

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

July 27, 2011 - 10:06 a.m.
Concord, New Hampshire

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RE: DT 11-151
MERRIMACK COUNTY TELEPHONE COMPANY:
Petition for an Alternative Form of
Regulation. (*Prehearing conference*)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. Merrimack County Telephone Company:
Paul J. Phillips, Esq. (Primmer, Piper...)

Reptg. Daniel Bailey:
Alan Linder, Esq. (N.H. Legal Assistance)

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Stephen Eckberg
Office of Consumer Advocate

Reptg. PUC Staff:
Matthew J. Fossum, Esq.
Kate Bailey, Director/Telecom Division
David Goyette, Telecom Division
Michael Ladam, Telecom Division

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

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1 P R O C E E D I N G

2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll open the prehearing conference in Docket
4 DT 11-151. On July 5th, 2011, Merrimack County Telephone
5 filed a petition for an alternative form of regulation.
6 An order of notice was issued on July 7 setting the
7 prehearing conference for today.

8 I'll note that we have a Notice of
9 Participation from the Office of Consumer Advocate, and
10 that the affidavit of publication has been filed. And, we
11 also have a Petition for Intervention by the New Hampshire
12 Legal Assistance.

13 So, can we begin with appearances.

14 MR. PHILLIPS: Good morning, Mr.
15 Chairman and Commissioners. I'm Paul Phillips, from the
16 law firm of Primmer, Piper, Eggleston & Cramer, here
17 representing the Petitioner, Merrimack County Telephone
18 Company. And, I'm joined by Mr. Tom Murray, who is the
19 External Relations Manager for TDS Telecom, which is the
20 parent company of MCT.

21 CHAIRMAN GETZ: Good morning.

22 MS. HATFIELD: Good morning,
23 Commissioners. Meredith Hatfield, for the Office of
24 Consumer Advocate, on behalf of residential customers.

1 And, with me for the Office is Steve Eckberg.

2 CHAIRMAN GETZ: Good morning.

3 MR. LINDER: Good morning, Mr. Chairman
4 and Commissioners. My name is Alan Linder. I'm with New
5 Hampshire Legal Assistance. We represent Dan Bailey, a
6 residential customer of Merrimack County Telephone
7 Company. Good morning.

8 CHAIRMAN GETZ: Good morning.

9 MR. FOSSUM: And, good morning. Matthew
10 Fossum, for the Staff of the Public Utilities Commission.
11 And, with me this morning are Kate Bailey, David Goyette,
12 and Michael Ladam from Commission Staff.

13 CHAIRMAN GETZ: Good morning. First,
14 let's address the Petition for Intervention from New
15 Hampshire Legal Assistance. Is there any objection to
16 that Petition to Intervene?

17 MR. PHILLIPS: Mr. Chairman, Merrimack
18 County does object for a number of reasons. One is that
19 the filing was made late, late in the day yesterday, which
20 was well after the deadline set by the Commission. I've
21 not had a chance to consult with my client team about it,
22 and particularly with the members of the team who
23 participated in the last MCT case, in DT 07-027, nor have
24 we had a chance to consult with NHLA as to the grounds for

1 their intervention or ways we might narrow it, how we
2 could negotiate that. So, just based on the filing
3 itself, we oppose it because it is tardy, and that
4 tardiness is prejudicial to us, because the evidence that
5 we presented shows that, on average, MCT is losing about
6 70 access lines per month, and has been since December of
7 2004. And, so, time is of the essence for us to get the
8 -- to get our case in chief before the Commission.

9 And, what it means for us is that we
10 would want an opportunity to respond to the NHLA petition
11 in writing. We'll, obviously, talk about this at the tech
12 session that follows, but we anticipate we'd need about a
13 week or ten days to prepare a written opposition. And,
14 then, obviously, there is some time for the Commission to
15 deliberate on the matter. All of which is undue delay
16 caused by the late filing, which means that we would then
17 wait longer to get our case going before the Commission.
18 So, that's Issue Number 1.

