

**Joint Stipulation in NH PUC Docket No. 10-183**

[SIGNATORIES]<sup>1</sup>

1. Signatories to the Joint Stipulation are as follows:
  - a. The New Hampshire Public Utilities Commission (“PUC” or “Commission”) conducts proceedings pursuant to state law and Commission Rules and has assigned Staff members to this proceeding (hereinafter “Staff”).
  - b. New England Cable and Telecommunications Association (“NECTA”) is a trade association that represents the interests of cable television companies and affiliates, including New Hampshire registered competitive local exchange carrier (“CLECs”) affiliates of Comcast Corporation (“Comcast”), Time Warner Cable (“Time Warner”) and MetroCast Cablevision (“MetroCast”).
  - c. segTel, Inc. (“segTel”) is a registered CLEC in New Hampshire.
  - d. Petitioners Granite State Telephone, Inc, Dunbarton Telephone, Inc., Bretton Woods Telephone, Inc. and Dixville Telephone Company each is a New Hampshire rural incumbent local exchange carrier (“RLEC”).

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<sup>1</sup> Captions are included to facilitate clarity and are not intended to have substantive significance.

[HISTORY]

2. Formerly, RSA 374:22-f prohibited entry by competitive local exchange carriers (“CLECs”) into territories of telephone utilities with fewer than 25,000 access lines, also known as RLECs, apart from the general CLEC entry statute at RSA 374:22-g.
3. The most recent text of RSA 374:22-f is attached as Exhibit A.
4. RSA 374:22-f (Exhibit A hereto) was eliminated by 2008 legislative amendments.
5. Thereafter, an amended RSA 374:22-g (Exhibit B hereto) applies to CLEC requests to provide telecommunications services, including local exchange services and any other telecommunications service, in a telephone utility service territory in New Hampshire.
6. On May 20, 2010, the New Hampshire Supreme Court released its Opinion in the case Appeal of Union Telephone Company d/b/a Union Communications, Consolidated Docket Nos. 2009-168 and 2009-432 (the “Opinion”), a copy of which can be found at 2010 N.H. LEXIS 48.
7. On August 5, 2010, the Commission issued an Order of Notice in this docket indicating that the Supreme Court in the Opinion has ordered the Commission to “determine whether the state statutory requirements are pre-empted by federal law,” including 47 U.S.C. § 253 (Exhibit C hereto).

[CLEC REGISTRATION PROCEDURES]

8. The signatories to this Stipulation agree that if the statutory requirements are not preempted by federal law, the procedures below are mandated by New Hampshire law for CLEC registration requests in a telephone utility service territory.
  - a. Except as provided in Puc Rules Part 431, regarding registration in the service territory of a non-exempt ILEC, the CLEC will request entry into a telephone utility service territory via petition, application or other form of request.
  - b. Public notice, commonly in the form of a Commission Order of Notice, will be published relative to the CLEC request and the nature of applicable Commission review. This Notice will be served on the affected RLECs serving the service territories for which entry is requested.
  - c. The affected RLEC will be a mandatory party and other interested parties can petition to intervene in the proceeding.
  - d. An initial Commission pre-hearing conference and technical session will be held to decide interventions and determine a schedule for procedural steps.
  - e. The RLEC and other parties will be afforded an opportunity to file testimony (initial and, in certain cases, rebuttal) on any

relevant factor listed in RSA 374:22-g and other facts material to the CLEC request.

- f. The parties will have the opportunity to propound discovery on testimony and other evidence offered prior to a public evidentiary hearing.
- g. The parties will have the opportunity for a public evidentiary hearing to review and address evidence submitted for possible inclusion in the record.
- h. The parties can file briefs and/or requests for findings of fact or law.
- i. The Commission will issue an Order pursuant to RSA 363:17-b.
- j. Parties can petition for reconsideration or appeal of an adverse Commission ruling pursuant to RSA 541:1, RSA 541:6 or other applicable appeal statutes.

## EXHIBIT A

NEW HAMPSHIRE  
REVISED STATUTES  
ANNOTATED

TITLES 32-34  
CHATTEL MORTGAGES  
TO  
PUBLIC UTILITIES  
Chapters 360 to 382

2007  
CUMULATIVE SUPPLEMENT

*Updated with legislation through Chapter 382 of the  
2007 Session of the General Court, which  
convened on Jan. 3, 2007.*

**For Use Until Publication of 2008 Cumulative Supplement**

Cite Supplement as RSA, with chapter and section  
followed by (Supp.), thus:  
**RSA 21:3 (Supp.)**

*Insert in pocket in back of the 1995 main volume*

**This supplement contains the legislative  
update for the 2007 session.**

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**374:22-f Service Territories Served by Several Telephone Utilities With Fewer Than 25,000 Access Lines.** A telephone utility shall not construct or extend its facilities in order to furnish, or otherwise furnish or offer to furnish, its service to premises within the service territory of another telephone utility that provides local exchange service and that has fewer than 25,000 access lines, except when requested by the utility in the territory of which the premises are located and when the commission, upon petition, finds and determines that the service proposed to be rendered will be consistent with the criteria set forth in RSA 374:22-e and RSA 374:22-g.

## HISTORY

**Source.** 1990, 109:1. 1995, 147:2. **Amendments—1995.** Amended section generally.  
eff. July 23, 1995.

## ANNOTATIONS

## Cited

Cited in Appeal of Pub. Serv. Co.  
(1996) 141 N.H. 13, 676 A.2d 101.

