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## VIA HAND DELIVERY

June 8, 2007

Ms. Debra Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street  
Concord, NH 03301



NHPUC JUN08'07 PM 3:40

**Re: DT 07-027 (Petition of Four TDS Telecom Companies for Alternate Regulation)**

Dear Ms. Howland:

Enclosed for filing in the above-referenced matter, on behalf of Granite State Telephone, Inc., are an original and eight (8) written copies of the "Initial Brief of Granite State Telephone, Inc.", submitted in accordance with the May 29, 2007 Secretarial Letter as amended by the June 5, 2007 Secretarial Letter.

An electronic copy of the enclosed document has been delivered separately to your office and to all parties of record in the case.

I have included an extra written copy of the enclosed document with this filing. Would you kindly date-stamp the extra copy and return it to my courier?

Thank you for your attention to this matter. Please let me know if you have any questions.

Very truly yours,

Paul J. Phillips  
Encls.

cc: Attached Service List, Docket No. DT 07-027 (copies e-mailed where shown)  
Susan Rand King, President, Granite State Telephone, Inc.

NHPUC JUN08'07 PM 4:41

**State of New Hampshire  
Before the New Hampshire Public Utilities Commission**

**DT 07-027**

**Petitions of  
Kearsarge Telephone Company, Inc.,  
Merrimack County Telephone Company, Inc.,  
Wilton Telephone Company, Inc., and  
Hollis Telephone Company, Inc.  
for an Alternate Form of Regulation**

**INITIAL BRIEF OF GRANITE STATE TELEPHONE, INC.**

**June 8, 2007**

**Submitted by:**

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**State of New Hampshire  
Before the New Hampshire Public Utilities Commission**

**DT 07-027**

**Petitions of Kearsarge Telephone Company, Inc., Merrimack County  
Telephone Company, Inc., Wilton Telephone Company, Inc., and  
Hollis Telephone Company, Inc. for an Alternate Form of Regulation**

**INITIAL BRIEF OF GRANITE STATE TELEPHONE, INC.**

Granite State Telephone, Inc. ("Granite State" or the "Company"), by and through the undersigned counsel and in accordance with the Secretarial Letter dated May 29, 2007, from the Executive Director of the Public Utilities Commission (the "Commission"), submits the following Initial Brief setting forth Granite State's legal position on certain preliminary matters of statutory interpretation that are central to the substantive issues in this proceeding.<sup>1</sup>

**I. Supporting Statement of Facts**

In support of its Initial Brief, Granite State states as follows:

1. This proceeding involves petitions filed simultaneously by four small incumbent local exchange carriers ("ILECs") in accordance with N.H. RSA 374:3-b.
2. N.H. RSA 374:3-b was enacted by the General Court and signed into law by the Governor effective July 22, 2005, and subsequently amended by an enactment of the General Court signed into law by the Governor effective July 21, 2006.

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<sup>1</sup> On May 31, 2007, the Public Utilities Commission ("Commission") granted a motion filed by the Office of Consumer Advocate for enlargement of time to June 8, 2007, for filing Initial Briefs, and to June 20, 2007, for filing Reply Briefs. *See* Secretarial Letter (June 5, 2007), at 1.

3. N.H. RSA 374:3-b allows "an incumbent local exchange carrier serving fewer than 25,000 access lines" to petition the Commission for approval of an alternate form of regulation. N.H. RSA 374:3-b, I-II.

4. Each of the four petitioners in this case – Kearsarge Telephone Company, Inc., Merrimack County Telephone Company, Inc., Wilton Telephone Company, Inc., and Hollis Telephone Company, Inc. (the "Petitioners") – is an ILEC serving fewer than 25,000 access lines. *Petition by Kearsarge Telephone Company, Inc., for Approval of an Alternate Form of Regulation* ("Kearsarge Petition"), ¶ 4, at 1; *Petition by Merrimack County Telephone Company, Inc., for Approval of an Alternate Form of Regulation* ("Merrimack County Petition"), ¶ 4, at 1; *Petition by Wilton Telephone Company, Inc., for Approval of an Alternate Form of Regulation* ("Wilton Petition"), ¶ 4, at 1; *Petition by Hollis Telephone Company, Inc. for Approval of an Alternate Form of Regulation* ("Hollis Petition"), ¶ 4, at 1.

