STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

In re: Intrastate Access Rate Reform

Order on Confidential Treatment of Access Revenue Calculations

O R D E R N O. 25,363

May 11, 2012

On April 20, 2012, Staff of the Commission submitted a memorandum to the Commission noting various requirements created by the Federal Communications Commission (FCC) relative to intrastate access rate reform in a recent FCC order. *See Connect America Fund et al.,* WC Docket No. 10-90 *et al.,* Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, (rel. Nov. 18, 2011) (CAF Order). In its memorandum, Staff recommended that the Commission open a docket to investigate the tariff revisions required by the CAF Order. Staff also recommended that the Commission issue an order requiring all carriers intending to charge intrastate access after July 1, 2012, to: (1) supply certain revenue and demand information, in Excel format, by May 15, 2012; and (2) file proposed tariff changes with supporting documentation by June 1, 2012. On April 23, 2012, the Commission, by secretarial letter, agreed with the Staff recommendation and ordered that the carriers supply the information described by Staff in the timeframes requested by Staff. The secretarial letter noted that as filings are submitted they would each be assigned a separate docket number.

To aid carriers in submitting the required information Staff developed a template that it distributed to carriers. According to Staff, other than the information about the rate elements and intra- and interstate rates, it anticipated that carriers would request confidential treatment of the information outlined on the template. In particular, Staff stated that many carriers would likely

seek confidential treatment for information about the demand levels for their services. Rather than require that each carrier submit a motion for confidential treatment pertaining to substantially similar information, Staff recommended that the Commission, pursuant to Puc 201.04 and 201.05, waive the requirement that the carriers submit motions for confidential treatment, and establish an alternative procedure for addressing the confidential information submitted with these filings. Staff specifically recommended that the Commission order carriers to submit:

- A public version of the filing showing each rate element and the Interstate and Intrastate rates applicable to the specified rate elements (columns A-E and I in the un-shaded portions of Staff's template as applicable), but otherwise redacted; and
- A confidential version of the filing showing all information, including the demand information and associated revenue calculations (columns F-H and J in the shaded portion of the template, and the shaded portion at the top for displaying the results of various calculations).

Staff recommended that the confidential version of the filing be held as confidential without an accompanying motion for confidential treatment.

According to Staff, this information is confidential, commercial, or financial information under RSA 91-A:5, IV, because it is competitively sensitive information. Staff further stated that disclosing the information could result in injury to a carrier's competitive position and may divulge information about a carrier's internal practices or priorities and that the Commission has previously found such potential injuries to be a sufficient basis for confidential treatment.

Although an analysis of confidentiality is usually made following the submission of a motion for confidential treatment, Staff recommended that pursuant to Puc 201.05, the Commission waive that requirement for these filings. Staff stated that under Puc 201.05, the Commission may waive its rules, on its own motion, when the waiver serves the public interest and when it will not disrupt the orderly and efficient resolution of the matters before the Commission. In determining the public interest the Commission shall waive a rule if compliance would be onerous or inapplicable in the circumstances or the purpose would be satisfied by an alternative method. Puc 201.05(b).

Staff argued that, in this instance a waiver serves the public interest because compliance would be onerous. More particularly, Staff stated that carriers have a limited time (until May 15) to provide the information required by the CAF Order in the format requested by Staff and that many carriers will be compiling multiple similar submissions for each of the states in which they operate. According to Staff, requiring those carriers to produce and submit a motion in these circumstances would be onerous. Staff also stated that waiving the motion requirement will aid in the orderly and efficient resolution of the matters before the Commission because carriers will be able to focus on providing the totality of the information required within the relevant timeframe, and Staff and the Commission will not be required to address numerous motions presenting similar arguments for the confidential treatment of substantially identical types of information. Staff also stated that because the rate information will not be confidential the public will still have relevant information about the rates.

