

DE 98-147
DR 98-157
DR 98-158
DR 98-159

CHICHESTER, KEARSARGE AND MERIDEN TELEPHONE COMPANIES

**Earnings Investigations and Petition to Consolidate
Order Approving Petition for Protective Treatment**

O R D E R N O. 23,542

July 31, 2000

I. BACKGROUND

The New Hampshire Public Utilities Commission (Commission) opened an inquiry regarding the earnings levels of Chichester Telephone Company (Chichester) as DR 98-157, Kearsarge Telephone Company (Kearsarge) as DR 98-158, and Meriden Telephone Company (Meriden) as DR 98-159, (collectively, TDS, the Companies or Petitioner) in early August 1998.

On August 18, 1998 the Companies, which are each owned by TDS Telecommunications, Inc., filed a petition for approval of their merger into Kearsarge, to modify the existing extended area service of the Companies, and to operate under the name of TDS Telecom. Docket No. DE 98-147 was opened and on February 18, 1999 the Commission approved the merger petition by Order *Nisi* 23,147. On December 6, 1999, the Commission issued Order No. 23,358 approving a Stipulation and Comprehensive Settlement Agreement of the Parties and Staff regarding permanent rates, proceeding expenses and other

DR 98-157
DR 98-158
DR 98-159

-2-

matters.

As a part of the earnings investigation, and in concert with its usual practice, the Commission's Finance Department conducted an audit of each of the three Companies. In the course of the audits, Staff requested to review detailed financial and other information relating to the three Companies' books and records. The audit information was also needed by Staff to analyze the merger petition.

In connection with supporting materials which the Companies provided or anticipated providing in the audit, on December 28, 1998 the Companies filed with the Commission, pursuant to N.H. Admin. Rule Puc 203.04, a Verified Motion for Protective Order (the Motion) by which it sought to exempt from disclosure, pursuant to RSA 91-A, Puc 204.05 and Puc 204.06 all of the material requested. On December 31, 1998 the Companies provided to Staff copies of the material for which they sought protective treatment. Subsequently, the Companies requested similar treatment for additional material provided in response to Staff Data Requests.

Pursuant to Puc 204.05(b), documents submitted to the Commission or Commission Staff accompanied by or preceded by a motion for protective treatment are protected as provided in Puc 204.06(d) until the Commission rules on the Motion for Protective Order.

TDS stated in its motion that the material for which it sought protective treatment included detailed trial balances, detailed general ledgers, accounts receivable aging, accounts payable aging, internal audit reports, Part X allocations, federal and state income tax returns, capital and operations budgets, detailed payroll records, organization charts, bank reconciliations and employee handbook and operation procedures (the Information). In their motion, the Companies referred to "customer specific" information, but provided no details as to what that information actually was. The Companies further described an "employee-specific" portion of the Information as including specific wage and personal employee information, and company-specific information as containing detailed financial transactions, allocations of costs, vendor/supplier information, income tax returns, budgets, organization structure, operational activities and employee policies and procedures.

TDS alleged that the Information contained competitively sensitive data that falls within the "confidential, commercial or financial information" exemptions from disclosure set forth in RSA 91-A:5, IV and Puc 204.06, including competitively sensitive data for the provision of competitive services.

In its motion TDS averred that: (1) the Information contained customer-specific, employee-specific and company-specific

information that is not made available to or known by the public in the ordinary course of the Companies' business; (2) disclosure of the customer-specific and/or employee-specific portions of the Information (a) would be considered an invasion of privacy, and (b) could result in potential liability to the Companies, its employees and the Commission; (3) the company-specific information, if disclosed, could be used by competitors and outside entities to target key areas of the business and attract customers and employees away from the Companies, which could have a significant negative financial impact on the Companies and could affect its rates and service standards; and (4) the Information (a) is compiled from internal databases of the Companies that are not publicly available, (b) is not shared with any non-employee for personal use, (c) is not considered public information, and (d) is treated such that any dissemination of the Information to non-employees is subject to non-disclosure requirements.

TDS stated in its Motion that the Commission Staff did not take a position on the motion in advance of filing and that TDS did leave a message regarding the filing for the Office of Consumer Advocate but was not able to obtain their position prior to filing. Subsequently, the Parties and Staff entered into settlement discussions which culminated in the Stipulation and Comprehensive

Settlement Agreement Regarding Permanent Rates, Proceeding Expenses (Stipulation), and Other Matters referred to above. Staff also informed the Commission that the Parties and Staff agreed, during those negotiations, that the copies of the Company's records provided to the auditors during the audit would be returned to the Company. The parties and Staff also agreed that portions of the response to Data Request 20, marked confidential and related to a detailed asset listing, and certain material provided to Staff and OCA on December 31, 1998 regarding supporting information for their settlement proposal, should be given protective treatment for the reasons provided by the Companies, as a resolution of the Companies' Motion.

II. COMMISSION ANALYSIS

We review the Companies' Motion by the standards set forth in Puc 204.06¹. Under Puc 204.06 we first determine whether the Information contains material of the Petitioner whose disclosure would create a competitive disadvantage for the Petitioner, such as trade secrets; research or development information; details of special contracts relating to pricing and incremental cost information for competitive services; or whether the Information

¹ The Motions for Protective Order were filed before August 24, 1999, the effective date of RSA 378:43 which modified the Right-to-Know Law with respect to filings by telephone utilities; therefore, this matter is herein resolved based on the law in existence prior to August 24, 1999.

contains the Petitioner's customer's information that is financially or commercially sensitive and would likely constitute an invasion of privacy. Then we determine whether the Information has become general public knowledge or is published elsewhere. The Commission will grant confidential treatment to the Information it finds meets these criteria, provided the outcome of the balancing test, described below, weighs in favor of non-disclosure. Petitioner's customers' information will be treated as protected if not otherwise made public and if disclosure would constitute an invasion of privacy.

Under the balancing test which we apply in this situation, the Commission must also consider any benefit to the public from requiring disclosure of the Information. In this instance the Staff must not only conduct its audit, it must issue a final report to the Commission on the audit in which it justifies its findings with respect to many areas of the Companies' financial accounting and reporting. A significant public interest is served by providing access to the process by which the Commission investigates and sets rates for public utilities which it regulates.

Public utilities are required to provide some level of public disclosure of their finances to preserve the openness of and maintain confidence in the regulatory process. This is particularly true where true competition does not exist in the provision of

services, as is the case in this instance.

The Commission Audit Staff must be permitted to use the Information as necessary in preparing its final report to the Commission. Such use should attempt, however, to minimize disclosure of any competitively sensitive information that may exist within it. The investment of the public utility in its sensitive financial and strategic information should not be unnecessarily and unfairly eroded.

In this instance, we find that the audit information includes material which would otherwise be protected under the standard set forth in RSA 91-A and Puc 204.05 and 204.06. We also find, however, that the Petitioner did not meet its burden in establishing which specific portions of the Information are proprietary. This was due, in part, to the circumstances by which the material came into the possession of the Audit Staff. The material provided was furnished to the Audit Staff by the companies as an accommodation to avoid the necessity of Audit Staff having to review the material at the Companies' places of business. Thus, this material would not normally be found at the Commission's offices, and would, therefore, not require a protective order to prevent its disclosure pursuant to RSA 91-A. Now that the audit is completed and the matter settled, and after a lengthy period during which there

DR 98-157
DR 98-158
DR 98-159

-8-

were no requests from the public or interested persons to review the material, we find that the proposal by the Parties and Staff to return this material to the Company to be a reasonable approach under the circumstances.

We find that the other information provided in response to Staff data requests and provided in the course of the proceeding does contain confidential information that meets the requirements of N.H. Admin. Rule Puc 204.06 (b) and (c). The Companies have met their burden in establishing that this information constitutes competitively sensitive information such that the Companies will be placed at a competitive disadvantage on its disclosure. Based on these facts, under the balancing test we have applied in prior cases, e.g., *Re New England Telephone Company (Auditel)*, 80 NH PUC 437 (1995); *Re Bell Atlantic*, 83 NH PUC 84 (1998); *Re EnergyNorth Natural Gas, Inc.*, 83 NH PUC 96 (1998), we find that the benefits of non-disclosure in this instance outweigh any benefit to the public of disclosure that may exist. The Information should be exempt from public disclosure pursuant to RSA 91-A:5,IV and N.H. Admin. Rule 204.06.

Based upon the foregoing, it is hereby

ORDERED, that TDS's Motion for Confidential Treatment is APPROVED in part in accordance with the above discussion; and it is

DR 98-157
DR 98-158
DR 98-159

-9-

FURTHER ORDERED, that the copies of the Company records provided to the Commission Audit Staff shall be made available to the Companies to retrieve on or after August 31, 2000, but no later than September 15, 2000 in accordance with Puc 204.06(h)(1) or they will be destroyed by the Commission; and it is

FURTHER ORDERED, that this Order is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of July, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary

