

1 STATE OF NEW HAMPSHIRE
2 PUBLIC UTILITIES COMMISSION
3

4 December 16, 2008 - 10:07 a.m.
5 Concord, New Hampshire

6 RE: DRM 08-126
7 RULEMAKING:
8 Puc Chapter 400 - Telephone.

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10 PRESENT: Commissioner Clifton C. Below, Presiding
11 Commissioner Graham J. Morrison
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14 APPEARANCES: (No appearances taken.)
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23 Court Reporter: Steven E. Patnaude, LCR No. 52
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I N D E X

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PAGE NO.

4 STATEMENTS BY:

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Mr. Coolbroth

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Mr. Kerry

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Mr. Rothfelder

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Ms. Mullholand

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Ms. Ross

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1 P R O C E E D I N G S

2 CMSR. BELOW: Good morning. I'll open
3 the public comment hearing in DRM 08-126. The Chairman is
4 unavailable because he's occupied at the Emergency
5 Operations Center, the power outages still needing to be
6 dealt with. On October 24th, 2008, the Commission voted,
7 pursuant to RSA 541-A, to initiate a readoption with
8 amendment rulemaking for New Hampshire Code of
9 Administrative Rules Puc 400, specifically Puc 402.49,
10 definition of "significant service outage", and Puc
11 431.01, CLEC regulatory requirements.

12 The Initial Proposal is to amend Puc
13 402.49, to expand the definition of "significant service
14 outage", in order to include "Signaling systems or tandem
15 failures having a statewide impact". This addition is
16 intended to clarify the rule and its subsections.

17 Puc 431.01 details the Commission's
18 registration requirements for all competitive local
19 exchange carriers operating within the state. It
20 describes the forms which need to be completed and the
21 process for obtaining a CLEC authorization from the
22 Commission. The proposed amendment to the rule is to
23 remove the word "non-exempt" from Section 431.01(d), as a
24 result of the passage of Senate Bill 386, which repealed

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1 RSA 374:22-F and revised RSA 374:22-G, to specify that all
2 telephone franchise areas served by a telephone utility
3 that provide local exchange service subject to the
4 jurisdiction of the Commission shall be non-exclusive.

5 The proposed rules will replace current
6 parts Puc 402.49 and Puc 431.01. The remainder of the
7 rules, Puc 400 rules for telecommunications, are not due
8 to expire until May 10th, 2013.

9 A rulemaking notice required by RSA
10 541-A:6 was filed with the Office of Legislative Services
11 on November 4th, 2008. The notice sets forth this public
12 hearing date and time, and it also sets a deadline for
13 submission of materials in writing or via e-mail of
14 December 18th, 2008. And, if necessary or desired, at the
15 close of this public hearing, the Staff of the Commission
16 and interested parties may hold a technical session to
17 review the rules. And, I note that we do have a quorum of
18 the Commission here pursuant to 541-A for the public
19 hearing.

20 So, do we have comments?

21 MR. COOLBROTH: Thank you, Commissioner
22 Below.

23 CMSR. BELOW: Yes.

24 MR. COOLBROTH: Good morning,

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1 Commissioner Morrison, as well. I'm Fred Coolbroth, from
2 the firm of Devine, Millimet & Branch, appearing today on
3 behalf of the rural telephone company members of the New
4 Hampshire Telephone Association. And, we've noted that
5 the rulemaking follows up on the changes to RSA 374:22-F
6 and 22 G-1.

7 This change in the statute provides a
8 process for competitive carriers to provide service in
9 independent telephone company service territories, when
10 doing so will be consistent with the public good. And,
11 the statute provides for factors for the Commission to
12 consider in making this "public good" determination.

13 We have reviewed the proposed change to
14 part 431 of the Commission's rule, and we do have a
15 concern that the change does not provide a mechanism for
16 the Commission to make this "public good" determination
17 that's called for in the statute.

18 We have worked on the language and have
19 provided to the Staff a revised draft proposal that would
20 permit the applicant to address these public good factors
21 that are in the statute. Would provide an opportunity for
22 the incumbent to comment on the application, including the
23 public good factors. And, based on the application and
24 the comments, the Commission would determine whether an

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1 adjudicative proceeding is needed in connection with the
2 application.

3 We believe that this proposed
4 formulation addresses the statutory requirements. And, we
5 urge the Commission to incorporate our proposed changes
6 into the new rule. I'll certainly point out that we are
7 willing to work with the Staff to refine the language, to
8 the extent there's a further concern or comments on it.
9 But we do believe that our proposed change would address
10 the "public good" issue.

11 We have provided it to the Staff. I'm
12 not sure whether the Commissioners would want us to hand
13 up a copy?

14 CMSR. BELOW: I think we have gotten a
15 copy of it.

16 CMSR. MORRISON: We have it.

17 MR. COOLBROTH: I have it available for
18 parties as well.

19 (Atty. Coolbroth distributing
20 documents.)

21 MR. COOLBROTH: Thank you.

22 CMSR. BELOW: And, just to be clear,
23 what you're -- are you suggesting that what you're
24 proposing, which goes well beyond the very limited Initial

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1 Proposal, arises also as a result of the amendment to the
2 RSA 374:22-G from Senate Bill 386?

3 MR. COOLBROTH: Yes, we do, Commissioner
4 Below. As we read the statute, it provides for the
5 factors that the Commission would review in determining
6 whether or not to grant the application. The statute
7 provides that the Commission has the authority to
8 authorize the competing carrier to come in, if the
9 Commission determines that it's consistent with the public
10 good. And, then, in Part 2 of 22-G, it prescribes
11 standards for the Commission to consider in making that
12 determination. So that we have tried, in our draft of the
13 rules, to conform to that statutory language. It took a
14 little reworking in order to be able to do that, but
15 that's what we have proposed.

