
9                   that?

10                  MR. McHUGH: Mr. Chairman, you said  
11                  "Friday, April 8th". April 8th is a Monday.  
12                  Do you want us to file on the 5th or Monday,  
13                  the 8th?

14                  CHAIRMAN HONIGBERG: The 5th. The  
15                  5th.

16                  MR. McHUGH: The 5th?

17                  CHAIRMAN HONIGBERG: We meant Friday.  
18                  Sorry.

19                  MR. McHUGH: Yes, that's fine. No  
20                  problem. Thank you.

21                  CHAIRMAN HONIGBERG: Thank you for  
22                  pointing that out. Yes, Ms. Malmquist.

23                  MS. MALMQUIST: And,  
24                  Mr. Commissioner, at this point, I'd just like

1 to confirm, on behalf of Charter, that Charter  
2 has no objection to the Commissioner's  
3 participation in this proceeding.

4 CHAIRMAN HONIGBERG: That's fine.  
5 We're going to need -- we're going to need,  
6 from everybody eventually, to know what your  
7 position is with respect to Commissioner  
8 Bailey. Because, as I said, under the letter  
9 she filed yesterday, she's disqualified, unless  
10 there's a waiver. So, we'll need to know, and  
11 you have until next Friday.

12 With that, are there other  
13 preliminary matters we need to deal with before  
14 getting the parties' positions for purposes of  
15 this prehearing conference?

16 MR. WIESNER: And I'll just note  
17 that, when the Company made their filing, they  
18 asked for a rule waiver to not file full paper  
19 copies of the modified Wholesale Performance  
20 Plan due to its length, and that request for  
21 waiver is still outstanding.

22 I don't know whether Attorney McHugh  
23 wants to speak to that. We, Staff, doesn't  
24 have any objection to that.

1 CHAIRMAN HONIGBERG: And I know we  
2 have -- we have interventions that we need to  
3 grant. So, is there any objection to the  
4 interventions that have been filed?

5 MR. MCHUGH: None.

6 CHAIRMAN HONIGBERG: All right.  
7 Those interventions are granted.

8 Mr. McHugh, anything further you want  
9 to say about the waiver -- rule waiver request?

10 MR. MCHUGH: No, sir.

11 CHAIRMAN HONIGBERG: All right. I  
12 think we -- and, Mr. Wiesner, we don't need to  
13 do that rule waiver in writing on the record  
14 here, can't we?

15 *(Atty. Wiesner indicating in the*  
16 *affirmative.)*

17 CHAIRMAN HONIGBERG: All right.  
18 We're going to -- we're going to grant the  
19 requested rule waiver regarding the filing.

20 MR. MCHUGH: Thank you, Mr. Chairman.

21 CHAIRMAN HONIGBERG: All right.  
22 Anything else?

23 *[No verbal response.]*

24 CHAIRMAN HONIGBERG: All right. Mr.

1 McHugh, why don't you start us off.

2 MR. McHUGH: I'll be very brief, Mr.  
3 Chairman. The Motion to Modify the Wholesale  
4 Performance Plan is pretty detailed. I thought  
5 the Commission's Order of Notice on Page 2,  
6 with the preliminary analysis and the summary  
7 of the proposal is accurate.

8 So, really, with that said, I'll just  
9 move on to the process we discussed in Maine  
10 yesterday, just to give the Commissioners my  
11 understanding of what we and Maine agreed to.  
12 There was a Maine technical session/prehearing  
13 conference tomorrow -- yesterday. It was not  
14 in front of the Commissioners. It was a  
15 hearings officer and some of the Commission  
16 staff.

17 So, what essentially we agreed to is,  
18 by next money any CLEC can file sort of --  
19 we're not really inviting data requests, but  
20 there were some questions that people had about  
21 the filing, how it would, you know, how the new  
22 Plan would work, things of that nature. And we  
23 said, if you give them to us in advance, at  
24 a -- whether you want to call it a "technical

1 session" or just sort of a joint meeting of all  
2 three states, with the staffs present and the  
3 parties, we could go through the answers and,  
4 you know, talk, you know, address if there are  
5 any follow-up questions, and that was supposed  
6 to be filed, in Maine anyway, by next Monday.

7 And then, after, we do have a hearing  
8 coming up in Vermont on -- and that's how I  
9 happened to know that the 8th is a Monday,  
10 that's the morning of the Vermont proceeding.

11 So, whether we do it before then or  
12 after then, but we'd like to either hold a  
13 conference call or a meeting to address the  
14 questions. And then, what we had discussed  
15 yesterday is, after the questions were  
16 answered, is pretty much after that move into  
17 settlement negotiations, which would not  
18 involve, in our judgment, they would not  
19 involve the staffs.

