

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-027

Kearsarge Telephone Company, Wilton Telephone Company, Inc.,
Hollis Telephone Company, Inc. and Merrimack County Telephone Company
Petition for Alternative Form of Regulation

**OBJECTION BY KEARSARGE TELEPHONE COMPANY
AND MERRIMACK COUNTY TELEPHONE COMPANY
TO OCA MOTION FOR FINAL ORDER, COMMENCEMENT
OF PHASE III AND TO MAKE COMCAST PHONE OF NH
A MANDATORY PARTY**

Kearsarge Telephone Company (“KTC”) and Merrimack County Telephone Company (“MCT”) hereby object to the “Office of the Consumer Advocate’s Motion for Final Order on Phase II, for Formal Commencement of Phase III, and to Make Comcast Phone a Mandatory Party” dated June 24, 2010 (the “OCA Motion”) and in support of their objection state as follows:

1. The OCA Motion opens by pointing to a year and a half of litigation in this case. That characterization does not begin to do justice to the length of this proceeding, which commenced with petitions filed on March 1, 2007. This case is now well over three years old, and the OCA Motion lays out a framework for it to drag on for three more years. Such a result would be unconscionable. The OCA Motion should be denied.

2. Nowhere in the OCA Motion does the OCA contend that the information submitted by KTC on June 11, 2010 in response to Order No. 25,103 (the “Order”) does not meet the requirements of the Order. Instead, the OCA argues that the legal standard used by the

Commission in the Order is erroneous. The OCA “reserves the right to respond” through a new adjudicative process that it is asking this Commission to establish. It does not identify the factual issues that would be resolved in an evidentiary hearing with regard to the responsiveness of the filing to the Order. KTC respectfully submits that the information that it has presented conforms fully to the Commission’s order and constitutes the basis for final ruling authorizing the implementation of KTC’s alternative regulation plan.

3. The OCA criticizes KTC and MCT for not having met their burden of proof. What the OCA does not point out is that until the issuance of this Order, the Commission had not spelled out what that burden is. KTC and MCT now know that drive test information for wireless coverage and the actual offering of cable telephone service meet the burden. KTC met the burden with regard to alternative wireless service, and KTC and MCT followed the directive - announced for the first time in the Order - to show alternative wireline service. In fact, the response dated July 2, 2010 by Comcast Phone of New Hampshire LLC further confirms the KTC and MCT filing with regard to Comcast’s competitive wireline alternative.

4. The OCA further requests this Commission to “reissue” its order removing the statement on page 28 that the Commission does not construe the order as a final order triggering rehearing pursuant to RSA 541:3. The OCA then further requests the Commission to refrain from considering the submissions by KTC and MCT until full resolution of a rehearing and appeal process. This request can be readily seen to be nothing more than an attempt to make sure that this proceeding has a duration of at least another three years. While the quantum of evidence that the Commission has required is much more than KTC and MCT ever thought was necessary under RSA 374:3-b, the Commission now has that evidence for KTC, and MCT is endeavoring to complete it. The process that the Commission utilized for the presentation of this

additional evidence is a reasonable exercise of discretion and serves the interests of the orderly and prompt conclusion of this three-year-old proceeding as it relates to KTC. Consideration of this evidence will result in a final ruling as to KTC, and KTC respectfully requests that the Commission proceed to such a ruling. As for MCT, the short period of time for the completion of its wireless analysis, taken in relation to the three years already invested, is reasonable and efficient for the conclusion of this proceeding. Following a final order or orders, the OCA's rights for rehearing and appeal would be fully preserved.

5. The OCA's arguments relating to the Commission's determination of the legal standard to be used under RSA 374:3-b,III(a) should be raised in a motion for rehearing following the issuance of a final order. Therefore, the OCA's arguments are premature at this time. However, KTC and MCT point out that the legal argument is made on the basis of material misquotes of Commission orders.

6. Paragraph 9 of the OCA Motion is based on a material misquoting of the Commission's Order No. 24,852 dated April 23, 2008 in this Docket. The quote in the OCA Motion stops with the word "plan". However, the full quote from the Order is as follows:

"We conclude with respect to the competitiveness test the Legislature would have us apply, that the use of the word "competitive" in subsection III(a) means that the mere availability of alternatives is not sufficient to approve a plan *but that the inclusion, among other things, of price protections in subsection III(b) means that a fully functioning competitive market is not necessary in order to approve a plan.*"

Id. p. 26 (Emphasis added). This passage, when properly quoted, means something entirely different from what is suggested in the OCA Motion. Since plans under RSA 374:3-b come with price protections, the Commission balances the level of competitive entry with a plan that includes price protections. That is exactly what the Commission has done here. Comcast Phone's service is pervasive throughout much of the FairPoint service territory in New

Hampshire. The Commission determined that the presence of that service within KTC and MCT exchanges would satisfy that balance. What the Commission wanted to know is whether Comcast had commenced offering its phone service in the KTC and MCT exchanges. The Commission now knows.

7. Similarly, in paragraph 10 of the OCA Motion, a quote from page 21 of the Order is inserted regarding Mr. Reed's testimony concerning the fact that Comcast Phone is certified as a CLEC in certain exchanges and has entered into an interconnection agreement with MCT. The OCA Motion then leaves out the sentence in which the Commission recognizes that "these are evolving markets and that certification of a CLEC is intended in most cases to lead to offerings of service. The OCA Motion then once again misquotes by not inserting the entire next sentence, which states as follows:

"The presence of Comcast as a CLEC in the exchanges of Antrim, Contoocook, Henniker, Hillsborough and Melvin Village will be sufficient to demonstrate that a competitive alternative is available, on condition that within 30 days TDS submits evidence, such as through an affidavit with supporting documentation such as advertisements, establishing that a voice service [footnote omitted] is *currently being offered in those exchanges.*"

Order, p. 21 (emphasis in original). Again, the Commission is conducting the balancing and identifying what it determines to be the applicable standard. The so-called inconsistency alleged by the OCA simply is not there.

8. The OCA then requests a new adjudicative process that it identifies as "Phase III" of this proceeding, which presumably would not commence until months or years from now following resolution of an OCA appeal to the New Hampshire Supreme Court. Such a procedural process would be manifestly unfair to KTC and MCT. Moreover, the OCA proposes to require KTC and MCT to notify customers of the information submitted in response to the Commission's order. In effect, the OCA would require KTC and MCT to write to all of their

customers to tell them that service is now available from their competitors, namely Comcast and wireless providers. Such a notification would serve to do nothing other than undermine the competitive position of KTC and MCT.

9. Finally, the OCA asks further to complicate this proceeding by making Comcast Phone a mandatory party to this docket. Such a step is entirely unnecessary. In fact, Comcast Phone has submitted an objection asserting, what we all know, that of course, Comcast is offering its service in exchanges of KTC and MCT. This request should be denied.

10. For all of the foregoing reasons, KTC and MCT respectfully request that the OCA Motion be denied.

Respectfully submitted,

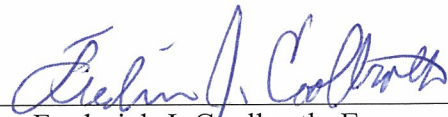
KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE
COMPANY

By its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated July 6, 2010

By:



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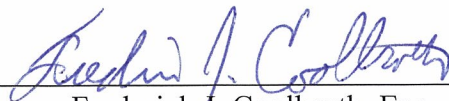
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objection was forwarded this day to the parties by electronic mail.


Frederick J. Coolbroth, Esq.