

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DT 11-151

MERRIMACK COUNTY TELEPHONE COMPANY

Petition for an Alternative Form of Regulation

Order Granting Petition

ORDER NO. 25,273

September 28, 2011

APPEARANCES: Primmer, Piper, Eggleston & Cramer, P.C. by Paul J. Phillips, Esq., for Merrimack County Telephone Company; New Hampshire Legal Assistance by Alan Linder, Esq., for Daniel Bailey; Meredith A. Hatfield, Esq., of the Office of Consumer Advocate on behalf of residential ratepayers; and Matthew J. Fossum, Esq., for the Staff of the Public Utilities Commission

I. PROCEDURAL HISTORY

On July 5, 2011, Merrimack County Telephone Company (MCT or Company) filed a petition for an alternative form of regulation pursuant to RSA 374:3-b. MCT, a wholly-owned subsidiary of TDS Telecommunications Corporation, is a rural incumbent local exchange carrier (ILEC) offering telecommunications services in Antrim, Bradford, Contoocook, Henniker, Hillsborough, Melvin Village, Sutton and Warner, New Hampshire. According to MCT, it serves fewer than 25,000 access lines in New Hampshire and otherwise qualifies for alternative regulation as a small ILEC pursuant to RSA 374:3-b. MCT seeks to be regulated in a manner more comparable to competitive local exchange carriers (CLECs) in New Hampshire.

On July 8, 2011, the Commission issued an order of notice setting a prehearing conference for July 27, 2011. On July 18, 2011, the Office of Consumer Advocate (OCA) notified the Commission of its intent to participate in the docket on behalf of residential ratepayers consistent with RSA 363:28. On July 26, 2011, the Commission received a motion

for late intervention by New Hampshire Legal Assistance (NHLA) on behalf of Daniel Bailey, a customer of MCT, which was granted at the prehearing conference.

Following the prehearing conference, MCT, Staff, the OCA, and NHLA engaged in negotiations relative to MCT's alternative regulation plan. On August 5, 2011, MCT, Staff, and NHLA filed a stipulation and settlement agreement, which added rate freezes, as well as provisions for Lifeline and Link-Up customers, to the alternative regulation plan originally proposed by MCT. The OCA took no position on the plan but supported the additions of the rate freeze and the provisions related to Lifeline and Link-Up. A hearing on the stipulation was held on August 25, 2011.

II. PLAN AND STIPULATION AND SETTLEMENT AGREEMENT

The stipulation and settlement agreement in this docket is substantially similar to that recently approved for MCT's affiliate, Union Telephone Company. *See* Docket No. DT 11-024. Pursuant to the plan originally proposed by the Company, MCT would be regulated in a manner comparable to CLECs in New Hampshire, except that it still have to meet its carrier of last resort and state and federal intercarrier service obligations. Exhibit MCT-2, Alternative Regulation Plan of Merrimack County Telephone Company § 3.1. Under the plan, MCT would not oppose the entry of any CLECs into its service territory and it would waive the rural exemption under the federal Telecommunications Act. Ex. MCT-2 §§ 3.6.1 and 3.6.2.

Under the original version of the plan, subject to certain adjustments for exogenous events, the Company would be permitted to increase or decrease its rate for stand-alone basic retail service at any time but the rate would be capped at the rate for comparable rate groups charged by the State's largest incumbent carrier, FairPoint Communications. MCT-2 §§ 4.1 and 4.1.2. Should MCT seek to raise rates on stand-alone basic retail service, it could raise the rates

by no more than five percent per year up to the applicable cap. MCT-2 § 4.1.1. According to MCT's petition it currently charges \$11.24 per month for residential single-party line voice service in each of its exchanges. *See* Exhibit MCT-1, Pre-Filed Testimony of Thomas Murray at 8. Should MCT raise rates to the maximum extent allowed, they could ultimately be raised to between \$13.27 and \$15.71, depending on the exchange, but not by more than five percent each year. Ex. MCT-1 at 8.

In addition to the above restrictions on changes to rates for stand-alone basic retail service, MCT agreed to freeze the rates for stand-alone basic retail service for the first year of the plan and only thereafter would it be permitted to adjust rates for that service. Exhibit Joint-1, Stipulation and Settlement Agreement at 3 and Exhibit Joint-2, Amended Alternative Regulation Plan of Merrimack County Telephone Company § 4.1. Also, the stipulation provides that for stand-alone basic retail customers on the Lifeline rate, their rate will not increase for the first four years of the plan. Ex. Joint-1 at 3 and Ex. Joint-2 § 4.1.6. Following the termination of the relevant rate freeze period, the rates for stand-alone basic service would be permitted to increase at no more than five percent per year, consistent with the remainder of the plan. Further, pursuant to the stipulation, within six months following the Commission's approval of the plan, and annually thereafter, MCT will meet with various community agencies to increase dissemination of information on the Lifeline and Link-Up programs. Ex. Joint-1 at 3-4 and Ex. Joint-2 §§ 4.1.6.1 and 4.1.6.2. The Company will also annually file with the Commission, the OCA and NHLA a report of its Lifeline-related activities along with other information relating to Lifeline participation. Ex. Joint-1 at 4 and Ex. Joint-2 § 4.1.6.3. These Lifeline obligations will terminate on the fourth anniversary of the plan. Ex. Joint-1 at 4 and Ex. Joint-2 § 4.1.6.3.

Under the plan, MCT will be permitted to adjust its rates on non-basic retail services in its discretion in response to market conditions and it will be required to file rate schedules with the Commission. Ex. Joint-2 §§ 4.2.1 and 4.2.3. The Company will also continue to meet its wholesale carrier obligations pursuant to state and federal law and will continue to meet its service quality obligations and file the relevant service quality reports. Ex. Joint-2 §§ 4.3, 6.1 and 6.2. According to the letter filed with the stipulation, each signatory supports approval of the plan subject to the amendments in the stipulation.

III. POSITIONS OF THE PARTIES

A. MCT

At the August 25, 2011 hearing, MCT presented Thomas Murray, Manager of State Government Affairs for TDS, as its witness. According to Mr. Murray, MCT has approximately 28 percent fewer access lines in service than it had on December 31, 2004. Ex. MCT-1 at 6. Further, Mr. Murray testified that this loss of market share was due to MCT being required to compete with cable, Voice over Internet Protocol, and wireless carriers that are subject to lesser degrees of regulation than MCT. Ex. MCT-1 at 3.

As for the elements of MCT's proposed plan, Mr. Murray testified that they meet the requirements of the statute while decreasing the regulatory burden on MCT. Transcript of August 25, 2011 Hearing (Tr.) at 12-13. He further testified that when the plan was originally proposed, MCT intentionally omitted references to the Lifeline and Link-Up programs because those had been the source of negotiations in prior petitions for alternative regulation. Tr. at 9. With regard to the Lifeline provisions that emerged as a result of the negotiation process, Mr. Murray took the position that although the Company agrees to increase its outreach for Lifeline enrollment, it may be that through no fault of its own Lifeline participation may drop, as some

customers move to alternate service providers. Tr. at 12. Therefore, he testified, the report on Lifeline enrollment would be for informational and not enforcement purposes. Tr. at 12. He contended that the inclusion of the Lifeline provisions helped to ensure access to affordable service as contemplated in the statute. Tr. at 12-13.

B. NHLA

NHLA expressed appreciation for MCT's efforts to incorporate amendments addressing concerns about access. NHLA stated that it believed the plan, as amended, conformed to the provisions of the statute requiring universal access to affordable stand-alone basic service. Tr. at 20. NHLA, therefore, supported the plan and recommended its approval. Tr. at 20-21.

C. OCA

On August 24, 2011, the OCA submitted a letter stating in relevant part:

As Mr. Phillips stated in his cover letter to the settlement agreement filed on August 15, 2011, the OCA is not a party to the settlement agreement and we take no position on TDS's proposed alternative regulation plan. As Mr. Phillips also noted, we do support the additions to the plan regarding the rate freeze for basic local exchange service and the provisions related to Lifeline/Link-Up. We believe these changes make the MCT plan more consistent with the existing alternative regulation plans of other New Hampshire TDS affiliates and we thank the Company for its willingness to include them in the settlement agreement.

The OCA also stated that it did not object to the hearing taking place in its absence.

D. Staff

In its closing, Staff stated that it supported the alternative regulation petition of MCT. Tr. at 20. Staff further stated that, as with prior alternative regulation petitions, it was concerned about Lifeline outreach and that the amendments to the originally proposed plan addressed those concerns. Tr. at 20-21. Staff also noted that the Company had agreed to rate freezes, which the Commission had previously found to be important in considering petitions for alternative

regulation. Tr. at 20-21. Staff recommended that the alternative regulation plan, as amended by the agreement, be approved. Tr. at 21.

