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Via Hand Delivery

June 20, 2007

Debra A. Howland, Executive Director
& Secretary
Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

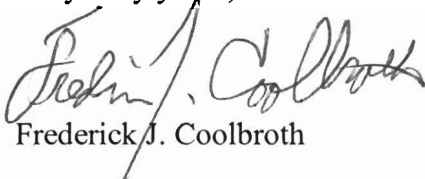
**Re: DT 07-027 - Kearsarge Telephone Company, Wilton Telephone Company,
Inc., Hollis Telephone Company, Inc., Merrimack County Telephone
Company – Petitions for Alternative Form of Regulation**

Dear Ms. Howland:

Enclosed for filing in the above-referenced matters are an original and seven (7) copies of the Reply Brief by Kearsarge Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc. and Merrimack County Telephone Company Regarding Legal Issues Presented by Petitions.

A compact disk containing the brief is also enclosed.

Very truly yours,


Frederick J. Coolbroth

FJC:kaa

Enclosures

cc: Service List

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-027

Kearsarge Telephone Company, Wilton Telephone Company, Inc.,
Hollis Telephone Company, Inc. and Merrimack County Telephone Company

Petitions for Alternative Form of Regulation Pursuant to RSA 374:3-b

**REPLY BRIEF BY KEARSARGE TELEPHONE COMPANY, WILTON
TELEPHONE COMPANY, INC., HOLLIS TELEPHONE COMPANY,
INC. AND MERRIMACK COUNTY TELEPHONE COMPANY
REGARDING LEGAL ISSUES PRESENTED BY PETITIONS**

This reply brief is submitted on behalf of Kearsarge Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc. and Merrimack County Telephone Company (collectively, the "Petitioners"). This reply brief responds to the initial briefs filed by the Commission Staff ("Staff"), segTEL, Inc. ("segTEL") and Granite State Telephone, Inc. ("GST") and the joint brief filed by New Hampshire Legal Assistance (on behalf of Ross Patnode) and the Office of Consumer Advocate ("NHLA/OCA"). The initial briefs address issues generally regarding RSA 374:3-b as well as the two questions posed by the Commission in its decision approving the procedural schedule in this docket. The issues raised in the initial briefs, to which this reply brief responds, are as follows:

1. Does each of the Petitioners meet the definition of "small incumbent local exchange carrier" in RSA 374:3-b, I?
2. Is "competitive wireline, wireless or broadband service" as referenced in 374:3-b, III (a) confined to products which constitute "basic local exchange service"?

3. Is a small incumbent local exchange carrier required to waive the exemption provided by Section 251(f) of the Telecommunications Act of 1996 in order to receive approval of an alternative regulation plan under RSA 374:3-b?

4. Does service provided by an affiliate of a small incumbent local exchange carrier qualify as a competitive service under RSA 374:3-b, III(a)?

5. Does the provision allowing basic rate changes to reflect specified exogenous events cease to operate when basic rates are at the level of the largest incumbent local exchange carrier?

The initial briefs of Staff, NHLA/OCA and segTEL urge the Commission to make determinations that would either disqualify the Petitioners from seeking alternative regulation under this statute or significantly increase the burdens on the Petitioners by adding approval requirements that are not contained in the statute. The plain language of the statute, the policy stated by the Legislature in adopting the statute and the extensive legislative history make clear that these attempts to add additional requirements should be rejected. In fact, many of the issues raised in their initial briefs were presented to the Legislature in the form of additional proposed statutory requirements that were not adopted in the final legislation.

In addressing these arguments, it is fundamental to remember the following legislative findings:

“The general court finds that the growth of unregulated wireless and broadband telecommunications services has provided consumers alternatives to traditional telephone utility services. The policy of this state is to promote competition and the offering of new and alternative telecommunications services while preserving universal access to affordable basic telephone services. The continuation of full utility regulation of small incumbent local exchange carrier telephone utilities is not consistent with these objectives. In light of the rapid changes in the telecommunications industry, these policy objectives will best be achieved by implementing alternative regulation plans for small incumbent local exchange carriers that encourage competition, preserve universal

telephone service, and provide incentives for innovation, new technology and new services....”

Laws 2005, 263:1.

Similarly, the legislative Regulatory Practices Pertaining to the Telecommunications Industry Study Committee formed pursuant to Laws 2005, 263:2 (the “Study Committee Report”) stated as follows in its report issued October 28, 2005:

“We strongly encourage small ILECs to proceed with alternative regulation proposals as defined in RSA 374:3-b already in effect. As a state, we cannot gauge the success of alternative regulation until someone tries it and exposes its benefits and/or shortcomings.”