Staff also noted that it was asserting this position solely for purposes of the above-described filings and did not intend its memorandum to represent Staff's position on any future

filings or requests for confidential treatment. In addition, under Staff's proposal any carrier seeking confidential treatment regarding information other than that described in Staff's memorandum and on Staff's template would be required to file a motion for confidential treatment in accordance with Commission rules.

We agree with Staff's memorandum and recommendation in these unique circumstances. Staff anticipates receiving multiple filings on the same issue, with each filing presenting essentially the same information. Staff also anticipates that the submitting carriers will seek to protect the same categories of information. We agree that in this instance requiring carriers to abide by our rules and individually file motions for confidential treatment will be onerous and needlessly repetitive. Accordingly, pursuant to our authority in Puc 201.05 we waive the requirement that carriers individually file motions for confidential treatment for these submissions.

Having concluded that individual motions are not required, and that a wider grant of confidential treatment is appropriate, we must now determine what information is subject to that treatment. We do so by applying our test for confidential treatment that:

> In determining whether commercial or financial information should be deemed confidential, we first consider whether there is a privacy interest that would be invaded by the disclosure. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in nondisclosure.

Northern New England Telephone Operations, Order No. 25,308 (December 28, 2011) at 8 (citation omitted).

Staff has recommended that the Commission grant protection to information about the demand levels for the carriers' services, and the calculations relying upon those demand levels as shown on Staff's template in columns F-H and J of the shaded portion, as well as the shaded portion at the top for displaying the results of various calculations. According to Staff, this information qualifies as "other documents entitled to confidential treatment pursuant to 91-A" under Puc 201.04 because it is confidential, commercial, or financial information under RSA 91-A:5, IV. Staff stated that the information is competitively sensitive and that disclosing it could result in injury to a carrier's competitive position and may divulge information about a carrier's internal practices or priorities. Staff further stated that because the rate and rate element information is available, there will still be meaningful information available to the public.

We agree that, in this instance, the carriers have a privacy interest in the information. Disclosing information about the demand for certain types of their services would give competitors insight into a carriers' business that they would not otherwise have.

Having found a privacy interest, we now must assess whether there is a public interest in disclosure of the information. We conclude that there is a public interest, albeit a somewhat limited one. The FCC has ordered that carriers make certain changes to the rates and that the states oversee those changes. As such, there is a public interest in understanding whether the carriers have made the changes required by the FCC and in understanding whether the state has confirmed that those changes are appropriate.

Balancing the above interests, we conclude that the interest in confidentiality outweighs that of the public in this case. First, it is possible that at least some of the carriers would not have disclosed the information, even to the State, absent a mandate from the FCC. Further, the

public will have available to it information about the rate elements at issue, the previous rates, and the new rates that will apply once the reforms are implemented on July 1, 2012. Thus, the public will have some information and the need for any further information is lessened.

For the above reasons, we grant confidential treatment of the demand level information in columns F-H and J of the shaded portion of Staff's template, as well as the shaded portion at the top of Staff's template for displaying the results of various calculations, without carriers being required to file motion for confidential treatment. For clarity, this grant of confidential treatment extends only to the specific information identified above. If a carrier seeks confidential treatment of any information outside of that defined, it must file a motion in compliance with the Commission's rules. Further, this grant of confidential treatment is limited to the filings described above and made in compliance with the CAF Order and shall not apply to any future filings by any company in any other case.

Based upon the foregoing, it is hereby

ORDERED, that confidential treatment of the demand level information in columns F-H and J of the shaded portion of Staff's template, as well as the shaded portion at the top of Staff's template for displaying the results of various calculations, is granted without carriers being required to file motions for confidential treatment.

By order of the Public Utilities Commission of New Hampshire this eleventh day of May, 2012.