20 CHAIRMAN HONIGBERG: Okay.

21 Ms. Malmquist.

22 MS. MALMQUIST: Surely. Thank you.

23 *[Court reporter interruption.]*

24 MS. MALMQUIST: Can you hear me?

1 CHAIRMAN HONIGBERG: Off the record.

2 [Brief off-the-record discussion  
3 ensued.]

4 MS. MALMQUIST: Charter's preliminary  
5 statement is really set out in its Motion to  
6 Intervene. Charter's substantial interests are  
7 affected by Consolidated's Wholesale  
8 Performance Plan and any changes to it.  
9 Charter interconnects with Consolidated in New  
10 Hampshire, and is particularly interested in  
11 Consolidated's service quality, with respect to  
12 number portability, directory listings, and  
13 trunking. Changes in the Wholesale Performance  
14 Plan would affect these metrics, and could lead  
15 to diminished wholesale service quality on the  
16 part of Consolidated, which would negatively  
17 affect Charter's business in the State of New  
18 Hampshire.

19 Charter wishes to participate in this  
20 docket to oppose certain substantive changes to  
21 the WPP. But we are willing to analyze and  
22 consider additional information and details  
23 from Consolidated relative to the requested  
24 substantive changes before determining whether

1 to object to all of the substantive changes.

2 I would like to talk a little bit  
3 about plans for a schedule in this docket, in  
4 coordination perhaps with the other states.  
5 One of the things that it sounded like this is  
6 somewhat consistent with what Mr. McHugh was  
7 talking about, but we thought that at some  
8 point, perhaps early on, it might create some  
9 space early in the proceeding to propose some  
10 sort of an initial hold on the formal schedule,  
11 to allow the interested parties, including  
12 Charter and others, to discuss settlement  
13 potential directly with Consolidated.

14 And as you're trying to figure out  
15 where in the schedule this will work, we're not  
16 wed to any particular time, but we thought that  
17 having some opportunity for settlement  
18 discussions would be helpful.

19 Also, during this early process and  
20 any of the -- and if settlement discussions are  
21 provided for up front, we would also suggest  
22 convening a technical workshop or workshops,  
23 maybe sometime in early May, that would require  
24 Consolidated to put some more information on

1 the record supporting its proposal and  
2 Petition.

3 I think it, you know, the onus --  
4 putting the onus on the interconnecting parties  
5 to ask them questions, when not very much  
6 information was put on the record to support  
7 the proposal, it would be helpful to have some  
8 information directly from Consolidated in the  
9 context or as part of a workshop, whether it's  
10 formal or informal, we'll leave it to you to  
11 decide.

12 CHAIRMAN HONIGBERG: Well, I'm  
13 actually going to flip that around. As a  
14 general proposition, we let the parties and  
15 intervenors work with Staff on a schedule that  
16 makes sense to everyone. And to the extent  
17 that everybody agrees, that's great, and that  
18 gets approved routinely.

19 If there's disagreement about what  
20 the schedule should be, then we can become  
21 involved and help the parties set a schedule  
22 that may be imposed on some and accommodate  
23 others.

24 But, as a general rule, I'd say 99

1 times out of 100 the parties and the  
2 intervenors set their own schedule, and include  
3 whatever breaks or holds as needed. And if it  
4 needs to be adjusted, it happens all the time.

5 Mr. Kennan.

6 MR. KENNAN: Thank you, Mr. Chairman.  
7 Forgive me if I'm telling you something you  
8 already know, but just by way of background.

9 The CLEC Association of Northern New  
10 England is a not-for-profit association of  
11 facilities-based competitive local exchange  
12 carriers that operate in, among their members,  
13 in Maine, New Hampshire, and Vermont. Their  
14 members that operate in New Hampshire have  
15 interconnection agreements under which -- with  
16 Consolidated, under which they obtain unbundled  
17 access to certain wholesale facilities and  
18 services. So, to the extent that  
19 Consolidated's provision of these services fall  
20 below standards established in the --  
21 originally in the Performance Assurance Plan,  
22 and now the WPP, CANNE's members are directly  
23 affected by that.

24 And just another background fact,

1 CANNE was directly and substantially involved  
2 in the development of the current WPP, and  
3 therefore it has significant experience and  
4 institutional knowledge regarding how that was  
5 developed and what went into it. And in  
6 particular, the balancing of countervailing  
7 interests that resulted in the current WPP.

8 Just in terms of CANNE's position, as  
9 Consolidated itself admits, the fact that the  
10 FCC forbore on any 271 requirements does not  
11 necessarily mean that a state must eliminate  
12 any metrics associated with the requirement.

13 The WPP was created to keep  
14 Consolidated accountable for its actions that  
15 directly affect other companies' ability to  
16 offer services and compete in the market, and  
17 that objective remains today.