**374:22-g Service Territories Served by Certain Telephone Utilities With More Than 25,000 Access Lines.**

I. Notwithstanding any other provision of law to the contrary, all telephone franchise areas served by a telephone utility that provides local exchange service and that has more than 25,000 access lines, subject to the jurisdiction of the commission, shall be nonexclusive. The commission, upon petition or on its own motion, shall have the authority to authorize the providing of telecommunications services, including local exchange services, and any other telecommunications services, by more than one provider, in any service territory, when the commission finds and determines that it is consistent with the public good.

II. In determining the public good, the commission shall consider the interests of competition with other factors including, but not limited to, fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility's opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.

III. The  
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374:22-f.

**Source.** 19  
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## EXHIBIT B





Revised Statutes Annotated of the State of New Hampshire Currentness

Title XXXIV. Public Utilities (Ch. 362 to 382) (Refs & Annos)

Chapter 374. General Regulations (Refs & Annos)

Telephone Utilities Service Territories (Refs & Annos)

→ **374:22-g Service Territories Served by Certain Telephone Utilities.**

I. To the extent consistent with federal law and notwithstanding any other provision of law to the contrary, all telephone franchise areas served by a telephone utility that provides local exchange service, subject to the jurisdiction of the commission, shall be nonexclusive. The commission, upon petition or on its own motion, shall have the authority to authorize the providing of telecommunications services, including local exchange services, and any other telecommunications services, by more than one provider, in any service territory, when the commission finds and determines that it is consistent with the public good unless prohibited by federal law.

II. In determining the public good, the commission shall consider the interests of competition with other factors including, but not limited to, fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility's opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.

III. The commission shall adopt rules, pursuant to RSA 541-A, relative to the enforcement of this section.

#### HISTORY

**Source.** 1995, 147:3. 2008, 350:1, eff. Sept. 5, 2008.

**Amendments--2008.** Deleted "With More Than 25,000 Access Lines" in the section catchline.

Paragraph I: Added "To the extent consistent with federal law and" preceding "notwithstanding", and deleted "and that has more than 25,000 access lines" following "exchange service" in the first sentence and added "unless prohibited by federal law" following "public good" in the second sentence.

Paragraph III: Deleted "and RSA 374:22-f" following "of this section".

#### LIBRARY REFERENCES

West Key Number

Telecommunications 785, 803.

Westlaw Topic

Westlaw Topic No. 372.

## NOTES OF DECISIONS

### In general 1

#### 1. In general

Public Utilities Commission (PUC) was required to hold a hearing before deciding whether to allow a telephone utility to compete in the service area of another telephone utility; contrary construction would have defeated the legislative intent of statute governing such proceedings, which was to require the PUC to conduct a searching inquiry before determining whether it was consistent with the public good to allow more than one provider to provide telecommunications services in a single area. In re Union Telephone Co. (2010) 2010 WL 1996606. Telecommunications ¶870(1)

In considering the factors comprising the “public good” determination in deciding whether to allow a telephone utility to compete in the service area of another telephone utility, the Public Utilities Commission (PUC) may rely not only upon written submissions, but may also rely upon its own expertise and that of its staff. In re Union Telephone Co. (2010) 2010 WL 1996606. Telecommunications ¶870(1)

N.H. Rev. Stat. § 374:22-g, NH ST § 374:22-g

Updated with laws currently effective September 10, 2010 through Chapter 381 of the 2010 Reg. Sess. and Chapter 1 of the Special Sess., not including changes and corrections made by the State of New Hampshire, Office of Legislative Services

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END OF DOCUMENT

## EXHIBIT C

**C****Effective: February 8, 1996**United States Code Annotated Currentness

Title 47. Telegraphs, Telephones, and Radiotelegraphs

Chapter 5. Wire or Radio Communication (Refs & Annos)■ Subchapter II. Common Carriers (Refs & Annos)■ Part II. Development of Competitive Markets (Refs & Annos)**→ § 253. Removal of barriers to entry****(a) In general**

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

**(b) State regulatory authority**

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

**(c) State and local government authority**

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

**(d) Preemption**

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

**(e) Commercial mobile service providers**

Nothing in this section shall affect the application of section 332(c)(3) of this title to commercial mobile service providers.

**(f) Rural markets**

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide

telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) of this title that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of this title; and

(2) to a provider of commercial mobile services.

#### CREDIT(S)

(June 19, 1934, c. 652, Title II, § 253, as added Feb. 8, 1996, Pub.L. 104-104, Title I, § 101(a), 110 Stat. 70.)

#### HISTORICAL AND STATUTORY NOTES

##### Revision Notes and Legislative Reports

1996 Acts. House Report No. 104-204 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

#### LAW REVIEW COMMENTARIES

FCC authority to regulate the Internet: Creating it and limiting it. James B. Speta, 35 Loy. U. Chi. L.J. 15 (2003).

#### LIBRARY REFERENCES

##### American Digest System

Telecommunications ¶71, 77, 87, 267.

Key Number System Topic No. 372.

##### Corpus Juris Secundum

CJS Telecommunications § 4, Prohibition of State or Local Barriers to Entity.  
CJS Telecommunications § 5, Prohibition of State or Local Barriers to Entity--Preemption.  
CJS Telecommunications § 34, Compensation for Use and Occupancy of Streets.

#### RESEARCH REFERENCES

##### ALR Library

32 ALR, Fed. 2nd Series 125, Construction and Application of Communications Act of 1934 and Telecommunications Act of 1996--United States Supreme Court Cases.

31 ALR, Fed. 2nd Series 237, What Constitutes Plain, Speedy, and Efficient State Remedy Under Tax Injunction