

THE STATE OF NEW HAMPSHIRE

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June 10, 2019

Re: DT 19-041, Consolidated Communications of Northern New England Company, LLC Petition for Approval of Modifications to Wholesale Performance Plan

To the Parties:

On May 14, 2019, Consolidated Communications of Northern New England Company, LLC (Consolidated) filed a Motion to Amend the Original Petition (Motion) and an Amended and Restated Petition in the above-referenced docket. The foundation of Consolidated's Motion and its Amended and Restated Petition is its claim that the issuance of recent forbearance orders by the Federal Communications Commission (FCC) represent a change of law that allows Consolidated to withdraw and terminate its Wholesale Performance Plan (WPP) pursuant to the change of law provisions set forth in Section K of the WPP. *See* FCC 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; FCC 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*, released April 15, 2019 (collectively, the FCC Forbearance Orders). Consolidated asserted that the issues raised in its Amended and Restated Petition are purely questions of law and proposed a briefing schedule for the consideration of those questions.

On May 24, the CLEC Association of Northern New England, Inc., together with Charter Fiberlink NH-CCO, LLC and Time Warner Cable Information Services (New Hampshire), LLC (collectively, the CLEC Intervenors), filed a response to the Motion. In their response, the CLEC Intervenors did not object to Consolidated amending its petition, but disagreed that the matters raised are purely questions of law. They asserted there are only two issues that require briefing: whether the FCC forbearance orders cited by Consolidated constitute a change of law within the meaning of WPP Part K, and whether any change of law requires the Commission to take action related to the WPP. The CLEC Intervenors argued that the FCC forbearance orders do not constitute a change of law, but even if they did, such changes do not require modification of the WPP terms. They asserted that, if no change of law has occurred, the Commission must deny Consolidated's request and keep the WPP in place until an actual change of law occurs or until the next Biennial Review of the WPP. Should the Commission find that a change of law has occurred that requires consideration of the merits of Consolidated's request,

however, the CLEC Intervenors contend that the Commission should review Consolidated's performance under the WPP and the impact on competitors.

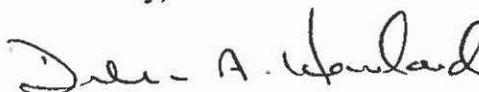
On May 29, Consolidated filed a reply to the CLEC Intervenors' response, in which it reiterated its request that the Commission schedule three legal questions for briefing by the parties.

Commission Staff (Staff) reviewed the filings and filed a memorandum on June 4, in which it recommended that the Commission grant Consolidated's Motion. Staff further recommended that the Commission direct all parties to file initial briefs no later than June 21, 2019, and to file reply briefs, if desired, no later than July 12, 2019, addressing the following legal question: "Do the FCC Forbearance Orders constitute a change of law contemplated by Section K of the WPP?"

The Commission has reviewed the parties' filings and Staff's recommendations and has granted the Motion, having found that Consolidated's proposed amendment and restatement of its petition will encourage the just resolution of the proceeding and will not cause undue delay, consistent with N.H. Code Admin. Rules Puc 203.10. The Commission has also approved Staff's recommendations regarding the legal question to be briefed and the schedule for briefing.

Accordingly, all parties desiring to file briefs are directed to file initial briefs on or before June 21, 2019, and to file reply briefs on or before July 12, 2019. Briefs shall address only the following legal question: "Do the FCC Forbearance Orders constitute a change of law as contemplated by Section K of the WPP?"

Sincerely,



Debra A. Howland
Executive Director

cc: Docket File
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