

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 10-

**Petition by Certain Rural Telephone Companies
Regarding CLEC Registrations within Their Exchanges**

Granite State Telephone, Inc. (“GST”), Dunbarton Telephone Company, Inc. (“DTC”), Bretton Woods Telephone Company, Inc. (“BWT”) and Dixville Telephone Company (“Dixville”), each a rural local exchange carrier and a rural telephone company (together, the “RLECs”), hereby petition for a determination that any Form CLEC 10 registrations purporting to authorize competitive local exchange carriers (“CLECs”) to engage in business as telephone utilities within the service territories of the RLECs be declared null and void or, in that such registration be rescinded due to:

- A. the failure of the Commission to provide notice to interested parties, an opportunity for hearing and to make required findings pursuant to RSA 374:26, 374:22-g and 374:22-e, as well as Puc 203.12, RSA 541-A:31 and RSA 541-A:35, prior to issuing or authorizing the issuance of such authority;
- B. the failure of the Commission to comply with RSA 363:17-b and RSA 541-A:35 which require the issuance of a final order by the Commission, which order is required to include the parties, their positions, findings of fact, conclusions of law, and an indication of the action of each Commissioner who participated in the matter;

- C. the mistake of fact and law involved in the Commission (or its staff) utilizing Puc 431.01 and its Chapter 431 process, as said rule and Chapter only authorizes issuances of registrations in areas served by non-exempt ILECs, not the areas served by the RLECs (which are not served by non-exempt ILECs); and
- D. for the other reasons detailed herein.

In support hereof, the RLECs state the following:

1. Each of the RLECs is a telephone public utility as defined in RSA 362:2 and is regulated by the Commission. The RLECs provide telecommunications services to residential and business customers and access services to utilities. Each of the RLECs has fewer than 25,000 access lines, and is a rural telephone company as that term is defined at 47 U.S.C. § 153(37) and as that term is used in 47 U.S.C. § 251(f)(1). None of the RLECs has waived the exemption provided to rural telephone companies under that section of the federal statutes.
2. BWT is the incumbent local exchange carrier providing service within the Town of Carroll and certain abutting unincorporated areas.
3. Dixville is the incumbent local exchange carrier providing service within Dixville Notch, New Hampshire.
4. DTC is the incumbent local exchange carrier providing service to the town of Dunbarton and portions of the towns of Bow and Goffstown.
5. GST is the incumbent local exchange carrier providing service to the towns of Chester, East Deering, Hillsboro Upper Village, Sandown, Washington, Weare and Windsor, as well as sections of the towns of Antrim, Auburn, Derry, Hopkinton and New Boston.

6. In December, 2008, the RLECs became aware that a CLEC¹ had filed a Form CLEC 10 application for registration which was labeled as an amendment to a prior registration for authority to serve all telephone exchanges within New Hampshire, including those served by the RLECs.

7. On December 17, 2008, the New Hampshire Telephone Association (“NHTA”), on behalf of the RLECs, filed with the Commission the letter attached hereto as Exhibit 1 in which NHTA asserted that any such certification could only be effected through compliance with RSA 374:22, RSA 374:22-g and RSA 374:26, not through registration under Puc 431.01.

8. On March 3, 2009, the Commission issued a certificate attached hereto as Exhibit 2 which purports to authorize that CLEC to provide local exchange service in all the exchanges in New Hampshire, including those served by the RLECs.

9. The Commission did not provide the RLECs with, nor did it issue or require any notice of the application or provide notice of any opportunity for hearing. To the best of the RLECs’ knowledge, there was no hearing or opportunity for hearing. The Commission’s March 3, 2009 issuance does not contain any findings of fact or conclusions of law. The issuance also contains no finding of public good.

10. segTEL asserts that it is not the only CLEC to have been granted authorization to engage in business as a telephone utility within the exchanges served by the RLECs. Because of the Commission’s practice of acting on CLEC 10 registrations without docketing, notice or hearing, the RLECs were not and are not aware of any such authorizations. However, it was not the intent of the RLECs to single out segTEL for treatment different from other CLECs.

¹ The CLEC involved was segTEL, Inc. (“segTEL”); however, this petition is not intended to be limited to segTEL.

Accordingly, this petition is being filed with respect to all CLECs granted authority to operate within the RLEC service territories.

11. The grant of such authority in each RLEC's territory may have an impact upon "the incumbent utilities opportunity to realize a reasonable return on its investments", may have an impact on universal service and may have an impact on meeting carrier of last resort obligations in the respective RLEC service territories. The rights and privileges of the RLECs are directly impacted by a grant of authority to a CLEC or CLECs to provide telecommunications service in respective RLEC service territories.

12. No order has been issued by the Commission granting authority to any CLEC to engage in business as a competitive local exchange carrier in the RLEC service territories.

