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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

August 25, 2011 - 2:07 p.m.
Concord, New Hampshire

NHPUC SEP09'11 PM 1:44

RE: DT 11-151
MERRIMACK COUNTY TELEPHONE COMPANY:
*Petition for an Alternate Form of
Regulation.*

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. Merrimack County Telephone Co.:
Paul J. Phillips, Esq. (Primmer, Piper...)

Reptg. Daniel Bailey:
Alan Linder, Esq.
New Hampshire Legal Assistance

Reptg. PUC Staff:
Matthew J. Fossum, Esq.

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

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E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
MCT 1	Testimony of Thomas E. Murray (July 1, 2011)	premarked
MCT 2	Original filed Alternative Regulation Plan	premarked
Joint 1	Stipulation and Settlement Agreement (August 15, 2011)	premarked
Joint 2	Redlined version of the mark-up of the Plan (August 15, 2011)	premarked

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P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good afternoon, everyone. We'll open the hearing in Docket DT 11-151. On July 5, 2011, Merrimack County Telephone filed a petition seeking approval of an Alternative Form of Regulation pursuant to RSA 374:3-b. An order of notice was issued on July 7, and a prehearing conference was held on July 27. Subsequently, intervention of the New Hampshire Legal Assistance was approved by a secretarial letter on August 5. A settlement was filed on August 15th. And, a secretarial letter was issued scheduling a hearing for this afternoon.

So, let's take appearances.

MR. PHILLIPS: Good afternoon, Mr. Chairman and Commissioners. I'm Paul Phillips, from the law firm of Primmer, Piper, Eggleston & Cramer. I'm here on behalf of Merrimack County Telephone Company. And, I'm joined by Thomas Murray from TDS Telecom.

CHAIRMAN GETZ: Good afternoon.

MR. LINDER: Good afternoon. My name is Alan Linder. I'm from New Hampshire Legal Assistance. We represent Daniel Bailey in this proceeding.

CHAIRMAN GETZ: Good afternoon.

MR. LINDER: Good afternoon.

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1 MR. FOSSUM: And, good afternoon.
2 Matthew Fossum, for the Staff of the Public Utilities
3 Commission. And, with me today is David Goyette from
4 Commission Staff.

5 CHAIRMAN GETZ: Good afternoon. And,
6 I'll note for the record that we have a letter filed by
7 the Consumer Advocate indicating that it takes no position
8 on the proposed alternative regulation plan, but it does
9 support the addition to the plan regarding rate freeze for
10 basic local exchange service and provisions related to
11 Lifeline and Link-Up, but the OCA is not available for the
12 hearing this afternoon.

13 So, are you ready to proceed,
14 Mr. Phillips?

15 MR. PHILLIPS: Yes, Mr. Chairman. I am.
16 Following the prehearing conference, the Staff convened a
17 technical session, at which the parties had a chance to
18 discuss their concerns. Merrimack County Telephone heard
19 the parties' questions, heard several helpful suggestions,
20 which we incorporated into a set of proposed amendments to
21 the plan. We had a follow-up discussion, settlement
22 discussion by telephone with the parties, at which we
23 heard some additional comments on the first set of
24 amendments. We added some additional amendments

1 thereafter, and were able to reach agreement with all of
2 the parties other than the Consumer Advocate's Office, and
3 we filed the Settlement on August the 15th.

4 The amendments, in our judgment, go even
5 further than the initial plan in satisfying the elements
6 of the statute. And, in particular, in addressing the
7 issues that Commissioner Below raised in the prehearing
8 conference concerning improvements in outreach for
9 Lifeline/Link-Up customers, and increasing the
10 availability and affordability of basic phone service.
11 So, we are satisfied with the process that we went
12 through.

13 On a personal note, I was particularly
14 pleased, since this is my first case with Mr. Linder, with
15 the cooperation, the air of cooperation we struck with
16 NHLA. I think we have a good agreement here.

17 We're going to have Mr. Murray testify
18 about the substance of the agreement. But we're hopeful
19 that, when the hearing is done, the Commissioners will
20 conclude that the plan should be approved.