5. The four Petitioners share common ownership as wholly owned subsidiaries of TDS Telecommunications, Inc. ("TDS Telecom"). Kearsarge Petition, ¶ 2, at 1; Merrimack County Petition, ¶ 2, at 1; Wilton Petition, ¶ 2, at 1; Hollis Petition, ¶ 2, at 1.

6. In addition to its intrastate telephone services, TDS Telecom also provides an Internet service, TDS Internet, which, on information and belief, is available in each of the Petitioners' services areas in New Hampshire.

7. TDS Telecom is a wholly owned subsidiary of Telephone and Data Systems, Inc., which also is an 82% owner of U.S. Cellular Corporation, the seventh-largest provider of wireless telecommunications services in the United States, with operations in the State of

New Hampshire. *See Telephone and Data Systems, Inc., 2004 Annual Report, "About TDS."*<sup>2</sup>

8. Notwithstanding their common ownership, each of the four Petitioners is a distinct and separate corporate entity that files a separate annual report with the Commission.

9. In the most recent Annual Report available for each Petitioner on-line:<sup>3</sup>

a. Kearsarge Telephone Company, Inc. reported serving a total of 10,200 access lines. *See Kearsarge Telephone Company, Inc., New Hampshire ILEC Annual Report for the Year Ended December 31, 2005 (filed Mar. 31, 2006), Schedule S-1, at page 72 of 77.*<sup>4</sup>

b. Merrimack County Telephone Company, Inc. reported serving a total of 17,458 access lines. *See Merrimack County Telephone Company, Inc., New Hampshire ILEC Annual Report for the Year Ended December 31, 2005 (filed Mar. 31, 2006), Schedule S-1, at page 75 of 80.*<sup>5</sup>

c. Wilton Telephone Company, Inc. reported serving a total of 3,569 access lines. *See Wilton Telephone Company, Inc., New Hampshire ILEC Annual Report for the Year Ended December 31, 2005 (filed Mar. 31, 2006), Schedule S-1, at page 71 of 76.*<sup>6</sup>

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<sup>2</sup> Available at [http://media.corporate-ir.net/media\\_files/irol/67/67422/reports/ar04/about\\_us.htm](http://media.corporate-ir.net/media_files/irol/67/67422/reports/ar04/about_us.htm).

<sup>3</sup> To the extent necessary to support a factual finding, Granite State respectfully asks the Commission, pursuant to N.H. Admin. Rule Puc 203.27, to take administrative notice of each Schedule S-1 of the four ILEC Annual Reports referenced in this paragraph and in footnotes 3 through 6 below.

<sup>4</sup> Available online at <http://www.puc.state.nh.us/Telecom/Annual%20Reports/ILECs/KeaN.H.RSArge-03-31-06-KeaN.H.RSArge%20NHPUc%20-%20AR%202005.pdf>.

<sup>5</sup> Available online at <http://www.puc.state.nh.us/Telecom/Annual%20Reports/ILECs/Merrimack-03-31-06-Merrimack%20County%20NHPUc-%20AR%202005.pdf>.

<sup>6</sup> Available online at <http://www.puc.state.nh.us/Telecom/Annual%20Reports/ILECs/Wilton-03-31-06-Wilton%20NHPUc-%20AR%202005.pdf>.

d. Hollis Telephone Company, Inc. reported serving a total of 3,431 access lines. Hollis Telephone Company, Inc., New Hampshire ILEC Annual Report for the Year Ended December 31, 2005 (filed Mar. 31, 2006), Schedule S-1, at page 71 of 76.<sup>7</sup>

10. The present proceeding represents the first opportunity for the Commission to apply the provisions of N.H. RSA 374:3-b to an actual petition for adjudicative relief.

