

THE STATE OF NEW HAMPSHIRE
Before the
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Kearsarge Telephone Company,)	
Wilton Telephone Company,)	
Hollis Telephone Company, and)	DT 07-027
Merrimack County Telephone Company)	
Petitions for Alternative Regulation)	

**POST-HEARING REPLY BRIEF BY THE STAFF OF
THE PUBLIC UTILITIES COMMISSION**

On March 1, 2007, Kearsarge Telephone Company, Wilton Telephone Company, Hollis Telephone Company, and Merrimack County Telephone Company (the Companies), all wholly owned subsidiaries of TDS Telecommunications Corporation, petitioned for alternative regulation of their local exchange service in New Hampshire pursuant to RSA 374:3-b.¹ On December 3, 2007, the Companies, the Office of Consumer Advocate (OCA), segTel, Inc. and the Commission Staff (Staff) filed a Settlement amending the Companies' four proposed plans for alternative regulation. Granite State Telephone, Inc., Comcast Phone of New Hampshire, LLC and Union Telephone Company did not object to the Settlement. Mr. Bailey, represented by New Hampshire Legal Assistance (NHLA), opposed the Settlement.

The Staff submits this post-hearing brief in support of the Settlement. In this brief Staff demonstrates that the four plans, as amended by the Settlement, are consistent with applicable law and appropriately balance the interests of ratepayers and the Companies. Staff urges the

¹ The Companies or their affiliates offer various other services in New Hampshire such as data services, long distance services and cable television services, however, these services are not included in the alternative regulation plan since they are either; not within the Commission's jurisdiction, or not price regulated.

Commission to grant the Companies' request for alternative regulation under the terms of the Settlement.

I. STATUTORY STANDARD FOR COMPETITION UNDER RSA 374:3-b

RSA 374:3-b guides the Commission's consideration of the Settlement and the proposed alternative regulation plans for the Companies. RSA 374:3-b states in part:

"II. A small incumbent local exchange carrier subject to rate of return regulation may petition the public utilities commission for approval of an alternative form of regulation providing for regulation of such carrier's retail operations comparable to the regulation applied to competitive local exchange carriers, subject to paragraph III, due to its status as carrier of last resort.

III. The commission shall approve the alternative regulation plan if it finds that:

(a) Competitive wireline, wireless, or broadband service is available to a majority of retail customers in each of the exchanges served by such small incumbent local exchange carrier...."

In this proceeding, the Commission must consider for the first time petitions under this new statute.² Much of the testimony submitted in this docket focused on what constitutes a "competitive" telecommunications service and whether such services are available to customers. Staff took the position, in its June 8, 2007, memorandum of law, that the phrase "competitive wireline, wireless, or broadband service" is not ambiguous. As a result, in Staff's view, we need not resort to legislative history to discern its meaning. Staff also argued that the Commission's assessment of competitive services under RSA 374:3-b must focus on competition with basic local exchange service and not on competition with long distance service. Staff reasoned that long distance service is not a substitute for basic local service and therefore it cannot compete with basic local service. Finally, Staff asserted that affiliates of the Companies should not be

² RSA 374:3-b was enacted in 2005 and amended in 2006. 263:7 effective July 22, 2005. 154:1 effective July 21, 2006.

considered independent competitive providers. Staff continues to press these positions and incorporates by reference all arguments made in its earlier legal memorandum.³

Courts in New Hampshire generally interpret statutes according to their plain meaning.⁴ “Competitive” is defined by *Webster’s Ninth Collegiate Dictionary* (Merriam-Webster, Inc. 1984) as, “relating to, characterized by, or based on competition.” “Competition” is defined by *Webster’s Ninth Collegiate Dictionary* as “the effort of two or more parties acting independently to secure the business of a third party by offering the most favorable terms.” Further, a statutory term such as “competitive services” must not be interpreted in isolation, but rather in the context of the overall statutory scheme. *See, Appeal of Pinetree Power, Inc.*, 152 N.H. 92, 96 (2005) *citing Appeal of Ashland Elect. Dept.*, 141 N.H. 336, 340 (1996). RSA 374:3-b essentially price deregulates a small local incumbent exchange carrier’s (ILEC’s) retail services.⁵ In light of this statutory scheme, the Commission must determine whether the level of competition in each ILEC exchange is sufficient to justify lifting rate of return regulation and allowing price deregulation.

Had the legislature wanted to impose a more specific standard or test for determining whether the level of competitive services were sufficient to deregulate a small ILEC’s retail services, it would have done so. It did not. Instead, the legislature used a general term, “competitive,” with a well established meaning and left it to the Commission to determine whether services were sufficiently competitive to justify approving a plan under RSA 374:3-b. The legislature’s failure, in RSA 374:3-b, to further define “competitive,” or to craft more

³ *See*, Staff Legal Memorandum filed in this docket on June 8, 2007.

