

State of New Hampshire
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

**Objection Of Daniel Bailey To
Petitioners' Motion For Partial
Reconsideration Of Order No. 24,852**

Now comes Daniel Bailey, Intervenor, by his counsel, New Hampshire Legal Assistance, pursuant to Puc 203.07(f) and Puc 202.03(c), and objects to the Motions of Kearsarge Telephone Company ("KTC") and Merrimack County Telephone Company ("MCTC"), subsidiaries of Telephone and Data Systems, Inc. ("the TDS Companies"), for Partial Reconsideration of Order No. 24,852, and states as follows:

1. On April 23, 2008, the New Hampshire Public Utilities Commission (Commission) approved the petitions for an alternative form of regulation, pursuant to RSA 374:3-b, of Wilton Telephone Company (Wilton) and Hollis Telephone Company

(Hollis), as modified by settlement agreement. The Commission rejected the petitions of Merrimack County Telephone Company (Merrimack) and Kearsarge Telephone Company (Kearsarge), as modified by settlement agreement. All companies are wholly-owned subsidiaries of Telephone & Data Systems, Inc. (TDS).

2. On May 23, 2008, KTC and MCTC (the TDS Companies) filed a partial motion for reconsideration with respect to the denial of the petitions of KTC and MCTC in the above entitled docket.

3. In the TDS Companies' memorandum in support of its partial motion for reconsideration (TDS Memo), TDS presents three arguments for rehearing: 1.) that Mr. Bailey should not be considered to have standing to challenge the Kearsarge petition (*See* TDS Memo, pp. 3-7); 2.) that TDS met its burden with respect to the Kearsarge and Merrimack petitions (*See* TDS Memo, pp. 7-15); and 3.) that the Commission should have applied RSA 374:3-b differently (*See* TDS Memo, pp. 15-20).

A. Mr. Bailey Has Standing With Respect to the Kearsarge Petition.

4. With respect to TDS's first argument, Mr. Bailey has suffered or will suffer an "injury in fact", Appeal of Richards, 134 NH 148, 154 (1991), cert. denied 502 U.S. 899 (1991), and his rights "may be directly affected" by the decision. RSA 541:3; 541:6; 541-A:32.

5. Approval of KTC's proposed Plan would eliminate the Commission's ability to review and scrutinize a significant portion of TDS' New Hampshire operations.

The proposed Plan provides:

- 3.1.1. The Company shall not be subject to rate-of-return regulation, and the Commission shall not consider rate base, rate-of-return or the overall earnings of the Company in connection with any rate changes made pursuant to this Plan.
- 3.1.2. During the term of this Plan, the Company shall not be required to file affiliate contracts or obtain 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.

See also RSA 374:3-b, V.

6. Any reduced level of oversight and regulatory control has the potential to affect all of TDS' New Hampshire customers. For example, since TDS' New Hampshire operations are commonly owned and operated, if the Plan were approved there would be the incentive and potential ability to shift costs from unregulated services (i.e., from KTC's operations) to regulated services (e.g., to MCTC's operations). Therefore, the reduction in oversight and regulatory control associated with KTC's Plan could ultimately affect the rates and service of other TDS customers like Mr. Bailey.

7. The pricing freedom provided in the KTC's proposed Plan could also have a negative impact on competition. Dr. Johnson discussed in his testimony how TDS' customers lack any competitive alternatives. If KTC were granted pricing freedom prior to the onset of competition, it could use its monopoly power to manipulate price levels for its own strategic advantage, and the result would be anti-competitive--creating unnecessary instability and uncertainty in the market, and making it more difficult, and more risky, for other firms to enter. If competition is prevented in KTC's area, it will

have a negative impact on the prospects for competition in adjacent areas, since competitors would be denied the economies of scale that would be present from serving a larger group of customers. Therefore, approving KTC's proposed Plan could negatively impact customers like Mr. Bailey.

8. With the approval of the Kearsarge petition, the Company would have an incentive to offer “bundled” packages at more attractive prices. This action could adversely affect competition in the “bundles” market. This action could also result in the incentive to extract regulated revenues to recoup for the decreased bundle prices in the market for basic phone service. Merrimack would then have an incentive to respond with similar bundled packages, in part, because TDS owns and operates both Kearsarge and Merrimack and it would be efficient to do so. The investments in these additional services will be difficult to separate out from the cost of service of basic phone service. The risk of cost shifting to basic service in Merrimack from the above enhanced services affects Mr. Bailey’s interests as a low income customer of Merrimack.

