

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 10-213

CRC COMMUNICATIONS OF MAINE, INC.

Petition to Amend CLEC and IXC Certifications

Order Approving Petition

ORDER NO. 25,165

November 8, 2010

On August 9, 2010, CRC Communications of Maine, Inc. (CRC) filed a request to amend its competitive local exchange carrier (CLEC) and competitive toll provider (CTP) certifications.¹ CRC seeks authority to provide local telecommunications services and inter-exchange telecommunications services in the territory served by Northland Telephone of Maine (Northland). Northland is a rural local exchange carrier (RLEC) operating in Chatham and East Conway, New Hampshire.

Currently, CRC is permitted only to offer services in the territories served by Northern New England Telephone Operations LLC, d/b/a/ FairPoint (FairPoint). CRC was originally granted CLEC and CTP authority in FairPoint's territory in January, 2009. On April 21, 2010, Northland and CRC filed with the Commission a voluntarily negotiated interconnection agreement that became effective on July 20, 2010. CRC now seeks to amend its authorizations to cover the territory served by Northland so that it may provide services to its customer, Time Warner Cable Information Services, LLC (Time Warner).

¹ Though CRC's petition notes that it seeks to amend its CLEC and interexchange carrier (IXC) certifications, it is in fact its CLEC and CTP certifications that it seeks to amend.

On August 30, 2010, Staff submitted a recommendation regarding the docket. According to Staff, to comply with the New Hampshire Supreme Court's decision in *Appeal of Union Telephone*, 160 N.H. 309 (2010), and pending the outcome of Docket No. DT 10-183, which is addressing the issues remanded to the Commission in the Supreme Court's opinion, a petitioner seeking to enter the territory of an RLEC must supply information and documentation sufficient to make a showing of public good as defined in RSA 374:22-g before the petition may be granted. On September 23, 2010, the Commission issued an order of notice scheduling a hearing and requiring CRC to give Northland notice of the proceeding, and to submit testimony, affidavits, or other evidence sufficient to meet the factors set out in RSA 374:22-g.

On October 12, 2010, CRC submitted the pre-filed testimony of Ed Tisdale, which, among other things, addressed the factors set out in RSA 374:22-g in the context of this petition. The hearing originally scheduled for October 27, 2010 was rescheduled to October 26, 2010, pursuant to a request from CRC. On October 26, 2010, CRC filed an affidavit attesting to the information contained in the testimony filed on October 12. No parties sought to intervene and the hearing was held on October 26, 2010. At the hearing, CRC requested that the petition be granted and Staff supported the petition.

In the context of a petition by a CLEC to enter the territory served by an RLEC, the New Hampshire Supreme Court stated that "RSA 374:26 sets the standard by which the PUC may grant or withhold permission to an entity seeking to expand its existing franchise." *Union Telephone*, 160 N.H. at 319. Further, "such permission may not be granted unless the PUC finds that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise." *Id.* (quotation omitted). Finally, "RSA 374:22-g sets

forth the numerous factors the PUC must consider when determining whether allowing more than one provider to provide telecommunications services in a single territory is for the ‘public good.’” *Id.* RSA 374:22-g, II states:

In determining the public good, the commission shall consider the interests of competition with other factors including, but not limited to, fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility’s opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.

As to the interests of competition, CRC contends that by granting the petition Northland’s customers will have an additional competitive alternative. Specifically, CRC contends that by allowing it, through Time Warner, to reach these customers, it could offer them new residential and business products, including through “bundles” with telephone, Internet and video from a single provider, a service they are not currently being offered. Additionally, CRC contends that allowing it to enter Northland’s territory will be consistent with the State’s policy to encourage competition. We conclude that allowing CRC to operate in Northland’s territory will, in fact, serve the interests of competition in that an additional competitor will be operating in the territory and will be offering new and different service alternatives.

As to fairness, CRC points out that there are already other, non-regulated companies offering services in the area, specifically cellular and nomadic VoIP providers. Given that there are already competitors in the area, and in light of the State’s policy to encourage competition, CRC contends that its petition should be granted. Since there are already regulated and unregulated providers in the area, we agree that allowing CRC entry would not be unfair. We

reached a similar conclusion in a prior petition of a CLEC to enter the territory of an RLEC, *see Comcast Phone of New Hampshire*, Order No. 24,938 (Feb. 6, 2009) at 19-20, where we found that fairness weighed in favor of permitting entry, in part because regulated and unregulated services were already being offered in the subject territory. Likewise, we conclude here that fairness weighs in favor of allowing CRC to enter Northland's territory.

Regarding economic efficiency, CRC argues that efficient operations are driven by the need for competitors to compete. As such, CRC contends that its presence in Northland's territory will inspire Northland to examine the efficiency of its operations and the pricing of its products. To the extent Northland implements any improvements, CRC contends, customers will benefit. In our decision on *Comcast Phone*, we noted that, as a general matter, competition leads to efficiency and that a means to achieve economic efficiency is to eliminate barriers to competitive entry. *Comcast Phone*, Order No. 24,938 at 20. We find similar forces at work here. By allowing CRC to enter, it is more likely that Northland will be inclined to improve its efficiency, which will ultimately benefit consumers. Therefore, we find that the interests of economic efficiency favor the granting of CRC's petition.

On issues relating to universal service, carrier of last resort obligations and Northland's ability to earn a reasonable return, CRC first avers that it has held an interconnection agreement with Northland's affiliate in Maine for two years and that Northland has made no specific claims that CRC's presence there has negatively impacted any of those factors. Further, CRC points out that Northland does not appear to collect federal universal service money, despite the existing operations of other competitors in its territory. This, according to CRC, is an indication that Northland's earnings are sufficient to sustain it without additional subsidies.

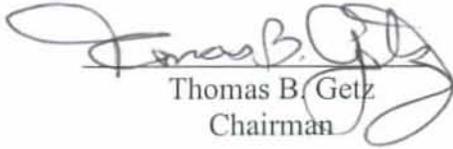
Additionally, the statute requires consideration of the recovery from competitive providers of expenses incurred by the incumbent utility to benefit those competitive providers. CRC notes that, because it has a voluntarily negotiated interconnection agreement with Northland, the two companies have already agreed on a scheme for the payment of Northland's expenses that arise from providing service to CRC. CRC also notes that the terms of that agreement are substantially similar to those under which the two companies have been operating in Maine, and which have not generated any complaints from Northland.

We note that there has been no objection by or complaint from Northland in this docket and there is no evidence that CRC's provision of service would affect Northland's ability to meet its obligations under universal service and carrier of last resort, or its ability to earn a reasonable return, in a manner inconsistent with the public good. Furthermore, Northland has been operating under a similar arrangement with CRC in Maine for two years, has not raised a complaint, and has not made any contention that CRC's presence in its New Hampshire territory would be problematic. In light of the above, we conclude that CRC has made a sufficient showing of the elements set out in RSA 374:22-g, II such that granting its petition is in the public good, pursuant to RSA 374:26.

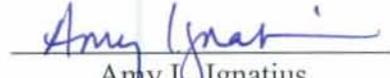
Based upon the foregoing, it is hereby

ORDERED, that allowing CRC to offer CLEC and IXC services in Northland's territory is in the public good and, therefore, its petition is granted.

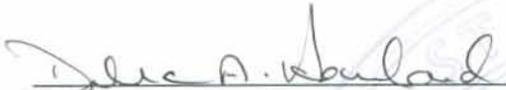
By order of the Public Utilities Commission of New Hampshire this eighth day of
November, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

