

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 14-__

Petition of Dixville Telephone Company
For Approval to Discontinue Operations

Pursuant to RSA 374:28, Dixville Telephone Company (“DTC”), a division of Tillotson Corporation (“Tillotson”), a Massachusetts company, engaged in business as a telecommunications public utility subject to the jurisdiction of the New Hampshire Public Utilities Commission (the “Commission”) respectfully requests approval to permanently discontinue its local telephone operations in the state, and represents to the Commission as follows:

I. BACKGROUND AND STATEMENT OF FACTS

1. DTC has its principal place of business at 450 Bedford Street, Lexington, MA 02420 and provides telecommunications service, including but not limited to exchange service, intrastate toll and exchange access service, to portions of the Dixville township area of Coos County, New Hampshire, primarily the former Balsams Grand Resort Hotel (“Balsams Resort”).
2. All of the assets of DTC are owned by Tillotson Corporation, a Massachusetts company. The Tillotson Corporation is wholly owned by OCG, LLC, itself an entity wholly owned by the New Hampshire Charitable Foundation (“NHCF”).
3. The Balsams Resort closed in September 2011, terminating telephone service for virtually all of DTC’s approximately 450 access lines. DTC currently is billing for only 4 access lines in service, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] DTC is also provides wholesale special access service to one telecommunications carrier, [REDACTED].

4. Balsams View, LLC (“Balsams View”) is a New Hampshire limited liability corporation formed for the purpose of purchasing and renovating the Balsams Resort and its accompanying properties.

5. Tillotson and Balsams View entered into a Purchase and Sale Agreement dated as of November 23, 2011 (the “Agreement”) pursuant to which Tillotson agreed to transfer to Balsams View, among other things, the Balsams resort and all of the rights and franchises of DTC, subject to and conditioned upon the receipt of all necessary final approvals, authorizations and consents of all governmental entities required for such a transfer.

6. On August 12, 2012, DTC and Balsams View filed a Joint Petition for Transfer of Assets in DT 12-263. By agreement of the parties and the Staff of the Commission, this proceeding was suspended pending discussions between the parties and the Staff.

7. On information and belief, and according to news reports, there has been no material progress in the redevelopment of the resort.

8. In the absence of further development of the resort, it is very unlikely that DTC’s customer base will expand in the near future.

9. Furthermore, it is reasonably certain that any future development in DTC’s service area will, of necessity, require telecommunications services and infrastructure that DTC does not provide and is in no financial position to construct.

10. Even with subsidies amounting to [REDACTED] per month from the federal Universal Service Fund and pooled interstate access settlements from the National Exchange Carrier Association, DTC is losing money and has become a drain on the resources of NHCF.

11. The Agreement between Tillotson and Balsams View provides that if the approval to transfer DTC's assets is not obtained by December 31, 2012, DTC may elect at its sole discretion to terminate the transaction as it pertains to DTC, and either (a) abandon the telephone company franchise or (b) sell the telephone company franchise and the telephone company assets to a third party.

12. Despite concerted efforts by DTC, no third party has indicated an interest in purchasing DTC at any price, nor will any party even accept reasonable compensation to assume the company's operations or its assets.

13. There are acceptable third party alternatives to DTC's local exchange service that are comparable to, or exceed, the quality of service that DTC currently provides or can ever hope to provide in the foreseeable future.

II. GOVERNING STATUTE AND LEGAL STANDARD

RSA 374:28 provides, in pertinent part, that

The commission may authorize any public utility to discontinue, temporarily or during such portion of each year as the commission may deem expedient, any part of its service whenever it shall appear that such temporary or seasonal discontinuance will not unreasonably inconvenience the public, or to discontinue the same permanently and remove the equipment essential to the same, whenever it shall appear that the public good does not require the further continuance of such service.