9. There is nothing in the record, other than corporate name, that suggests that Kearsarge and Merrimack operate as different companies. Business decisions that are made in Kearsarge in response to an approval of a Kearsarge petition will likely implicate business decisions in Merrimack. Thus, customers in Merrimack, such as Mr. Bailey, are affected by Kearsarge approval.

10. To the extent that approval of the Kearsarge petition increases investment by TDS in competition in KTC exchanges, this could result in upward pressure to increase basic rates in the MCTC exchanges. The likelihood of a rate increase would

directly impact customers like Mr. Bailey, who have no competitive alternatives, and who will be locked into the monopoly prices of MCTC. Further, this upward pricing freedom could have a negative impact on universal service by forcing some customers (particularly low income customers) off the network. As Dr. Johnson explained in his testimony, universal service benefits all customers on the network. In fact, the Commission must find that universal service will be protected before it can approve an alternative form of regulation (AFOR) under RSA 374:3-b, III.

11. Whether or not Mr. Bailey has standing to challenge the Kearsarge petition, the Commission must still determine whether the settlement agreement is in the public interest and whether the results are just and reasonable. See Northern Shores Water Company, 2007 NH PUC LEXIS 43, 10-12, Order No. 24,765 (2007) (“Notwithstanding a settlement among the parties, we must still independently determine whether the settlement results comport with applicable standards”.) The Commission has this obligation under Puc 203.20(b) whether or not this is currently a “contested case”.

B. The TDS Companies Failed To Meet Their Burden of Proof.

12. With respect to TDS’s second argument, the burden of proof is clearly on TDS, whether the Commission is evaluating only the petitions, or the petitions as modified by settlement agreement. *See* N.H. Admin. Code Puc 203.25; *see also Public Service Company of New Hampshire, Petitions for Approval of Renegotiated Power Supply Arrangements With Whitefield et al*, 2001 NH PUC LEXIS 155, 20; ORDER NO. 23,763 (2001).

13. The Commission determined that there must be competition now in order for the Companies' petitions to be granted. Order No. 24, 852, p. 26.

14. There is no evidence in the record that RCC Minnesota is actually serving customers in any of the exchanges of Kearsarge or Merrimack. There is no evidence in the record that Comcast is actually providing basic telephone service to residents in Kearsarge or Merrimack. Even if Comcast was providing telephony service, there is no evidence in the record that suggests the packages provided by Comcast are "competitive" with TDS's basic telephone service. There is no evidence in the record that TDS customers have ported their telephone numbers to a VoIP provider in any of the exchanges of Kearsarge or Merrimack. There is no evidence or economic analysis in the record that VoIP is being used as a "ready substitute" for basic telephone service in Kearsarge or Merrimack, as TDS suggests. TDS Memo, p. 10. Additionally, there is no evidence in the record that any non-TDS company is actually offering broadband service in Kearsarge or Merrimack. In the end, there is no evidence in the record that "[c]ompetitive wireline, wireless, or broadband service is available to a majority of the retail customers in **each of the exchanges** served..." by either Kearsarge or Merrimack (emphasis added). RSA 374:3-b, III(a).

15. The Commission correctly determined that TDS did not meet its burden with respect to the "availability" of alternatives in both the Kearsarge or Merrimack exchanges.

C. The Commission Correctly Interpreted and Applied the Law.

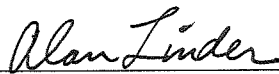
16. With respect to TDS's third argument, the fact that parties disagree on the interpretation of a statute does not mean the statute cannot be interpreted by its plain meaning, as implied by TDS. TDS Memo, p. 15. "When a statute's language is plain and unambiguous, we need not look beyond it for further indication of legislative intent." Appeal of the Office of Consumer Advocate, 148 NH 134, 137 (2002). See also State v. Comeau, 142 NH 84, 86 (1997).

17. Mr. Bailey agrees with TDS on page 17 of its Memo that the Commission has been given authority to utilize its expertise in interpreting and applying statutory terms in its evaluation of AFOR petitions. Indeed, this discretion and delegation of authority is conferred by virtue of the plain meaning of the phrase "...if it finds" in RSA 374-3:b, III. In this case, the Commission has appropriately used its expertise in evaluating the Kearsarge and Merrimack petitions.

WHEREFORE, Mr. Bailey requests that the Commission deny TDS's motion for partial reconsideration of Order No. 24,852.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this date I sent copies of the within document by email to the Commission and to all parties on the service list in this docket.

New Hampshire Legal Assistance

Date: May 30, 2008



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