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July 6, 2010

Debra A. Howland
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New Hampshire Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, New Hampshire 03301



Re: DT 08-130, MetroCast Cablevision of New Hampshire
DT 09-065, IDT America Corp.
DT 09-198, segTEL, Inc.
Report of Technical Session

Dear Ms. Howland:

On July 1, 2010, Staff and the parties to the above-referenced dockets met in a joint technical session following the pre-hearing conferences held before the Commission. Staff offers the following as a report of matters discussed and issues determined at that technical session.

As the Commission is aware, the above dockets share a common legal issue that is the subject of a recent opinion of the New Hampshire Supreme Court. *See Appeal of Union Telephone Company d/b/a Union Communications*, 161 N.H. __ (decided May 20, 2010). In that opinion, the Court recognized, among other things, that the state statutory requirements for notice and a hearing for applications of competitive local exchange carriers (CLECs) under RSA 374:22-g and 374:26 may be pre-empted by the federal Telecommunications Act of 1996, 47 U.S.C. § 251, *et seq.* The Court remanded the matter to the Commission to determine, in the first instance, whether the state requirements were pre-empted by federal law.

Regarding Docket Nos. DT 08-130 and DT 09-065, Union Telephone Company (Union), an incumbent local exchange carrier (ILEC) challenged the authorizations of MetroCast Cablevision of New Hampshire (MetroCast) and IDT America Corp. (IDT) to operate in Union's territory as having been granted in a manner contrary to the statutory requirements found necessary by the Supreme Court. At the technical session on July 1, 2010, Union, MetroCast and IDT represented that they had reached the framework for a

settlement which would, in part, resolve those dockets. In brief, pursuant to RSA 374:26, the Commission may authorize a CLEC application without a hearing if all interested parties are in agreement. Staff understands that Union, MetroCast and IDT are the interested parties in the relevant CLEC applications and that they will, as part of their settlement, agree that a hearing is not a necessary predicate of authorization in this case. As such, the settlement would comply with the terms of the statute, and the dispute over authorization being granted without the otherwise required hearing would be dissolved. Union, MetroCast and IDT represented their belief that a settlement could be reached by July 15, 2010, and that upon its filing and approval they would seek dismissal of DT 08-130 and DT 09-065. segTEL, Inc., which has requested to intervene in these dockets, has indicated that it would not challenge such a settlement.

Regarding Docket No. DT 09-198, Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Telephone Company, and Dixville Telephone Company (collectively the Rural ILECs), challenged the authorization granted to segTEL, Inc. (segTEL) to operate as a CLEC in the Rural ILEC territories, included in segTEL's statewide certification. During the pre-hearing conference segTEL contended, among other things, that the challenge to its authorization unfairly singled it out for discriminatory treatment since it was not the only CLEC granted such authorization. At the technical session it was agreed that the Rural ILECs would be willing to dismiss, without prejudice, the petition filed against segTEL and to file a new petition. That new petition would challenge the process for authorizing CLECs in "exempt" ILEC territories generally, and would include a challenge to any CLEC's authorization in the territory of the Rural ILECs, as a result of statewide certification, including segTEL's.

As a result of the above developments, Staff requests that the Commission withhold any further action on the above dockets pending the filing of a settlement covering Docket Nos. DT 08-130 and DT 09-065, and a request to dismiss Docket No. DT 09-198. Coincident with the dismissal of Docket No. DT 09-198, a new petition relating to the CLEC authorization process will be filed, and, therefore, the issue remanded to the Commission for determination will still be before the Commission. Accordingly, Staff believes the above treatment will be an administratively efficient remedy for the issues presented in these dockets, and will still allow the Commission to fulfill its duty to respond to the Supreme Court's order on remand.

Until the issue of possible federal pre-emption of state requirements for the CLEC authorization process is resolved:

- All CLEC applications will be docketed by the Commission and published on the Commission's website; and
 - For CLEC applications seeking authorization to operate in FairPoint Communications' service territory, the procedures of Puc 431 will be followed; or
 - For CLEC applications seeking authorization to operate in service territories other than that of FairPoint Communications, a hearing

will be scheduled, unless the interested parties agree that one is not needed, pursuant to RSA 374:26.

Thank you for your attention to these matters. Please do not hesitate to contact me if you have any questions.

Sincerely,
Matthew J. Fossum
Matthew J. Fossum
Staff Attorney