

THE STATE OF NEW HAMPSHIRE



CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Graham J. Morrison
Clifton C. Below

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland

PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

July 13, 2007

Re: DT 07-027, et seq., Kearsarge Telephone Company, Inc. et al.
Petition for Alternative Form of Regulation
Questions of Statutory Construction

To the Parties:

On March 1, 2007, four affiliated incumbent local exchange carriers (ILECs)—the Kearsarge, Wilton, Hollis and Merrimack County telephone companies, all subsidiaries of TDS Telecom—filed petitions seeking approval of an RSA 374:3-b alternative regulation plan. The Commission issued an order of notice on April 10, 2007 commencing this proceeding.

Subsequent to the May 4, 2007 prehearing conference, the parties filed a proposed procedural schedule, which included two rounds of briefs along with a request that the Commission “review the briefs with a view to determining how the statute will be applied in its review of the [TDS] Companies’ proposed plans.” On May 29, 2007, the Commission issued a secretarial letter approving the procedural schedule and asking the parties to brief at least two issues, which concern the treatment of affiliates and long distance service under the statute.

On June 8, 2007, initial briefs were filed by the petitioners, Commission Staff, New Hampshire Legal Assistance (NHLA) jointly with the Office of Consumer Advocate (OCA), segTel, and Granite State Telephone. Reply briefs were filed on June 20, 2007 by the petitioners, NHLA and OCA, segTel, and Granite State Telephone. The parties raise in their briefs a number of issues in addition to the two set forth by the Commission.

The two questions asked by the Commission were:

1. Does a service provided by an affiliate of the ILEC qualify as a competitive service for purposes of the statute?
2. Does long distance service qualify as a competitive wireline service for purposes of the statute?

With respect to the first question, the Commission has determined that it is unable at this stage of the proceeding to conclude whether service provided by an affiliate of the

DT 07-027, et seq.
July 13, 2007
Page 2

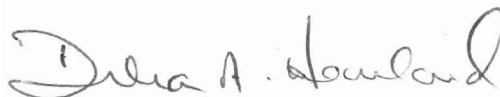
petitioners qualifies as a competitive service under the statute. The question cannot be resolved purely as a matter of law but requires the development of a factual record, a process in which the petitioners bear the burdens of production and persuasion.

As for the second question, the Commission has similarly determined that it cannot conclude, based on the briefs, whether long distance service qualifies as a competitive wireline service under the statute. This question is more properly answered with the benefit of the full adjudicative process, including development of a factual record, and a thorough exploration of the meaning of the core term "competitive" as used in the statute. Such exploration will rely upon standard rules of statutory construction, and a review of legislative history as well as application of the Commission's own expertise as may be appropriate.

The parties raise other issues of statutory interpretation, including, among others: whether the petitioners should be treated separately or in the aggregate with respect to application of the eligibility standard of 25,000 access lines; whether the federal distinction between telecommunications and information services should be applied; and, whether the statute should be read effectively to require abandonment of the rural exemption under the federal Telecommunications Act of 1996. The Commission has determined that the additional questions raised by the parties are not ripe for resolution but must instead be considered in light of a full development of the facts and the application of the law to those facts.

Although it is not possible at this time to resolve as a matter of law the issues raised by the parties, the briefs have proved very useful in more fully framing the issues for hearing. Therefore, the proceeding will continue in the normal course. Accordingly, the parties shall file a proposed procedural schedule after the July 19, 2007 technical session.

Very truly yours,



Debra A. Howland
Executive Director and Secretary

cc: Service List

FREDERICK J COOLBROTH
DEVINE MILLIMET & BRANCH
49 N MAIN ST
PO BOX 3610
CONCORD NH 03302

DEBRA A MARTONE
TDS TELECOM
PO BOX 337
11 KEARSARGE AVE
CONTOOCOOK NH 03229-0337

DARREN R WINSLOW
UNION COMMUNICATIONS
13 CENTRAL ST
PO BOX 577
FARMINGTON NH 03901

JOSEPH DONAHUE
PRETI FLAHERTY BELIVEAU PACHIOS
PO BOX 1058
45 MEMORIAL CIRCLE
AUGUSTA ME 04332-1058

STEPHEN MERRILL
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

ELJAH D EMERSON
PRIMMER PIPER EGGLESTON & CRAM
421 SUMMER ST
PO BOX 159
ST JOHNSBURY VT 05819-0159

KATH MULLHOLAND
SEGTEL INC
PO BOX 610
LEBANON NH 03766

SUSAN GEIGER
ORR & RENO PC
ONE EAGLE SQUARE
PO BOX 3550
CONCORD NH 03302-3550

PAUL J PHILLIPS
PRIMMER PIPER EGGLESTON & CRAM
421 SUMMER ST
PO BOX 159
ST JOHNSBURY VT 05819-0159

MEREDITH A HATFIELD
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

CHRIS RAND
GRANITE STATE TELEPHONE
600 SOUTHSTARK HIGHWAY PO BOX :
WEARE NH 03281

JEREMY L KATZ
SEGTEL INC
PO BOX 610
LEBANON NH 03766

SUSAN RAND KING
GRANITE STATE TELEPHONE
600 SOUTH STARK HWY
PO BOX 87
SOUTH WEARE NH 03281

ALAN LINDER
NH LEGAL ASSISTANCE
48 SOUTH MAIN ST
CONCORD NH 03301

MIKE REED
TDS TELECOM
24 DEPOT SQUARE
NORTHFIELD VT 05663

LINDA LOCKHART
PRETI FLAHERTY BELIVEAU PACHIOS
45 MEMORIAL CIRCLE
PO BOX 1058
AUGUSTA ME 04332-1058

JASPER THAYER
UNION COMMUNICATIONS
7 CENTRAL STREET
FARMINGTON NH 03835

Docket #: 07-027 Printed: July 13, 2007

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429