19 Issue Number 2 for us is that NHLA did
20 intervene without objection in the last MCT case, in
21 07-027. And, in that case, there was a settlement that
22 was reached with both Staff and with the Office of
23 Consumer Advocate and MCT to resolve the issues in the
24 case. The only holdout was NHLA. And, despite very

1 vigorous and reasonable attempts to get a settlement on
2 the part of MCT, we were not able to get a settlement with
3 NHLA. And, the consequence of that was that we spent well
4 over three years litigating that case.

5 And, at the conclusion of that case, in
6 the order in the Kearsarge alternative regulation matter,
7 the order of December 22nd, 2010, the Commission
8 ultimately ruled that the issues that NHLA had raised were
9 inconsistent with the purposes of the statute. And,
10 that's the statute that's at issue in this case.

11 And, so, we feel that NHLA's
12 participation in that case also created undue delay and
13 prejudice to MCT. We anticipate that they would be
14 raising similar issues here, even though the Commission
15 has already resolved many of those issues in MCT's favor.

16 And, finally, we're here before the
17 Commission on an amended statute. The Legislature has
18 just amended 374-B:3. And, the way that they have amended
19 it is actually to narrow the interests that low income
20 consumers would raise. The issues raised by NHLA in the
21 last case involved the affordability and the availability
22 of stand-alone basic service and how that was proven
23 through comparability with competing services. All of
24 those issues have been taken away in the amended statute.

1 The amended statute now focuses squarely on the loss of
2 access lines. And, that is the proxy for robust
3 competition. The evidence that we've presented is that --
4 is that MCT has lost over 5,000 access lines since
5 December of 2004. And, so, when it comes to the issues
6 that NHLA would raise, what the Commission found in the
7 December order was that -- was that the interests of low
8 income consumers are already protected by statute. And,
9 so, the focus of the statute is on competition, not on
10 stand-alone basic service or pricing, affordability, or
11 any of those other issues.

12 What the Legislature did recently in
13 SB-22, when it amended the statute, was to actually lower
14 the cap from 10 percent to 5 percent, the cap by which MCT
15 stand-alone basic rates can exceed the current FairPoint
16 rate. And, so, the Legislature has taken additional
17 measures legislatively to protect low income consumers.
18 And, so, the Commission's concerns raised in the December
19 order are even stronger now under the new statute.

20 So, our view is that the interests that
21 NHLA has raised, and, you know, I mean no disrespect to
22 them, are very, very narrow. And, in fact, in our view,
23 they are entirely indistinguishable from the general
24 public interest that is served by the Staff's presence, by

1 the general consumer interests that are served by OCA's
2 participation in the case. There really is no greater
3 interest that NHLA brings to the case than is already
4 represented by other parties in the case.

5 And, so, our view is that the Commission
6 ought to deny their Petition to Intervene. In the event
7 the Commission intends to grant their intervention, we
8 would ask that their intervention be very strictly
9 narrowed, and narrowed in several respects. To focus only
10 on the issue they have raised, which is the affordability
11 of stand-alone basic service, and narrowed in a procedural
12 way, to limit the scope of their discovery, to limit their
13 -- any testimony they might file, to limit their
14 cross-examination of our witnesses, so that it's focused
15 solely on that one issue.

16 Now, in our view, that issue is a simple
17 mathematical calculation that the Legislature has created,
18 it's a 5 percent cap. We don't believe there is a factual
19 dispute about that. But, if the Commission believes
20 there's an open question, and that's the basis for NHLA's
21 intervention, we would ask the Commission to narrow their
22 intervention to just that question.

23 CHAIRMAN GETZ: Well, before I let
24 others have an opportunity to weigh in, let me ask a

1 couple of questions. First, on your first point, you
2 seemed to be suggesting that NHLA would be in the tech
3 session following this prehearing conference, even if we
4 didn't rule in their favor today or deferred ruling. So,
5 is that your assumption that --

6 MR. PHILLIPS: My assumption is that,
7 absent a clear denial of their petition from the Bench
8 today, in the prehearing conference, that they would be
9 participating in the tech session.

10 CHAIRMAN GETZ: And, then, following
11 that, it seems, on your second point, and we haven't heard
12 what position NHLA will take today, but it seems like the
13 basis of your assumption of undue delay is weighted on the
14 fact that they have disagreed with you substantively in
15 the past about what should happen with alt. reg. And, I
16 mean, that seems like hardly a basis for denying a
17 petition for intervention.