18 We think that Consolidated has  
19 cherry-picked some of the metrics it wants  
20 eliminated. The current WPP is the result of  
21 several years, literally, of negotiations, and  
22 reflects the elimination of many, many metrics  
23 from the original Performance Assurance Plan.

24 So, CANNE believes that we all need

1 to look at the overall balance of metrics  
2 before removing any. And need to look at the  
3 performance under the metrics that are being  
4 removed. If they're removing metrics or if  
5 metrics are to be removed, some of the dollars  
6 at risk, it may be appropriate to shift them to  
7 balance the metrics that Consolidated  
8 consistently misses.

9 If circumstances have changed such  
10 that it's appropriate to remove some of the  
11 metrics, it may be appropriate to look at other  
12 metrics that reflect more current needs in the  
13 marketplace, and among them may be pole  
14 attachments.

15 The Commissions, we agree, should  
16 take a consolidated or at least a joint --  
17 coordinated, excuse me, a coordinated approach  
18 to any proposed changes, and we're glad to hear  
19 that. And we don't think that the Commissions  
20 are necessarily limited to any 60-day time  
21 period to get this done. It took several years  
22 the last time. And we certainly hope it  
23 doesn't take that long this time, but it is a  
24 complicated issue.

1 CHAIRMAN HONIGBERG: I do think I  
2 speak with some confidence that you will not be  
3 the last person to use "consolidated" in a way  
4 that is confusing.

5 Mr. Wiesner.

6 MR. KENNAN: Forgive me for that, Mr.  
7 Chairman.

8 CHAIRMAN HONIGBERG: Oh, no. No, no.  
9 We're all going to do it, I guarantee it.

10 MR. WIESNER: I will try to avoid  
11 that trap, as tempting as it is.

12 The Staff has begun review of the  
13 proposed modifications to the WPP. That  
14 analysis is ongoing. We recognize the interest  
15 in regional coordination to vet the proposed  
16 changes and to discuss them. The Company and  
17 the intervenors are active in all three states.  
18 We have had preliminary discussions with staff  
19 of the other two state commissions. And we  
20 will endeavor to come up with an efficient and  
21 coordinated process for joint review of issues  
22 which apply throughout the region.

23 We're mindful of the Company's  
24 request to have the changes effective as of

1 June 1. As has been suggested, that may or may  
2 not be realistic, but we will try to move  
3 forward expeditiously to address and resolve  
4 any issues.

5 It may or may not be necessary to  
6 have a hearing on the merits in this docket.  
7 That's something we'll discuss with the parties  
8 during the technical session, and issue a  
9 report on what was resolved in terms of  
10 scheduling.

11 CHAIRMAN HONIGBERG: I'm correct, am  
12 I not, that the last time we did this we did  
13 not have a hearing, is that right?

14 MR. WIESNER: That's correct.

15 MR. MCHUGH: Correct.

16 MR. WIESNER: It was essentially a  
17 settlement that was brought to the three  
18 commissions, and approved, at least in this  
19 state, without a hearing.

20 CHAIRMAN HONIGBERG: What happens if  
21 there's no agreement? Does the existing Plan  
22 just continue in existence? Or is there a -- I  
23 don't -- at least I think that's what happens,  
24 although I'm not sure.

1 MR. McHUGH: That's correct, Mr.  
2 Chairman.

3 CHAIRMAN HONIGBERG: All right. Yes.

4 MR. McHUGH: I was going to say,  
5 other than there would be an evidentiary  
6 hearing on the proposed modifications, I  
7 suspect.

8 CHAIRMAN HONIGBERG: Right. And then  
9 some order would have to be issued in response  
10 to your Petition.

11 MR. McHUGH: Correct.

12 CHAIRMAN HONIGBERG: Okay.  
13 Understood.

14 Someone else have a question or other  
15 comment? Yes, Ms. Malmquist.

16 MS. MALMQUIST: Just as a point of  
17 interest. In other -- in some of the other  
18 states -- in some of the other states,  
19 including Vermont, during the last set of  
20 waiver discussions and settlements, the actual  
21 settlements in various phases were approved on  
22 the record, at least in the State of Vermont.

23 CHAIRMAN HONIGBERG: All right. If  
24 there's nothing else, we will adjourn the

1 prehearing conference and leave you to your  
2 technical session. And again remind you of  
3 next Friday to let us know your intentions with  
4 respect to Commissioner Bailey.

5 Thank you all.

6 MR. MCHUGH: Thank you.

7 ***(Whereupon the prehearing***  
8 ***conference was adjourned at 2:21***  
9 ***p.m., and a technical session***  
10 ***was held thereafter.)***

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