13. The issuance of the amended CLEC 10 registration March 3, 2009 involves errors of law because under RSA 374:22, 374:26, 374:22-g, 374:22-e, 541-A:31 and other applicable law. *See*, Appeal of Union Telephone Company d/b/a Union Communications, 161 N.H. ____ (Slip Op., May 20, 2010). The Commission is required to provide for a hearing, make findings based upon evidence before it which address particular factors in those statutes and then to make conclusions based on those findings on whether granting the CLEC's application is in the public good. Such evidence, findings and conclusions must be specific to the service territory and applicant involved in a request for authority. The applicable state requirements have not been preempted by federal law or federal agency action.

14. Actions by administrative agencies that involve the legal rights and privileges of parties, such as the rights of the CLECs and the RLECs (the incumbent telephone utilities in this matter), are contested cases as defined by the New Hampshire Administrative Procedure Act. RSA 541-A:1(IV). New Hampshire statutes and Commission rules require adjudicatory

procedures which require notice and hearing in such situations. RSA 374:22, 374:22-g, 374:26, 541-A:1(I), 541-A:31 through 541-A:38, Puc 203.12. RSA 374:22-e also requires notice to interested parties in actions involving authorizations for more than one telephone utility in a service territory.

15. Administrative agencies, such as the Commission, must act within their delegated powers. *Appeal of Concord Natural Gas Corp.*, 121 N.H. 685, 289 (1981); *Kimball v. N.H. Board of Accountancy*, 118 N.H. 567, 568 (1978). Rules and orders adopted by state agencies may not add to, detract from or in any way modify the statutory law. See *Kimball, supra*. Thus, the Commission's rules do not in any way limit the legal requirements discussed above as required by RSA 374:26, 374:22-g, 374:22-e and other applicable law or limit the rights of the RLECs or any other party pursuant to the U.S. and New Hampshire Constitutions.

16. In docket DT 08-013, *RE: Comcast Phone of New Hampshire, LLC Request for Authority*, ORDER GRANTING HEARING (August 18, 2008), the Commission provided an opportunity for hearing, after previously noticing said matter. In so ruling it stated “[w]e will schedule a hearing pursuant to RSA 374:26, which requires a hearing if all interested parties are not in agreement, to consider evidence by Comcast and other parties concerning whether a grant of franchise authority to Comcast in the KTC, MCT and WTC service territories is for the public good.”

17. The application for authority by a CLEC is a request for authority to operate as a public utility as defined by RSA 362:2 and is governed by RSA 374:26, 374:22-g and 374:22-e. RSA 363:17-b requires the issuance of a final order by the Commission on *all* matters presented to it. That statute requires that such orders reflect, among other things, the parties, the position of the parties and the concurrence or dissent of each Commissioner participating in the matter.

18. Similarly, RSA 541-A:35 requires the Commission to issue final orders in contested cases such as this one which include findings of fact and conclusions of law. In fact, there is no evidence in the issuance that any Commissioner even participated in the issuance of the March 3, 2009 authorization letter.

19. The explicit language on Commission rule Puc 431.01 only applies in the territories of non-exempt ILECs, which the RLECs are not. Thus, any document that purports to provide authority in the RLEC's territories issued pursuant to that rule is invalid and should be declared null and void or rescinded.

20. Commission Rule Puc 431.01(d) states that an issuance under that rule "authorizes the applicant to provide competitive local exchange service in the territory of *non-exempt ILECs*" (emphasis added). Commission rule Puc 402.33 provides that "[n]on-exempt ILEC means an ILEC that is not exempt pursuant to 47 U.S.C. § 251(f)." Each of the RLECs is a rural telephone company as that term is used in 47 U.S.C. § 251(f)(1). None of the RLECs has waived the exemption provided to rural telephone companies under 47 U.S.C. § 251(f). Thus, none of the RLECs' service territories is territory served by a non-exempt ILEC.

21. Since the rule only purports to provide for authority in the territory of non-exempt ILECs and since the RLECs' territories are not such territories, the rule does not apply to issuances of authority in the RLEC's territories. Entities that file applications for authority to provide service in the service territory of an ILEC that is not a non-exempt ILEC are required to file a petition that complies with Commission rules PUC 203.05 and 203.06, among others. Thus, the Commission should rule that the March 3, 2009 issuance, or any similar issuance, is null and void or rescind it, as it was not authorized under the rule it was issued under.

WHEREFORE, the RLECs respectfully request this Commission to declare null and void, or rescind, any CLEC authorization, granted pursuant to a Form 10 registration, to engage in business as a telephone utility within the service territories of the RLECs (including, without limitation, the amended authorization issued March 3, 2009 for segTEL).

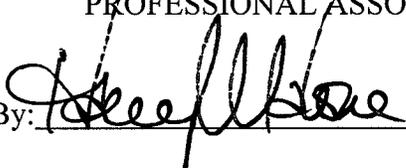
Respectfully submitted,

GRANITE STATE TELEPHONE, INC.
DUNBARTON TELEPHONE COMPANY, INC.
BRETTON WOODS TELEPHONE COMPANY,
INC.
DIXVILLE TELEPHONE COMPANY

By Their Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: July 13, 2010

By:  _____

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