21 CHAIRMAN GETZ: Thank you.

22 MR. PHILLIPS: Thank you.

23 CHAIRMAN GETZ: Call your witness.

24 MR. PHILLIPS: I call Thomas Murray from

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[WITNESS: Murray]

1 TDS Telecom.

2 (Whereupon *Thomas E. Murray* was duly
3 sworn and cautioned by the Court
4 Reporter.)

5 MR. PHILLIPS: Mr. Chairman, I have had
6 four exhibits premarked for identification purposes. I'm
7 going to hand them to the Commissioners at this time, Mr.
8 Chairman. And, I've also distributed copies to the
9 parties.

10 THOMAS E. MURRAY, SWORN

11 DIRECT EXAMINATION

12 BY MR. PHILLIPS:

13 Q. Mr. Murray, would you please state your name and your
14 current employment and your employer for the record.

15 A. My name is Thomas Murray. I'm the Manager of State
16 Government Affairs for TDS Telecom, who is the parent
17 company of Merrimack County Telephone.

18 Q. And, Mr. Murray, you prefiled direct testimony in this
19 matter dated July the 1st, is that correct?

20 A. I did.

21 Q. And, was that testimony prepared under your supervision
22 or did you prepare it yourself?

23 A. It was under my supervision with a team at TDS.

24 Q. And, do you have any changes to that testimony today?

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[WITNESS: Murray]

1 A. I do not.

2 Q. And, if you were to offer this testimony from the stand
3 today, would it be the same as it is in writing?

4 A. Yes.

5 Q. Thank you. I'm approaching the witness to offer him
6 the exhibits. Mr. Murray, is that your testimony?

7 A. Yes, it is.

8 Q. And, Mr. Murray, you had attached to your testimony an
9 exhibit, which was the original Alternative Regulation
10 Plan of Merrimack County Telephone, is that right?

11 A. Yes.

12 Q. And, I'm showing you that exhibit. Is that the plan?

13 A. Yes. That's it.

14 Q. And, Mr. Murray, are you a signatory to a Stipulation
15 and Settlement Agreement that was dated as of August
16 the 15th, 2011 in this matter, which was jointly
17 executed by Merrimack County Telephone Company, New
18 Hampshire Legal Assistance, and the Staff of the New
19 Hampshire Public Utilities Commission?

20 A. Yes.

21 Q. I'm showing you a copy of that. Is that the
22 Stipulation?

23 A. Yes, it is.

24 Q. And, attached to that Stipulation was a redlined

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[WITNESS: Murray]

1 mark-up of the original Alternative Regulation Plan
2 showing in redline changes that were proposed for
3 amendment purposes as part of that Settlement
4 Agreement, is that right?

5 A. Yes.

6 Q. And, I'm handing you that now. Is that the -- is that
7 the amended plan?

8 A. Yes, it is.

9 Q. So, for the record, your testimony is identified as
10 "MCT 1"; the original plan is identified as "MCT 2";
11 the Stipulation and Settlement Agreement is identified
12 as "Joint 1"; and the redlined mark-up of the plan is
13 identified as "Joint 2".

14 Mr. Murray, would you please explain for
15 the Commissioners the original plan that you filed, and
16 then followed up with the amendments that were
17 incorporated as part of the settlement process.

18 A. The plan that we filed was consistent with the previous
19 plans that have been approved by the Commission,
20 really, absent only the Lifeline provisions that we
21 have seen in previous plans. And, the Company chose
22 not to include the Lifeline provisions for a couple of
23 reasons. One, the new statute, with a 5 percent annual
24 rate cap, was something that was worked on with New

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[WITNESS: Murray]

1 Hampshire Legal Aid during the legislative process.

2 And, we felt that that was sufficient protection for

3 Lifeline customers. And, in addition, the statute

4 doesn't require the Lifeline commitment. So, that was

5 -- the plan was virtually identical to all the other

6 plans, absent the additional Lifeline language.

7 Q. And, then, as part of the discussions with the other
8 parties in the case, did Merrimack County Telephone
9 offer amendments that -- well, you can, I'll have you
10 describe those amendments.

11 A. Yes. I mean, there are really two themes that were
12 brought forth by Staff, OCA, and New Hampshire Legal
13 Aid. One was the concept of a rate freeze, which was
14 something that was in the final approved plans. And,
15 we were willing to include that for all stand-alone
16 basic customers for the period of one year. So that
17 the one amendment that you'll see redlined in this
18 exhibit is a one year rate freeze. And, so, that was
19 the first thing.