⁴ *See, Appeal of Pinetree Power, Inc.*, 152 N.H. 92, 96 (2005) *citing Appeal of Ashland Elec. Dept.*, 141 N.H. 336, 338 (1996) (We begin our inquiry with the examination of statutory language.), and *Appeal of Verizon New Hampshire*, 153 N.H.50, 60 (2005) (The courts begin with the plain meaning of the words unless the statute suggests otherwise.)

⁵ “II.providing for regulation of such carrier’s retail operation comparable to the regulation applied to competitive local exchange carriers,....” 374:3-b, II. By treating a small ILEC like a CLEC the statute provides for no price regulation of retail service, just as CLECs are currently treated.

specific standards for approval, evidences the legislature's reliance upon the Commission's specialized expertise to determine whether a small ILEC is experiencing sufficient competition throughout its service territory to move to price deregulation. Similar to the legislative deference given to the Commission for its rate setting function,⁶ RSA 374:3-b gives the Commission considerable deference in its determination of whether to end rate of return regulation for a small ILEC.

The New Hampshire Courts have described the Commission's expertise and discretion in the rate setting context,

“We acknowledge that ‘(t)he commission must exercise its own expertise and skill in the setting of rates,’ and recognize that ‘(t)he soundness of having (ratemaking) matters ... determined by a commission of persons qualified to evaluate the issues in a specialized field lies beyond dispute.” (citations omitted) *Legislative Utility Consumers' Council v. Public Service Company of New Hampshire*, 119 N.H. 332, 339-340 (1979) quoting, *Spintman v. Chesapeake & Potomac Tel. Co.*, 255 A.2d 304, 307 (1969).

Consistent with the general statutory guidance provided the Commission in setting just and reasonable rates, RSA 374:3-b provides only a general description of the requisite competitive services and then allows the Commission to exercise its expertise in assessing competitive services and approving alternative regulation for small ILECs.

There is also some federal limitation of state actions regarding small ILECs found in the 1996 Telecom Act.⁷ Although the 1996 Act does not deal directly with ILECs local exchange rates, it does have the primary purpose of promoting competition among telecommunications providers and expressly prohibits any state regulatory actions that thwart that purpose.⁸ As a

⁶ See, RSA 378:7 requiring the commission to set just and reasonable rates without further defining either the standard or the inquiry required to set such rates.

⁷ 47 U.S.C. § 153 et seq.

⁸ See, 47 U.S.C. § 253.

result, the Commission may not grant alternative regulation to small ILECs in ways that will harm competition in their service territories.

Mr. Bailey argues in his brief that the Commission must read RSA 374:3-b and 378:7 together because they deal with the same subject matter. A closer look at these two statutes, however, leads to a different conclusion. The Commission is to regulate small ILECs under RSA 374:3-b as if they were CLECs.⁹ The Commission does not price regulate CLECs. Therefore RSA 374:3-b eliminates further price regulation of small ILEC's retail rates so long as other conditions are met. RSA 378:7 deals only with rates the Commission actually regulates and therefore does not apply to small ILECs granted unregulated rates under RSA 374:3-b. Hence the Commission should not attempt to read RSA 378:7 and RSA 374:3-b together.

II. ASSESSMENT OF COMPETITIVE SERVICES FOR THESE COMPANIES

A. Record Evidence on competitive services in the TDS Service Territories

Staff witnesses Ms. Gage and Dr. Chattopadhyay filed pre-filed testimony on availability and competitiveness of third party services in several of the Companies' exchanges. Dr. Chattopadhyay's analysis of competition involved the use of an econometric model to study customer behavior. Based upon that analysis of the period January 2004 to June 2007¹⁰ Dr. Chattopadhyay concluded that in the Wilton and Hollis exchanges basic local service was not sufficiently competitive to allow price deregulation at that time. Exhibit 9, Prefiled Direct Testimony, Pradip Chattopadhyay, p. 18, ln. 18-20. Ms. Gage considered availability of third party services in the Sutton and Salisbury exchanges and concluded that there was not sufficient wireless, wireline or broadband coverage to find competitive services available to a majority of customers in those two exchanges. Exhibit 10, Direct Testimony, Josie Gage, p. 11, ln. 13-16,

⁹ See, RSA 374:3-b, II

¹⁰ Prefiled Direct Testimony of Pradip Chattopadhyay, p. 13 ln. 9.

and p. 12 ln. 1-2. For wireless availability, Ms. Gage based her analysis on cellular tower locations and likely signal transmittal distances based upon engineering studies. Exhibit 10, Direct Testimony, Josie Gage, p. 10 ln. 4-11. Based upon that Staff analysis, when questioned by NHLA, counsel for Mr. Bailey, Staff witness Ms. Kathryn Bailey testified that

“Q. Okay. I just have one last question. Are competitive wireline, wireless, or broadband services available to a majority of the customers in each and every exchange of TDS today?”