18 MR. PHILLIPS: Respectfully, Mr.
19 Chairman, it's not just that they disagreed with our
20 position in the past. It's that the Commission itself
21 ruled that the issues they were raising were inconsistent
22 with the statute that we're advancing today as well. So,
23 in other words, we are trying to avoid a situation where
24 NHLA is re-litigating issues that we spent more than three

1 years litigating previously.

2 CHAIRMAN GETZ: Well, I guess that gets
3 to the last point. When you say "narrow their
4 participation", I mean, aren't you basically saying that
5 we should only deal with issues that are relevant to this
6 proceeding?

7 MR. PHILLIPS: Well, what I'm saying is
8 that you should only allow them to advance arguments that
9 are relevant to the basis for their intervention. And, in
10 our view, what they're saying is that they're concerned
11 only about the affordability and the availability of
12 stand-alone basic service. Our basic position is that
13 that issue is already fully protected by statute. But, if
14 the Commission believes there is still an open question
15 about how those rates are calculated or how access line
16 counts are calculated or something of that nature, that
17 you limit their intervention to just those issues.

18 CHAIRMAN GETZ: And, you're, in that
19 respect, relying on Item Number 5 in their petition from
20 yesterday, where it says "The Petitioner seeks to assure
21 universal access to affordable stand-alone basic telephone
22 service"?

23 MR. PHILLIPS: Yes. That's right.

24 CHAIRMAN GETZ: Mr. Linder, opportunity

1 to reply.

2 MR. LINDER: Thank you, Mr. Chairman and
3 Commissioners. I believe that, other than the fact that,
4 and we apologize for this, that the Petition for
5 Intervention has been filed four days late, but
6 nevertheless prior to the prehearing conference, we have,
7 I believe, met the criteria of the statute that governs
8 intervention. We have shown a direct interest or our
9 petition alleges a direct interest of a residential
10 customer of the petitioning company, who receives service
11 from the Company, who will be affected by any change in
12 rates, who will be directly affected, whether adversely or
13 otherwise, could be directly affected, if the Petition
14 were granted, and the plan that was -- accompanied the
15 Petition is approved as is, without any changes.

16 So, having alleged a direct interest,
17 which could be adversely affected by the granting of the
18 Petition and the plan as proposed, results in a
19 residential customer directly affected who would not be
20 allowed to participate, and not be allowed to raise issues
21 that the customer feels directly impacts the customer.

22 So, I think our opinion is that we have
23 met the criteria of the intervention statute, but for the
24 fact that it has been filed four days late, and that the

1 criteria then would be whether there is -- that would
2 result in some undue delay or undue prejudice. And, I
3 don't think the fact that the Company dis -- that we may
4 or may not disagree with the Company's position is a
5 grounds to oppose intervention.

6 So -- and, I was going to wait until the
7 Commission allowed the parties the opportunity to make a
8 statement of preliminary position to set forth our precise
9 interest in this matter, which I can do at this point.

10 But --

11 CHAIRMAN GETZ: Well, actually, I was
12 going to suggest that I think that would inform us, if we
13 went around in the normal order to hear the positions of
14 the parties, and I think that might be helpful. But, in
15 the interim, Ms. Hatfield or Mr. Fossum, do you have any
16 thing to say about the Petition to Intervene?

17 MS. HATFIELD: I do, Mr. Chairman. But
18 I'd be happy to wait until Mr. Linder discusses their
19 preliminary statement of position, if that is okay with
20 the Commission?

21 CHAIRMAN GETZ: Okay. We can do that.
22 Commissioner Below.

23 CMSR. BELOW: I have a question for
24 Mr. Piper -- I mean, I'm sorry, Mr. Phillips.

1 MR. PHILLIPS: That's quite all right.

2 CMSR. BELOW: I think you asserted that
3 the Legislature has sort of addressed this by providing
4 that maximum stand-alone rates don't increase by more than
5 5 percent in each year above -- up to the comparable rates
6 charged by the largest incumbent carrier, pursuant to RSA
7 374:3-b, III(b), right?

8 MR. PHILLIPS: Yes.

9 CMSR. BELOW: And, the petition on
10 behalf of Daniel Bailey says "the Petitioner seeks to
11 assure universal access to affordable stand-alone basic
12 telephone service." And, yet, the new statute, the
13 revised statute has a separate section that is part of
14 374:3-b, III, that says, starting at III, "The Commission
15 shall approve the alternative regulation plan if it
16 finds", and then it has (a), (b), which is the provision
17 for the maximum stand-alone basic local rate and the rate
18 of increase over four years after the plan is approved.
19 Then, it has (c). And, then, (d) is a separate finding
20 that the Commission has to make, is that "The plan
21 preserves universal access to affordable stand-alone basic
22 telephone service." And, doesn't that suggest that we
23 have to make a finding on that issue that goes above and
24 beyond the finding relative to what the maximum

1 stand-alone basic local service rate would be?

2 MR. PHILLIPS: Well, it does,
3 Mr. Commissioner. I agree with that, with that reading of
4 the statute. You know, our position is not that there's
5 not an issue in the case. It's that that issue is already
6 adequately represented, in fact, fully represented by the
7 Office of Consumer Advocate. And, so, there's simply no
8 need for an additional party to come into the case to
9 argue essentially the same position, and, thereby, you
10 know, expend resources and time that are not needed.

11 CMSR. BELOW: Okay. Thank you.

12 CHAIRMAN GETZ: All right. Well, let's
13 turn then to opportunity for the parties to explain their
14 positions, and then we'll return to the issue of the
15 intervention after we've gone through that. So,
16 Mr. Phillips.

17 MR. PHILLIPS: Thank you, Mr. Chairman.
18 Merrimack County Telephone Company seeks approval of a
19 proposed alternative regulation plan pursuant to RSA
20 374:3-b, as recently amended by the New Hampshire General
21 Court. The amendments to the statute, which were enacted
22 as Senate Bill 22, took effect on June 14th, 2011.

23 MCT is an incumbent local exchange
24 carrier serving fewer than 25,000 access lines, and so is

1 eligible to seek alternative regulation under 374:3-b.
2 MCT previously petitioned for approval of alternative
3 regulation under an earlier version of the statute. That
4 petition date was March 1st of 2007. The Commission
5 denied the petition more than three years later, on May
6 14th, 2010.

7 Under the amended statute, MCT must show
8 that it has 25,000 -- I'm sorry, 25 percent fewer access
9 lines in service today than it did on December 31st, 2004.
10 The Company has prefiled the testimony of Mr. Tom Murray
11 to show that MCT has lost over 5,000 access lines between
12 December 2004 and December 2010, a figure that represents
13 a loss of more than 28 percent of MCT's access lines. As
14 the testimony also explained, this figure is a
15 conservative count, because MCT revised the methodology it
16 uses to count its access lines in 2005. But, under the
17 figures that were actually filed in the Annual Report in
18 2004, MCT has lost nearly 6,300 access lines, or nearly 33
19 percent of its access lines in service since
20 December 2004. And, so, MCT has amply demonstrated that
21 it qualifies for approval of an alternative regulation
22 plan on that standard.

23 The plan that MCT proposes is materially
24 identical to the plans that were already approved by the

1 Commission for other MCT affiliates in New Hampshire,
2 including Wilton and Hollis, Kearsarge, and in Union
3 Telephone most recently. These plans, like the MCT
4 proposed plan, fully satisfied the requirements of
5 374:3-b.

6 There is one difference I would say in
7 the plan, and that is, because MCT serves a larger number
8 of towns than the other affiliates do, we have not
9 proposed a Lifeline/Link-Up Outreach Program as part of
10 the plan, but we anticipate discussing this issue with
11 Staff and OCA during the tech session. We believe this
12 issue is one that can be fairly easily resolved through
13 settlement.

14 The extent of access line loss in MCT's
15 service area reflects a robust competition, and represents
16 a serious challenge to MCT's continuing ability to serve
17 as a carry of last resort to its rural customers.
18 Approval of an alternative form of regulation will allow
19 MCT to meet the challenges of competition in its area, by
20 creating regulatory flexibility in its rates, services,
21 and operations, while maintaining solid protections for
22 ratepayers in the form of rate caps. Under the amended
23 statute, competitive entry into MCT's service territory is
24 substantially eased under the new statute.

