

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 18-175

DIXVILLE TELEPHONE COMPANY

Petition for Approval to Discontinue Operations

Order *Nisi* Conditionally Granting Petition

ORDER NO. 26,235

April 22, 2019

APPEARANCES: Primmer Piper Eggleston & Cramer PC, by Paul J. Phillips, Esq., on behalf of Dixville Telephone Company; James A. Huttenhower, Esq., on behalf of New Cingular Wireless PCS, LLC (AT&T Mobility); and David K. Wiesner, Esq., on behalf of Commission Staff.

In this order, the Commission conditionally approves Dixville Telephone Company's discontinuance of landline telephone service operations as an incumbent local exchange carrier, including the provision of basic service under state law. That approval is warranted given Dixville Telephone's unique circumstances, as it has only a few remaining customers, its continued operation is not financially sustainable without continuing subsidies, existing customers have indicated that they can obtain alternative service acceptable to them, there are no Lifeline customers, and all customers were notified of the petition and no customers objected to the proposed discontinuance.

The Commission's approval will be effective as of July 1, 2019, subject to the condition that Dixville Telephone obtain any Federal Communications Commission approvals required under 47 U.S.C. § 214(a). The Commission also directs that the exchange code for Dixville Notch be returned to the numbering administrator, that Dixville Telephone attempt to negotiate mutually-agreeable dates for disconnection of customer services, or provide at least 10 days' notice prior to disconnecting service to any customer, and that Dixville Telephone continue to

provide service to AT&T Mobility until replacement facilities are available and operational.

This order is being issued on a *nisi* basis to ensure that customers and all other interested persons receive notice of the decision and have the opportunity to file comments or request a hearing before the order becomes effective.

I. PROCEDURAL BACKGROUND

On November 15, 2018, Dixville Telephone Company (Dixville) filed a Petition for Approval to Discontinue Operations (Petition). Dixville requested that the Commission approve its discontinuance of operations as a provider of landline telephone service in the small franchise area in which it is the incumbent local exchange carrier (ILEC). The Petition was supported by the pre-filed testimony of Ann Walsh and Arthur Nicholson.

An order of notice was issued on December 12, 2018, and a Prehearing Conference was held on January 14, 2019, at which the timely petition for intervention filed by New Cingular Wireless PCS, LLC (AT&T Mobility), was granted. A procedural schedule was established by secretarial letter dated January 15, 2019.

Following a technical session and discovery, the parties filed a Stipulation of Facts with Exhibits (Stipulation of Facts), pursuant to N.H. Code Admin. Rules Puc 203.20(c), on March 18, 2019. On March 29, 2019, Commission Staff (Staff) filed a memorandum recommending conditional approval of the Petition without a hearing and indicated the other parties concurred in that recommendation (Staff Recommendation). Based on the Staff Recommendation, the Commission suspended the procedural schedule for the proceeding by secretarial letter dated April 1, 2019. Dixville filed affidavits affirming the pre-filed testimony of Ann Walsh and Arthur Nicholson on April 10, 2019.

The Petition, Stipulation of Facts, Staff Recommendation, and other docket filings, with the exception of any information for which confidential treatment has been request of or granted by the Commission, are posted at <http://www.puc.state.nh.us/Regulatory/Docketbk/2018/18-175.html>.

II. POSITIONS OF THE PARTIES AND STAFF

A. Dixville's Petition

Dixville is an ILEC that has chosen to be classified as an excepted local exchange carrier (ELEC) subject to minimal regulation under RSA 362:7, I(c)(2). *See* Petition at 1. Dixville serves a single telephone exchange (603-255, Dixville) in New Hampshire. *Id.* Dixville is the only landline company designated as an Eligible Telecommunications Carrier (ETC) in its rural study area; however, the Federal Communications Commission (FCC) has designated other wireless ETCs in Dixville's study area, which, "by the terms of their ETC designations, stand ready to offer Lifeline services to qualifying low-income residential customers." *Id.* at 1-2.

