

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DOCKET DRM 08-126

COMMENTS OF UNION TELEPHONE COMPANY

I. INTRODUCTION AND SUMMARY

These comments are on behalf of Union Telephone Company d/b/a Union Communications (“Union”) regarding the proposed change to Puc rule 431.01(d). Union is a small Incumbent Local Exchange Carrier (“ILEC”) with less than 7000 access lines and is an exempt ILEC as that term is defined in Commission Rules, Puc 402.33.¹

The proposed change to Puc rule 431.01(d) would result in a statewide rule on certain procedures involved in receiving competitive telecommunications authority. The rule, as proposed, does not clearly address the requirements of the statutes and other applicable law, including the opportunity for hearing, the criteria the Commission is required to consider before granting such authority, and notice to incumbent ILECs like Union. In contrast, the language proposed at the hearing on December 16, 2008 by the rural members of the New Hampshire Telephone Association (“NHTA”) (“NHTA Proposal”) on behalf of other ILECs provides a uniform, statewide procedure to address telecommunications authority which reflects these legal requirements. For these reasons, Union opposes the

¹ Union is a rural telephone company as that term is defined at 47 USC §153 (37) and as that term is used in 47 U.S.C. § 251 (f)(1). Union has not waived the exemption provided to rural telephone companies under that section of the federal statutes. Union is the incumbent telephone utility serving a territory that includes all or portions of: Alton, Barnstead, Center Barnstead, Farmington, Gilmanston, New Durham, and Strafford, New Hampshire.

proposed rule change, but supports the NHTA proposal, with one minor exception. Union suggests that the NHTA proposal be adopted with a change to the time period for ILECs to comment on a filing at the PUC to thirty, rather than fourteen, days.

II. ARGUMENT

A. The Rule, As Proposed, Fails To Address The Requirements Of The Statutes

In a situation involving an application for competitive telecom authority, RSA 374:22-e, RSA 374:26, RSA 541-A:31 and state and federal constitutional requirements of due process requires notice to, at a minimum, the ILEC serving the territory and an opportunity for hearing. This authority and RSA 374:22-g require the Commission to make findings based upon the application and any evidence before it addressing particular factors in the statutes, and to make a conclusion based on those findings on whether granting an application for authority is in the public good.

The public good factors that RSA 374:22-g requires the Commission to address are as follows:

the interests of competition with other factors including, but not limited to, fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility's opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.

RSA 374:22-e, 374:22-g and 374:26 anticipate evidence and findings on a specific application prior to making conclusions on the public good. These statutory requirements cannot be met by a generic finding in a rulemaking without knowledge of the application, service territory, proposed operation or incumbent utility involved.

Because the proposed change does not reflect the requirements of the statutes and other applicable law, the Commission should not adopt the proposed change to Puc rule 431.01(d).

B. The NHTA Proposal Should Be Adopted – With A Thirty Day Comment Period

The NHTA proposal provides a uniform statewide procedure to address competitive telecommunications authority applications and addresses the applicable statutory and other legal requirements. For this reason, it should be adopted, except that its adoption should include a thirty day period to comment on proposed authority.

Fourteen, rather than thirty days will allow for investigation of an application and more thoughtful comments – and perhaps non-opposition of them. The relatively short fourteen day period will make it more likely that an ILEC will simply “cover themselves” by opposing and requesting a hearing. Such a step might be circumvented if a carrier is given reasonable time to investigate what is actually involved in an application and talk with an applicant before such comments are due. Thus, the NHTA proposal, with this change, should be adopted.

C. The State Law Enacted By SB 386 Does Not Require The Proposed Rule Change

Prior state law – that which appeared in RSA 374:22-f prior to its deletion by the enactment of SB 386², involved different statutory standards for entry of competitive telecommunications carriers in areas served by incumbents with more than 25,000 lines or those with less than 25,000 access lines. The notice of rulemaking attached to the November 6, 2008 order and submitted for the State Register provides that:

the amendment is requested in order to remove the word “non-exempt” from 431.01(d) as a result of passing of SB 386, the distinction between certain telephone utilities with more than 25,000 access lines(non-exempt) and those with fewer than 25,000 access lines(exempt) was deleted and RSA 374:22-f was repealed.

However, the terms exempt and non-exempt are defined in the Puc rules are not tied to the 25,000 access line definitions under the prior state law state law, but to a different concept under federal law.

Specifically, Puc 402.33 provides that “Non-exempt ILEC” means an ILEC that is not exempt pursuant to 47 U.S.C. §251(f). That provision of federal law, which has the subtitle “Exemptions, suspensions, and modifications” provides exemptions from the requirements of certain interconnection related duties for specified smaller ILECs based upon specific criteria, which exemptions state commissions may terminate based upon criteria in that federal statute. Thus, the term “non-exempt” in the rule has no relationship to the state law that formerly appeared at RSA 374:22-f .

² 2008 N.H. Session Laws Chapter 350.

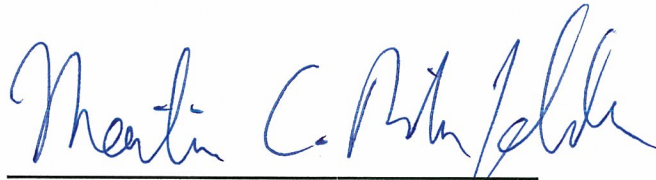
The November 6, 2008 order proposing this rulemaking also notes that SB 386 amends RSA 374:22-g by adding language indicating that all telecommunications authority shall be non-exclusive. The existing rules do not make any authority exclusive, as the current rules allow anyone to file a petition under the rules in Puc 203 for authority in any part of the state. Thus, the proposed rule change is not required by SB 386.

III. CONCLUSION

The proposed rule fails to reflect the requirements of state statutes and other law involved in granting telecommunications authority. Thus, it should not be adopted. Instead, the NHTA Proposal, with a thirty day comment period, should be adopted. The NHTA Proposal accurately reflects the statutory requirements involved in providing telecommunications authority in New Hampshire. The thirty day time period for comments on such applications would provide more reasonable time periods for comments and would allow parties time to determine if they can reasonably not oppose an application.

Respectfully submitted,

**UNION TELEPHONE COMPANY d/b/a
UNION COMMUNICATIONS**

A handwritten signature in blue ink, reading "Martin C. Rothfelder".

December 18, 2008

Martin C. Rothfelder (NH Bar. No. 2880)
Rothfelder Stern, L. L. C.
625 Central Avenue
Westfield, NJ 07090
Phone: (908) 301-1211