1 And, so, just in sum, MCT urges the
2 Commission to approve the alternative regulation plan and
3 to do so expeditiously. Thank you.

4 CHAIRMAN GETZ: Thank you. Mr. Linder.

5 MR. LINDER: Thank you, Mr. Chairman and
6 Commissioners. The order of notice that was issued in
7 this case indicates that the Commission will be
8 considering a number of issues in this case. One of which
9 is the one that Commissioner Below pointed out, and that
10 is whether the Company's plan preserves universal access
11 to affordable basic stand-alone telephone service. And,
12 that is the reference in the statute to RSA 374:3-b, as in
13 "boy", III, Subsection (d), as in "dog", as amended in
14 June of 2011. That, as Commissioner Below pointed out,
15 Subsection (d), III(d), as in "dog", is different than --
16 from III, Subsection (b), as in "boy", which I will refer
17 to as the "rate cap" subsection. That is different from
18 the access to affordable basic stand-alone telephone
19 service in Subsection III(d), as in "dog".

20 The Legislature it's a basic principle
21 of statutory construction that the Legislature would not
22 have two separate sections if they meant the same thing.
23 And, our focus in this proceeding is intended to be on
24 Subsection 3 -- III, Subsection (d), as in "dog". And,

1 the question is "whether the Company's plan, as filed with
2 the Commission, does, in fact, preserve universal access
3 to affordable basic stand-alone telephone service?" And,
4 that is separate from the "rate cap" subsection, which
5 imposes a 5 percent rate increase per year for the first
6 four years, and then after which the Company's rates can
7 increase up to what is now the FairPoint level, and that's
8 apart from exogenous charges.

9 In our opinion, the Company's plan is
10 deficient with respect to III, Subsection (d). And,
11 without the addition of several provisions, which I'm
12 going to mention in a moment, it is our opinion, and our
13 purpose for being involved in this proceeding, is that the
14 plan would not preserve universal access to affordable
15 basic stand-alone service. And, the two provisions which
16 we feel should be in the plan that are not are that,
17 number one, efforts to expand participation of the
18 Company's customers in the Company's federally funded
19 Lifeline Discount Program. The Commission could take
20 administrative notice of certain portions of DT 07-027,
21 but it was clear from the record in that case that there
22 are a very small number of the Company's customers who
23 participate in the Lifeline Program. And, that number,
24 really, in our opinion, needs to be and can be expanded.

1 And, without a provision in the plan committing the
2 Company to serious efforts to increase Lifeline
3 participation, that alone, in our opinion, would make the
4 plan deficient.

5 Heard counsel state that counsel is
6 willing to discuss that, and that counsel agreed that that
7 was not in the plan. Again, if the Commission chose to
8 take administrative notice of certain portions of DT
9 07-027, the Commission would find that all of the plans by
10 -- that were proposed by all of the TDS companies,
11 including Merrimack County Telephone Company, did contain
12 a provision with respect to Lifeline.

13 The second provision that we feel should
14 be in the plan, in order to promote these -- in order to
15 carry out the statutory provision of preserving access to
16 affordable basic stand-alone service, is a rate freeze
17 provision for a limited period of time. When counsel for
18 the Company referred to earlier in his statement to the
19 Settlement Agreement that was proposed in DT 07-027, and
20 counsel is correct that New Hampshire Legal Assistance's
21 client did oppose that Settlement Agreement, but even that
22 Settlement Agreement had in it, for all four then TDS
23 companies, including Merrimack, a rate freeze provision,
24 and the rate freeze consisted of a rate freeze for a

1 limited period of time, one to two years, for basic
2 exchange customers, and it also included a provision for a
3 rate freeze for four years for Lifeline customers. That
4 does not appear at all in the Company's plan.

5 And, it would be our position that such
6 a provision for a rate freeze for a limited period of time
7 for those two categories of residential customers should
8 be part of the plan. And, it would be our position that
9 the Commission should not approve the plan in the absence
10 of the plan being amended to include the provisions for a
11 limited rate freeze for those categories of residential
12 customers, and a provision to expand participation in the
13 Company's federally funded Lifeline Rate Discount Program.