20 And, then, the second item was the
21 Lifeline provisions, in terms of Lifeline outreach,
22 which are very similar to what was recently approved in
23 the Union alternative regulation case, with a couple
24 more clarifications that some of the parties wanted to

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[WITNESS: Murray]

1 see, in particular, OCA, New Hampshire Legal Aid wanted
2 to see a little more language. So, specifically, the
3 Lifeline changes are the -- there was a clarification
4 under 4.1.6.1(a), as to the particular division that we
5 should be working with in the outreach, the Division of
6 Family Assistance. So, that was one, just kind of a
7 clarification change.

8 We continued with the four year Lifeline
9 rate freeze, so that the rate freeze extends to
10 Lifeline customers, similar to what was in other plans.

11 And, you know, probably most
12 significantly is 4.1.6.3, which is that we'll provide
13 an annual written summary, a brief summary, if you
14 will, to the parties, in terms of our Lifeline outreach
15 effort. In addition, we'll provide a report to the
16 parties that essentially details our Lifeline numbers,
17 in terms of how many subscribers we have that take
18 advantage of the program.

19 We also put forth an opportunity, which
20 arguably existed certainly without the plan specifying
21 it, but for any of the parties to request an annual
22 meeting, where we would come in and talk with them, if
23 they wanted to sit down and meet. And, so, that's
24 specified in the changes.

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[WITNESS: Murray]

1 One note that we put forth in this
2 competitive market with regard to the Lifeline numbers
3 was I guess I'd call it a "disclaimer", to basically
4 say that, you know, the Lifeline numbers, as the
5 industry becomes more competitive, are likely to go
6 down, in spite of what efforts might be, as customers
7 choose cable and wireless and other things. So, we
8 wanted to be clear that the fact that we -- the numbers
9 might go down doesn't constitute a lack of effort on
10 our part, essentially.

11 So, those were basically the significant
12 changes to the plan that was filed. And, essentially,
13 it mirrors the recently approved Union plan, with a few
14 other little minor add-ons, but nothing -- nothing too
15 onerous or nothing too significant in terms of
16 differences.

17 Q. And, is it your view, Mr. Murray, that this plan, as it
18 has been proposed to be amended, satisfies the
19 requirements of the statute?

20 A. Oh, certainly. I think it -- as I think it did when we
21 filed it. And, I think these additional Lifeline
22 provisions were additional concessions in the
23 settlement process, and so that it just goes further to
24 protect the universal service aspects of the statute

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[WITNESS: Murray]

1 and things like that.

2 MR. PHILLIPS: Thank you. I have no
3 further questions. The witness is available for
4 questions.

5 CHAIRMAN GETZ: Thank you. Mr. Linder?

6 MR. LINDER: I have no questions. Thank
7 you.

8 CHAIRMAN GETZ: Mr. Fossum?

9 MR. FOSSUM: I also have no questions.

10 CHAIRMAN GETZ: Commissioner Ignatius.

11 CMSR. IGNATIUS: Thank you.

12 BY CMSR. IGNATIUS:

13 Q. Mr. Murray, I have a question that is probably
14 consistent with other plans, and I probably should have
15 inquired about in other proceedings. But if you could
16 give some clarification to Section 7.4, in addressing
17 "exogenous changes". And, specifically, 7.4.2 says
18 that "the Commission shall consider whether the
19 exogenous change" -- oh, I'm sorry, 7.4.1, that "an
20 exogenous change has caused financial impact." Can you
21 give an example of what would be the kinds of evidence
22 that you would present demonstrating "financial
23 impact"?

24 A. Well, obviously, we're potentially at the cusp of

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[WITNESS: Murray]

1 significant changes at the federal level. And,
2 certainly, that could change something. Now, the law
3 talks more specifically about in-state, intrastate
4 revenue changes. And, if you looked at some of the
5 recent potential plans, they could have -- they
6 undoubtedly will have some intrastate impact, let's put
7 it that way. So, it's a little difficult to speculate
8 on what that might look like, I think. I speculated it
9 will range from a formulaic thing that the FCC just
10 puts out, and we just say, you know, "they say you've
11 got to do this, you know, to recover that", to
12 something that could be more on a traditional rate
13 analysis basis, maybe potentially a mini rate case,
14 something like that, if we had to go that, that realm.