In one of the few cases addressing this statute, the Commission had denied a railroad's petition to close its ticket office in Charlestown, New Hampshire. The New Hampshire Supreme

Court overturned this decision on appeal, holding that the public good standard of RSA 374:28 is:

a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case. *If it is reasonable that a person or a corporation have liberty to take a certain course with his or its property, it is also for the public good.* It is the essence of free government that liberty be not restricted save for sound reason. Stated conversely: It is not for the public good that public utilities be unreasonably restrained of liberty of action, or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service.¹

This language is lifted verbatim from *Grafton County Electric Light and Power Co. v. State*,² which the Commission has since labeled as the “no net harm” test:

All parties agree that the leading case on the public good standard is *Grafton County Electric Light and Power Co. v. State* The above language, which speaks in terms of the liberty of public utilities to act as other corporations if the action is not forbidden by law and warranted under the circumstances, supports a “no harm” test. Corporate liberty should not be restrained if the public is not harmed by the proposed transaction.³

Under the “no net harm” test, the Commission must approve the proposed transaction if the public interest is “not adversely affected.”⁴ This obligation requires the Commission to balance the interests of ratepayers against the right of shareholders to be free of regulation which unreasonably restrains legitimate corporate activities.⁵ Consequently, in assessing those risks and benefits to determine the overall effect on the public interest, the Commission must approve

¹ *Boston & Me. R.R.*, 102 N.H. 9 at 10 (1959) (emphasis supplied).

² 77 N.H. 539, 540 (1915).

³ *Eastern Utilities Associates*, DF 89-085, Order No. 20,094 76 NH PUC 236, 251 (1991). *See also New England Power Company*, DR 97-251, 83 NH PUC 392, 397 (1998).

⁴ *New England Electric System*, DE 99-035, 84 NH PUC 502, 510 (1999) (citing *Re CCI Telecommunications of N.H., Inc.*, 81 NH PUC 844, 845 (1996) (“In essence, the ‘no net harm’ test requires approval of a proposed transaction if the public interest is not adversely affected.”)).

⁵ *Id.*

the transaction if its effect “is at worst neutral from the public interest perspective.”⁶

III. REQUEST FOR RELIEF

Given the facts as stated above and the governing standard, DTC respectfully requests approval to permanently discontinue providing local exchange, intrastate toll, and exchange access services in New Hampshire. DTC’s customer base has been reduced to an uneconomic level and the company is a financial drain on the public at large and the charitable organization that owns it. Even if development does come to this area, DTC is not equipped to meet the reasonable telecommunications requirements of such a development. Affordable alternatives to DTC’s local service exist that are comparable to, or exceed, the quality of service that DTC currently provides or can ever hope to provide in the foreseeable future. Furthermore, this alternative has proved satisfactory in feasibility trials.

The Commission has previously established that a “significant factor which weighs heavily is that customers can be conveniently converted to an alternate . . .”⁷ As the Commission explained in *Claremont Gas Corp.* “it is equally settled that a public utility is not obligated to provide service at a loss. The United States Supreme Court gave express recognition to the principle that there are due process limits to a utility’s obligation to serve the public: ‘... if at any time it develops with reasonable certainty that future operation must be at a loss, the company may discontinue operation and get what it can out of the property by dismantling the road. To compel it to go on at a loss or to give up the salvage value would be to take its property without just compensation which is a part of due process of law.’”⁸

The New Hampshire Supreme Court has held that:

⁶ *Id.*

⁷ *Claremont Gas Corp.*, 79 N.H. P.U.C. 426, 430-431 (1994).

⁸ *Id.* at 430.

[t]he statutory term 'public good' has been given a broad definition by this court and has been held not only to include the needs of particular persons directly affected by curtailment of services but also to the needs of *the public at large and the general welfare of the utility involved.*"⁹

Thousands of dollars of public and charitable funds are being spent each year to sustain four end user lines, and for [REDACTED]. DTC's continued operation will burden the public in general and DTC's parent, a charitable organization devoted to the general statewide welfare of the public. On the other hand, discontinuance of its local service operation will pose little if any inconvenience to its few remaining customers. It is clear that the balance of interests favors a determination that the public good does not require the further continuance of DTC's service.

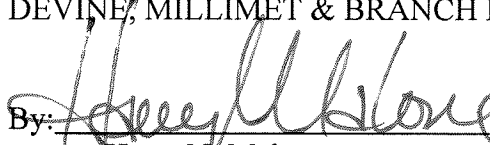
WHEREAS, Tillotson Corporation respectfully requests that the Commission

- i) approve this request to discontinue DTC's local telephone operations in the state;
and
- ii) provide such other relief as is just and equitable.

Respectfully submitted,

TILLOTSON CORPORATION

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⁹ Boston & Me. R.R., 102 N.H. at 10. (emphasis supplied).