Dixville is currently a division of a corporation indirectly owned by the New Hampshire Charitable Foundation (NHCF), a New Hampshire nonprofit corporation. *Id.* Dixville primarily provided service to the Balsams Grand Hotel (the Balsams) located in Dixville Notch until the hotel closed in September 2011, "terminating telephone service for the vast majority of [Dixville's] approximately 450 access lines." *Id.* at 2. According to Dixville, since the closing of the Balsams, it has been attempting to find a purchaser to operate its existing franchise, but those efforts have not been successful. *Id.*

Over the past several years, Dixville's retail customer base has continued to decline. *Id.* at 4. At the time of filing the Petition, Dixville had a total of eleven access lines in service, with one residential retail line and ten business lines: nine serving the Balsams property and one serving the New Hampshire Department of Transportation. Pre-Filed Direct Testimony of Ann

Walsh (Walsh Testimony) at 6. Dixville has a single wholesale customer, AT&T Mobility, which it provides with six DS 1 circuits as a tariffed special access service. *Id.* Dixville indicated it would be “willing to transfer the DS 1 circuits to AT&T Mobility at no cost as part of any regulatory discontinuance.” Pre-Filed Direct Testimony of Arthur Nicholson (Nicholson Testimony) at 5; Walsh Testimony at 6.

Dixville has no full-time employees, and contracts with third parties for its operations and billing functions. Walsh Testimony at 7. According to Dixville, its “service area is essentially abandoned,” as Dixville Notch is an unincorporated place with a population that has now “dwindled to the low single digits.” *Id.* When a service call to a Dixville customer is needed, Bretton Woods Telephone Company (BWTC), which contracts with Dixville to provide telephone operations, dispatches personnel from Bretton Woods, New Hampshire, about 70 miles from Dixville. *Id.*

Although Dixville continues to receive subsidies from the federal Universal Service Fund (USF) and pooled interstate access settlements from the National Exchange Carriers Association (NECA), those “federal subsidies have shifted support away from voice service in favor of broadband service, which [Dixville] cannot and does not provide.” Petition at 3-4. According to Dixville, it “has been exempted from the usual broadband buildout requirements for ETCs” and has sought FCC forbearance for any obligation to provide Lifeline-supported broadband internet access service. *Id.* at 4. Dixville maintained it does not have any interconnection agreements with competitive providers, nor does it have any other wholesale service arrangements that are subject to regulation under federal or state law. *Id.* at 5.

Dixville asserted that there exist acceptable third-party alternatives to its local exchange service that are comparable to, “the quality of regulated communications service that [it]

currently provides or can reasonably hope to provide in the future.” *Id.* According to Dixville, while it does not currently have, nor has it previously had, any qualifying Lifeline customers in its study area, any customers who may hereafter request Lifeline service would have sufficient service options available to them from the wireless ETCs designated to provide such services in the Dixville study area. *Id.* In addition, both Verizon Wireless and AT&T Mobility offer cellular telephone service in the Dixville service area. Nicholson Testimony at 3.

Dixville argued that the Commission should take into account the charitable nature of its current ownership when evaluating the public benefits of discontinuing its operations, in view of the operating losses it has experienced for several years that have resulted in depletion of charitable resources. Petition at 5; Walsh Testimony at 7-9. The continued operation of Dixville’s business, “without any realistic prospect of a transfer of [its] utility franchise to a qualified purchaser, would cause further wasting of charitable resources that could be better directed to charitable causes.” Petition at 5.