15 But I suspect that it will be fairly
16 formulaic, in that we'll say "here's where the revenues
17 have declined, and here's what we're looking to do to
18 attain revenue neutrality on that."

19 Q. And, when you say "mini rate case", do you mean, if
20 some revenues have dropped and other revenues have
21 increased, you might look at them to get a fuller
22 picture?

23 A. You know, there are so many different scenarios that
24 could play out, and I'd have to -- I'd be a soothsayer

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[WITNESS: Murray]

1 to, you know, speculate on exactly how it's all going
2 to play out. So, I guess it's -- it's hard to
3 speculate on exactly what it would look like at this
4 time.

5 Q. And, do you have a position on whether something that
6 the Company seeks on a federal level, for example, the
7 plan -- plans are being developed right now with the
8 FCC over broadband deployment, if there were a plan
9 that the Company endorsed, and so sought those changes
10 that are contained in the plan and the FCC approved
11 them, would that be considered an "exogenous change"?

12 A. I guess I would look at it the other way, in that, at
13 the end of the day the FCC will issue an order that
14 essentially makes this, you know, FCC a policy, rule,
15 however you want to put it. So, I think if we --
16 what's been put forth is a proposal, and the FCC will
17 have to mold that with things from the Joint Board and
18 other associations and things to come up with the final
19 plan.

20 So, I hesitate to think that the FCC
21 would take the plan lock, stock, and barrel. So, in
22 that instance, I don't think the example you put forth
23 is likely to play out, but you're probably closer to it
24 than I am.

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[WITNESS: Murray]

1 Q. Well, I'm just trying to think about the meaning of
2 "exogenous". And, I guess, in my mind, I've always
3 thought of it as something that's imposed upon a
4 company through no doing or fault or request of its
5 own. And, that the idea that the Company might seek
6 financial changes, different ways in which revenues are
7 achieved in a plan, and have those approved, does that
8 put it outside of the category of an "exogenous
9 change", because it was something the Company planned
10 for, sought, requested, endorsed?

11 A. Well, and I think, if you look at the whole federal
12 activities that have gone on since the National
13 Broadband Plan was released, they were the impetus of
14 the change. We just put forth, along with other
15 industry members, the solutions. So, in that example,
16 certainly, we didn't petition for these changes. And,
17 even with the best of scenarios that might play out
18 with the plans that have been filed, I don't expect
19 we're going to be ahead of the game. You know, it's
20 not going to be a win. It's "how much loss can you
21 take", basically, kind of scenario.

22 Q. The plan specific -- the agreement here, specifically
23 says that in reviewing an exogenous change, the
24 Commission "shall not [consider] a rate-of-return

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[WITNESS: Murray]

1 analysis." That's at 7.3. Is there anything else
2 that, in your understanding of a plan like this, would
3 be automatically excluded from consideration?

4 A. To begin, I haven't thought much about how this
5 "exogenous change" scenario will play out. And, so, I
6 guess I would defer till we have something in front of
7 us that constitutes a change with a trigger, and
8 probably sit down and discuss it, certainly, with
9 Staff, maybe the Commissioners, if they felt there need
10 be. I suspect any of those changes would impact all
11 the phone companies in New Hampshire, and not that we
12 would have unique circumstances under the statute, but
13 all the companies would be looking at probably some
14 sort of a change. And, so, probably might be a
15 workshop item or something like that. I suspect there
16 may be a workshop on what comes out of the FCC on a
17 number of levels.

18 CMSR. IGNATIUS: More than one. That's
19 helpful. Thank you.

20 CHAIRMAN GETZ: Anything further,
21 Mr. Phillips, for this witness?

22 MR. PHILLIPS: No. I have no further
23 questions. Thank you.

24 CHAIRMAN GETZ: Then, you're excused.

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1 Thank you, Mr. Murray. Any objection to striking the
2 identifications and admitting the exhibits into evidence?

3 MR. PHILLIPS: No.

4 CHAIRMAN GETZ: Hearing no objection,
5 they will be admitted into evidence. Anything else before
6 opportunity for closings?