11. The Commission conducted a prehearing conference in this matter, followed by a Technical Session, on May 4, 2007.

12. On May 7, 2007, Granite State moved to intervene in this proceeding and has heard no objection from any party to its motion.

13. At the Technical Session, the parties and prospective parties agreed that an initial period of legal briefing was needed, in advance of further development of the evidentiary record, in order to frame and resolve any issues of statutory construction that may raise threshold questions in this proceeding. The parties agreed to ask the Commission to approve a Procedural Schedule that, *inter alia*, set June 1, 2007 as the filing deadline for Initial Briefs and set June 15, 2007 as the filing deadline for Reply Briefs.

14. By Secretarial Letter dated May 29, 2007, the Commission issued its decision granting Granite State's motion to intervene and approving the Procedural Schedule as requested by the parties.

15. In the Secretarial Letter, the Commission further requested that, as part of their Initial Briefs, the parties address two specific issues:

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<sup>7</sup> Available online at <http://www.puc.state.nh.us/Telecom/Annual%20Reports/ILECs/Hollis-03-31-06-Hollis%20NHPUC%20-%20AR%202005.pdf>.

a. Does a service provided by an affiliate of the [petitioning] ILEC qualify as a competitive service for purposes of the statute?

b. Does long distance service qualify as a competitive wireline service for purposes of the statute?

16. On May 31, 2007, counsel for the Office of Consumer Advocate requested an extension of time, to June 8, 2007, for the parties to file their Initial Briefs, and to June 20, 2007, for the parties to file their Reply Briefs. No party objected to the request, which the Commission granted on May 31, 2007. *See* Secretarial Letter (June 5, 2007).

17. In accordance with the Secretarial Letters and Procedural Schedule, Granite State submits this Initial Brief, with a Reply Brief to follow no later than June 20, 2007.

## **II. Summary of Granite State's Legal Position**

The Commission is asked in this proceeding to apply N.H. RSA 374:3-b for the first time to petitions for alternate regulation submitted by four small ILECs. Granite State asserts that N.H. RSA 374:3-b is clear and unambiguous and does not require the Commission to engage in further statutory construction prior to adjudicating the petitioners' requests for relief. Rather, the Commission can and should apply N.H. RSA 374:3-b to the petitions strictly in accordance with the express language of the statute.<sup>8</sup> The meaning of the statute, as shown by its plain language, is also supported by a review of the legislative history. Accordingly, the Commission should reject suggestions to read unwritten limitations into

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<sup>8</sup> Granite State takes no substantive position at this time on the merits of the Petitions.

N.H. RSA 374-3:b, in ways that would prohibit or restrict the petitioners' ability to obtain their requested relief.

Granite State appreciates the opportunity to address these matters of statutory interpretation but believes that the Commission need not be further hindered or delayed in its prompt consideration and resolution of the petitioners' requests for relief under N.H. RSA 374-3:b.

### **III. Argument**

The Petitioners in this proceeding ask the Commission to apply the provisions of a newly enacted statute, N.H. RSA 374-3:b, to their respective petitions for relief. The Commission is thus presented with cases of first impression under the new statute.

N.H. RSA 374-3:b provides, in its entirety, as follows:

#### **374:3-b Alternative Regulation of Small Incumbent Local Exchange Carriers.**

I. In this section, "small incumbent local exchange carrier" means an incumbent local exchange carrier serving fewer than 25,000 access lines.

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 the retail customers in each of the exchanges served by such small incumbent local exchange carrier;



(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, regulations, 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 modifications to the alternative regulation plan or return to rate of return regulation.