14 And, so, with that, I think that is the
15 statement position on behalf of our client, Daniel Bailey.
16 Thank you very much.

17 CHAIRMAN GETZ: Thank you.

18 Ms. Hatfield.

19 MS. HATFIELD: Thank you, Mr. Chairman.
20 The OCA does not have a position at this time. We are
21 hopeful that the parties can meet in a technical session
22 and discuss areas of agreement and areas that we might
23 litigate.

24 I did want to speak briefly to the

1 motion for intervention. The OCA supports it. And, we're
2 disappointed that it seems as though the Company's main
3 basis for objecting to it is an assumption of the
4 substantive position that New Hampshire Legal Assistance
5 might take on behalf of its client.

6 And, we -- Mr. Phillips did make several
7 statements, when he was discussing the Company's
8 objection, although he did note that he hasn't consulted
9 with his client yet, so perhaps there is room for them to
10 reconsider their strong objection. But he did make
11 several statements regarding why the statute was amended,
12 and I believe he said "it was amended to narrow issues
13 that low income customers would raise." And, I would like
14 an opportunity to respond to that if he provides that in
15 writing. And, he also, I think, I think a few others have
16 mentioned it correctly, but I think Mr. Phillips discussed
17 the statute allowing the Company to raise its rates so
18 that it would "exceed the FairPoint rate by 5 percent",
19 which I don't believe is correct. So, if he does file a
20 response, we might like to have the opportunity to
21 respond, if some of those statements are made, just so
22 that the record clear.

23 CHAIRMAN GETZ: When you say "file a
24 response", meaning a written response to an objection to

1 the Petition to Intervene?

2 MS. HATFIELD: Yes. And, my hope would
3 be that we could discuss this during the technical session
4 and make that not necessary. But I did just want to raise
5 those issues that, if factual statements are made and/or
6 statements about interpreting the statute, we would just
7 want an opportunity to respond to those at some point.

8 And, then, I would also note that it's
9 our view that any technical session held after the
10 prehearing conference is public. So, whether or not you
11 have ruled on New Hampshire Legal Assistance's motion, we
12 believe that they would be entitled to participate. Thank
13 you.

14 CHAIRMAN GETZ: Okay. Thank you.
15 Mr. Fossum.

16 MR. FOSSUM: Thank you. As far as
17 concerns -- I'll address first the Motion for
18 Intervention. Staff has no objection to NHLA's Motion to
19 Intervene.

20 As for the Petition, though Staff has
21 been reviewing the Petition, we do not, at this time, have
22 a position on it. We do acknowledge that the law in this
23 area has been recently amended. And, at least initially,
24 it appears that Merrimack County's line loss is sufficient

1 to meet that particular factor of the amended statute.

2 With that said, though, Staff will
3 certainly continue to evaluate the plan, as well as
4 further suggestions or amendments that may be made to it
5 for its compliance with the terms of the amended statute.
6 And, we'll look forward to working with the parties in the
7 technical session following this conference to develop a
8 schedule and hopefully to narrow some of the issues that
9 have come up.

10 (Chairman and Commissioners conferring.)

11 CHAIRMAN GETZ: Mr. Phillips, we'll give
12 you, as the Petitioner, the opportunity to speak last.

13 MR. PHILLIPS: Thank you.

14 CHAIRMAN GETZ: Either to substantive
15 issues or the procedural issues.

16 MR. PHILLIPS: Yes. Thank you. Let me
17 first address Ms. Hatfield's concerns. First, I obviously
18 misspoke on the FairPoint rate. And, so, I do apologize
19 for that. I think that the statute makes it clear what
20 the rate cap provides. So, there's not really an issue
21 for discussion there. When I talked about the Legislature
22 "narrowing the interests of low income consumers", what I
23 meant by that was that the -- that there's no -- there's
24 no longer as great an issue for low income consumers

1 because the Legislature gave them more protections when
2 they amended the statute. They lowered the rate cap.
3 They actually added the words "stand-alone" in two
4 different places, so that, you know, now the Commission
5 actually gets to look at that as an issue. And, you know,
6 I think equally as importantly, they added Subsection VI,
7 which provides for no hearing when a competitive entrant
8 wants to enter a small ILEC's territory under an AFOR
9 plan.

