

DT 00-015

UNIVERSAL SERVICE

**Investigation Into Pending Changes Affecting The Provision Of
Universal Service As A Result Of The 1996 Telecommunications
Act**

Prehearing Conference Order On Scope And Schedule

O R D E R N O. 23,436

March 29, 2000

APPEARANCES: Dom D'Ambruoso, Esq., Ransmeier & Spellman, for New Hampshire Telephone Assn.; Victor D. DelVechhio, Esq., for Bell Atlantic-New Hampshire; John Lightbody, Esq., on for Kearsarge Telephone Company; Frederick Coolbroth, Esq., Devine, Millimet & Branch, appearing on behalf of Granite State Telephone, Inc., Merrimack County Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company; Alan Linder, Esq., representing Save Our Homes Organization; James Sanborn, Union Telephone Company; David Fagundus, Esq., for AT&T; Representative John Thomas of the New Hampshire House of Representatives appearing for the Science, Technology & Energy Committee of the New Hampshire (Telecommunications Oversight); Kenneth Traum and William Homeyer for the Office of the Consumer Advocate; E. Barclay Jackson, Esq., representing Staff of the Public Utilities Commission.

I. INTRODUCTION AND BACKGROUND

On January 27, 2000, this Commission issued an Order of Notice (OON) in the above captioned case. The case was initiated to investigate issues in New Hampshire regarding pending changes affecting the provision of universal service and whether there are items at the state level that need to be addressed as a result of the Telecommunications Act of 1996.

The OON also indicated that the investigation would *inter alia* delve into whether there was a need for a State Universal Service Fund and if so the appropriate size of such a fund. The OON set the prehearing conference for February 18, 2000 and also ordered that a forum be convened after the close of the conference for all interested participants to discuss informally issues related to universal service.

The prehearing conference was held on February 18, 2000 at which time the parties indicated above appeared. A number of parties, but not all, made preliminary statements regarding issues ranging from Lifeline/link-up programs to implicit and explicit subsidies to what the definition in New Hampshire of Universal Service should encompass. There was also discussion regarding the possibility of some consensus regarding the issues to be included in the docket.

After the hearing a forum was held that included speakers on various universal service topics. The speakers included Cheryl Parrino of Universal Service Administration Company (USAC) speaking on Interstate universal service, Bob DeBrux and Jean Pauk (TDS), representing Rural Carriers and giving their perspectives, Victor Desantis (Bell Atlantic) giving the regional Bell Operating Company (RBOC) perspective, Bill Salvatore (AT&T) providing the CLEC perspective and Jim

Isaak (Internet/Standards Consultant) addressing considerations for Universal Service in New Hampshire.

On March 9, 2000 the parties and Staff met again to develop a proposal for the scope and procedural schedule for the docket. The meeting was attended by a number of parties and limited interveners. Subsequently, the Parties and Staff submitted a statement of the proposed scope of the proceeding and a proposed procedural schedule.

II. INTERVENTIONS

A number of parties intervened in the proceeding asking for either full or limited intervention. Some of those requesting intervention were not at the prehearing conference but did attend the technical session that was held on March 9, 2000.

Requests for intervention of those parties who did not note an appearance at the Prehearing conference were made by Jennifer Duane, Esq., for Sprint Corporation; Teresa L. Moore, requesting intervention on behalf of Bell Atlantic Mobile; and Martin Gross, Esq., also requesting intervention for Bell Atlantic Mobile. MCI WorldCom simply asked for limited intervention as did James Monahan who asked to be placed on the service list.

There were no objections to the requests for interventions. The Commission, accordingly, granted the requests at the Prehearing Conference.¹

III. PROPOSAL

A joint proposal was submitted after the parties discussed the scope of the docket and a procedural schedule at the March 9, 2000 technical session. The joint proposal suggested that the case be split into three (3) separate phases. Phase III would be commenced only after a Phase II decision was rendered regarding the legitimate necessity of establishing a Universal Service Fund.

The Parties and Staff agreed that Phase I of the proceeding should cover the Threshold Issues on Universal Service and would answer the following questions:

Threshold Issues on Universal Service

- A. Should New Hampshire adopt the FCC definition of Universal Service with or without modifications? What advanced services should be included in a definition of Universal Service?
- B. Must carriers provide all of the services included in the definition before they are eligible to receive support?

¹See Transcript dated February 18, 2000 RE: DT 00-015, pp. 7-8.

- C. Should Public Interest Payphones ("PIPs") be covered by a Universal Service Fund? Why or why not?
- D. What penetration level should be used as the appropriate metric for determining whether or not Universal Service exists in New Hampshire?
- E. Is there a need for a State fund or fund structure before the Federal reforms occur?
- F. How do we define and determine "affordability" and "comparability" with respect to access to the public switched network?
- G. Should the State supplement the Federal programs' current assistance for Lifeline/Link-Up, Schools, Libraries and Rural Health Care?
- H. If so, which of these programs should be covered and by how much?

The proposed procedural schedule for Phase I would begin with Staff and Parties filing Position Papers on the questions presented. The recommended schedule is as follows:

☛ Position Papers re Threshold Issues	April 20, 2000
☛ Data Requests	May 4, 2000
☛ Data Responses	May 23, 2000
☛ 1st Collaborative Session(9:00 a.m.)	June 8, 2000
☛ 2nd Collaborative Session(9:00 a.m.)	June 23, 2000
☛ Settlement Conference (9:00 a.m.)	July 6, 2000
☛ Report on Agreement	July 11, 2000

☛ Written Position on Unresolved Issues	July 18, 2000
☛ Hearing(10:00 a.m.)	July 25, 2000

The joint proposal recommends that Phase II should be used to determine the need for high-cost support for rural carriers (hereinafter referred to as "Phase II") and should address the following questions:

- A. Examine present implicit and explicit subsidies and identify changes taking place with respect to these subsidies. Related questions may include:
 - (1) What cost studies/models should be used to determine whether, and to what extent, a rate is currently subsidized or providing a subsidy?
 - (2) What current implicit subsidies should be made explicit?
 - (3) Should we adopt a state-wide model?
 - (4) If so, how should it differ from the FCC's hybrid cost proxy model?

- B. Is a Universal Service Fund necessary at this time? Staff considers B to be a "threshold" question. If the answer to B is "no," then the Commission needs to determine what future conditions would trigger the need for an intrastate fund. If the answer to B is "yes," then Phase III would seek immediate answers to additional questions.

The Parties and Staff agreed that the Procedural Schedule for Phase II should be discussed at the end of the proposed First Collaborative Session to be held on June 8, 2000.

In addition, the Staff and Parties who attended the March 9th technical session agreed that communications with respect to Docket DT 00-015 should be made via e-mail as much as possible. Parties without e-mail capability would receive material distributed via facsimile. Initial Position Papers will be distributed by e-mail and fax among the Parties and Staff to be used as working papers for the Collaborative Sessions; they will not be filed with the Commission. The Written Positions on Unresolved Issues, due July 18, 2000, will be filed by hard copy with the Commission, and by e-mail and fax among the Parties and Staff.

IV. COMMISSION ANALYSIS

Section 254 of Title 47 of the United States Code deals with Universal Service and Congress' desire to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural health care providers. Congress specifically authorized the states, to the extent not inconsistent with the authority granted to the Federal Communications Commission, to devise methods to ensure all

consumers including low income, rural, insular and those in high cost areas can obtain telecommunications and information services that are reasonably comparable to those services provided in urban areas. 47 USC § 254(b)(3),(f). Thus, New Hampshire is free to adopt regulations to preserve and advance universal service within the state as long those mechanisms are specific, predictable and sufficient to support the definitions and standards and do not burden the Federal universal service support mechanisms. 47 USC §254(f).

We said in the order of notice that we initiated this proceeding to investigate, among other things: (1) whether there are issues at the state level that need to be addressed as a result of the changes taking place in the telecom market, and, (2) if it is subsequently determined that there is a need for a State Universal Service Fund, to decide the appropriate size of such a fund and develop proper mechanisms for its implementation and operation. We believe that the proposed scope of the proceeding is appropriate for investigating this state's universal service goals. We are entrusted with promoting universal service by assuring affordable residential access. We believe that the scope of the proceeding as described by the joint proposal allows us to identify the services to be supported. Further, the scope

enables us to consider the possible methods for providing funding support to those services so identified.

Accordingly, we agree that this docket should be split into three separate phases. The primary objective in Phase I will be for us to determine the threshold issues relating to universal service. We concur, for example, with Mr. Linder's position at the prehearing conference that any analysis should include determining whether there is a need for a State fund for low-income programs like Linkup, Lifeline, and, if appropriate, Public Interest Payphones. A further question is whether a State fund or fund structure is needed for High Cost telephone providers before Federal reforms occur.

We believe that Phase II of the proceeding goes beyond the limited question of high-cost support for rural carriers. Phase II's basic question is whether a universal service fund is necessary based on the decisions of the first phase. In that light the Phase II proceeding should determine explicit subsidies as support for the mechanisms determined necessary in Phase I. We adopt the questions as presented in the proposal with the caveat that these questions may be added to or expanded as the process unfolds.

We adopt the procedural schedule as defined in the

joint proposal. Additionally, we instruct the parties to develop a joint proposal for Phase II at the first collaborative session scheduled for June 8, 2000. Once we have had an opportunity to review the questions proposed (if different than the ones already suggested) and the Phase II procedural schedule we will issue a supplemental order regarding Phase II and possibly Phase III.

Phase III of the proceeding will be necessary only if we determine the need for a state fund. We will deal with the specific questions to be addressed and a procedural schedule only after we finish the first two phases of this proceeding.

We acknowledge that the process in working towards a state universal fund is a flexible one and that this order may be supplemented as necessary as we reach Phase II and possibly Phase III of the process.

With regard to the proposal that parties will use e-mail as a means of communicating with one another, we have no objection. This includes the filing of the initial position papers with the Commission. Also, we require that a joint report be filed, as soon as practical, after each of the two collaborative sessions. This report should include a synopsis of the parties positions and a recommendation for

further action.

A listing of all e-mail addresses of the parties is attached to this order for use by the parties. If the list does not contain an e-mail address but has a fax number, that party will be served via facsimile. Again, all written submissions, which include the initial positions and final positions on unresolved matters, shall be made in accordance with our rules by forwarding an original and eight copies to the Executive Secretary of the Commission.

Based upon the foregoing, it is hereby

ORDERED, that our investigation under this docket will be split into three phases, with Phase III commencing only if necessary; and it is

FURTHER ORDERED, that the scope of Phase I as proposed herein is adopted which includes an initial paper being filed answering the eight proposed questions in the broadest sense possible; and it is

FURTHER ORDERED, that the procedural schedule as proposed herein for Phase I of the proceedings is adopted.

By order of the Public Utilities Commission of New
Hampshire this twenty-ninth day of March, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
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Attested by:

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