IV. The alternative regulation plan may allow the small incumbent local exchange carrier to offer bundled services that include combinations of telecommunications, data, video, and other services.

V. Following approval of the alternative regulation plan, the small incumbent local exchange carrier shall no longer be subject to rate of return regulation or be required to file affiliate contracts or seek prior commission approval of financings or corporate organizational changes, including, without limitation, mergers, acquisitions, corporate restructurings, issuance or transfer of securities, or the sale, lease, or other transfer of assets or control.

At the Technical Session following the Prehearing Conference in this matter, one or more parties suggested that N.H. RSA 374:3-b may contain ambiguous terms or phrases that require further construction by the Commission before the Petitioners' requests for relief may

be considered.<sup>9</sup> Granite State respectfully disagrees with any such suggestions, for the reasons stated below.

**A. N.H. RSA 374:3-b is clear and unambiguous and requires no further statutory construction prior to its application to the present petition for relief.**

Granite State asserts that N.H. RSA 374:3-b is clear and unambiguous and that the Commission can and should apply N.H. RSA 374:3-b by its plain language to the Petitioners' petitions, without any need for further construction. The Commission should have no impediment to its prompt consideration and resolution of the Petitioners' requests for relief.

As in all cases involving statutory interpretation, the starting point is the language of the statute. *Pennichuck Corp. v. City of Nashua*, 152 N.H. 729, 735 (2005). The Commission must construe N.H. RSA 374:3-b as a whole, and if the statute's language is clear and unambiguous, the Commission should not look beyond the statute to discern legislative intent. *Id.*; see *In re: Verizon New England, Inc.*, 153 N.H. 50, 60 (2005) ("When the language of a statute is clear on its face, its meaning is not subject to modification."). The General Court is presumed to know the meaning of words, and to have used the words of a statute advisedly. *Id.* (citing *Caswell v. BCI Geonetics, Inc.*, 121 N.H. 1048, 1050 (1981)). The legislative intent is to be found not in what the General Court might have said, but rather in the meaning of what it did say. *Id.* Similarly, the customary presumption is that the General Court does not waste words or enact redundant provisions. *Appeal of Public Service Co. of New*

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<sup>9</sup> In its Reply Brief, due for submission on or before June 20, 2007, Granite State will respond to any specific arguments that are formally advanced by the parties in their Initial Briefs.

*Hampshire*, 125 N.H. 46, 54 (1984). To those ends, the Commission must ascribe to statutory words and phrases their usual and common meaning, unless the statute suggests otherwise. *Verizon New England, Inc.*, 153 N.H. at 60.

Taking N.H. RSA 374:3-b as a whole, Granite State believes the statute requires no further construction. The General Court has established a clear framework for a small ILEC to propose, and for the Commission to approve, an "alternative regulation plan" that will relieve the small ILEC from the requirements of rate-of-return regulation and put the small ILEC on a comparable regulatory footing with its competitors. Any questions involving the petitioners' threshold eligibility for relief, or any other purported limitations on the scope of the relief available to the petitioners under the statute, must be resolved in favor of allowing the Petitioners' petitions to go forward under the plain language of the statute.

1. **Each of the petitioning companies is a separate and cognizable entity for purposes of invoking jurisdiction under N.H. RSA 374:3-b,I, and nothing in N.H. RSA 374:3-b suggests or requires that the access lines of the four companies be aggregated so as to bar the petitioners from obtaining the requested relief.**

As a threshold matter, it was suggested at the Technical Session that the four Petitioners, each of which serves fewer than 25,000 access lines, should nonetheless have their access lines aggregated for purposes of determining jurisdiction under N.H. RSA 374:3-b. Aggregation of the petitioners' access lines would exceed the 25,000-line limit and arguably

pose a jurisdictional barrier to the Petitioners' requests for relief.<sup>10</sup> Granite State disagrees with any such suggestion and urges the Commission to reject any effort to aggregate the four Petitioners' access lines for purposes of N.H. RSA 374:3-b.

By its plain terms, N.H. RSA 374:3-b applies to each "incumbent local exchange carrier serving fewer than 25,000 access lines." N.H. RSA 374:3-b, I. Each of the Petitioners is a separate and legally cognizable corporate entity under New Hampshire law. *See Norwood Group, Inc. v. Phillips*, 149 N.H. 722, 724 (2003) ("The corporation and its owners are considered separate legal entities."). Each has separately been granted authority by the Commission to own and operate a telephone business in the State of New Hampshire. Each files a separate Annual Report that reports its separate operations to the Commission. In the present proceeding, each Petitioner has filed its own separate petition seeking relief under N.H. RSA 374:3-b.

There is nothing in N.H. RSA 374:3-b that directs the Commission to aggregate a small ILEC's access lines with those of its affiliates as a precondition of determining the ILEC's eligibility for relief under the statute. The Commission should "neither consider what the legislature might have said nor add words that it did not see fit to include." *Verizon New England, Inc.*, 153 N.H. at 60.

Indeed, the General Court, in other areas of the statutory law, has shown that it knows how to aggregate the transactions of affiliated companies when it wants to. *See, e.g., N.H. RSA 77-A:1, XIII* (for purposes of New Hampshire Business Profits Tax, the General Court defined "combined net income," to be used "for all business organizations conducting a

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<sup>10</sup> *See* Supporting Statement of Facts, *supra*, at ¶ 9(a)-(d).

unitary business") and N.H. RSA 77-A:1, XIV (defining "unitary business" to mean "one or more related business organizations engaged in business activity both within and without this state among which there exists a unity of ownership, operation, and use; or an interdependence in their functions"); *see also* N.H. RSA 77-E:3, II (for purposes of New Hampshire Business Enterprise Tax, adopting definition of "affiliated group" from Internal Revenue Code, 26 U.S.C. § 1504(a)).

In light of its express recognition of these concepts elsewhere in New Hampshire law, the General Court's complete silence on the role of affiliated entities in N.H. RSA 374:3-b must be viewed as a rejection of an affiliate-aggregation requirement that would limit a carrier's eligibility for relief under the state. *See Appeal of Public Service Co. of New Hampshire*, 141 N.H. 13, 17 (1996) (declining "to interpolate words of limitation" into statute beyond its plain language). The Commission should reject any attempt to read such a requirement into the statute, but instead should promptly apply the plain language of the statute to the Petitioners' requests for relief.

2. **N.H. RSA 374:3-b, III(a) is silent as to the exclusion of a petitioner's affiliate from the category of "competitive wireline, wireless, or broadband service", and the Commission should not read a limitation into the statute where none exists in the plain language.**

The Commission in its Secretarial Letter of May 29, 2007, has asked whether a service provided by an affiliate of a Petitioner qualifies as a "competitive service" for purposes of N.H. RSA 373:3-b. The question suggests that the phrase "[c]ompetitive wireline, wireless,

or broadband service" in N.H. RSA 374:3-b, III(a), might be read so as to exclude from its definition any wireline, wireless or broadband service that may be provided by affiliates of the Petitioners.<sup>11</sup> The statute, however, is entirely silent on the question of whether services of affiliated providers should be excluded from the Commission's review under N.H. RSA 374:3-b. Because the statute is silent on any such restriction, Granite State respectfully urges the Commission to reject any effort to limit the scope of the statute beyond its plain language.

"The silent assumptions the legislature entertained when it enacted [a statute] matter little to our analysis; what is important for our purposes is the statutory language itself, for we construe the legislature's intent from the statute as written, and we will not consider what the legislature might have said or add words that the legislature did not include." *Appeal of Zimmerman*, 141 N.H. 605, 611 (1997).