Amy L. Ignatius	Michael D. Harrington (KNS)	Robert R. Scott
Chairman	Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director

Smith, Kim

From: Smith, Kim
Sent: Friday, May 11, 2012 4:10 PM
To: Bailey, Kate; Fossum, Matthew; Goyette, David; 'rcarmichael@186comm.com'; 'regulatoryaffairs@accesspointinc.com'; 'dnorton@accesspluscom.com'; 'cat@airespring.com'; 'regulatory@telecomgroup.com'; 'owen.x.smith@att.com'; 'contact@nationwideregulatorycompliance.com'; 'regulatory@telecomgroup.com'; 'esamp@gwi.net'; 'jharper@broadviewnet.com'; 'cgarrett@broadvox.com'; 'linda.cicco@bt.com'; 'dbailey@bullseyetelecom.com'; 'rick.gutierrez@qwest.com'; 'betty.sanders@chartercom.com'; 'pfoley@corp.earthlink.com'; 'ted.heckmann@cinbell.com'; 'stacey_parker@cable.comcast.com'; 'smc@wca.com'; 'regulatory@comtech21.com'; 'sforquer@covista.com'; 'trina.bragdon@ottcommunications.com'; 'ed.tisdale@ottcommunications.com'; 'jkorn@crexendo.com'; 'katherine.mudge@megapath.com'; 'tbattles@dscicorp.com'; 'regulatory@entelegent.com'; 'skingery@ernestgroup.com'; 'jnewkirk@fibertech.com'; 'joe.topel@orange.com'; 'jennifer@bayring.com'; 'gent@otel.us'; 'gmccarty@globalcapacity.com'; 'diane.peters@globalcrossing.com'; 'regulatory@granitenet.com'; 'alee@btigroup.com'; 'regulatory@h3net.com'; 'Carl.Billek@idt.net'; 'rcowley@ingts.com'; 'regulatory@intelepeer.com'; 'emostrom@ins-us.net'; 'kteal@itllc.net'; 'regulatory@telecomgroup.com'; 'lbrown@lightower.com'; 'linda.hunt@lightyear.net'; 'ldellaero@matrixbt.com'; 'john.l.conroy@verizon.com'; 'anita.kaplan@paetec.com'; 'jbarstow@metrocast.com'; 'mtr@commpliancegroup.com'; 'jon_brinton@mitel.com'; 'llackey@sover.net'; 'fernanda.manko@sidera.net'; 'cdmonroe@newhampshirefastroads.net'; 'rcarmichael@nhosystems.com'; 'rsheehan@nhcgrp.com'; 'kelly.faul@xo.com'; 'banderson@nan.com'; 'jrenneker@nos.com'; 'jbrown@vcomsolutions.com'; 'ted.hankins@centurylink.com'; 'bpaul@oxfordnetworks.com'; 'mtennis@rnkcom.com'; 'fstocker@vermontel.com'; 'tlyons@securesyscom.net'; 'kath@segtel.com'; 'vleon@spectrotel.com'; 'benjamin.aron@sprint.com'; 'sgareleck@telcentrex.com'; 'eric.fishman@hklaw.com'; 'dhyde@teljet.com'; 'julie.laine@twcable.com'; 'charlie@tops-tele.com'; 'erobinson@tncii.com'; 'regulatory@telecomgroup.com'; 'phill@usacsp.com'; 'chip@velocity.org'; 'joan.m.engler@one.verizon.com'; 'rclark@wcs.com'; 'gjoseph@wimactel.com'; 'kathy.hobbs@windstream.com'; 'kris.shulman@xo.com'; 'regulatory@ymaxcorp.com'; 'regulatoryaffairs@zonetelecom.com'; Stachow, Leszek; 'anich@bwtc.net'; 'awalsh@tillotsoncorp.com'; 'scnelson@gsinet.net'; 'bstafford@gsn.net'; 'tom.murray@tdstelecom.com'; 'rtulk@fairpoint.com'; 'rtaylor@fairpoint.com'; 'dwinslow@bayring.com'; 'gmk@fhllplaw.com'; 'rbrazill@att.com'
Subject: Order on Confidential Treatment of Access Revenue Calculations
Attachments: 25-363.pdf

An Order was issued today In re: Intrastate Access Rate Reform. It is an Order on Confidential Treatment of Access Revenue Calculations.

A copy of Order No. 25,363 is attached.

Kim Smith
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