Dixville stated its proposal meets the “no net harm” standard for discontinuance of residential basic service implicit in RSA 374:22-p, VIII(a). *Id.* at 6-7. Dixville acknowledged it operates as a “carrier of last resort” and it is not contemplated that a provider “with equivalent legal and regulatory obligations will serve in Dixville’s service area now or at any time in the foreseeable future.” *Id.* at 7. Dixville nonetheless asserted that, based on the facts presented, the Commission should conclude that the effect of its permanent discontinuance of service will be, “at worst, neutral from a public-interest perspective and that, in fact, the net benefits will likely exceed the net harms.” *Id.*

In particular, Dixville claimed that discontinuance of its regulated residential voice service to its single basic service customer “would not unduly harm that customer, who would

continue to have access to wireless service in Dixville's service area, which has received significant upgrades in recent years.” *Id.* at 7-8. Dixville identified as a positive public benefit of its discontinuance of operations the end of significant monthly losses incurred by NHCF as a result of Dixville’s operations. *Id.* at 8. According to Dixville, the Commission “should rightly take into account the needless, ongoing depletion of ... charitable assets” if Dixville’s Petition were denied. *Id.* Dixville witness Walsh maintained that, effectively, “[t]ens of thousands of dollars in public and charitable resources are being used each year to support AT&T Mobility, a major telecommunications carrier, and a single regulated residential customer for whom reasonable alternatives to regulated service are available.” Walsh Testimony at 9.

B. Stipulation of Facts

The parties and Staff filed a stipulation to set forth facts relevant to the Commission’s determination regarding the Petition, noting that AT&T Mobility joined only with respect to certain factual representations regarding wholesale services, but did not object to any of the other facts set forth therein. Stipulation of Facts at 1, 4.

The Stipulation of Facts addresses telephone numbering issues, noting that the Dixville Notch exchange consists of one exchange, 603-255, which has not been pooled, and for which Dixville is the code holder. *Id.* at 1. No numbers have been ported out of the Dixville Notch exchange, and Dixville has no experience with the porting process. *Id.* In order to port numbers from the Dixville Notch exchange, Dixville would have to develop expertise with the mechanics and relationships required to release its numbers to another carrier. *Id.* All of Dixville’s customers will have service disconnected prior to its discontinuance of operations, which will create a clean code with no contaminated blocks, which can be reassigned to a more populated rate center in New Hampshire. *Id.*

The Stipulation of Facts addresses potential landline alternatives to Dixville's service. The closest other ILEC and landline ETC is Consolidated Communications (Consolidated), with a service territory that surrounds Dixville on all sides. *Id.* at 2. Colebrook is the closest Consolidated exchange to Dixville Notch; according to historic central office mileage data, the distance between the Colebrook and Dixville central offices is 10 air miles. *Id.* The next closest Consolidated exchange is Errol, at a distance of 10.33 air miles from Dixville's central office. *Id.* If another ILEC were designated as an ETC for Dixville, the newly-designated provider would have to assimilate Dixville's switch, requiring programming and system changes, or install a new switch, which would incur investment costs with little customer revenue to recover that investment. *Id.*

The Stipulation of Facts posited a solution in which the Commission might order Consolidated to serve Dixville's single basic service residential customer from its Colebrook facility. *Id.* That solution would entail constructing a line from the closest Consolidated copper plant (i.e., the "meet point" between Dixville and Consolidated) to the customer premises. *Id.* Portions of that line may already exist, but the entire line does not exist and any missing portions would have to be newly constructed. *Id.* Once constructed, the customer would be issued a number out of the Colebrook exchange and receive Consolidated dial tone at Consolidated's basic service rates. According to the Stipulation of Facts, the following factors weigh against that approach: (a) there is no indication that the residential customer would support the potential solution, (b) the cost of providing service would not be covered by Consolidated's current monthly charges for basic service, and (c) although the service could be provided at a higher rate (e.g., foreign exchange line rates), even at such a higher rate, the cost of providing service would not be covered in the event of service calls or other routine maintenance. *Id.* at 2-3.

The Stipulation of Facts also addresses potential wireless alternatives to Dixville's service. According to the Universal Service Administration Company, there are nine wireless carriers that have been afforded ETC status for the Dixville area, two of which recently relinquished their ETC status. *Id.* at 3. Of the seven remaining wireless ETCs, six affirmed that they provide service in the Dixville area. *Id.* The six carriers range in cost from \$8.33 per month to \$60 per month. *Id.* One of the carriers has its own network, while the others use a combination of AT&T, Sprint, and Verizon Wireless to provide service. *Id.* The Stipulation of Facts includes service and rate information from the seven ETC carriers, as provided to Staff. *Id.* and Exhibit A. Staff conducted testing using approved FCC methodologies for determining cell phone data speeds and determined that two additional, non-ETC, wireless carriers provide service in the area near the residential customer's premises. *Id.* and Exhibit B. Dixville's sole residential customer has advised the Commission that he currently uses his cell phone as his primary voice line and his landline as a back-up, and he also confirmed that he does not object to Dixville's Petition. *Id.* and Exhibit C.

In addition, the Stipulation of Facts addresses Dixville's financial condition. With respect to its balance sheet, Dixville's cash on hand at the close of 2018 was \$42,109, and the value of plant in service will be fully depreciated within 11 years. *Id.* at 3-4 and Exhibit D. With respect to its income statement, the bulk of the revenues are subsidies distributed through federal USF and NECA. *Id.* at 4 and Exhibit D. Both of those revenue sources are expected to diminish over time; "however, an accurate projection of the rate and timing of those reductions is not available." *Id.*

Finally, the Stipulation of Facts addresses wholesale services provided by Dixville. As stated above, Dixville has one wholesale customer, AT&T Mobility, for which it provides six

DS 1 special access circuits that carry traffic from a cell site within the Dixville Notch exchange. *Id.* at 4. AT&T Mobility has been negotiating with Consolidated to install facilities that would replace the DS 1 circuits provided by Dixville. *Id.* AT&T Mobility expects the replacement facilities to be operational by June 30, 2019. *Id.* Dixville has agreed to keep its DS 1 circuits in service for a period of 30 days from the issuance of final regulatory authority for Dixville to discontinue operations. *Id.*

C. Staff Recommendation

In the Staff Recommendation, Staff described the unique set of facts underlying Dixville's proposal to discontinue operations. Staff Recommendation at 1-2. Staff indicated its belief that "Dixville is not viable over the long-term, and that the benefits to its customers in the short-term are insufficient to outweigh the continued subsidies from USF and NECA." *Id.* at 3. According to Staff, those subsidies are being used by Dixville "not to expand infrastructure or service opportunities, but merely to remain solvent," and the "subsidy amounts may be put to more productive use by other carriers in different areas." *Id.* Based on Dixville's particular circumstances, Staff stated its support for the relief sought in the Petition, with reference to the "public good will not be adversely affected" standard under RSA 374:22-p, VIII(a). *Id.* Staff acknowledged that this is a "case of first impression, so there is a lack of precedent regarding application of the public good standard in such circumstances." *Id.* at 2.

Although its existing customers are aware of Dixville's proposed discontinuance, Staff recommended that Dixville provide each customer at least 10 days' advance notice of disconnection, in the absence of agreement with any customer regarding a specific disconnection date for existing service. *Id.* at 3. Staff maintained that the Commission does not need to condition its approval on a showing by Dixville that all customers have successfully found

alternative services, because the single basic service customer over which the Commission has authority has confirmed that he already has alternative service. *Id.* Staff therefore recommended that the discontinuance be effective on July 1, 2019, which is one day after the wholesale customer anticipates its replacement facilities will be operational. *Id.*

With respect to Dixville's ETC status, Staff summarized the history of that status and Dixville's current circumstances, as well as the federal statutory criteria for relinquishment of ETC status under 47 U.S.C. §214(e). *Id.* at 3-4. Noting there are currently six cellular ETCs serving the Dixville area, Staff maintained that, under federal law, "the existence of additional ETCs means that the Commission must permit Dixville to relinquish its ETC status." *Id.* at 4. According to Staff, because there are no Lifeline customers in the Dixville exchange, the requirement that the Commission (or the FCC) require another carrier to serve is inapplicable. *Id.* Staff recommended that the Commission permit Dixville to relinquish its ETC status, provided that any relevant FCC approvals required under 47 U.S.C. § 214 are granted in connection with Dixville's discontinuance of operations and relinquishment of its ETC status. *Id.*

Staff noted that Dixville serves only one exchange, which has no ported numbers, has never been pooled, and all numbers will have service disconnected prior to Dixville's discontinuance of operations. *Id.* Based on those circumstances, Staff recommended that Dixville's exchange code be returned to the North American Numbering Plan Administrator (NANPA) for assignment to another rate center. *Id.*

Based on its review and analysis of the relevant facts and applicable law, Staff recommended that the Commission:

- (1) suspend the procedural schedule in this docket;

- (2) conditionally approve Dixville's Petition, effective July 1, 2019, without a hearing;
- (3) condition its approval on Dixville's receipt of any FCC approvals required under 47 U.S.C. § 214;
- (4) require that the Dixville Notch exchange code be returned to the NANPA; and
- (5) require that Dixville attempt to negotiate mutually-agreeable dates for disconnection of customer services, or provide at least 10 days' notice prior to disconnecting service to any customer.

III. COMMISSION ANALYSIS

The Commission retains limited regulatory jurisdiction over ILECs like Dixville that have elected ELEC status. *See* RSA 362:7, I(c); RSA 362:8. Much of that retained jurisdiction pertains to the obligation of an ILEC to offer "basic service" to its customers. *See* RSA 362:8, IV; RSA 374:22-p. Under RSA 374:22-p, VIII(a), an ILEC, whether qualified as an ELEC or otherwise, "may not discontinue residential basic service, regardless of technology used, in any portion of [its] franchise area unless the commission determines that the public good will not be adversely affected by such withdrawal of service."

As recognized by Staff, we have not previously had occasion to interpret and apply that statutory standard for discontinuance of residential basic service by an ILEC. The factual record established through Dixville's initial filing, the Stipulation of Facts,¹ and the Staff Recommendation with which the parties concur, demonstrate a unique set of facts and circumstances that support a finding that the public good will not be adversely affected by Dixville's discontinuance of operations.

¹ Under N.H. Code Admin. Rules Puc 203.20(d), if a stipulation of facts "is filed and is not contested by any party, the stipulation shall bind the commission as to the facts in question, and the commission shall consider the stipulation as evidence in the decision of the matter."

Following the closure of the Balsams, Dixville's service area is almost entirely unpopulated and its retail customer count has dwindled to less than ten. Dixville's future business prospects are bleak and its financial situation is unsustainable. It is able to avoid insolvency primarily as a result of federal subsidy payments, which are not fully utilized for their intended purpose and likely could be more productively deployed by another carrier in a different location. Its remaining retail customers were notified of this proceeding and have not participated in it. The sole residential basic service customer has confirmed that he has adequate cellular service and does not object to discontinuance of Dixville's landline telephone operations. Alternative sources of voice telephone service are available from a number of wireless carriers, although we make no determination here about the general suitability of cellular service as a substitute for landline service. Based on those particular circumstances, we find that Dixville's cessation of operations, subject to the conditions specified below, will not adversely affect the public good. *See* RSA 374:22-p, VIII(a).²

With respect to Dixville's ETC status, federal law permits the relinquishment of that status in certain specific circumstances:

A State commission (or the [FCC] in the case of a common carrier designated under paragraph (6)) shall permit an [ETC] to relinquish its designation as such a carrier in any area served by more than one [ETC]. An [ETC] that seeks to relinquish its [ETC] designation for an area served by more than one [ETC] shall give advance notice to the State Commission (or the [FCC] in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an [ETC] to cease providing universal service in an area served by more than one [ETC], the State commission (or the [FCC] in the case of a common carrier designated under paragraph (6)) shall require the remaining [ETC(s)] to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require

² For the sake of clarity, we have not based that determination on Dixville's contention that its continued operation would waste charitable resources that otherwise could be used to advance the public good. Charitable works are undoubtedly a legitimate social good; however, the Commission's focus must remain on the balance of interests between public utilities and their customers.

sufficient notice to permit the purchase or construction of adequate facilities by any remaining [ETC].³

The record in this proceeding demonstrates that there are a number of wireless carriers designated as ETCs for the Dixville service area, and those ETCs are available to provide service to any customers who may remain in or come to the area. We do not, however, have to reach the relinquishment issue here. We read the federal statute quoted above to address the situation where a carrier will continue operations but wishes to terminate its ETC status. Because Dixville will entirely cease operations, it will no longer be considered a telephone utility with a franchise area under state law. Dixville will therefore no longer be qualified to be an ETC capable of meeting any universal service obligations.

We agree with the Staff Recommendation that certain conditions should be imposed on Dixville's discontinuance of operations.

First, Dixville must obtain from the FCC all required approvals under 47 U.S.C. § 214(a). We therefore condition Dixville's discontinuance on receipt of all such FCC approvals and direct Dixville to notify the Commission when those approvals have been received.

Second, we find that Dixville should provide adequate notice of disconnection to each of its current customers, and we therefore direct Dixville to give each customer at least 10 days' advance notice of disconnection, in the absence of an agreement between Dixville and any such customer with respect to a specific disconnection date for existing service.

³ 47 U.S.C. § 214(e)(4). Paragraph (6) of 47 U.S.C. § 214(e) authorizes the FCC to designate a carrier as an ETC if the carrier provides "telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission." In New Hampshire that would include cellular carriers under RSA 362:6.

Third, in the interest of conserving telephone numbers in the New Hampshire 603 area code,⁴ we direct that the Dixville exchange code be returned to the NANPA for assignment to another rate center in the state.

Fourth, Dixville must continue to provide service to AT&T Mobility until replacement facilities are available and operational.

Finally, we specify that the effective date of Dixville's discontinuance of operations shall be the later to occur of July 1, 2019, and the date upon which all four of the foregoing conditions have occurred.

We issue this order on a *nisi* basis to ensure that Dixville's customers and all other interested persons receive notice of the decision and have an opportunity to file comments or request a hearing before the order becomes effective. We direct Dixville to mail a summary of this order to each of its customers, to publish the order summary in a newspaper with general circulation in those portions of the state in which operations are conducted, and to file affidavits confirming that such notification and publication have occurred.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Dixville Telephone Company's Petition for Approval to Discontinue Operations is GRANTED, subject to the conditions specified in the body of this order, effective as of the later to occur of July 1, 2019, and the date upon which all such specified conditions have occurred; and it is

FURTHER ORDERED, that Dixville shall cause a summary of this order, issued concurrently with this order, to be published once in a newspaper with general circulation in

⁴ See RSA 374:59, II (Commission "should promote and adopt telephone number conservation measures to the maximum extent allowed by federal law for area code 603 and any subsequently assigned New Hampshire area codes").

those portions of the state in which operations are conducted, such publication to be made no later than April 26, 2019, such publication to be documented by affidavit filed with the Commission on or before May 3, 2019; and it is

FURTHER ORDERED, that Dixville shall send to each of its customers by first class U.S mail a summary of this order, issued concurrently with this order, no later than April 26, 2019, such mailing to be documented by affidavit filed with the Commission on or before May 3, 2019; and it is

FURTHER ORDERED, that all persons desiring to respond to this order are notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than May 3, 2019, for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than May 9, 2019; and it is

FURTHER ORDERED, that this order shall be effective May 10, 2019, unless Dixville fails to satisfy the publication and notification obligations set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

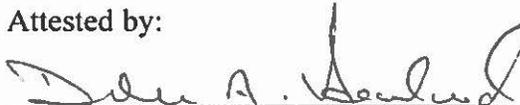
By order of the Public Utilities Commission of New Hampshire this twenty-second day of April, 2019.


 Martin P. Honigberg
 Chairman


 Kathryn M. Bailey
 Commissioner


 Michael S. Giaimo
 Commissioner

Attested by:


 Debra A. Howland
 Executive Director