

DT 00-015

UNIVERSAL SERVICE

**Investigation Into Pending Changes Affecting The
Provision Of Universal Service As A Result Of
The 1996 Telecommunications Act**

O R D E R N O. 23,602

December 22, 2000

APPEARANCES: Dom D'Ambruoso, Esq., Ransmeier & Spellman, for New Hampshire Telephone Assn.; Victor D. DelVechhio, Esq., for Bell Atlantic-New Hampshire; John Lightbody, Esq., on for Kearsarge Telephone Company; Frederick Coolbroth, Esq., Devine, Millimet & Branch, appearing on behalf of Granite State Telephone, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company; Alan Linder, Esq., representing Save Our Homes Organization; James Sanborn, Union Telephone Company; David Fagundus, Esq., for AT&T; Representative John Thomas of the New Hampshire House of Representatives appearing for the Science, Technology & Energy Committee of the New Hampshire (Telecommunications Oversight); Kenneth Traum and William Homeyer for the Office of the Consumer Advocate; E. Barclay Jackson, Esq., representing Staff of the Public Utilities Commission.

I. INTRODUCTION AND BACKGROUND

On January 27, 2000, this docket was opened as a result of roundtable meetings discussing the potential impact on the state regarding pending changes affecting the provision of universal service as a result of the passage of the 1996 Telecommunications Act (TAct). The docket was initiated to investigate whether there were issues that needed to be addressed

at the state level as a result of the changes taking place in the telecom market and whether a State Universal Service Fund was warranted, and if so to decide the appropriate size of the fund and develop proper mechanisms for its implementation and operation.

An Order of Notice was issued and set the prehearing conference for February 18, 2000 and also ordered that a forum be convened after the close of the conference for all interested participants to discuss informally issues related to universal service. Both the prehearing conference and the forum were held, in addition to a subsequent meeting of all interested parties on March 9, 2000, the results of which are captured in the Prehearing Conference Order on Scope and Schedule, Order No. 23,346, dated March 29, 2000.

Order No. 23,346 included a procedural schedule for the docket which allowed for discovery, collaborative sessions and briefing of the issues. It identified eight questions to be addressed in Phase I of this proceeding as well as issues to be addressed in Phase II. The parties and the Staff of the Commission (Staff) met on various occasions to discuss the scope of the docket and what, if anything, the state needed to do to ensure that the TAct's goals regarding the delivery of affordable telecommunications services to all Americans were

met. On July 21, 2000, the parties and Staff submitted a report to this Commission recommending how this state should treat universal service. The report included proposed legislation and triggering factors that would start an investigation into the need for a State Universal Service Fund. The report touched on several unresolved issues but included suggestions for further investigation into the unresolved areas.

A hearing was held on August 22, 2000, at which time this Commission heard a summary of each of the issues presented in the report by the parties and Staff.

II. POSITIONS OF THE PARTIES AND STAFF

A panel of witnesses with representatives from Staff, the Independent Telephone Companies, Verizon and the Office of Consumer Advocate summarized the report and recommendations which had been developed collaboratively. The proposal recommended, first, that the Federal Communications Commission (FCC) definition of Universal Service should be used by the state and that any and all FCC revisions be automatically incorporated in the New Hampshire definition.

At the hearing and in the proposal it was also noted that some members of the group believed soft dial-tone should be provided, in some cases, to enable access to 911 in the

absence of telephone service. Because there was no consensus on the issue and because it is a complicated issue it was recommended a subgroup be formed to study the costs and benefits of soft-dial tone. The group also proposed that all services included in the FCC definition of universal service must be provided by a carrier to be eligible for universal service support.

Another item that was addressed both at the hearing and by the group in its collaborative sessions dealt with public interest payphones (PIP) and whether funding for PIPs should be included in Universal Service. The panel recommended that it could be efficient to fund PIPs through an established universal service fund, but that there was an open proceeding, DT 98-048, to address PIPs and their funding. If for some reason, an alternative funding method was not determined in the PIP proceeding and no universal service fund existed, a funding requirement to provide an authorized PIP, could trigger the need to create a state universal service fund.

The next issue addressed what penetration level should be used as the appropriate metric for determining whether or not Universal Service exists in New Hampshire. The panel recommended that the commission should continue to

monitor the annual penetration level on a statewide average basis and for the lowest income group. The Staff will review economic trends and national data and make a recommendation to the Commission on how to proceed if the statewide penetration level falls below 95% or below the national average, or if the lowest income group falls below 90% or below the national average. The public policy goal, the panel advised, should be to raise the low income penetration level as close to the statewide average as reasonably possible.

