

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 07-027**

**KEARSARGE TELEPHONE COMPANY,  
WILTON TELEPHONE COMPANY, INC., HOLLIS TELEPHONE COMPANY, INC.,  
AND MERRIMACK COUNTY TELEPHONE COMPANY**

**Petitions For Approval Of Alternative Form Of Regulation**

**Procedural Order Setting Hearing on Additional Evidence**

**ORDER NO. 25,130**

**July 15, 2010**

**APPEARANCES:** Devine, Millimet & Branch by Frederick J. Coolbroth, Esq. on behalf of Kearsarge Telephone Co., Wilton Telephone Co., Hollis Telephone Co., and Merrimack County Telephone Co.; New Hampshire Legal Assistance by Alan Linder, Esq. on behalf of Daniel Bailey; Rorie Hollenberg, Esq. of the New Hampshire Office of Consumer Advocate on behalf of New Hampshire residential ratepayers.

**I. PROCEDURAL HISTORY**

Following hearings on September 29 and October 1, 2009, the Commission issued Order No. 25,103 (May 14, 2010) denying Merrimack County Telephone Company's (Merrimack's) request for alternative regulation pursuant to RSA 374:3-b and holding the record open for 30 days to allow Telephone & Data Systems, Inc. (TDS), the parent of each of the petitioning companies, to submit additional evidence on wireline competition for certain exchanges in the Kearsarge Telephone Company (Kearsarge) and Merrimack service territories.

On June 11, 2010, TDS submitted an affidavit of Thomas E. Murray describing advertisements for Comcast competitive voice offerings in the Kearsarge exchanges of Andover, Boscawen, Chichester, Meriden and New London, and evidence of telephone number porting

requests in Andover, Boscawen, Chichester and New London. The affidavit also included a confirmed service order obtained from Comcast for voice service in Meriden.

On June 14, 2010, TDS submitted an additional affidavit of Thomas J. Murray describing advertisements by Comcast for voice service in the Merrimack exchanges of Antrim, Contoocook, Henniker and Hillsboro as well as evidence of telephone number porting in each of those exchanges. The affidavit also included a copy of an email from Time Warner confirming that Time Warner offers voice service in Moultonboro. In a motion accompanying the affidavit, Merrimack requested an additional 90-day extension of the record in order to conduct drive tests in the Merrimack exchanges of Bradford and Warner, and possible other exchanges as Merrimack deems appropriate, to establish access to wireless services in those exchanges.

On June 24, 2010, the Office of Consumer Advocate (OCA) filed a motion requesting that the Commission: (1) deem Order No. 25,103 a final order for purposes of RSA 541:3; (2) begin a new proceeding to consider the evidence submitted by Kearsarge and Merrimack; and (3) make Comcast a mandatory party to that new proceeding.

On June 24, 2010, New Hampshire Legal Assistance (NHLA), on behalf of Mr. Bailey, requested an evidentiary hearing to consider the evidence submitted by Kearsarge and Merrimack and asked that any process and hearing combine evidence for both Kearsarge and Merrimack in order to promote efficient use of witnesses, in particular out of state experts. NHLA also requested that the Commission clarify what evidence Kearsarge and Merrimack must produce in order to meet their burden and obtain alternative regulation pursuant to RSA 374:3-b.

On July 6, 2010 Comcast objected to the OCA's motion to make it a mandatory party and offered, in lieu of becoming a party, to provide competitive information needed by the parties to

that proceeding on a confidential basis. On July 6, 2010, Kearsarge and Merrimack objected to the OCA and NHLA motions as an attempt to delay the process which began three years ago.