The General Court has demonstrated that it knows how to use the utility statutes to exclude affiliate transactions. *See, e.g.*, N.H. RSA 366:7 (Contracts Between Utilities and Affiliates) (authorizing the Commission to "disallow the inclusion in the accounts of a public utility of any payments or compensation to any affiliate for any services rendered, or property furnished, under existing contracts or arrangements with an affiliate ...."). For this reason, the Legislature's silence on that subject in N.H. RSA 374:3-b,III(a) cannot be read as any expression of intent to accomplish a similar objective in the present statute. The suggestion of such a limitation in N.H. RSA 374:3-b,III(b) must be rejected.

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<sup>11</sup> The question apparently arises from the fact that Internet access service and wireless telecommunications services are offered in the Petitioners' respective service territories by affiliates of the Petitioners. *See* Supporting Statement of Facts, *supra*, at ¶¶ 6-7. The present record has not had sufficient factual development to establish the extent of those service offerings in the Petitioners' service areas.

Some may argue, however, that the term "competitive" itself can or should be read so as to exclude from statutory consideration those services that are provided by affiliates of the Petitioners, on the theory that a "corporate family" (i.e., separate businesses sharing common corporate ownership) cannot compete with itself. Granite State respectfully disagrees with such an argument for the reasons previously discussed in Section III(A)(1), *supra*. The Legislature could have, but did not, include a "unitary business" or "affiliated group" exception (such as are found in N.H. RSA 77-A:1, XIV ("unitary business") and N.H. RSA 77-E:3, II ("affiliated group")) to the scope of N.H. RSA 374:3-b. The Commission should not read a limitation into the scope of the statute where the Legislature has failed to include it.

This is particularly true with respect to remedial statutes, which should be construed broadly to effectuate their purposes. *Jefferson County Pharmaceutical Ass'n, Inc. v. Abbott Laboratories*, 460 U.S. 150, 159 (1983). A remedial statute is legislation that authorizes actions to be commenced and relief to be obtained. *Southwestern Bell Telephone Co. v. Kansas Corporation Comm'n*, 29 P.3d 424, 429 (Kans. App. 2001); *see also Wallace v. Stearns*, 96 N.H. 367, 369 (1950) ("The word 'remedial' is applied to those statutes which give a new remedy or which are intended to supply some defects or abridge some superfluities of the common law.") (quotations and citations omitted).

RSA 374:3-b is remedial in nature, because it authorizes a qualified class of carriers to commence a case before the Commission and to obtain a new form of relief previously unavailable at law. For such a statute, the Commission should reject any suggestion to find a limitation to the availability of relief where the plain language of the statute is silent with

respect to such a limitation. Accordingly, Granite State does not believe the Commission should exclude a petitioner's affiliated operations when considering the extent to which "[c]ompetitive wireline, wireless, or broadband service is available" in the Petitioners' exchanges.

3. **N.H. RSA 374:3-b, III(a) is not, by its plain language, limited to consideration of "comparable" (i.e., local exchange) service, and the Commission should not supply such a limitation in its application of the statute to the present petition.**

Also at the Technical Session, a suggestion was made that the phrase "competitive wireline, wireless or broadband service" in N.H. RSA 374:3-b, III(a), must be limited to "comparable" offerings to those provided by the Petitioners. The implication is that the statute is intended only to measure the demonstrated level of competition between providers offering similar service plans. The statute, however, is entirely silent with respect to any such limitation and uses the word "competitive", which describes both similar and dissimilar service offerings. While local calling (i.e., calling within a local calling area to which local rates apply) currently occurs over wireline, wireless and broadband services, there is nothing in the statutory language that requires the Commission to consider only the extent to which any of the three listed services offers a separate "local-only" calling option. Accordingly, Granite State urges the Commission to reject any effort to go beyond the plain language by reading such a limitation into the statute.

The statute expressly lists "[c]ompetitive wireline, wireless, or broadband service" as the elements to be considered in assessing the availability of alternative services to a majority of



retail customers in each of the Petitioners' exchanges. The statutory phrase contains an "or," rather than an "and," indicating that the Legislature believes that the availability of any one of the three services – rather than the availability of all three – is a sufficient basis to satisfy the statutory element.

The Commission should not add words to N.H. RSA 374:3-b that the legislature did not include. *Zimmerman*, 141 N.H. at 611. Granite State urges the Commission to reject any suggestion to limit the scope of the statute to the "local exchange" components of "wireline, wireless or broadband service," and instead to consider Petitioners' petitions under the plain language of the statute as written.

**4. The "rate cap" provision of N.H. RSA 374:3-b, III(b) sets maximum rates for "the plan," and, by its plain language, allows "additional rate adjustments" to be made to each component of "the plan," including the baseline "comparable rates" and the 10% annual rate increases.**

At the Technical Session, it was suggested that the "rate cap" provision in N.H. RSA 374:3-b,III(b) should be read so as to limit the applicability of the "additional rate adjustments" allowed under the statute. Specifically, it was suggested that, while the "rate cap" comprises two components – (1) a requirement not to "exceed the comparable rates charged by the largest incumbent local exchange carrier operating in the state" and (2) a requirement not to "increase [basic local service rates] by more than 10 percent in each of the 4 years after a plan is approved" – the "additional rate adjustments" may be made only to the

second component and not to the first.<sup>12</sup> Granite State disagrees with such a suggestion and urges the Commission to reject such a limitation as contrary to the plain language of the statute.

The "rate cap" provision of N.H. RSA 374:3-b limits the ability of a petitioning carrier to increase the carrier's "basic local service rates" during the period of the approved "alternative regulation plan." By its plain language, the statute makes clear that "the plan" must provide a two-pronged rate cap, but that "the plan" may also provide for "additional rate adjustments." N.H. RSA 374:3-b, III(b). Nothing in the statute limits the applicability of "additional rate adjustments" to only one prong of the rate cap but not the other. Indeed, the statute clearly states that it is "the plan" as a whole that "may provide for additional rate adjustments." The plain language of the statute authorizes the Commission to approve "additional rate adjustments" to either prong of "the plan," and nothing in the statute suggests otherwise. Accordingly, Granite State urges the Commission to reject any attempt to limit the applicability of "additional rate adjustments" to the plan.

**B. The legislative history of N.H. RSA 374:3-b confirms that the statute is clear and unambiguous in its meaning.**

Granite State believes the clear and unambiguous meaning of N.H. RSA 374:3-b makes it unnecessary to discern its interpretation from the legislative history. *See Appeal of Public Service Co. of New Hampshire*, 125 N.H. at 56 (Souter, J., for the Court) ("[T]he clarity of the

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<sup>12</sup> The "additional rate adjustments," which require Commission review and approval, are intended "to reflect changes in federal, state, or local government taxes, mandates, rules, regulations or statutes . . ." N.H. RSA 374:3-b, III(b).

statute rules out the need to rely on legislative history in its interpretation"). Nonetheless, an examination of the legislative history supports Granite State's reading of the plain reading of the statute. *See id.*, 125 N.H. at 55; *see also Appeal of Pine Tree Power, Inc.*, 152 N.H. 92, 97 (2005) (even where dispute is resolved "[b]y the plain language of the statute," the "legislative history is also instructive").

**1. The legislative history of the "rate cap" provision of N.H. RSA 374:3-b, III(b) demonstrates that "additional rate adjustments" may be made to both the baseline "comparable rates" and to the annual 10% rate increases.**

The legislative history of the "rate cap" provision, N.H. RSA 374:3-b, III(b), supports the plain-language reading of that section and demonstrates that the ability of a petitioning carrier to make "additional rate adjustments" is applicable both to the "comparable rates" baseline element of the rate caps, and to the 10% rate increases that are allowed each year during the first four years of an alternative regulation plan. The legislative history thus refutes any suggestion that "additional rate adjustments" are intended to apply only to the 10% annual rate increases and not to the baseline "comparable rates" as well.

