

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

PUC 400 – RULES FOR
TELECOMMUNICATIONS

DRM 08-126

WRITTEN COMMENTS OF METROCAST CABLEVISION

Introduction

Pursuant to the November 4, 2008 Public Utilities Commission (“Commission”) Notice filed with the State Office of Legislative Services (“Notice”), MetroCast Cablevision of New Hampshire LLC (“MetroCast”) respectfully files the following written comments in the above-captioned rulemaking docket.

MetroCast provides cable television and high speed Internet services in nearly 40 communities in mostly rural portions of eastern New Hampshire, as well as in Maine, Connecticut and several other states. Even though MetroCast’s broadband facilities are capable of providing local phone service throughout its New Hampshire footprint, MetroCast has launched competitive phone services only in the communities where FairPoint Communications is the incumbent local exchange carrier (“ILEC”). Until recently, MetroCast was effectively barred by RSA 374:22-f (limiting rural entry) and 22-g (limiting competition to non-exempt areas) from introducing competition into the seven towns or portions of its towns served by Union Telephone, a rural ILEC.¹ Following recent statutory changes that took effect on September 5, 2008, Section

¹ The seven Union communities are: Alton, Barnstead, Center Barnstead, Farmington, Gilmanton, New Durham and Strafford.

374:22-g now requires that the territory of rural ILECs, such as Union, be considered “non-exclusive” and the Section 374:22-f state rural exemption from CLEC competition has been eliminated. MetroCast responded to the new legislation by seeking to be registered in Union’s territory, a request that was granted by the Commission on October 3, 2008. Union’s October 10, 2008 challenge to the granting of the MetroCast certification has been fully briefed and is awaiting decision by the Commission.

ARGUMENT

MetroCast supports the Commission’s proposed changes to the registration rules for New Hampshire CLECs. In pertinent part, the proposed change eliminates the word “non-exempt” in Rule 431.01(d) so that it now reads as follows:

“(d) Unless the Commission denies an application for CLEC registration pursuant to PUC 431.02, it shall issue a CLEC authorization number which authorizes the applicant to provide competitive local exchange service in the territory of ILECs.”

Pursuant to the prior statutory scheme that limited CLEC entry into rural areas, the Rule 431.01(d) registration process only expressly applied to non-exempt (*i.e.*, non-rural) ILECs, namely, FairPoint. Now the legislature has chosen to delete the rural limitations in RSA 374:22-f and the limitation to “non-exempt” areas in RSA 374:22-g. For its part, the Commission has reasonably implemented the legislation by deleting the text in Rule 431.01(d) that had limited the registration process to non-exempt areas. This is all that is necessary and appropriate to implement the statutory changes removing entry barriers to telecommunications competition in rural areas.

Following this change, as plainly intended by the legislature, the registration process for rural areas will be the same as it is in the areas served by FairPoint. The Commission will vet the application against state law standards, as reflected in the CLEC

application forms, and grant the registration if they are met. If the CLEC has specific conditions precedent to commencing operations, such as securing interconnection arrangements or completing pole attachments, it will need to satisfy these conditions before beginning to serve New Hampshire customers. Similarly, if the ILEC has specific concerns with the manner in which a particular CLEC is operating pursuant to the registration, the ILEC is free to raise such concerns in an appropriate forum.

MetroCast opposes any request for significant changes to the PUC's registration rules of the nature proposed by the New Hampshire Telephone Association ("NHTA") at the December 16, 2008 public hearing. Among other things, MetroCast objects to changes that would necessitate preparation and submission of detailed factual showings during the registration process or would require a contested public hearing process, except at the Commission's discretion. Creating a specific, burdensome process for CLEC registrations would be contrary to legislative intent that rural and non-rural ILECs be treated alike, unnecessary in many cases, and excessively wasteful in terms of both time and resources. Given that many rural exchanges have relatively few many customers, a burdensome and costly entry process would effectively deny many New Hampshire residents and businesses the benefits of competitive telecommunications options enjoyed by the rest of the state.

MetroCast notes that rural ILECs would retain whatever rights they may have under applicable state or federal law, and could raise claims outside of the registration process. The ILEC also could petition the Commission for changes in its form of regulation as a result of competitive entry. In any event, the Commission has correctly

determined that rural ILECs need not be given procedural rights to initiate a lengthy, pitched regulatory battle over CLEC registrations in their service territories.

CONCLUSION

MetroCast welcomes the opportunity to provide comments in the instant rulemaking. For the above reasons, the Commission should adopt its proposed regulations to implement the changes to Chapter 374. It should reject calls from the rural ILECs to set up a process for every registration request in rural territories that would serve to indefinitely delay or deny the benefits of competitive entry for New Hampshire residents and businesses.

METROCAST CABLEVISION OF
NEW HAMPSHIRE, LLC

By its attorneys,



Robert J. Munnelly, Jr.
Murtha Cullina LLP
99 High Street – 20th Floor
Boston, MA 02110
Telephone: (617) 457-4062
Fax: (617) 482-3868
rmunnelly@murthalaw.com

Date: December 18, 2008