A. (Bailey) No.”

Transcript Day 1, December 4, 2007, p. 97

Immediately after Ms. Bailey testified, witness Mike Reed for the Companies testified based upon earlier testimony by Mr. Reed and Mr. Ulrich, that competitive wireline, wireless or broadband services are available to a majority of customers in each of the Companies’ exchanges. Transcript Day 1, December 4, 2007, p. 97 ln. 8-9. The Companies’ witness used wireless company coverage maps and marketing data to determine whether wireless service was available to a majority of customers in each of the Companies’ exchanges. *See*, Companies Responses to Staff Set 1 Data Requests (Staff 1-54) September 4, 2007 (attached as Exhibit 1). The Companies relied upon substantial loss of access lines and access minutes to demonstrate the level of competition the Companies were experiencing. Exhibit HTC 2C, Direct Testimony of Michael C. Reed p. 5 ln. 16-23, pg. 6, and p. 7 ln. 1-17.

The OCA and Mr. Bailey, represented by NHLA, also submitted prefiled testimony applying differing analyses of competitive services in the Companies’ service territories and concluding that competition was not sufficient in all exchanges to fulfill RSA 374:3-b. The OCA and Mr. Bailey in their prefiled testimony examined the product and geographic

characteristics of alternatives, analyzed the market share of the Companies and examined whether alternative wireless and broadband services are competitive substitutes for the Companies' basic local service. They concluded that the Companies are not only a dominant firm in the market for basic telephony, but also that wireless and broadband alternatives are not competitive substitutes for basic local service. *See*, Exhibit 8, Prefiled Testimony of Robert Loube, p. 18, Line 20 to p.21, Line 2 and Exhibit 7, Prefiled Testimony of Ben Johnson, p. 60, Line 9 to p. 61, Line 11 and p. 86, Lines 1-17.]

Staff witness, Dr. Chattopadhyay, supplemented his prefiled testimony at hearing by indicating that given current trends he would expect to see what he considered sufficient price elasticity within approximately 2 years from June 2007 in Wilton and within approximately 3 years from June 2007 in Hollis, to conclude that the markets for basic service would be competitive. Transcript Day 2, December 5, 2007, p.166-168.

This is not the first case in which the Commission has received conflicting evidence and differing expert opinions and must weigh the evidence in order to reach a decision.

“In arriving at its conclusions, the commission can rely, in addition to the testimony presented, on the exhibits, the records and reports required to be filed with it by the company, and on the commission's own expertise and that of its own staff. Furthermore the commission is not compelled to accept the opinion evidence of any one witness or group of witnesses. Whether it should rely upon the expert testimony presented by staff witnesses in preference to that offered by the company is a matter for its judgment based upon the evidence presented.” (citations omitted) *New England Telephone Company v. State*, 113 N.H. 92, 101-102 (1973)

In this case, however, several of the parties who originally had conflicting testimony (the Companies, OCA and Staff) reached a settlement which amended the Companies' proposed plans in ways that each signatory felt appropriate and consistent with the requirements of RSA 374:3-b. Transcript Day 1, December 4, 2007, p. 35 ln. 16-23; and p. 49-53. In reviewing this record Staff urges the Commission to consider all analysis, including testimony at hearing on the

affect of the Settlement, and then determine whether, on balance, there is sufficient evidence of competition to approve the Settlement.

Competition is not an all or nothing concept. With the Settlement's market opening provisions and the rate freezes, for one year in Wilton, two years in Hollis, and two or more years in the Merrimack and Kearsarge service territories, the Staff believes that competition is sufficiently enabled by the plans to be consistent with the requirement of RSA 374:3-b.

Transcript Day 2, December 5, 2007, p. 166-168. While competition is expected from wireless and broadband providers, Staff believes that competition emanating from wireline alternatives cannot be ignored and should be encouraged given that such alternatives are close substitutes for the incumbent's basic local service. For these Companies, Staff believes the record supports a finding that the additional market opening provisions of the plan together with the rate protection for basic service and lifeline customers included in the Settlement are necessary and appropriate given the level of competition in the Companies' exchanges and are consistent with the requirements of RSA 374:3-b. Transcript Day 1, December 4, 2007 p. 49-52. In Staff's view the current level of competition among alternatives may be sufficient to allow bundling and price deregulation of non-basic services as provided for in the Companies' plans.¹¹ For basic local service, however, Staff believes a rate freeze is needed until competitive markets are more robust. The Settlement contains market opening provisions as well as tests to assure the provision of wireline service by an unaffiliated provider before allowing deregulation of basic local services.

B. Market Opening Provisions and Dynamic State of Competitive Markets

¹¹ Examples of non-basic services include: intra state long distance, voice mail, call waiting, and call forwarding.

In the Settlement the Companies agree to both, waive the rural exemption¹² and to expedite the interconnection process with competitive local exchange carriers (CLECs) so as to allow more rapid entry of other wireline carriers. The rural exemption is a significant market barrier since it prevents entry of any wireline telecommunications providers requiring interconnection with the Companies' network. Absent the Settlement, a competitive carrier must make a bona fide request to interconnect which is followed by a proceeding before the Commission to determine whether the rural exemption should be waived. Such a proceeding may take up to 120 days¹³ and requires a substantial evidentiary hearing to determine whether interconnection is economically burdensome and technically feasible.¹⁴ In addition to waiving the rural exemption in the Settlement, the Companies have shortened the time during which a competitive provider may request arbitration of an interconnection agreement with the Commission from 135 days, as required by statute, to 90 days.¹⁵ By agreeing to waive the rural exemption and shorten the time to get to arbitration the Companies have significantly reduced the time and expense required by a competitor wishing to enter and compete in their service territories.

