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February 8, 2006

Representative Lawrence Ross, Chair  
Science, Technology and Energy Committee  
Legislative Office Building  
Concord, New Hampshire 03301

Re: HB 1756  
Regulation of Small Independent Telephone Companies

Dear Chairman Ross:

In response to the January 31, 2006 public hearing on HB 1756, and in anticipation of the work session on the bill February 8, 2006, the Public Utilities Commission offers the following comments.

The Commission would like to reiterate what it considers to be an important labeling issue. This bill has been cast as dealing with "alternative regulation" plans; however, as the Commission has testified previously, alternative regulation is a misnomer for what is under consideration here. It would be more accurate to describe HB 1756 as a price deregulation bill. In addition, the Commission remains concerned that as currently structured and written there is little legislative guidance as to what standards the Commission should employ when reviewing a request to allow price deregulation. Furthermore, past legislative discussions of this subject matter have revealed widely differing views of what is meant or intended by the bill.

In an attempt to assist the Committee in its consideration of this important issue, the Commission offers two alternative drafts of a price deregulation statute. One alternative excludes a substantive role for the Commission and reflects an underlying conclusion by the Legislature that there is sufficient competition in the service territories of the small ILECs to preclude the need for regulatory oversight of prices for basic residential telephone service. The Commission does not advocate this alternative, but if it is the Legislature's determination that deregulation is appropriate at this time then this alternative better accomplishes that legislative goal. You will also note that, in this alternative, the option exists for the Legislature to establish certain pre-conditions for allowing price deregulation if it were so inclined.

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OPTION #1: Deregulation absent Commission Review

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3 1 Price Deregulation of Small Incumbent Local Exchange Carriers. Amend RSA 374:3-  
4 b, II to read as follows:

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6 II. A small incumbent local exchange carrier subject to rate of return regulation may  
7 notify the public utilities commission that it has opted for **price deregulation** ~~approval of~~  
8 ~~an alternative form of regulation providing for regulation of such carrier's retail~~  
9 ~~operations comparable to the regulation applied to competitive local exchange carriers.~~

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11 2 Commission Action. Amend RSA 374-b, III by deleting it in its entirety and replacing  
12 it with language to read as follows:

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14 **III. Upon notification, the Commission shall grant such deregulation, provided the**  
15 **small incumbent local exchange carrier notifies its customers of the change in**  
16 **regulation, and that the notice is served not less than 60 days prior to the change in**  
17 **regulation;**

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19 **[Optional preconditions could be added here such as: a transitional price cap on**  
20 **basic rates and provisions that the small incumbent local exchange carrier**  
21 **relinquish its rural exemption under federal law; ports its telephone numbers to any**  
22 **provider capable of providing voice service; does not tie the provision of any service,**  
23 **other than intrastate telecommunications, to basic local service; and/or agrees to**  
24 **lease the high frequency portion of its local line for a reasonable price to competitive**  
25 **broadband providers.]**

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27 3 Bundled services permitted; Rate of Return Regulation No Longer in Effect. Amend  
28 RSA 374-b:IV-V as follows:

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30 IV. ~~The alternative regulation plan may allow~~ **Under price deregulation, the small**  
31 **incumbent local exchange carrier to may offer bundled services that include**  
32 **combinations of telecommunications, data, video and other services.**

33  
34 V. ~~Following approval of the alternative regulation plan~~ **implementation of price**  
35 **deregulation, the small incumbent local exchange carrier shall no longer be subject to**  
36 **rate of return regulation or be required to file affiliate contracts or seek prior commission**  
37 **approval of financings or corporate organizational changes, including, without limitation,**  
38 **mergers, acquisitions, corporate restructuring, issuance or transfer of securities, or the**  
39 **sale, lease or other transfer of assets or control.**

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41 4 Effective Date. This act shall take effect 60 days after its passage.  
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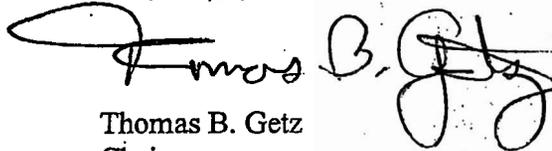
The other alternative, as opposed to a blanket legislative declaration that price deregulation should occur, provides for a Commission determination on a case-by-case basis as to whether competition exists in a particular ILEC service territory. In addition, the alternative provides greater guidance as to how the Commission would determine when price deregulation is appropriate. This alternative has two aspects. It first states when the Commission "shall" allow price deregulation and it then states when the Commission "may" allow price deregulation. Under this approach, the Commission shall allow price deregulation when, in essence, there is a comparably priced substitute for ILEC basic service; and it may allow price deregulation even when these circumstances do not apply so long as there is a plan, conditioned by the Commission, that promotes a level playing field and provides for a transition to price deregulation that mitigates rate increases over a reasonable period.

