THE STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Telephone Operating Company of Vermont LLC

Docket -_____

Petition For Approval of Modifications to the Wholesale Performance Plan

NOW COMES, Telephone Operating Company of Vermont LLC d/b/a Consolidated Communications – NNE ("Consolidated Communications") and hereby requests the Vermont Public Utility Commission ("Commission") approve certain modifications to the Wholesale Performance Plan ("WPP") for effect June 1, 2019, as shown in the attached redlined copy of the WPP and as summarized below. Consolidated Communications is filing a similar request today with the New Hampshire Public Utilities Commission and the Maine Public Utilities Commission. In support of this Petition, Consolidated Communications states as follows:

1. Consolidated Communications proposes to modify the WPP to eliminate any requirement to track and report performance measurements that pertain to certain products or services that the Federal Communications Commission ("FCC") granted Section 271 forbearance to Bell Operating Companies ("BOCs") that are mutual obligations of all local exchange carriers ("LECs") under section 251(b). These include resale, number portability, and directory listings. Consolidated Communications is not proposing to eliminate WPP provisions that apply to products or services, such as unbundled loops or transport, that are additional obligations of Incumbent Local Exchange Companies ("ILECs) under section 251(c). Consolidated Communications also is proposing a few substantive changes unrelated to the forbearance relief granted, such as to the small sample rule, as well as certain administrative changes, such as to the company's name.

2. The FCC's 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 ("271 Forbearance Order,") granted forbearance on 13 of 14 items from the section 271(c)(2)(B) competitive checklist. The FCC found that under sections 10 (a)(1), (a)(2) and (a)(3) of the Act, these checklist items are not necessary to ensure just and reasonable rates, terms, and conditions, or to protect consumers, and that forbearance is in the public interest.[1]

Specifically, the FCC forbore from enforcing checklist items for which other section 251 safeguards already address and duplicate the narrowband obligations. These include checklist items 1-2 (interconnection and access to UNEs), 7-9 (directory listings, white pages, numbering) and 11-14 (number portability, local dialing parity, reciprocal compensation, and resale), which establish interconnection and access obligations that duplicate requirements that are mandated under section 251 and are codified in the Commission's rules implementing section 251.[2]

The FCC granted forbearance also from the independent unbundling items on the competitive checklist that do not reference or duplicate section 251 requirements. These include access to local loops, transport, switching, and access to databases (checklist items 4 - 6 & 10) as required under sections 271(c)(2)(B)(iv), (v), (vi), and (x).[3]

[1] 271 Forbearance Order at ¶¶ 17, 18, 24.

[2] Id at ¶ 16.

[3] Id at ¶ 24. *See* also ¶ 25 where the FCC explains "that the scope of the independent checklist items is different from the section 251 unbundling requirements. While the independent checklist items create obligations for BOCs that are broader than the obligations imposed by section 251(c)(3) because the former do not hinge on a finding of impairment, the BOCs are not required to provide access to the independent items under the cost-based standard in 252(d)(1) as they must for section 251 UNEs. They must instead provide access at a rate governed by the "just and reasonable" standard established under sections 201 and 202, which applies to all telecommunications services for which forbearance has not been granted. *See* also ¶ 35 "Section 251 and its cost-based pricing requirements remain the primary unbundling requirement for the BOCs, and we find that it is not necessary to retain the [non-duplicative] checklist obligations."

3. The FCC retained checklist item 3, which provides an obligation and enforcement mechanism to provide access to poles, ducts, conduit, and rights-of-way in accordance with the requirements of Section 224.[4]

4. Among other things the FCC found the petitioner's – US Telecom's – argument about potential cost reductions associated with maintaining PAPs to be reasonable[5] and that forbearing from thirteen of the fourteen checklist items as described in the FCC order could reduce [BOC] costs to the extent it reduces PAP obligations in the state.[6] The FCC acknowledged that it is within the states' authority to determine whether to modify or eliminate the PAPs.

5. The Maine, New Hampshire and Vermont Commissions (collectively the "NNE Commissions") structured the Performance Assurance Plan ("PAP") and its successor Wholesale Performance Plan ("WPP") to include performance measurements and standards intended to ensure compliance with the section 271 competitive checklist after Verizon (now Consolidated Communications) entered the long distance market.[7] Given the FCC's order forbearing from enforcing Section 271 competitive checklist items 1, 2, and 4 – 14, it would be fair and reasonable for Consolidated Communications to seek to withdraw the WPP in its entirety in the three NNE states. Consolidated Communications is not seeking to withdraw the WPP at this time, however, but reserves its right to seek such relief in the future.