Id., p. 3. A copy of the Study Committee Report is attached as an appendix to this Reply Brief.

Simply put, the barriers proposed by segTEL, NHLA/OCA and Staff are not consistent with the public policy underlying RSA 374:3-b. The Petitioners urge the Commission to reject these additional requirements and rule on the proposed plans based on the statute as written.

From this perspective, the Petitioners address each of these questions in turn.

ARGUMENT

1. Each of the Petitioners Qualifies as a “Small Incumbent Local Exchange Carrier” under RSA 374:3-b.

Under RSA 374:3-b, I, the term “small incumbent local exchange carrier” is defined as “an incumbent local exchange carrier serving fewer than 25,000 access lines.”

Kearsarge Telephone Company (“KTC”) is an incumbent local exchange carrier that has been granted franchise authority by the Commission to provide telecommunications service in the exchanges of Andover, Boscawen, Chichester, Meriden, New London and Salisbury. KTC serves approximately 9,900 access lines.

Wilton Telephone Company, Inc. ("WTC") is an incumbent local exchange carrier that has been granted franchise authority by the Commission to provide telecommunications service in the Wilton exchange. WTC serves approximately 3,400 access lines.

Hollis Telephone Company, Inc. ("HTC") is an incumbent local exchange carrier that has been granted franchise authority by the Commission to provide telecommunications service in the Hollis exchange. HTC serves approximately 3,300 access lines.

Merrimack County Telephone Company ("MCT") is an incumbent local exchange carrier that has been granted franchise authority by the Commission to provide telecommunications service in the exchanges of Antrim, Bradford, Contoocook, Henniker, Hillsborough, Melvin Village, Sutton and Warner. MCT serves approximately 16,800 access lines.

None of the parties to these proceedings disputes that each of the Petitioners serves fewer than 25,000 access lines and is an incumbent local exchange carrier. However, NHLA/OCA raises the question, and segTEL asserts, that the access lines served by the four Petitioners should be aggregated for purposes of the definition of "small incumbent local exchange carrier" in RSA 374:3-b,I (i.e., that it serves fewer than 25,000 access lines), ostensibly because each of the Petitioners shares a common corporate parent. Such an approach would be contrary to the express terms of the statute, as well as established corporate law principles.¹

Each of the four Petitioners is a separate New Hampshire corporation, none of which owns any percentage of the shares of any other. As a matter of corporate law, each Petitioner is a fully independent corporate entity. Each Petitioner received its franchise authority separately from this Commission. Pursuant to that authority, each has a long history of service to customers

¹ The four petitions have been filed separately by each Petitioner, and each Petitioner has presented evidence with regard to the exchange or exchanges that it serves. The Petitioners have requested that the proceedings on the four petitions be consolidated as a matter of administrative convenience.

within its franchise service territory. None of the Petitioners is authorized to engage in business as a telecommunications utility within the service territory of any of the other Petitioners. Each of the Petitioners provides service pursuant to its own retail and wholesale tariffs.

To be sure, the Petitioners are “affiliates” pursuant to RSA 366:1, since the equity securities of each company are owned entirely by TDS Telecommunications Corporation. The Petitioners’ status as affiliates, however, is irrelevant. This Commission has always treated the Petitioners as separate public utilities for all purposes under New Hampshire’s utility statutes and regulations. Their rates are regulated separately. They file separate PUC reports. They maintain separate tariffs. Nothing in RSA 374:3-b even remotely purports to establish a different analysis. To the contrary, the statute requires only that an ILEC serve 25,000 or fewer access lines and neither states nor implies that affiliates’ access lines should be aggregated. See Rodgers v. Colby’s Ol’ Place, Inc., 148 N.H. 41, 44 (2002) (“Courts can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.”).

The Petitioners urge this Commission to consider the thoughtful and thorough arguments of GST on this point. See, Initial Brief of Granite State Telephone, Inc., pp. 9-11.

Each of the Petitioners must separately meet the requirements of the statute, and the failure of any one Petitioner to meet its burden does not affect the other Petitioners. Each of the Petitioners is a “small incumbent local exchange carrier” as defined in RSA 374:3-b, I, and each of these petitions is properly before this Commission.

2. “Competitive Wireline, Wireless or Broadband Service” Is Not Limited to Basic Local Service.

Staff, NHLA/OCA and segTEL all seem to argue that in order for a small ILEC to demonstrate that a competitive wireline, wireless or broadband service is available, the

referenced competitive service must constitute “basic local exchange service” as a separate, stand-alone service that is not bundled with other services. This requirement is not stated in the statute and should be rejected.

Basic service is the low-priced platform used by customers to obtain services on the public switched telephone network. Local area calling is included while many other services are provided at additional cost. Intermodal services such as wireless and broadband do not use this model. The other features that customers desire are bundled with the local calling capability. The competitors do not compete to provide this low-priced platform as a separate, stand-alone service. They package their services and use the service packages to spirit away usage of the small ILEC’s network. Some customers keep their local service because it is inexpensive (although the trend shows more customers are giving up the wireline service). They primarily then use somebody else’s network for making local calls and for higher revenue-producing services, such as vertical services and toll calling, and the ILEC’s revenues suffer accordingly. The small ILEC is left with only a flat-rated basic local service revenue amount that does not cover the network cost. The Petitioners urge the Commission to focus on the actual substitution of services that customers are making, not the separate provision of basic local service.

Adoption of the position proposed by Staff, NHLA/OCA and segTEL would be contrary to the express legislative findings in Laws 2005, 263:1 (“...the growth of unregulated wireless and broadband telecommunications services has provided consumers with alternatives to traditional telephone utility services”). The position that broadband and wireless services are not competitive unless they offer a separate, low-priced basic local service simply is not consistent with that finding (or with competitive reality). Competitors do not seek out customers for this separate low-priced service. Indeed, the “Contact Us” page on segTEL’s web site

(<http://www.segtel.com/contactus.html>) includes a dozen services about which prospective customers may inquire; a separate basic local service offering is not one of them.

In the legislative process relating to the 2006 amendment to RSA 374:3-b, this Commission proposed in a letter dated February 8, 2006 to the House Science, Technology and Energy Committee an amendment to the statute that would have required small ILECs to demonstrate the availability of a substitute for basic local service in order to depart from rate of return regulation. This proposed language was not adopted.

RSA 374:3-b handles basic service in a different way. If there were competitors for this stand-alone service, there would be no need for a price cap on basic local service. The legislation recognizes this difference and protects the availability of basic local service through (i) the price cap set forth in RSA 374:3-b, III(b) and (ii) the general requirement that in RSA 374:3-b, III(d) for the ILEC to show that the plan “preserves universal access to affordable basic telephone service.”²

The Petitioners urge the Commission to adopt the definition of competitive service as set forth in the Initial Brief of the Petitioners dated June 8, 2007 and reject the narrow definition proposed by Staff, NHLA/OCA and segTEL.

3. Small Incumbent Local Exchange Carriers Are Not Required to Waive the Rural Exemption under Section 251(f) of the Telecommunications Act of 1996 in Order to Receive Approval of an Alternative Regulation Plan.

² In that regard, the Petitioners point out that each of them will continue to offer Lifeline and Link-up services for low income customers.

NHLA/OCA and segTEL argue that the Petitioners must waive their exemption rights under Section 251(f) of the Telecommunications Act of 1996 in order to show that competitive alternatives are available. This argument has been and must be rejected.

Again, there is no such requirement in the plain language of RSA 374:3-b. Moreover, if there were any ambiguity on this point (which there is not), the legislative history makes clear that this issue was brought up many times during the legislative process, and any such requirement was rejected. The Study Committee Report expressly rejects such a requirement, stating that “[w]e prefer to see the results of small ILEC alternative regulation plans under RSA 374:3-b, before adding additional requirements to current law.” Appendix, p. 16. Imposing a rural exemption waiver requirement would be directly contrary to this expression of legislative policy.

From a public policy perspective, the rural exemption is a process that a rural ILEC must undertake to maintain its rural exemption, but it does not hinder a *bona fide* competitor from interconnecting with the ILEC. Rather, the federal rural exemption process merely allows a state commission the opportunity to ensure that the public interest is served. For example, if a rural ILEC were to waive its rural exemption it may be required to interconnect with a competitor when it is inconsistent with the federal universal service provisions, which is the obligation of the state commission to determine on a case-by-case basis not by a “global waiver” of the rural exemption. Moreover, the New Hampshire statute requires the Commission to approve an alternative form of regulation that “preserves universal access to affordable basic telephone service”, which coincides with the Congressional intent of the rural exemption. No state commission should waive its jurisdiction in this matter given that it only takes 120 days to ensure that a competitor’s request to interconnect is technically feasible, not economically

burdensome and is consistent with the federal universal service provisions and with the New Hampshire statutes. Only by undertaking this process on a case-by-case basis can the Commission ensure that the interconnection of networks is in the interest of the public.

4. Competitive Services May Include Services Provided by Affiliates.

The Petitioners have addressed this issue in their initial brief and will not repeat those arguments here. With regard to US Cellular, the Petitioners point out that US Cellular is a national company competing with wireline carriers throughout the country. There is no evidence that US Cellular's competitive behavior is any different in the service territories of the Petitioners than it is elsewhere. Customers use their US Cellular phones as substitutes for landline service in the exchanges of the Petitioners every bit as much as they do elsewhere. The generalized statements made on page 3 of the Staff's brief regarding the behavior of affiliates appear to be assertions of fact that have no evidentiary basis whatsoever in this case.

5. The Provision for Basic Rate Adjustments to Reflect Specified Exogenous Changes Does Not Cease to Operate when Basic Rates Are at the Level of the Largest Incumbent.

Under RSA 374:3-b, III (b), an alternative regulation plan must provide for the protection of basic local exchange rates with the following requirement:

"The plan provides for maximum basic local service rates at levels that do not exceed the comparable rates charged by the largest incumbent local exchange carrier operating in the state and that do not increase by more than 10 percent in each of the 4 years after a plan is approved with the exception that the plan may provide for additional rate adjustments, with public utilities commission review and approval, to reflect changes in federal, state, or local government taxes, mandates, rules, regulations, or statutes...."

The NHLA/OCA brief argues that the provision for basic rate adjustments to reflect specified exogenous changes only operates with regard to the ten percent cap but not to the cap relating to the rates charged by the largest incumbent local exchange carrier. This construction

has no basis in the language of the statute and would vitiate the purpose of the technical amendments made to the statute in 2006.

As pointed out fully in the initial brief of GST, the original version of RSA 374:3-b included a ten percent annual rate cap during the first four years of a plan regardless of exogenous changes in taxes, regulations, mandates, etc. This cap produced a level of risk that small incumbent local exchange carriers simply could not take prudently. This issue was addressed in the Study Committee Report. The Study Committee stated as follows:

“The New Hampshire Telephone Association has expressed concerns that the wording of the current law may be interpreted to limit a small ILEC’s ability to reasonably increase its basic service rates. As a result, small ILEC’s have hesitated in filing for alternative regulation under RSA 374:3-b.

We recommend that the Legislature clarify the language in RSA 374:3-b and we will introduce appropriate legislation for the 2006 Legislative session.”

Id., p. 3. Recommended legislation was included. Id., p. 5.

The interpretation of the statute urged by NHLA/OCA would result in the same exogenous factor risk that led to the technical amendment. There is no evidence of any such intention, and this proposed interpretation should be rejected.

The NHLA/OCA brief also proposes additional requirements that are beyond the language of the statute and should be rejected. These include (i) vague requirements alleged to be based on anti-trust considerations (pp. 15-18), which have no basis in the statute; (ii) requirements that rates be “just and reasonable”, which simply returns ratemaking to the rate-of-return approach, contrary to the intent of the statute; and (iii) interpretation of the statute in conformity with Puc 206.06, which ignores the fact that the unsuitability of Puc 206.06 to the telecommunications industry was the genesis of the legislation that became RSA 374:3-b.

CONCLUSION

The legislative policy reflected in RSA 374:3-b is that the time has arrived to try alternative regulation for small ILECs in New Hampshire and learn from actual experience of operations under these plans. The plans proposed by the Petitioners carry out that directive by being drafted in strict conformity with the statute. The imposition of extensive requirements that go beyond the statutory provisions would be contrary to the intent of the Legislature. The Petitioners respectfully submit that such additional requirements should be rejected and that their plans be approved.