16 CMSR. BELOW: Okay. Anything else?

17 (No verbal response)

18 CMSR. BELOW: Okay. Anyone else who
19 would like to comment on the proposed rules? Yes, sir.

20 MR. KERRY: Yes, please. I am Cameron
21 Kerry, from the firm of Mintz, Levin, representing Comcast
22 Phone, LLC. And, Comcast will submit written comments, as
23 I'm informed MetroCast will as well. They could not be
24 here today. But I do want to address, if I may briefly,

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1 this notion that the amendment of RSA 374:22-G and the
2 repeal of 374:22-F somehow creates a new statutory scheme
3 that requires a whole new entry mechanism. If you look at
4 the bill that produced these changes, SB 386, makes a
5 change of 14 words. It deletes the two references to
6 systems or companies that have less than 25,000 lines.
7 And, that's it. And, you know, to take that simple change
8 and build that up into a whole new statutory scheme is a
9 little bit like the medieval alchemists, where, if you
10 remember, they use to -- they spent inordinate amount of
11 time trying to make gold out of lead. This is alchemy.
12 And, you know, there's no need to establish a new
13 statutory -- a new entry mechanism. The Commission has
14 one. The Commission has determined that that mechanism
15 strikes a balance in relation to the public good
16 requirements of 374:22-G.

17 And, as the Commission said in its
18 August order in docket 08-013, the Legislature made clear
19 its intention that there be competition statewide, and
20 that can be under a single mechanism.

21 The alternative that's being proposed
22 here would simply delay entry. We've already seen that in
23 the territories of TDS Companies, docket 08-013, where it
24 has now been a year since Comcast Phone filed its CLEC 10.

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1 If we go down this road with new rules, it will be even
2 longer and clearly will create the same adjudicative
3 process in every instance of entry. That is not the sort
4 of streamlined entry that this Commission has adopted, and
5 I submit that the Legislature clearly intended in
6 harmonizing the entry in New Hampshire to one single
7 mechanism across the state. Thank you.

8 CMSR. BELOW: Okay. Thank you. Anybody
9 else like to comment? Yes, sir.

10 MR. ROTHFELDER: Good morning. I'm
11 Martin Rothfelder, of Rothfelder Stern, LLC, on behalf of
12 Union Telephone Company. It's a pleasure to be before you
13 this morning. Union Telephone generally supports the
14 comments that Mr. Coolbroth has presented, and, perhaps
15 more importantly, supports the solution, with perhaps one
16 minor exception. Looks like the solution they propose
17 will work to address the actual statutory framework that
18 the Commission must operate within, and that we believe is
19 reasonable. We share the concern, as a general matter,
20 the rule as proposed is not required by or made necessary
21 by Senate Bill 386, and the proposed change doesn't really
22 address the statutory requirements, as Mr. Coolbroth's
23 proposal, that the Commission needs to follow to provide
24 entry. We would suggest -- We would hope that the

1 Commission would consider adopting into this rulemaking or
2 a subsequent rulemaking the procedures that Mr. Coolbroth
3 has put forth. The one concern we have is in what is his
4 proposed 431.02(b)(1), the 14-day time period that we're
5 concerned is a little bit tight. And, we would propose --
6 we anticipate proposing in our written comments that that
7 be a 30-day time period. And, we appreciate the
8 opportunity to appear this morning, and we will follow up
9 with comments. Thank you.

10 CMSR. BELOW: Okay. Thank you. Anyone
11 else? Ms. Mullholand.

12 MS. MULLHOLAND: Kath Mullholand, pro
13 se, for segTel, Incorporated. One of the things that I
14 think that has not been incorporated here this morning in
15 comments is the process of becoming a CLEC, as well as the
16 process of providing service in a territory. Becoming a
17 CLEC is a matter of being authorized by the Commission.
18 But, being able to collocate, being able to buy unbundled
19 network elements, being able to get pole agreements, and
20 all of the other things that go along with providing
21 service in a territory are all time-consuming options, and
22 things that will involve both companies negotiating and
23 bring up all of these public good and public interest
24 arguments.

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1 The authorization of a CLEC does not
2 need to go that far. SegTel is in support of the rules as
3 proposed.

4 CMSR. BELOW: Okay. Any other comments?
5 Yes, Ms. Ross.

6 MS. ROSS: The Staff would just like to
7 indicate that we supported the proposed amendment because
8 we viewed the statutory change as a directive by the
9 Legislature to treat all carriers within the state
10 equally, that is the small ILECs and the large ILECs, with
11 regard to CLEC entry. And, just to clarify, we are only
12 talking about registering an entity to do business within
13 a service territory. There are a number of additional
14 steps, as segTel just pointed out, before a carrier would
15 actually be able to terminate or originate traffic within
16 that service territory or provide any type of telephone
17 services.

18 So, Staff views the proposed rule change
19 as an extension of the balancing test that the Commission
20 did in originally enacting the rule, in which it
21 considered the factors called out in 22-G and determined
22 that a streamlined process for registering CLECs is
23 appropriate.

24 CMSR. BELOW: Okay. If there are no
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1 other comments, I would just remind you again that
2 December 18th is the deadline for written comments. And,
3 I think, at the close of this hearing, Staff will be
4 available for a technical session, if folks would like to
5 discuss the proposed rule.

6 So, at this point, I'll close the public
7 hearing and thank you for your comments.

8 (Whereupon the hearing ended at 10:22
9 a.m.)

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