10 So, in these ways, the Legislature was
11 demonstrating that the statute already protects rate
12 issues, pricing issues, issues that affect low income
13 consumers, and does so, you know, even more than it did
14 before. And, yet, even under the earlier statute, as the
15 Commission found in the December 22nd order, you know, you
16 said the statute -- that "basic service is protected by
17 other portions of the statute", and so the issue -- the
18 only -- the primary focus of the statute is on
19 competitiveness issues, not on pricing issues or rate
20 issues. And, so, -- and that's the December 22nd order at
21 Page 23.

22 And, so, the statute already protects
23 those interests. And, what I was saying was that the
24 Legislature took additional measures to create even more

1 protections. And, as these protections were enacted, the
2 interest, the cognizable interest that Mr. Bailey or NHLA
3 might have in the outcome of the proceeding was made
4 narrower. And, in our view, it has been, you know,
5 effectively extinguished and made indistinguishable from
6 the interests that is represented by OCA.

7 And, so, that's our position. And, we
8 don't feel a need to litigate issues again about
9 stand-alone basic service. We think the Commission spoke,
10 you know, fully on that issue in the December 22nd, 2010
11 order. After three years of litigation on the matter, we
12 think we're done on that. And, we simply want to get to
13 as expeditious a proceeding as we can get to. And, that's
14 why we're trying to preserve everybody's time and expenses
15 in this matter. Thank you.

16 CHAIRMAN GETZ: All right. Thank you.

17 CMSR. IGNATIUS: I did have a question,
18 Mr. Phillips. The last point you just made about feeling
19 a need for "expeditious treatment", and I think everybody
20 would agree with that, I have to say I don't understand,
21 though, why the intervention request by Legal Assistance
22 would delay the proceeding? You said earlier that,
23 "because you would need to file an objection, you would
24 need -- we would need time to deliberate, we would need

1 time to issue an order, and that would cause you prejudice
2 and cause you to wait longer to get the case going" was
3 how you put it. We're about to go into a tech session,
4 not wait for a ruling on this, on this question, I think
5 you conceded earlier.

6 MR. PHILLIPS: Yes.

7 CMSR. IGNATIUS: So, how does this issue
8 delay you getting the case going?

9 MR. PHILLIPS: Well, the point I made
10 about the "need to file a written response and the need
11 for the Commission to deliberate on the question" really
12 had to do with the lateness of the petition. Because, in
13 our view, if the petition had been timely filed, we would
14 have had an opportunity to talk about the matter with NHLA
15 before we got into the room here, and we might have well
16 been able to narrow their issues or resolve their issues
17 in some fashion, and so we wouldn't have to oppose it
18 entirely. That's where the prejudice comes in, from our
19 perspective, with the lateness.

20 With respect to NHLA's intervention as a
21 general matter, the concern we have is that, first of all,
22 as I've said, their interest, we believe, is very narrow.
23 We believe that it is, you know, adequately represented by
24 other parties. And, you know, in candor, we are, you

1 know, chastened by the experience of trying to resolve
2 these issues with NHLA from a prior case. It was a
3 difficult matter. It did not ultimately result in a
4 resolution of the issues. We feel that the plan, which
5 has now been approved by the Commission in four other
6 cases, for four other companies, was actually a product of
7 those negotiations. It showed that it was -- it was a
8 result of compromise in which we were trying, you know,
9 reasonably and fairly aggressively to get to a settlement
10 with NHLA. It didn't reach that point, unfortunately, but
11 the plan nonetheless reflects, you know, the movement of
12 the Company toward NHLA's position.

13 And, so, I would just say that, just as,
14 you know, this is what we're saying, reacting to a
15 late-filed petition, without, you know, the ability to
16 talk about it with the Petitioner.