IV. COMMISSION ANALYSIS

Effective June 14, 2011, the Legislature amended RSA 374:3-b, III. Under the newly enacted version of the statute, an alternative regulation plan for a petitioning company is to be approved if the Commission finds that:

- (a) The small incumbent local exchange carrier has 25 percent fewer access lines in service than it did on December 31, 2004;
- (b) The plan provides for maximum stand-alone 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 5 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;
- (c) The plan meets intercarrier service obligations under other applicable laws;
- (d) The plan preserves universal access to affordable stand-alone basic telephone service; and
- (e) The plan provides that, if the small incumbent local exchange carrier operating under the plan fails to meet any of the conditions set out in this section, the public utilities commission may require the small incumbent local exchange carrier to propose modifications to the alternative regulation plan or return to rate of return regulation.

As a result, the petitioning company is no longer required to show that competitive wireline, wireless or broadband service is available to the majority of customers in each of the exchanges served by that company, only that the petitioning company has 25 percent fewer access lines than it had on December 31, 2004.

MCT qualifies as a small incumbent local exchange carrier because it has fewer than 25,000 access lines in service. *See* RSA 374:3-b, I. Accordingly, the Commission will approve its alternative regulation plan if it meets the requirements of RSA 374:3-b, III. First, as noted in MCT's petition, it has lost more than 25 percent of its access lines since December 31, 2004. In

fact, according to the petition, and not disputed by any party, MCT has approximately 28 percent fewer lines in service than it had at the end of 2004. Thus, MCT's petition meets the criterion of RSA 374:3-b, III (a).

Next, we note that the plan as originally filed contained provisions limiting any increases in stand-alone basic service rates to no more than five percent per year, and capped those rates at the rates set by FairPoint, the state's largest incumbent carrier. Thus, the plan as filed met the requirements of RSA 374:3-b, III (b). We note also that pursuant to the stipulation, in addition to the above limitations, the rate for stand-alone basic service is frozen for one year following approval and the rate for stand-alone basic service at the Lifeline rate is frozen for four years following approval. Thus, this plan now offers a greater degree of rate protection than called for in the statute. Further, the plan specifically states that MCT will continue to meet its intercarrier service obligations. Thus, it complies with the dictates of RSA 374:3-b, III (c).

Next, the Commission must assess whether the plan preserves universal access to affordable stand-alone basic service. As noted above, the amended plan freezes for a time the rates for stand-alone basic service, thus ensuring that the service will continue to be available at current rates. Moreover, under the Lifeline provisions of the amended plan, MCT will increase the dissemination of information about the Lifeline rate, with the goal of informing more people of its availability. While, as Mr. Murray noted, providing additional information may not lead to an increase in subscribers to the program, we believe it will help inform the public of the availability of the program which will help provide continuing access to affordable stand-alone basic service. Also, we note that we have previously found the existence of rate freezes and increased information important in approving alternative regulation plans. *See, e.g., Kearsarge*

Telephone Company, et. al., Order No. 25,182 (Dec. 22, 2010) at 28. For these reasons, we believe the plan complies with the requirements of RSA 374:3-b, III (d).

Lastly, the Commission must determine whether the plan provides that if the carrier fails to meet its obligations, the carrier may be required to return to its prior form of regulation. Pursuant to sections 2.2 and 2.3 of the amended plan, MCT would be required to return to its prior form of regulation if it should fail to abide by the terms of its alternative regulation plan or if the Commission determines that MCT is no longer eligible for alternative regulation. Thus, the plan conforms to the requirements of RSA 374:3-b, III (e).

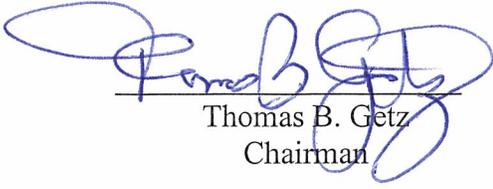
For the above reasons, we conclude that MCT's alternative regulation plan, as amended by the stipulation and settlement agreement complies with the requirements of RSA 374:3-b. Accordingly, MCT's petition is granted.

Based upon the foregoing, it is hereby

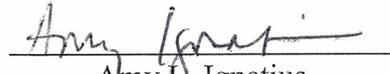
ORDERED, subject to the amendments in the stipulation and settlement agreement, Merrimack County Telephone Company's petition for alternative regulation is granted and its amended alternative regulation plan is approved; and it is

FURTHER ORDERED, that within 20 days of the date of this order a final version of the plan incorporating the changes identified in the stipulation and settlement agreement shall be filed with the Commission.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of
September, 2011.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy D. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