## **II. COMMISSION ANALYSIS**

In Order No. 25,103, we made findings concerning the requests by Kearsarge and Merrimack for alternative regulation based upon the evidence before us. In that order we also held the record open for an additional 30 days to allow the companies to supplement their evidence in areas we found deficient. Both Kearsarge and Merrimack presented evidence regarding competitive wireline offerings in certain of their exchanges as contemplated by our order. *See* Order No. 25,103 at 21 and 28. In addition to presenting new evidence on competitive wireline offerings, Merrimack asked that we hold the record open an additional 90 days for it to develop evidence on wireless offerings.

Through the Companies' submissions and motions by OCA and NHLA we are presented with a number of procedural issues. In crafting an appropriate procedure, we must balance the importance of providing an opportunity to be heard, timely and efficient use of resources, and the policy considerations underlying RSA 374:3-b.

With these factors in mind, we grant OCA's and NHLA's request for a hearing on the new evidence presented by both Kearsarge and Merrimack, consistent with the terms of Order No. 25,103 at 28. The hearing will be limited to the new evidence submitted and whether it fulfills the requirements of RSA 374:3-b. To be as efficient as possible with the parties' litigation resources, we will consider at this hearing the evidence for both Kearsarge and Merrimack with regard to the competitive wireline offerings. We will not, however, consider any evidence regarding wireless availability. Furthermore, we deny Merrimack's request for an additional 90 days to develop evidence on wireless offerings as it is beyond the timeframe and

scope of Order No. 25,103, which already provided a 30-day extension of time to supplement the record. If Merrimack continues to seek consideration of an alternative regulation plan, it is free to file a new request under RSA 374:3-b, with new wireless data or other indicia of competitive alternatives for its customers. Any new request will be assigned a docket in the normal course. We trust that the parties will use the tools available, including requests for administrative notice and arguments of *res judicata*, to apply the findings and rulings from this proceeding to any future request by Merrimack for alternative regulation under RSA 374:3-b.

We deny OCA and NHLA's requests to designate Order No. 25,103 as final for purposes of rehearing and appeal under RSA 541:3. Until we have completed our consideration of the evidence and applied the statutory standards, it is not an efficient use of resources to entertain rehearing requests. We also deny OCA's request to designate Comcast a mandatory party to this docket. Comcast filed a notice of its withdrawal from this proceeding on September 21, 2009, and, at that time, no party objected to its withdrawal. Inasmuch as Comcast has offered to provide competitive information on a confidential basis, we are confident that the record can be developed without requiring Comcast to be a party.

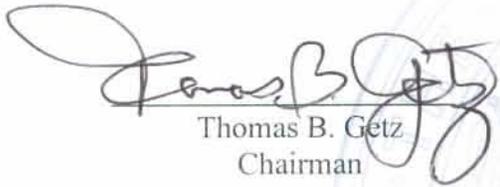
The parties should undertake discovery on the evidence proffered in the TDS affidavits in a technical session on July 27, 2010. We will conduct a hearing on the competitive wireline evidence presented by Kearsarge and Merrimack on September 2, 2010. We encourage the parties to develop an expedited process for responsive testimony or evidence regarding the availability of CLEC offerings in the exchanges in question for our consideration.

**Based upon the foregoing, it is hereby**

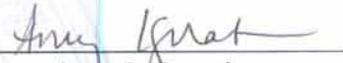
**ORDERED**, the parties to this docket and Staff shall hold a technical session on July 27, 2010 at 10:00 a.m. to be held at the Commission at 21 South Fruit Street, Concord, New Hampshire; and it is

**FURTHER ORDERED**, that the Commission shall hold a hearing on the matters described herein at the Commission on September 2, 2010 at 10:00 a.m.

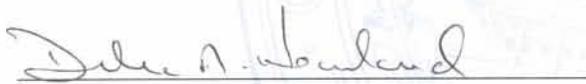
By order of the Public Utilities Commission of New Hampshire this fifteenth day of July, 2010.

  
Thomas B. Getz  
Chairman

  
Clifton C. Below  
Commissioner

  
Amy L. Ignatius  
Commissioner

Attested by:

  
Debra A. Howland  
Executive Director