Under the first approach, the Legislature would be concluding that the level of meaningful competition in all these service territories, is or soon will be, sufficiently high to justify price deregulation without Commission oversight. This approach presumes that rate increases would be limited by market forces and there would be no regulatory pass-through of increases, irrespective of the reason for the increase. As for the second approach, the Legislature would be delegating to the Commission the responsibility to determine when there is meaningful competition sufficient to constrain prices and insure safe, reliable service.

The Commission believes that the two alternatives have the virtue of setting forth clearly the Legislature's intent as to its desired goal and defining the precise role that the Commission would play in either case. Furthermore, while the Commission regards the case-by-case approach as the better approach at this point in time, it continues to hold the view, which it has testified to on numerous occasions in the past, that technological advances are rapidly altering the competitive landscape. As a result, the Commission fully expects over time that price deregulation will be appropriate as a general matter. In the interim, however, the Commission seeks to achieve a delicate balance between promoting competition that fairly treats both incumbents and new entrants while protecting the interests of customers whose needs range from basic affordable service to the desire for innovative services.

Representatives of the Public Utilities Commission will be available at the February 8, 2006 work session to respond to questions and work on language.

Very truly yours,



Thomas B. Getz  
Chairman

Cc: Sponsors of HB 1756  
Science, Technology and Energy Committee members  
Senate Energy and Economic Development Committee members  
GST, TDS, etc.  
Verizon

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OPTION # 2: Deregulation pursuant to Commission Review

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**1 Alternative Regulation Price Deregulation of Small Incumbent Local Exchange Carriers; Plans.** Amend RSA 374:3-b, II-III to read as follows:

II. A small incumbent local exchange carrier subject to rate of return regulation may petition the public utilities commission for approval of **price deregulation** ~~an alternative form of regulation providing for regulation of such carrier's retail operations comparable~~ to the regulation applied to competitive local exchange carriers;

III. The commission shall ~~allow price deregulation~~ **approve the alternative regulation plan** if it finds that competitive wireline, wireless or broadband service is available ~~to a majority of the retail customers in each of~~ **ubiquitously throughout** the exchanges served by such small incumbent local exchange carrier, **provided that at least one competitive alternative, or a combination of alternatives, is offered at a reasonably comparable price and is a suitable substitute for basic local service throughout the small incumbent local exchange carrier's service territory.**

~~\_\_\_\_\_ (b) the plan provides for maximum basis maintains a basic local service rates at levels prevailing throughout the state as of the effective date of this section plus allowances for inflation and adjustments to reflect changes in federal, state, or local government taxes, mandates, rules, regulations or statutes; provided, that no small incumbent local exchange carrier may increase basic local service rates by more than 10 percent per year in each of the 4 years after a plan is approved;~~

~~\_\_\_\_\_ (c) the plan promotes the offering of innovative telecommunications services in the state;~~

~~\_\_\_\_\_ (d) the plan meets intercarrier service obligations under other applicable laws and;~~

~~(e) the plan preserves universal access to affordable basic telephone service;~~

**IV. The commission may allow price deregulation that does not meet the requirements of III above, with conditions that will promote a level playing field designed to develop a fully competitive market including a rate transition plan that tempers potential rate increases, giving due consideration to rates charged by the largest incumbent local exchange carrier operating in the state and possible rate adjustments that may be needed to reflect changes in federal, state, or local government taxes, mandates, rules, regulations or statutes.**

**3 Bundled services permitted; Rate of Return Regulation No Longer in Effect.** Amend RSA 374-b:IV-V as follows:

~~IVV. The alternative regulation plan may allow~~ **Under price deregulation, the small incumbent local exchange carrier to may offer bundled services that include combinations of telecommunications, data, video and other services.**

~~VI. Following approval of the alternative regulation plan~~ **full implementation of price deregulation, the small incumbent local exchange carrier shall no longer be subject to rate of return regulation or be required to file affiliate contracts or seek prior commission approval of financings or corporate organizational changes, including, without limitation, mergers, acquisitions, corporate restructuring, issuance or transfer of securities, or the sale, lease, or other transfer of assets or control.**

**4 Effective Date.** This act shall take effect 60 days after its passage.