The Staff believes that the rate freezes for one year and two years respectively for Wilton and Hollis are important because they provide additional time for potential new wireline entrants to establish a basic service offering which will enhance the existing competition from wireless and broadband alternatives in these markets.

¹² 47 USC § 251 (f)

¹³ 47 USC § 251 (f) 1 (B)

¹⁴ Id.

¹⁵ See, 47 USC § 252 (b) (1)

As acknowledged by Staff witness Dr. Chattopadhyay, the telecommunications market is dynamic. Exhibit 9, Prefiled Testimony, Pradip Chattopadhyay, Page 14, Line 18. Changes in service offerings have occurred over the 2004-2007 timeframe examined by Dr. Chattopadhyay and will likely continue. Transcript Day 2, p.166, Line 11 to p. 167, Line 16. As further evidence of the developing markets Staff notes that on December 12, 2007, Comcast Phone of New Hampshire, LLC (Comcast) filed an application to be registered as a competitive local exchange carrier to operate in the following towns: Andover, Antrim, Bennington, Boscawen Chichester, Deering, Henniker, Hillsboro, Hopkinton, Loudon, New London, Salisbury, Wilmont and Wilton.¹⁶ All of these towns are in the Companies' service territory. *See*, partial copy of filing at Exhibit 2.

C. Mr. Bailey's Competitive Analysis under RSA 374:3-b is Flawed

Mr. Bailey also argues that lifeline and low income customers may be more dependent upon basic local service and may have fewer competitive choices because they do not buy additional services which are typically bundled. Based upon the evidence in this case, the Companies' lifeline customers represent approximately 1% of total customers. Exhibit Bailey 22C. RSA 374:3-b requires a finding that competitive services are available to a majority of customers in each exchange, not to all or nearly all customers. *See*, 374:3-b, III (a). This general statutory requirement should not be confused with the requirement that such a finding be made for low-income customers as a separate group. As will be discussed below, the Settlement contains some specific additional protections for lifeline customers, who are by definition low income customers.

¹⁶ A copy of part of the Comcast CLEC registration filing is attached as Exhibit 2 to this brief.

D. Additional Competitive Protections in Settlement

As discussed above, the record supports a finding of competitive services sufficient to allow the modified alternative regulation plans proposed in the Settlement. Moreover, the Settlement establishes additional specific competitive showings in all exchanges except Wilton and Hollis. The Staff believes that competitive alternatives will develop sufficiently in one year in Wilton and two years in Hollis. As a result, the Settlement does not impose additional competitive tests on Wilton and Hollis. Transcript Day 1, December 4, 2007, p. 77 lines 9-20. The competitive tests agreed to in the Settlement are as follows:

(1) a non-affiliated wireline CLEC has collocated in the central office serving that exchange and is offering service;

(2) a non-affiliated cable telephone provider is certified to provide telephone service within the exchange and has facilities able to serve a majority of customers within that exchange;

(3) a non-affiliated cable provider is offering the functional equivalent to telephone service within the exchange and has facilities able to serve a majority of customers within that exchange;

(4) a non-affiliated CLEC is providing basic service to the exchange through resale, unbundled network elements, its own facilities or a combination thereof; or

(5) the affected Petitioner demonstrates to the Commission that wireless or non-affiliated broadband service is available to a majority of retail customers in the affected exchanges and that such service is “competitive” within the meaning of RSA 374:3-b.

These additional tests for competitive services ensure, except in the fifth subsection, that a wireline provider is present with the immediate ability to serve customers in an exchange

before TDS is allowed to raise its basic exchange rate. These four tests are concrete and easily verifiable.

If at a later date, any party wishes to rely upon subsection 5, the Commission will require a further evidentiary record similar to that developed in this docket. Given the dynamic market for telecommunications in New Hampshire the facts will likely have changed significantly at the time of any future inquiry under subsection 5

Because Staff believes wireline service has the best substitutability with basic local service, these added tests for wireline providers create a higher likelihood that basic local rates will be constrained by competitive services. Transcript Day 1 December 4, 2007, p 88 at ln 10-16 and p. 89 ln 4-8.

III THE SETTLEMENT MEETS OTHER REQUIREMENTS of RSA 374:3-b

Once the Commission determines that telecommunications services in a small ILEC's service territory are sufficiently competitive, it must also consider several other factors before granting approval of a plan under RSA 374:3-b.