17 With respect to the Lifeline/Link-Up
18 issue that Mr. Linder raised, every single AFOR plan that
19 the TDS companies have gotten approval for has included a
20 Lifeline/Link-Up Outreach Program. We are confident that
21 this one will as well. The issue, as I said, is that
22 Merrimack County Telephone serves a greater geographical
23 area. And, so, in the Union case, in DT 11-024, as the
24 Commission found, that plan had a much more specific, much

1 more deadline-driven, much more concrete Lifeline and
2 Link-Up Outreach Program than the Wilton, Hollis, and
3 Kearsarge plans had. That reflects TDS's responsiveness
4 to the Commission's concerns in the earlier plans.

5 Our concern with MCT is that to do that
6 on a greater geographical area creates a greater burden
7 for us. And, so, we want to have that discussion with
8 Staff and with OCA. It's not our intention simply to
9 ignore the issue. In fact, it's our intention to respond
10 to the issue. And, we would have addressed that with
11 Mr. Linder, if the petition had been timely filed, we
12 would have been able to take that up with him prior to
13 this prehearing conference.

14 But I want to assure him and assure the
15 Commission that we are cognizant of the concern, obviously
16 well aware of the concern. We have responded to the
17 concern in a prior case, and plan to do so as well in this
18 case.

19 (Chairman and Commissioners conferring.)

20 CMSR. IGNATIUS: Mr. Phillips, a couple
21 of times you've said that -- you've referenced the prior
22 case in a long, protracted struggle, and specifically the
23 Legal Assistance's unwillingness to enter into a
24 Settlement Agreement. Are you suggesting that there was

1 intentional delay or abuse of the process on the part of
2 Mr. Linder or his client?

3 MR. PHILLIPS: No, I'm not.

4 CMSR. IGNATIUS: And that the issues
5 that Legal Assistance raised were the cause of that docket
6 taking so long and being somewhat tortured in its process?

7 MR. PHILLIPS: No, I'm not suggesting
8 anything of the sort. And, as I said initially, part of
9 my concern coming into the hearing today is that I've not
10 had a chance to talk to the client team that worked on
11 that case. My impression was that there was a fully
12 stipulated settlement with the public parties that was not
13 approved by NHLA, and that the fact that the case could
14 not be fully settled was the reason that it had to be
15 litigated. And, that's, obviously, a procedural issue.
16 But I'm not trying to impugn motive or anything, an intent
17 like that behind the reasoning.

18 What I am suggesting, however, is that,
19 in a case like this, when you have both Staff and OCA
20 participating fully, and representing both the public
21 interest, the general interest of the public, as well as
22 the particular interest of consumers, it becomes -- it
23 becomes more complicated when individual ratepayers are
24 advancing their individual interests. And, I'm not

1 suggesting they don't have a right to do that. I'm simply
2 suggesting that their interests in this case can be and in
3 our view should be subsumed within the participation of
4 OCA.

5 CMSR. IGNATIUS: Thank you.

6 (Chairman and Commissioners conferring.)

7 CHAIRMAN GETZ: Okay. With respect to
8 the Petition to Intervene, we find that the Petition to
9 Intervene would be in the interest of justice and would
10 not impair the orderly and prompt conduct of the
11 proceeding. So, we would grant NHLA's Petition to
12 Intervene. I would note, however, under 541-A:32, does
13 provide that the Commission could limit the participation.
14 I would say, however, based on what we've heard so far,
15 I'm not sure what that limitation, if any, would be, if
16 there's a basis for it, or how it actually would work
17 administratively. But I think it's premature for us to do
18 anything with that respect. And, actually, I would
19 expect, Mr. Phillips, you know, based on what happens in
20 the technical session, I guess would serve to inform you
21 on whether there is any basis for making such a request
22 under 541-A:32 to limit the participation of NHLA in any
23 way.

24 But, in any case, we're not seeing that

1 basis today, but we're not prejudging what may come out of
2 some filing by you or some response by the other parties
3 with respect to that issue.

4 Is there anything else that we need to
5 address today?

6 (No verbal response)

7 CHAIRMAN GETZ: Okay. I think, with
8 that, we will close the prehearing conference. Await a
9 recommendation out of the technical session, and then take
10 the procedural matters under advisement. Thank you,
11 everyone.

12 (Whereupon the prehearing conference
13 ended at 10:52 a.m., and a technical
14 session was held thereafter.)
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