N.H. RSA 374:3-b was originally enacted in 2005 with the passage of HB 194 (enacted as Ch. 263:7, eff. July 22, 2005), and was subsequently amended to its present form in 2006, with the passage of HB 1756 (enacted as Ch. 154:1, eff. July 21, 2006). In its original form, the portion of the "rate cap" provision that allowed for adjustments applied only to the "comparable rates" (then called "prevailing rates") prong of "the plan." The original version read as follows:

**374:3-b Alternative Regulation of Small Incumbent Local Exchange Carriers.**

\* \* \*

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

\* \* \*

(b) The plan provides for maximum basis *[sic]* local service rates at levels prevailing throughout the state as of the effective date of this section plus allowances for inflation and adjustments to reflect changes in federal, state, or local government taxes, mandates, rules, regulations, or statutes; provided, that no small incumbent local exchange carrier may increase basic local service rates by more than 10 percent per year in each of the 4 years after a plan is approved . . . .

N.H. RSA 374:3-b, III(b) (as originally enacted) (emphasis added).

The 2006 amendment moved (and rephrased) the "adjustments" language to the end of the sentence, so that "adjustments" would apply to both the "prevailing rates" (renamed "comparable rates") and the 10% annual basic local rate increases. As previously discussed, the amended language, which is currently in force and at issue here, reads as follows:

**374:3-b Alternative Regulation of Small Incumbent Local Exchange Carriers.**

\* \* \*

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

\* \* \*

(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, regulations, or statutes . . . .

N.H. RSA 374:3-b, III(b) (as presently in force) (emphasis added).

To the extent, if any, that the 2006 amendment altered the applicability of the "additional rate adjustments" exception, the effect was to extend the applicability of that exception from just the "comparable rates" prong to both prongs of the "rate cap" provision – both the "comparable rates" prong and the 10% increase prong.

This history demonstrates that, at all times under N.H. RSA 374:3-b, the "adjustments" exception has applied to the "comparable rates" (formerly known as "prevailing rates") component of "the plan." The suggestion that the "adjustments" exception should now be read as excluding the "comparable rates" component flies in the face of both the plain language and the legislative history of the statute. Granite State asks that the Commission reject any such suggestion and conclude, from the plain language of N.H. RSA 374:3-b, that both the "comparable rates" and the "10% basic local rate increase" components of the "rate cap" are and should be subject to the "additional adjustments" exception of that section.

#### **IV. Conclusion**

Granite State appreciates the opportunity to express its views about the meaning of RSA 374:3-b. In Granite State's view, the statute is clear and unambiguous and so is not in need of further construction or interpretation. As discussed above, the Petitioners should have their Petitions considered forthwith under the plain language of the statute, and the Commission should reject any suggestions that would add unwritten limitations on the scope of relief available to the Petitioners and to the standards by which their Petitions are reviewed.

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WHEREFORE Granite State Telephone, Inc., submits this Initial Brief in accordance with the Procedural Order of the Commission.

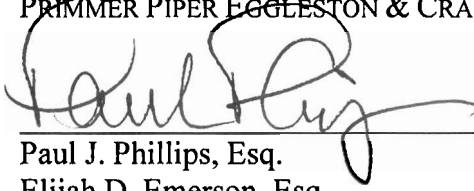
DATED at Plymouth, New Hampshire, this 8th day of June, 2007.

Respectfully submitted,

GRANITE STATE TELEPHONE, INC.

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**State of New Hampshire  
Before the New Hampshire Public Utilities Commission**

**DT 07-027**

**Petition of Kearsarge Telephone Company, Merrimack County  
Telephone Company, Wilton Telephone Company and  
Hollis Telephone Company for an Alternate Form of Regulation**

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