6. Rather, Consolidated Communications is proposing to modify the WPP to eliminate any requirement to track and report performance measurements that pertain to

[4] Id at ¶ 19.
[5] Id at ¶ 17.
[6] Id at ¶ 36.
[7] *See* e.g., NH PAP at p. 1 "The New Hampshire Performance Assurance Plan ("New Hampshire PAP") is a self-executing remedy plan that will ensure that Verizon New Hampshire ("Verizon NH") continues to provide quality wholesale services to competitive carriers after Verizon NH has gained entry into the long distance market pursuant to Section 271 of the Telecommunications Act of 1996." *See* also WPP at p. 1 "The WPP is a self-executing remedy plan that ensures FairPoint NNE will provide services, access and interconnection to Competitive Local Exchange Carriers ("CLECs") consistent with the requirements of the Communications Act of 1934, as amended, State law and regulation, and stipulations between the CLECs and FairPoint NNE."

products or services that are mutual obligations of all local exchange carriers ("LECs") under section 251(b), consistent with the FCC's 271 Forbearance Order. Consolidated Communications is also proposing a few substantive changes unrelated to the relief granted to BOCs in the FCC's 271 Forbearance Order, such as to the small sample rule, as well as certain administrative changes, such as to the company's name. Consolidated Communications proposes the NNE Commissions consider all such modifications to the plan in a single proceeding pursuant to the Biennial Review provisions set forth in Section 1, Part H of the WPP.[8]

7. Under the Biennial Review provisions of the plan at least sixty (60) days prior to the next biennial anniversary of the plan, which is June 1, 2019, Consolidated Communications shall provide notice of proposed modifications to all eligible Competitive Local Exchange Carriers ("CLECs") and the NNE Commissions. CLECs may propose revisions to the plan at least thirty (30) days prior to the biennial anniversary. Consolidated Communications, CLECs and the NNE Commissions shall promptly establish a procedural schedule for the review of all such proposed revisions to the WPP.

8. Consolidated Communications is specifically proposing to eliminate or modify metrics that measure ordering, provisioning, maintenance or billing functions associated with resale, local number portability, directory listings, directory assistance and operator services, referred to hereafter collectively as "WPP obligations of all LECs." Consolidated Communications proposes to remove or modify a total of 68 metrics that measure WPP

[8] Consolidated Communications reserves its right to propose those modifications intended to bring the plan into conformance with the FCC's 271 Forbearance Order be considered pursuant to the Change of Law provisions, set forth in Section 1, Part K of the WPP, which includes a 90-day maximum timeframe for the parties to negotiate language to conform the plan to applicable law before submitting the matter to the Commissions for approval or decision and, that upon Commission approval or resolution of such revisions, the modifications to the performance metrics and related bill credits shall be made retroactive to the effective date of the change in law, unless otherwise expressly ordered by the Commission. For administrative efficiency, and as a good faith gesture, Consolidated Communications is not presently proposing the Commission consider the proposed 271 Forbearance Order modifications to the WPP pursuant to the Change of Law provisions contained in the plan.

obligations of all LECs. Forty-nine (49) metrics will be eliminated in their entirety and 19 will be modified to remove resale and/or LNP from the existing product groups.