“(b) The plan provides for maximum 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 10 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 regulation, or statutes;

(c) The plan promotes the offering of innovative telecommunications services in the state;

(d) The plan meets intercarrier service obligations under other applicable laws;

(e) The plan preserves universal access to affordable basic telephone service; and

(f) 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 modification to the alternative regulation plan or return to rate of return regulation.” RSA 374:3-b, III (b)–(f).

A. Settlement’s Rate Protection and Affordability for Basic and Life Line Services

RSA 374:3-b, III (b) Rate Protections

The plans before amendment by the Settlement contained the minimum rate protections set out in subsection (b) quoted above. The Settlement increased rate protections by adding a basic rate freeze for one or two years or more depending upon the level of competition experienced by each of the companies.

In the case of lifeline customers the Settlement extends the basic rate freeze for four years or longer until additional competitive tests are met. These competitive tests are the same ones applicable to all KTC and MCT exchanges for basic rates, except that for lifeline customers the tests apply to all exchanges in all companies. Finally, the Settlement caps the Companies’ lifeline rates at the levels of lifeline rates for the largest incumbent local exchange carrier operating in New Hampshire. Thus, the Settlement provides far more protection of lifeline rates than required by RSA 374:3-b, III (b) or proposed under the original plans.

RSA 374:3-b, III (e) Universal Access to Affordable Basic Telephone Service

The Settlement’s additional rate freezes for lifeline customers meet the affordability requirements of subsection (e). First they prevent any change in rates for four or more years. Second, lifeline rates cannot rise until the Settlement’s competitive tests are met in an exchange. Third, consistent with the statute, lifeline rates may only increase 10% annually for four years after the rate freeze. Fourth, the Settlement limits lifeline rates to those of the largest incumbent. Finally, the Companies commit to work with NHLA and the parties to increase Lifeline enrollment. All of these provisions meet the affordability and universal service requirements of subsection (e).

For non-lifeline customers, the Settlement likewise enhances the minimum statutory rate protections and therefore increases affordability. Competition will also provide a limitation on rates for basic services. By reducing barriers to market entry for wireline providers the Settlement provides further constraints on basic service pricing once price freezes have expired and improves affordability of basic local services.

B. Settlement Promotes Innovative Services by Promoting Competition

As discussed in section II B above, the telecommunications markets in New Hampshire are dynamic and should continue to develop. Staff believes that the best way to promote innovative services within the Companies' service territories is to promote competition. The Settlement has several market opening provisions designed to speed up the entry of additional market participants. These provisions clearly promote competition and should lead to more innovative service offerings.

C. Settlement's Protection of Inter-carrier Services

Under the plans the Companies agree to continue to meet all inter-carrier obligations. *See*, sections 3.4 and 4.3 of each of the plans. The plans do not remove the Commission's regulation of wholesale prices nor does 374:3-b purport to deregulate wholesale services. In fact, RSA 374:3-b deals only with retail operations.¹⁷ Further, as discussed above, the Settlement provides for expedited interconnection arbitration requests to the Commission and waives the Companies' rural exemption. These conditions substantially exceed minimum inter-carrier requirements for the Companies. As a result, the plans as modified by the Settlement are consistent with RSA 374:3-b (d).

¹⁷ A small incumbent local exchange carrier subject to rate of return regulation may petition the public utilities commission for approval of an alternative form of regulation providing for regulation of such carrier's *retail* operations comparable to the regulation applied to competitive local exchange carriers, subject to paragraph III, due to its status as carrier of last resort. RSA 374:3-b, II (emphasis added)

D. Settlement's Support of On-Going Commission Oversight

Both the Companies' plans and the Settlement provide for on-going Commission oversight of the Companies. The plans provide, consistent with RSA 374:3-b, that in the event that the Commission determines that the company no longer meets the eligibility criteria under RSA 374:3-b the Commission may either require modification of the plan or termination and return to rate of return regulation. *See*, 374:3-b, III (f) and section 2.3 of each plan. Further, the Settlement provides that basic rate freezes do not end in some cases until certain competitive tests are met. The Commission may be asked to determine whether or not those specific competitive criteria are met. In addition, nothing prevents the Commission from periodically reviewing the state of competition and competitive rates within each of the Companies' exchanges and requesting modifications to the plans in order to meet statutory criteria of available competitive services.

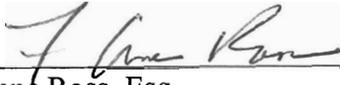
CONCLUSION

The Settlement in this case is among parties with normally divergent views, the Companies, the OCA, a CLEC and Staff. The Settlement represents a compromise of competing concerns and a balance of interests between the Companies and their customers. Settlements are allowed and encouraged in administrative proceedings. *See*, RSA 541-A:31, V. The Commission's rules provide that the Commission shall approve the disposition of contested cases by settlements if it "determines that the result is just and reasonable and serves the public interest." N.H. Code Admin. R. Puc 203.20(b). Based upon the record in this proceeding, Staff urges the Commission to approve the Settlement and the four amended alternative regulation plans submitted by the Companies.