7 (No verbal response)

8 CHAIRMAN GETZ: Hearing nothing, then
9 we'll begin with you, Mr. Linder.

10 MR. LINDER: Thank you, Mr. Chairman and
11 Commissioners. New Hampshire Legal Assistance signed the
12 Stipulation and Settlement Agreement on behalf of its
13 client, Daniel Bailey. And, Mr. Bailey does support the
14 Stipulation and Settlement Agreement, and supports the
15 amended plan, which has been marked as an exhibit this
16 morning -- or, this afternoon.

17 And, as pointed out by the witness, the
18 amended plan contains provisions for Lifeline outreach
19 efforts by the Company and limited rate freezes for basic
20 exchange customers and for Lifeline customers.

21 At the prehearing conference on July
22 27th, Legal Assistance explained, in support of its
23 request for intervention, and as described on Pages 17
24 through 20 of the transcript of that prehearing

1 conference, the reason that Mr. Bailey sought to intervene
2 was because, as pointed out by counsel, the Company's
3 original Alternative Regulation Plan did not contain the
4 provisions regarding Lifeline and rate freezes that were
5 mentioned by counsel and the witness. The amended plan,
6 which has been marked as an exhibit, does now contain
7 these two provisions. And, as was pointed out also by
8 counsel, that the order, and as pointed out at the
9 prehearing conference, the order of notice indicated that
10 one of the items that the Commission would need to
11 consider before approving the amended plan would be
12 whether the plan preserves universal access to affordable
13 basic stand-alone service, pursuant to RSA 374:3-b,
14 III(d).

15 We think that the addition of the
16 Lifeline provisions and the rate freeze provisions do
17 result in a plan -- in an alternative regulation plan that
18 does preserve universal access to affordable stand-alone
19 basic telephone service. And, we also feel that the
20 Company's amended plan does, in fact, conform to the
21 statute, as amended, and that the Settlement Agreement,
22 with all its terms and provisions, is in the public
23 interest.

24 And, accordingly, Mr. Bailey

1 respectfully recommends that the Commission approve the
2 Company's petition for alternative regulation and its
3 amended plan, which has been marked as an exhibit today.
4 Thank you very much.

5 CHAIRMAN GETZ: Thank you. Mr. Fossum.

6 MR. FOSSUM: Thank you. Much like New
7 Hampshire Legal Assistance, Staff also supports the
8 Alternative Regulation Plan of Merrimack County Telephone,
9 in light of the agreement that Staff has also signed,
10 along with the Company and Legal Assistance. As the
11 Commission is certainly aware, the governing statute on
12 alternative regulation was recently amended. And, even
13 though it did appear to Staff that MCT, Merrimack County,
14 might qualify for alternative regulation under the terms
15 of that amended statute without further changes to its
16 proposed plan, it did engage with Staff and others, and,
17 as a result, we were able to reach agreement in this case.

18 As to Staff's more specific concerns
19 here, as with prior alternative regulation petitions, the
20 Staff was concerned about Lifeline and Lifeline outreach.
21 And, the amendments to the plan that have been agreed upon
22 do address those concerns. And, in addition, as has been
23 noted already, the Company has agreed to rate freezes,
24 which is a condition that the Commission has previously

1 found to be important when considering petitions for
2 alternative regulation.

3 So, for these reasons, the Staff
4 supports the Agreement in this case, and recommends that
5 Merrimack County's Alternative Regulation Plan, as amended
6 by the Agreement, be approved as consistent with RSA
7 374:3-b. Thank you.

8 CHAIRMAN GETZ: Thank you.
9 Mr. Phillips.

10 MR. PHILLIPS: Thank you, Mr. Chairman.
11 Merrimack County Telephone is appreciative of the parties'
12 cooperation in this matter. It's been a good process. We
13 believe the amended plan presents an even stronger case in
14 support of approval of MCT's petition. And, so, we urge
15 the Commission to act expeditiously in approving that
16 petition. Thank you.

17 CHAIRMAN GETZ: Okay. Thank you. Then,
18 we'll close the hearing and take the matter under
19 advisement.

20 (Whereupon the hearing ended at 2:31
21 p.m.)

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