Respectfully submitted,

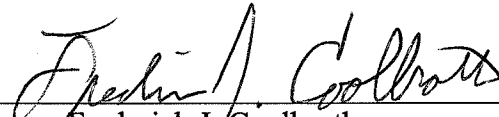
Kearsarge Telephone Company
Wilton Telephone Company, Inc.
Hollis Telephone Company, Inc.
Merrimack County Telephone Company

By their attorneys,

**DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION**

Dated: June 20, 2007

By:



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State of New Hampshire

GENERAL COURT

CONCORD

MEMORANDUM

DATE: OCTOBER 28, 2005

TO: HONORABLE JOHN H. LYNCH, GOVERNOR
 HONORABLE W. DOUGLAS SCAMMAN, JR., SPEAKER OF THE HOUSE
 HONORABLE THEODORE L. GATSAS, PRESIDENT OF THE SENATE
 HONORABLE KAREN O. WADSWORTH, HOUSE CLERK
 HONORABLE STEVEN J. WINTER, SENATE CLERK
 MICHAEL YORK, STATE LIBRARIAN

CC: CHAIRMAN OF TELECOMMUNICATIONS PLANNING AND DEVELOPMENT ADVISORY COMMITTEE
 CHAIRMAN OF TELECOMMUNICATIONS OVERSIGHT COMMITTEE
 CHAIRMAN OF HOUSE SCIENCE, TECHNOLOGY & ENERGY COMMITTEE
 CHAIRMAN OF SENATE ENERGY AND ECONOMIC DEVELOPMENT COMMITTEE

FROM: REP. JAMES M. GARRITY, CHAIRMAN

RE: FINAL REPORT OF THE REGULATORY PRACTICES PERTAINING TO THE TELECOMMUNICATIONS INDUSTRY STUDY COMMITTEE (HB 194, CHAPTER 263:2, LAWS OF 2005)

Pursuant to Chapter 263:2, Laws of 2005, enclosed please find the Final Report of the REGULATORY PRACTICES PERTAINING TO THE TELECOMMUNICATIONS INDUSTRY Study Committee.

COMMITTEE MEMBERS

Rep. James M. Garrity (r+d), Chairman

Rep. John H. Thomas (r)

Rep. Jim Ryan (d)

Sen. Bob Odell (r)

Sen. Robert J. Letourneau (r)

Sen. Peter H. Burling (d)

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Final Study Committee Report

REGULATORY PRACTICES PERTAINING TO THE TELECOMMUNICATIONS INDUSTRY
(HB 194, Chapter 263:2, Laws of 2005)
November 1, 2005

Background, Market Realities / Purpose of Study

263:1 Purpose and Findings. The general court finds that the growth of unregulated wireless and broadband telecommunications services has provided consumers alternatives to traditional telephone utility services. The policy of this state is to promote competition and the offering of new and alternative telecommunications services while preserving universal access to affordable basic telephone services. ...With regard to large incumbent local exchange carriers, a study committee is hereby established to determine the appropriate form of regulation in this changing environment.

Committee Duties

263:4 Duties. The committee shall examine regulatory practices as they pertain to:

- I. The importance of basic telephone services offered by land line telephone companies to households and firms not served by the rapidly evolving unregulated telecommunication industries.
- II. The cost of these services to their users and to the regulated telephone companies.
- III. Innovative regulatory approaches, which have been implemented in other jurisdictions, which lessen business restrictions of the companies in return for price stability.
- IV. The impact of competition and the potential for alternatives other than the typical rate of return regulation that will provide incentives for infrastructure investment and the offering of new and innovative services while preserving universal access to affordable basic telephone services.
- V. Whether a small incumbent local exchange carrier's alternative regulation plan should include a reasonable and timely transition of the small incumbent local exchange carrier's intrastate access rates to the interstate level.
- VI. Whether a small incumbent local exchange carrier should be required to agree to relinquish its rural exemption under the federal Telecommunications Act immediately upon approval of an alternative regulation plan.
- VII. Whether an alternative regulation plan should include a proposed wholesale tariff setting forth the rates, terms, and conditions of service available to competitive carriers offering service in the small incumbent local exchange carriers' service territory; including whether the tariff should be approved by the commission and made available on a nondiscriminatory basis to competitive carriers.
- VIII. Whether RSA 374:22-f should apply to a small incumbent local exchange carrier with an approved alternative regulation plan.

Committee Members

House Members

- Rep. James M. Garrity (r+d) (Chairman)
- Rep. John H. Thomas (r)
- Rep. Jim Ryan (d)

Senate Members

- Sen. Bob Odell (r)
- Sen. Robert J. Letourneau (r)
- Sen. Peter H. Burling (d)

Public Hearings

The committee held its organizational meeting on August 31, 2005 and scheduled bi-weekly public hearings for September and October. Public hearings were held in the Legislative Office Building (Concord, NH) on the following dates.

- September 15, 2005 (Thursday) 9:00 am
- September 29, 2005 (Thursday) 9:00 am
- October 13, 2005 (Thursday) 9:00 am
- October 27, 2005 (Thursday) 9:00 am

The committee accepted testimony from stakeholders in the NH communications market (Regulators, Incumbent Local Exchange Carriers, Competitive Local Exchange Carriers, State Agency personnel, citizens, Internet Service Providers, Cable Television/Telecommunications providers, and industry observers). Testimony was accepted in person at public hearings, in written form and in electronic form (by email). The committee supplemented the information it received via testimony with independent and detailed research about the current and future communications marketplace. Research was shared between committee members via e-mail between public hearings. Minutes and attachments of the public hearings were published and distributed via email to a large distribution list of communications stakeholders.

Findings

The committee finds the following:

- The rapid advance of new communications technology continues to introduce more competition into the traditional telecommunications markets.
- In New Hampshire, the overall communications market is very competitive and, in general, gives many consumers the advantages to choose between competing services. The most robust telecommunications competition (and opportunity for best value price shopping) is present in the business markets, where economies of scale allow new competitors to play. In the consumer market, telecommunication competitive choice is most strongly present in urbanized areas of the state, and mostly in the Verizon franchise areas.
- Rural areas of the state have less competitive choices for basic and advanced telecommunications services, since it is more expensive for competitors to enter these markets.
- Recent rulings on the federal level by the FCC and pending action in the United States Congress to rewrite the Federal Telecommunications Act continue to preempt state control of telecommunications and communications issues. States are being left with a smaller piece of the pie to regulate.
- There is a growing trend among the several states and at the federal level toward reduced regulation of the communications markets.
- Reduced price regulation in favor of market-based pricing should be a goal of this state.
- The policy of this state is to promote competition and the offering of new and alternative telecommunications services.
- The policy of this state is to preserve universal access to affordable basic telephone services.
- The New Hampshire Public Utilities Commission (NHPUC) acknowledges the rapid changes in the telecommunications marketplace and the need for alternative forms of regulation.
- The NHPUC is currently (11/01/2005) in discussions with Verizon Communications to formulate an alternative regulatory framework.
- HB 194, Chapter 263, Laws of 2005 gives the small incumbent local exchange carriers the opportunity to submit alternative regulation plans for their franchise areas.

- The current taxation of internet access under the New Hampshire Communications Service Tax (CST) is considered by some to be illegal or an over-interpretation of the federal "grandfathering" provision.

Recommendations

Long Term:

- The New Hampshire Legislature should consider a full rewrite of its telecommunication regulatory laws to reflect the realities of the digital age and marketplace which already exist. Such rewrite should broaden the scope from telecommunications (in specific) to communications (in general). Such a new law should reduce regulation, encourage competition, eliminate protected franchise territories, guarantee 911 and E-911 services, mandate carrier of last resort obligations, and allow market-based pricing backed by strong consumer protection enforcement. We encourage the existing policy committees and commissions (Telecommunications Planning and Development Advisory Committee; Telecommunications Oversight Committee; House Science, Technology & Energy Committee; Senate Energy and Economic Development Committee) to formulate proposals for such a rewrite.

Short Term:

- We strongly encourage small ILECs to proceed with alternative regulation proposals as defined in RSA 374:3-b already in effect. As a state, we cannot gauge the success of alternative regulation until someone tries it and exposes its benefits and/or shortcomings.
 - The New Hampshire Telephone Association has expressed concerns that the wording of the current law may be interpreted to limit a small ILEC's ability to reasonably increase its basic service rates. As a result, small ILEC's have hesitated in filing for alternative regulation under RSA 374:3-b.
 - We recommend that the Legislature clarify the language in RSA 374:3-b and we will introduce appropriate legislation for the 2006 Legislative session. (See recommended legislation the end of this report).
- We strongly encourage the NHPUC and Verizon Communications to continue their discussions relative to large ILEC alternative regulation and to provide regular progress reports to existing telecommunications policy committees and commissions (listed above).
- The legislative members of this committee intend to follow technological, regulatory, and taxation developments of the communications market as part of their ongoing duties as members of their respective legislative standing committees, and to educate their colleagues as needed.

Study Questions Addressed:

- I. The importance of basic telephone services offered by land line telephone companies to households and firms not served by the rapidly evolving unregulated telecommunication industries.
 - As has already been stated, the policy of this state is to preserve universal access to affordable basic telephone services.
- II. The cost of these services to their users and to the regulated telephone companies.

- Basic telephone service should remain affordable and regulated telephone companies providing those services should be allowed to increase their rates in a reasonable fashion. We believe RSA 374:3-b addresses this issue.
- III. Innovative regulatory approaches, which have been implemented in other jurisdictions, which lessen business restrictions of the companies in return for price stability.
- We have been made aware of approaches in other states and jurisdictions, and will continue to follow those developments as individual legislators.
- IV. The impact of competition and the potential for alternatives other than the typical rate of return regulation that will provide incentives for infrastructure investment and the offering of new and innovative services while preserving universal access to affordable basic telephone services.
- We heard many hours of testimony about the presence of and potential impact of competition in the New Hampshire communications market. We believe that, in theory and in general, competition will keep prices affordable and result in more innovation. We prefer to see this theory proved out in practice by following the progress of small ILEC alternative regulation plans under RSA 374:3-b.
- V. Whether a small incumbent local exchange carrier's alternative regulation plan should include a reasonable and timely transition of the small incumbent local exchange carrier's intrastate access rates to the interstate level.
- We prefer to see the results of small ILEC alternative regulation plans under RSA 374:3-b, before adding additional requirements to current law.
- VI. Whether a small incumbent local exchange carrier should be required to agree to relinquish its rural exemption under the federal Telecommunications Act immediately upon approval of an alternative regulation plan.
- We prefer to see the results of small ILEC alternative regulation plans under RSA 374:3-b, before adding additional requirements to current law.
- VII. Whether an alternative regulation plan should include a proposed wholesale tariff setting forth the rates, terms, and conditions of service available to competitive carriers offering service in the small incumbent local exchange carriers' service territory; including whether the tariff should be approved by the commission and made available on a nondiscriminatory basis to competitive carriers.
- We prefer to see the results of small ILEC alternative regulation plans under RSA 374:3-b, before adding additional requirements to current law.
- VIII. Whether RSA 374:22-f should apply to a small incumbent local exchange carrier with an approved alternative regulation plan.
- We prefer to see the results of small ILEC alternative regulation plans under RSA 374:3-b, before adding additional requirements to current law.

Recommended Legislation:

Other than clarifying language to RSA 374:3-b (detailed below), the committee recommends no additional legislation at this time.

374:3-b Alternative Regulation of Small Incumbent Local Exchange Carriers.

I. In this section, "small incumbent local exchange carrier" means an incumbent local exchange carrier serving fewer than 25,000 access lines.

II. A small incumbent local exchange carrier subject to rate of return regulation may petition the public utilities commission for approval of an alternative form of regulation providing for regulation of such carrier's retail operations comparable to the regulation applied to competitive local exchange carriers, with certain exceptions outlined below, due to its status as carrier of last resort.

III. The commission shall approve the alternative regulation plan if it finds that:

- (a) Competitive wireline, wireless, or broadband service is available to a majority of the retail customers in each of the exchanges served by such small incumbent local exchange carrier;
- (b) The plan provides for maximum basic local service rates at levels that do not exceed the comparable rates charged by the largest incumbent local exchange carrier operating in the state and that do not increase by more than 10 percent in each of the 4 years after a plan is approved with the exception that the plan may provide for additional rate adjustments to reflect changes in federal, state, or local government taxes, mandates, rules, regulations, or statutes;
- (c) The plan promotes the offering of innovative telecommunications services in the state;
- (d) The plan meets intercarrier service obligations under other applicable laws; and
- (e) The plan preserves universal access to affordable basic telephone service.
- (f) The plan provides that in the event that the small incumbent local exchange carrier operating under the plan fails to meet any of the conditions set out in this section, the Commission may require the small incumbent local exchange carrier to propose modifications to the alternative regulation plan or return to rate of return regulation.

IV. The alternative regulation plan may allow the small incumbent local exchange carrier to offer bundled services that include combinations of telecommunications, data, video, and other services.

V. Following approval of the alternative regulation plan, the small incumbent local exchange carrier shall no longer be subject to rate of return regulation or be required to file affiliate contracts or seek prior commission approval of financings or corporate organizational changes, including, without limitation, mergers, acquisitions, corporate restructurings, issuance or transfer of securities, or the sale, lease, or other transfer of assets or control.