

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DT 07-027

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

**Petitioners' Motion for Partial Reconsideration of Order No. 24,852**

Kearsarge Telephone Company ("KTC") and Merrimack County Telephone Company ("MCT", and collectively with KTC, the "Petitioners"), two of the four petitioners in the above-docketed proceeding (this "Docket"), hereby move for a partial reconsideration of Order No. 24,852 (the "Order") or rehearing under RSA 541:3 (this "Motion") concerning the Public Utilities Commission's findings that the Petitioners' failed to demonstrate the existence of "availability" of competitive alternatives pursuant to RSA 374:3-b and failing to approve of the alternative regulation plans ("AFOR Plans"), as amended by the Settlement Agreement (hereinafter defined), submitted respectively by the Petitioners in this Docket.<sup>1</sup> In support of this motion, the Petitioners state as follows:

1. In the Order, in relevant part, this Commission held:

Absent evidence of availability in all exchanges, and in light of the TDS Companies' burden of proof, we cannot find available alternatives for all of the exchanges in either Kearsarge or Merrimack. We need not reach an analysis of whether the alternatives are competitive in the Kearsarge and Merrimack service territories, because we do not find sufficient availability. As a result, for Kearsarge Telephone Company and Merrimack County Telephone Company the record does not support a finding that competitive services are available to a majority of customers in each exchange.

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<sup>1</sup> Given the Commission's approval of the AFOR Plans, as amended by the Settlement Agreement, submitted on behalf of Wilton Telephone Company, Inc. and Hollis Telephone Company, Inc., this Motion only applies to the Commission's Order as applicable to KTC and MCT. Hence, the styling of this Motion as a motion for partial reconsideration or rehearing.

Order, at p. 29.

2. It is well known that nearly all parties to this Docket entered into that certain Settlement Agreement, dated November 30, 2007 (the “Settlement Agreement”), by and among all of the petitioners, the Commission Staff, the Office of the Consumer Advocate (“OCA”) and segTEL, Inc. Only Intervenor Daniel Bailey, a customer of MCT, objected to the terms of the Settlement Agreement. Otherwise, the Staff, OCA, all of the petitioners and all other Intervenors either supported the Settlement Agreement and this Commission’s approval of the AFOR Plans, as amended thereby, or did not object.

3. The Petitioners submit that the Commission erred as a matter of law, or otherwise committed reversible error, in finding a lack of available competitive telecommunications alternatives as set forth in the governing statute and denying the Petitioners’ respective AFOR Plans, as amended by the Settlement Agreement. In general, and as more fully set forth in the Petitioners’ Memorandum of Law, the Commission erred in: (i) its application of the burden of proof; (ii) considering the case presented by KTC to be a “contested case” (*see* Order, at p. 26) as Mr. Bailey has no standing to participate in this Docket against KTC’s interests or otherwise complain about the terms of the Settlement Agreement as applicable to KTC<sup>2</sup>; and (iii) its statutory interpretation of RSA 374:3-b in the context of (x) the application of principles of statutory construction under New Hampshire law and the statutory scheme which governs the Commission and (y) the Commission’s application of its own standard in a conflicting manner. For these reasons, the Commission should reconsider that portion of its Order denying the relief sought by the terms of the Settlement Agreement and approve the Petitioners’ respective AFOR

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<sup>2</sup> Indeed, Mr. Bailey’s own petition to intervene states that his interests arise from being a customer of MCT, and he makes no allegations with respect to his “interests” in any other service territory. *See* Petition for Intervention and to Substitute Daniel A. Bailey for Intervenor Ross Patnode, October 5, 2007, at para. 4.

Plans as amended thereby. In the alternative, the Commission should grant a partial rehearing on these issues as set forth within the Memorandum of Law.

4. As noted above, the Petitioners' hereby submit an accompanying Memorandum of Law which is incorporated by reference as though fully set forth herein. All of the Petitioners' reasons for requesting partial reconsideration of the Order or for a partial rehearing, as set forth in the Memorandum of Law, are deemed to be set forth herein.

WHEREFORE, the Petitioners respectfully request that the Commission reconsider that portion of Order No. 24,852 concerning the Petitioners' AFOR Plans and approve the Settlement Agreement as it relates to the Petitioners' plans or, in the alternative, schedule a rehearing on these same issues limited to the AFOR Plans submitted by KTC and MCT.

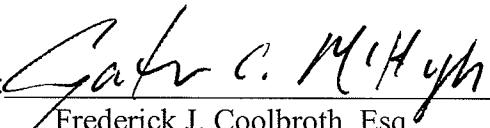
Respectfully submitted,

KEARSARGE TELEPHONE CO. AND  
MERRIMACK COUNTY TELEPHONE CO.

By their Attorneys,

DEVINE, MILLIMET & BRANCH,  
PROFESSIONAL ASSOCIATION

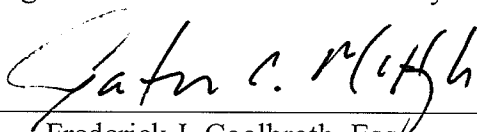
Dated: May 23, 2008

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties by electronic mail.

Dated: May 23, 2008

By:   
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Frederick J. Coolbroth, Esq.  
Patrick C. McHugh, Esq.