Respectfully submitted:

STAFF OF THE PUBLIC UTILITIES COMMISSION

By its Attorneys



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Date: 2/8/08

Exhibit 1

Kearsarge Telephone Company
Wilton Telephone Company
Hollis Telephone Company
Merrimack County Telephone Company
Docket No. DT 07-027
Company Responses
To Staff Set 1 Data Requests
September 4, 2007

STAFF 1-54: Reed Testimony, Attachments A-MCT, B-KTC, C-WTC, and D-HTC. Please provide the maps verifying the coverage for each and every company (cellular as well as broadband service providers) cited in the Attachments for each and every exchange. Describe in detail how you arrived at the specific percentages.

Response:

Please refer to maps included in the response to Staff 1-37. As explained in Mr. Reed's testimony, wireless coverage was determined by use of the CoverageRight map which is based on data obtained from wireless company coverage maps. This was used along with maps provided by the wireless providers on their websites. Because the wireless coverage is nearly 100%, Petitioners did not plot each wireless competitor on each exchange map. The websites provide the requested data and as an example Mr. Reed has attached maps obtained from the Verizon Wireless website, attachments TDS 0071-0133.) Cable television information was gathered via each providers website. Then, using our exchange maps, our local technicians and managers recorded the approximate location of all cable facilities. Finally, by overlaying our DSL available routes on these same maps we were able to develop reasonable estimates.

Michael C. Reed is responsible for this response.

Exhibit 2

MINTZ LEVIN

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January 28, 2008

Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301



Re: Comcast Phone of New Hampshire, LLC Request for Approval of Form CLEC-10

Dear Ms. Howland:

Comcast Phone of New Hampshire, LLC ("Comcast Phone") requests the New Hampshire Public Utilities Commission ("the Commission") for approval of its Form CLEC-10, filed on December 12, 2007, and an issuance of a CLEC authorization number as provided in PUC 431.01(d). This issuance will authorize Comcast Phone to provide competitive local exchange service within the service territory of Kearsarge Telephone Company, Merrimack County Telephone Company, Wilton Telephone Company and Hollis Telephone Company (collectively "TDS Telecom Companies"). To the extent that the reference in PUC 431.01(d) to "the territory of non-exempt ILECs" implies a limit on issuance of an authorization in this requested service area, Comcast Phone asks the Commission to waive such limit.

Comcast Phone is a competitive local exchange carrier currently authorized to provide intrastate telecommunications services within the State of New Hampshire in exchanges served by Verizon. Comcast Phone seeks to expand this service area to include Rate Centers served by the TDS Telecom Companies in Andover, Antrim, Bennington, Boscawen, Chichester, Deering, Henniker, Hillsboro, Hopkinton, Loudon, New London, Salisbury, Wilmot, and Wilton.

Authorization should be issued because Comcast Phone's application satisfies the requirements of Form CLEC-10 and such entry will serve the public good by expanding local exchange competition. Moreover, it is consistent with the position taken by the TDS Telecom Companies in the proposed Settlement in Docket 07-027, now under consideration by the Commission. In the proposed Settlement, the TDS Telecom Companies have waived the rural telephone company exemption and they do not object to Comcast Phone's entry into the TDS Telecom Companies' territory.

1. Any Exemption from Local Competition Is Not At Issue.

PUC 431.01(d) provides that the Commission "shall issue a CLEC authorization number which authorizes the applicant to provide competitive local exchange service in the territory of non-exempt ILECs." It is doubtful, however, whether the language limiting registration to "non-

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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exempt ILECs” is intended to preclude in its entirety the issuance of authorization to provide competitive service in the territory of arguably exempt ILECs, particularly since the rules are silent on any avenue for the registration of competitive providers in the exempt ILEC territories. Such a complete prohibition would frustrate competitive entry in New Hampshire. But the Commission need not reach that issue, because the TDS Telecom Companies can be treated as a non-exempt ILEC for purposes of Comcast Phone’s application.

First, Comcast Phone is authorized to state that the TDS Companies take no position on this request. In this light, there is no assertion before the Commission that any exemption applies.

Moreover, in the matter of *Petition of Kearsarge Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc. and Merrimack County Telephone Company Petition for Alternative Form of Regulation*, DT 07-027 (“the TDS Alt Reg Petition”), the TDS Telecom Companies along with other parties filed a proposed settlement agreement for approval by the Commission. The proposed settlement pending before the Commission states, among other things, that (a) the TDS Telecom Companies will not oppose Commission certification or registration of any company seeking to do business as a competitive local exchange carrier in the service territories of the TDS Telecom Companies, and (b) the TDS Telecom Companies agreed to waive the rural telephone company exemption under Section 251(f)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“the Telecommunications Act”).¹ Treatment of the TDS Telecom Companies as non-exempt for purposes of PUC 431.01(d) is consistent with these terms of the proposed settlement.

Since Comcast Phone’s Form CLEC 10 complies with the requirements of PUC 431.01(c), and there is no basis for denial of registration under PUC 431.02, Comcast Phone’s application for registration to provide competitive local exchange service in the TDS Telecom Companies’ territories should be approved under PUC 431.01(d).

2. Competitive Entry Into TDS Telecom Companies’ Service Territory Serves the Public Good.

For the reasons stated above, the Commission can authorize Comcast Phone’s expansion of its service territory without addressing whether the TDS Telecom Companies are an exempt ILEC. But even if the TDS Telecom Companies are eligible for exemption under RSA 374:22-f – something that has not been established² – the Commission should find pursuant to RSA

¹ *Settlement Agreement Among the Joint Petitioners and the Other Signatories Hereto*, DT 07-027, ¶¶ 1, 2.1 (filed Nov. 30, 2007).

² RSA 374:22-f applies to ILECS with fewer than 25,000 access lines. Whether the TDS Telecom Companies have fewer than this number depends whether each TDS subsidiary is counted singly or all their access lines are aggregated, a question in dispute in connection with the TDS Alt Reg Petition for purposes of RSA 374:3-b, which uses the same 25,000-line benchmark. See *Initial Brief of SegTEL*, DT 07-027, pp. 3-6 (June 8, 2007); *Secretarial*

374:22-f that granting Comcast Phone access to the TDS Telecom Companies' service territories is "consistent with the public good" under RSA 374:22-e and 374:22-g.

The Commission has been primarily concerned with "the fostering of a competitive market for the provision of advanced telecommunications services within New Hampshire" in accordance with the responsibility assigned to it by both the New Hampshire Legislature and federal statute. *Order No. 23,660, Vtts Networks, Investigation Into Cessation of Network Operations*, DT 01-013, Order Denying Motion for Waiver, p.5 (March 3, 2001). The Commission in turn recognizes that the federal statute seeks to "utilize the discipline of the marketplace to stimulate technological innovation, efficiency, and improvements in service quality and reliability." *Order No. 23,738, Bell Atlantic Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996*, DE 97-171, Order Granting in Part and Denying in Part, p. 2 (July 6, 2001). Thus, "one of the principal goals of the telephone provisions of the Act is to open the local exchange and exchange access markets to competition." *Id.*

By allowing Comcast Phone to expand its existing service territory into the TDS Telecom Companies' territories, the Commission would fulfill state and federal policy goals of encouraging competition, promoting deployment of advanced services, and giving resident consumers the freedom of choice among different voice service providers. Comcast Phone has already shown its ability to provide voice service to consumers in New Hampshire, and competitive entry into the proposed service territory thus would promote the public good by facilitating efficient service and maintenance in the territory. *Order No. 24,422, Merrimack County Tel. Co., Granite State Tel. Co., Joint Petition to Modify Service Boundaries*, DT 04-191, Order *Nisi* Approving Boundary Modifications, p.2 (Jan. 7, 2005).

Any more restrictive interpretation RSA 374:22-e, 374:22-f, and 374:22-g not only would be inconsistent with the Commission's policy of fostering local competition, but also would put these provisions in conflict with federal law. It is fundamental to the Telecommunications Act that "[s]tates may no longer enforce laws that impede competition, and incumbent LECs are subject to a host of duties to facilitate market entry." *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 370 (1999). Section 251(f) of the Telecommunications Act establishes a scheme permitting and limiting exemption of rural ILECs from interconnection obligations. 47 U.S.C. § 251 (f). State laws that are inconsistent with the federal scheme by insulating incumbent LECs from competition are preempted. *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, 15 F.C.C.R. 15168, 15171-75 (Aug. 10, 2000).

In particular, any application of provisions of RSA 374:22-e, 374:22-f, and 374:22-g so strict that it would make competitive entry subject to the incumbent's invitation or require division of territory with the incumbent could "have the effect of prohibiting" competitive entry

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

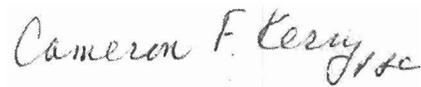
January 28, 2008

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in violation of 47 U.S.C. § 253 (a). This same issue was addressed in *Silver Star Telephone Co., Inc. Petition for Preemption and Declaratory Ruling*,³ where the FCC preempted a Wyoming rural incumbent protection provision. Very similar to RSA 374:22-f, the Wyoming statute empowered certain ILECs serving 30,000 or fewer access lines in Wyoming to preclude other carriers from providing competing local exchange service in their territories until at least January 1, 2005. *Id.* at 15656-57. The FCC held that this provision is a barrier to entry prohibited under Section 253 (a) because it grants incumbent LECs unfettered discretion to prevent any entity from providing competing service in their territory.⁴

For all these reasons, Comcast Phone respectfully requests that the Commission issue a CLEC authorization number allowing it to provide competitive local exchange service in the TDS Telecom Companies' service territories in New Hampshire and, if necessary, waive PUC 431.01(d). Please do not hesitate to contact the undersigned with any questions.

Sincerely yours,



Cameron F. Kerry

cc: Brian A. Rankin
Stacey L. Parker
Frederick J. Coolbroth, Esq.
May Y. Low, Esq.