Also addressed was the issue of whether there is a need for a State fund or fund structure before the Federal reforms occur. The panel testified that, prior to Federal reform, the state should enact legislation to give the PUC authority to implement a state USF and collect money to fund it should the need arise. A list of potential triggering events was identified and draft legislation was proposed.

Both the panel and the proposal addressed rate comparability and affordability. The panel stated it believes current rates in NH are considered reasonably comparable and affordable. However, rates appear to be less affordable for households at or below \$10,000 (in 1984 dollars which is equivalent to \$16,082 in current dollars). This income group

may require state funded universal service assistance in the future. The penetration levels will be utilized, among other things, to determine whether rates remain affordable. The group agrees that reasonably comparable means similar rates for similar size calling areas and applies to rural and high cost areas and low income groups.

The panel also discussed the proposal with regard to LIFELINE/LINKUP/SCHOOLS AND LIBRARIES. It was reiterated that the Staff and parties did not believe schools, libraries, and rural health care facilities required additional state funding at this time because all of the federal funding available to New Hampshire has not been utilized. Ms. Pauk testified that a report issued on July 19, 2000, titled *Closing the Gap - Universal Service for Low Income Households*, found that states can increase the penetration in low income households "by doing some sort of outreach programs or additional education." She went on to state, "Generally, what the paper found was that doing the education and those efforts seem to have a greater impact on penetration rates for low income customers than just increasing the amount of support." *Transcript, August 22, 2000*, p. 58. The Parties and Staff recommended implementing such an educational effort because it was believed that increasing education would be more beneficial

than simply adding more dollars to the programs.

Finally, there was a discussion surrounding the thoughts of adding broadband to the definition of universal service. The parties and Staff rejected this idea but thought proposals to deploy broadband in the rural areas, as a social policy, should be discussed in a separate forum that included DRED, wireless carriers and cable TV providers.

After an initial discussion of the collaborative sessions the panelists discussed that the Phase II issues of determining explicit and implicit subsidies were not completed given the belief and recommendation that no statewide Universal Service Fund was necessary. Mr. Cort, one of the panelists, however did describe the potential triggering factors that if sparked would require an investigation on implementing such a fund. *See, Transcript, August 22, 2000, p. 64, 68.* Mr. Cort described the triggering events as interstate access reform that results in intrastate revenue deficiency. He explained that this is really looking at activity at the federal level, either on access reform for rural carriers or on some type of price cap activity incentive regulation for the rural carriers, that would have a spillover or an impact on intrastate revenues and intrastate rates.

The second item would be intrastate access reform, and the third trigger would be material changes in local calling areas. The actual potential triggering events proposed read as follows:

1. Interstate access reform that results in intrastate revenue deficiency.
2. Intrastate access reform.
3. Material changes in local calling areas.
4. Material financial impact of intercarrier compensation arrangements.
5. Regulatory decisions or changes generally that are likely to result in the inability of an ETC to provide local exchange service at rates which are at the state average for a similar calling area.
6. Staff's annual review of penetration levels.

Finally, the panelists discussed proposed legislation that was modeled after other states. The draft legislation included a grant of authority to this Commission to propose and adopt rules requiring a state universal service fund after notice and hearing. Once a fund was established, the legislation would also give authority to the Commission on how to ensure contribution for the eligible telecommunications

carriers.

III. COMMISSION ANALYSIS

A. Universal Service Definition

This state has the responsibility along with our sister states and the federal government for preserving and advancing universal service. 47 USC 254(b),(f). The principles articulated in Section 254(b) are also meant to be sustainable in a competitive environment that is rapidly advancing technologically. The commitment of affordable local service as a national policy goal is a social policy that can be sustainable in this new environment. To that end, we agree with the recommendations of the Parties and our Staff that utilizing the FCC definition of Universal Service is appropriate given the fact that all FCC revisions to the definition will be incorporated into the New Hampshire definition. By our state definition changing when federal revisions are made we can ensure access to modern networks and implement universal service according to the diverse needs of our state.

We note that several parties raised questions at the hearing of whether we should broaden the definition of universal service to include "soft-dial tone." We agree with the parties and Staff that this is a complicated issue and

therefore we direct that a committee of all interested parties in this docket be formed to study the costs and benefits of the proposal. In our oral deliberations, we directed the working group to report back to the Commission by March 31, 2001 with its recommendations. Additionally, we directed the committee to study the feasibility of providing voice mail for the homeless. As the working group has not yet initiated its study, we will extend the reporting date to June 30, 2001.