9. The forty-nine metrics Consolidated Communications proposes to eliminate are:

OR-1-02-2000	% On Time LSRC - Flow-Through
OR-1-04-2000	% On Time LSRC - No Facility Check (Non-Flow-Through)
OR-1-06-2000	% On Time LSRC/ASRC - Facility Check (Non-Flow-Through)
OR-2-02-2000	% On Time LSR Reject (Flow-Through)
OR-2-04-2000	% On Time LSR Reject - No Facility Check (Non-Flow-Through)
OR-2-06-2000	% On Time LSR/ASR Reject - Facility Check (Non-Flow-Through)
OR-5-01-2000	% Flow-Through – Total
OR-5-01-3121	% Flow-Through – Total
OR-5-03-2000	% Flow-Through – Achieved
OR-5-03-3121	% Flow-Through – Achieved
OR-6-03-2000	% Resent LSRC
OR-6-04-1040	% Accuracy - Directory Listing
OR-11-01-2000	% On Time Resale Provider Notifications
PR-3-01-2000	% Completed in 1 Day - No Dispatch (1 to 5 Lines)
PR-3-02-2000	% Completed in 4 Days - No Dispatch (1 to 5 Lines)
PR-3-06-2000	% Completed in 3 Days - Dispatch (1 to 5 Lines)
PR-3-07-2000	% Completed in 4 Days - Dispatch (1 to 5 Lines)
PR-4-02-2000	Average Delay Days
PR-4-04-2000	% Missed Due Date – Dispatch
PR-4-05-2000	% Missed Due Date - No Dispatch
PR-4-07-3540	% On Time Performance - LNP Only
PR-4-16-1040	% Directory Data Base Updates Completed On Time
PR-5-01-2000	% Missed Due Date – Facilities
PR-5-02-2000	% Orders Held for Facilities > 15 Days
PR-6-01-2000	% Installation Troubles Reported within 30 Days
PR-8-01-2000	% Open Orders in a Hold Status > 30 Days
PR-8-02-2000	% Open Orders in a Hold Status > 90 Days
MR-2-02-2000	Network Trouble Report Rate – Loop
MR-2-03-2000	Network Trouble Report Rate - Central Office
MR-3-01-2010	% Missed Repair Appointment - Loop
MR-3-01-2120	% Missed Repair Appointment - Loop
MR-3-02-2010	% Missed Repair Appointment - Central Office
MR-3-02-2120	% Missed Repair Appointment - Central Office
MR-4-02-2010	Mean Time To Repair - Loop Trouble
MR-4-02-2120	Mean Time To Repair - Loop Trouble

MR-4-03-2010	Mean Time To Repair - Central Office Trouble
MR-4-03-2120	Mean Time To Repair - Central Office Trouble
MR-4-04-2000	% Cleared within 24 Hours
MR-4-06-2010	% Out of Service > 4 Hours
MR-4-06-2120	% Out of Service > 4 Hours
MR-4-07-2010	% Out of Service > 12 Hours
MR-4-07-2120	% Out of Service > 12 Hours
MR-4-08-2010	% Out of Service > 24 Hours
MR-4-08-2120	% Out of Service > 24 Hours
MR-5-01-2000	% Repeat Reports within 30 Days
MR-5-02-2000	% Repeat Reports within 30 Days on No Trouble Found
BI-1-02-2000	% DUF in 4 Calendar Days
OD-1-01-1021	Average Speed of Answer - Call Completion
OD-1-02-1021	Average Speed of Answer - Directory Assistance

10. The nineteen metrics Consolidated Communications proposes to modify to remove resale and/or LNP from the existing product groups are:

PO-3-02-1000	% Answered within 30 Seconds - Ordering
PO-3-04-1000	% Answered within 30 Seconds - Repair
OR-1-02-3332	% On Time LSRC - Flow-Through
OR-1-04-3331	% On Time LSRC - No Facility Check (Non-Flow-Through)
OR-1-06-3331	% On Time LSRC/ASRC - Facility Check (Non-Flow-Through)
OR-2-02-3332	% On Time LSR Reject (Flow-Through)
OR-2-04-3331	% On Time LSR Reject - No Facility Check (Non-Flow-Through)
OR-2-06-3331	% On Time LSR/ASR Reject - Facility Check (Non-Flow-Through)
OR-4-11-1000	% Completed Orders with Neither a PCN nor BCN Sent
OR-4-16-1000	% Provisioning Completion Notifiers Sent within One Business Day
OR-4-17-1000	% Billing Completion Notifiers Sent On Time
OR-6-01-1001	% Service Order Accuracy
OR-6-03-3332	% Resent LSRC
BI-2-01-1000	Timeliness of CLEC Bill
BI-3-04-1000	% Billing Claims Acknowledged with 2 Business Days of Receipt
BI-3-05-1000	% Billing Claims Resolved with 28 Calendar Days After Acknowledgement
BI-3-07-1000	% Full or Partial Denials
BI-3-08-1000	% CLEC Billing Claim Adjustments Appearing on the Bill within 45 Calendar Days
BI-9-01-1000	% Billing Completeness in 12 Billing Cycles

For all the reasons stated in this petition, Consolidated Communications respectfully requests the Commission:

A. Approve the proposed modifications to the WPP to conform the plan to the FCC's 271 Forbearance Order as well as to make certain other changes to the plan as outlined above and set forth in revision mode in the attached WPP; or,

B. In order to maximize administrative efficiency, coordinate with the Maine and Vermont Commissions to establish a procedural schedule that will enable interested parties to work together, in a timely manner, across all three states for the purpose of updating the WPP accordingly.

Dated: February 28, 2019

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