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³ FCC 97-336, 12 F.C.C.R. 15639 (Sept. 24, 1997); *aff'd*, FCC 98-205, 13 F.C.C.R. 16356 (Aug. 24, 1998)

⁴ FCC 98-205, 13 F.C.C.R. 16356, at ¶ 3 (Aug. 24, 1998)



Andrew D. Fisher
Senior Counsel

1500 Market Street
Philadelphia, PA 19102
215-286-3039

VIA OVERNIGHT MAIL

December 11, 2007

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, NH 03301-2429

RE: CLEC Registration – Comcast Phone of New Hampshire, LLC

Dear Executive Director Howland:

I am enclosing one copy of the above-referenced application. Can you please date stamp the enclosed copy page and forward in the self-addressed, pre-paid envelope.

If you should have any questions, please feel free to contact the undersigned or Stacey Parker, Senior Director, Regulatory Affairs at 978-927-5700.

Sincerely,

A handwritten signature in black ink, appearing to read "A. D. Fisher", written over a thin horizontal line.

Andrew D. Fisher

c: Stacey Parker (via email)



CLEC APPLICATION FOR REGISTRATION

1. General Information

Federal Identification Number 30-0022802

Date of Application 12/11/07

Legal Name Comcast Phone of New Hampshire, LLC

Trade Name (d/b/a) Comcast Phone of New Hampshire, LLC
 in New Hampshire

Contact Person Stacey Parker

Complete Mailing Address 12 Tozer Road
Beverly, MA 01915

Phone Number 978-927-5700

Fax Number 978-927-6074

E-mail Address Stacey_Parker@cable.comcast.com

2. History of Applicant

- a. Has the applicant, or have any of the general partners, corporate officers, director of the company, limited liability company managers or officers been convicted of any felony not annulled by a court? No
 - b. In the past ten years, has the applicant, or have any of the general partners, corporate officers, director of the company, limited liability company managers or officers had any civil, criminal or regulatory sanctions or penalties imposed pursuant to any state or federal consumer protection law or regulation? No
 - c. In the past ten years, has the applicant, or have any of the general partners, corporate officers, director of the company, limited liability company managers or officers settled any civil, criminal or regulatory investigation or complaint involving any state or federal consumer protection law or regulation? No
 - d. Is the applicant, or are any of the general partners, corporate officers, director of the company, limited liability company managers or officers currently the subject of any pending civil, criminal or regulatory investigation or complaint involving any state or federal consumer protection law or regulation? No
 - e. Has the applicant, or have any of the general partners, corporate officers, director of the company, limited liability company managers or officers been denied certification in any other state. No
- If so, please list each state. No

f. If the answer to any of the questions in a through e above is yes, please attach an explanation.

If you have any questions, please call the New Hampshire Public Utilities Commission at 603-271-2431.
 Please mail any documents to the above address.



3. Service

List the three primary telecommunications services the company will provide:

a. Access

b. Exchange Access

c. Interexchange Service

Identify the applicant's proposed service area:

TDS Rate Centers in the following communities:

Andover, Antrim, Bennington, Boscowan, Chichester, Deering, Henniker, Hillsboro, Hopkinton, Loudon, New London,

Salisbury, Wilmont, Wilton

4. Required Attachments

- a. A copy of the New Hampshire Secretary of State Certificate of Authority
b. Proof of Surety Bond, if applicable
c. Form CLEC-1, Contact Information
d. A copy of the CLEC's complete rate schedule
e. A copy of Form CLEC -11, Adoption of Uniform Tariff, if applicable

5. Compliance Statements

I attest that the applicant will comply with all applicable New Hampshire laws and all Commission policies, rules and orders. DJK (initial)[Puc 430.02]

I attest that the applicant has the necessary managerial qualifications, technical competence and financial resources to operate the CLEC for which the applicant seeks registration. DJK (initial)

I attest that the applicant agrees to use with the Verizon New Hampshire rates for intraLATA switched access, as filed in Tariff 85, including future changes, or charge a lower rate. In the event the applicant believes a higher rate is justified, the applicant will file a separate petition with evidence supporting the higher rate. DJK (initial)

6. Signature

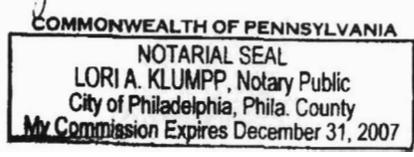
I David J. Kowolenko, (name) declare under penalty of perjury that I am authorized to make this verification for and on behalf of the applicant; that I have read the information provided by the applicant in the foregoing document and any and all attachments, and am informed and believe the same are true, and on that ground, affirm that the matters stated herein are true.

[Signature] Signed David J. Kowolenko, Vice President, Voice Services Title

Subscribed and sworn before me this 11th (day) of December (month) in the year 2007

County of Philadelphia

State of Pennsylvania



[Signature] Lori A. Klumpp
Notary Public/Justice of the Peace
My Commission expires 12/31/2007