We also note that a principle of universal service is to provide access to advanced services. 47 USC 254 (b)(2). More and more we become aware of the widening of the digital divide. In order to ensure that some are not left behind we would recommend that the Legislature arrange for a study by an appropriate agency on the "digital divide" and whether providing customer premises equipment (CPE) might be one way to narrow the gap. Advanced services must be considered as part of the evolving process as universal service should be a way to deliver access to modern networks. The proposal to allow the definition of universal service to change as the federal definition does is one way in which this concept can be achieved.

With regard to the encompassing of a Do Not Disconnect policy into the definition of universal service, we

appreciate Mr. Linder's comments regarding this matter. FCC Lifeline rules require that customers with past due balances cannot be denied service under the Lifeline Program as long as they enter into a payment arrangement for past due toll charges and pay in full charges for basic service each month. The obstacle to universal service is the disconnection of local telephone service for non-payment of toll service. We will direct our Staff to initiate rulemaking that prohibits disconnection of local service for non-payment of toll service.

B. Establishing A Fund

One of the threshold questions adopted in the Prehearing Conference Order No. 23,346, asked if there is a need for a State fund or fund structure before the Federal reforms occur. Both the report and the testimony presented to us in August recommended that while no fund was necessary at this time some state action should be taken in the form of "legislation giving this Commission authority to implement a state USF and collect money to fund it should the need arise." Proposal at page 1.

We agree that we do not currently need to establish a Universal Service Fund. However, we believe that it is critical to have the framework in place so that we can act

expeditiously should a determination be made that the fund is needed. Along this line, we concur with the potential triggering events that were filed as Attachment 1 to the Parties' Report. We think that the recommendation regarding the promotion of education in the Independent territories and the Verizon proposal with regard to additional funding may be useful in analyzing changes in penetration levels. Although, we have not had the opportunity to analyze Verizon's proposal independently we will do so in the near future. We can say, however, that from purely a conceptual basis the two programs would enable us to study the changes in program usage, if any, and study the cost differences to evaluate which program would be more suitable for statewide implementation.

C. Regulatory Scheme

We said in Order No. 23,346 that the federal law provides New Hampshire with the freedom to adopt regulations to preserve and advance universal service within the state as long those mechanisms are specific, predictable and sufficient to support the definitions and standards and do not burden the Federal universal service support mechanisms. 47 USC §254(f). The Parties' and Staff's effort in drafting legislation on this issue goes far in getting us the authority needed for developing a State Universal Service Fund structure, deciding

the appropriate size of such a fund and designing the proper mechanisms for its implementation and operation.

We have several changes that we believe are appropriate for the legislation given our discussion above. First, the Declaration of Purpose and Findings discusses this Commission's authority to establish a universal service fund to provide affordable "basic" telecommunications service. This term is not consistent with what was recommended to us with regard to a universal service definition. We agreed that the definition of Universal Service would change as modifications are made to the federal definition. Given the principle of taking into account advances in telecommunications and information technologies we believe the word "basic" which modifies "telecommunications service" would be inconsistent with the purpose of any legislative or regulatory aim. Removing the word "basic" before "telecommunications service" and adding "consistent with federal law" after "telecommunications service" would satisfy our concern over the inconsistency.

Second, in paragraph II, Low-Income Support, the term "telephone utilities" should be replaced with eligible telecommunications carriers. We believe this change better characterizes those companies who would be required to

participate in the educational outreach programs.

In paragraph IV, Authority, the word "Title" in the first sentence should be replaced with the word "section." Finally, the discussion in this paragraph relating to the funds collected should further include language that the funds are not available for the general revenue of the state. For example, the sentence should read, "Funds contributed to a state universal service fund are not state funds and therefore are not subject to provisions of law relating to the general fund." Language could also be adopted by the Legislature by adding a new paragraph to RSA 6:12, I regarding the universal service fund.

In the end we believe the recommendations made by Parties and Staff as modified in our order are an appropriate starting place for both this Commission and the Legislature.

Based upon the foregoing, it is hereby

ORDERED, that the proposal presented on Universal Service is adopted pursuant to our discussion above; and it is

FURTHER ORDERED, that a working group be established under the direction of our Director of Consumer Affairs to implement discussions on soft dial tone and voice mail for the homeless; and it is

FURTHER ORDERED, that the group submit a report to

this Commission by June 30, 2001; and it is

FURTHER ORDERED, that a rulemaking docket be opened to establish rules prohibiting disconnection of local service for non-payment of toll service.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of December, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary