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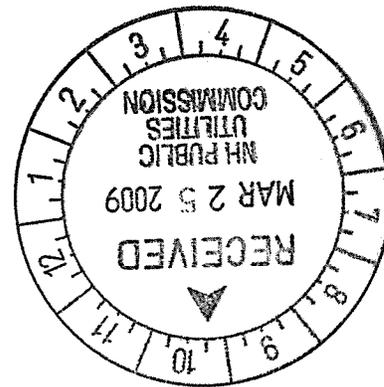


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March 24, 2009

VIA OVERNIGHT DELIVERY

Michelle A. Caraway
Deputy Clerk
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301-6160



Re: 2009-0168, Appeal of Union Telephone Company d/b/a Union Communications

Dear Ms. Caraway:

Enclosed please find an original and seven copies of (1) Motion of MetroCast Cablevision of New Hampshire LLC for Summary Affirmance of Agency Decision; (2) Memorandum in Support thereof; (3) Supplement to Appendix; (4) Verified Application of Robert J. Munnely, Jr. to Appear Pro Hac Vice; and (5) Certificate of Service.

If you have any questions, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "RJM", with a long, sweeping horizontal line extending to the right.

Robert J. Munnely, Jr.

RJM/mb

Enc.

cc: Martin C. Rothfelder, Esq.
Debra A. Howland, NH PUC
Kelly A. Ayotte, Attorney General
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STATE OF NEW HAMPSHIRE
SUPREME COURT

SUPREME COURT DOCKET NO. 2009-0168

APPEAL OF
UNION TELEPHONE COMPANY d/b/a UNION COMMUNICATIONS

MOTION OF METROCAST CABLEVISION OF NEW HAMPSHIRE LLC
FOR SUMMARY AFFIRMANCE OF AGENCY DECISION

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March 24, 2009

Pursuant to New Hampshire Supreme Court Rule 25, MetroCast Cablevision of New Hampshire L.L.C. (“MetroCast”) respectfully responds to the Appeal of Union Telephone Company (“Union”) dated March 5, 2009 by moving for summary affirmance of Public Utility Commission (“Commission”) Order No. 24,939, dated February 6, 2009 (“February 6 Order”). The February 6 Order denied a motion by Union requesting rescission or rehearing of the Commission’s September 30, 2008 ruling authorizing MetroCast to provide competitive telecommunications services within Union’s service territory. As grounds for this Motion, MetroCast states as follows:

1. Summary affirmance of the February 6 Order is appropriate because there is no substantial question of law raised by Union’s petition for appeal;
2. Union’s petition ignores that the Commission has since 2005 construed its enabling statutes to grant telephone authorizations in areas served by FairPoint Communications (formerly, Verizon Communications) (“FairPoint”) using a non-adjudicative application process and, following statutory changes to RSA 374:22-g and related statutes that removed barriers to entry in areas served by rural incumbents,¹ reasonably applied the same process to MetroCast’s application to serve Union’s territory;
3. Union relies on statutes, rules or provisions that the Commission did not consider relevant in establishing the nonadjudicative process, are inapplicable to MetroCast’s entry request, have been displaced or

¹ See 2008 NH Ch. 350, “An Act Relative to Service Territories Served by Several Telephone Utilities” (effective September 5, 2008, prior to MetroCast’s application). Union’s appeal makes no reference to this recent legislation and fails to acknowledge its impact.

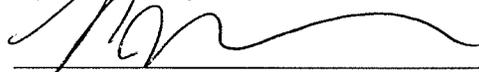
preempted by specific requirements in the amended telephone entry statutes effective in September 2008, and/or raise claims which Union lacks legal standing to assert;

4. The February 6 Order is not an unjust or unreasonable application of the law; and
5. Summary affirmance accords with the public interest because Union should not be allowed to use this appeal to achieve a significant delay in the delivery of benefits to New Hampshire customers from the entry of competitive telecommunications services in Union's territory.
6. MetroCast also relies on the grounds stated in its memorandum of law, filed herewith.

Accordingly, for the reasons stated above and in the accompanying memorandum of law, MetroCast requests that the Court summarily affirm the Commission's February 6 Order pursuant to Supreme Court Rule 25 or deny Union's petition for appeal.

METROCAST CABLEVISION OF NEW HAMPSHIRE LLC

By its attorneys,



Olga L. Bogdanov, N.H. No. 17094

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DATE: March 24, 2009

STATE OF NEW HAMPSHIRE
SUPREME COURT

SUPREME COURT DOCKET NO. 2009-0168

APPEAL OF
UNION TELEPHONE COMPANY d/b/a UNION COMMUNICATIONS

MEMORANDUM OF LAW OF METROCAST CABLEVISION OF NEW HAMPSHIRE LLC
IN SUPPORT OF SUMMARY AFFIRMANCE OF AGENCY DECISION

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March 24, 2009

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INTRODUCTION

MetroCast Cablevision of New Hampshire LLC (“MetroCast”) is a cable television company authorized by the Public Utilities Commission (“Commission” or “PUC”) to provide telecommunications services in 28 communities served by FairPoint Communications (“FairPoint”) as the incumbent carrier. Appendix¹, pp. 13 (reciting 2007 authorization), 18 (list of communities) (hereinafter “A. 13, 18”). MetroCast responded to the enactment of legislation eliminating rural entry barriers² by requesting and receiving authorization to serve the territories of rural incumbent Union Telephone Company (“Union”). A. 13-25 (Application); A. 27-29 (Authorization). The Commission denied Union’s request for rescission or rehearing in a February 6, 2009 Commission Order (“February 6 Order”). A. 46-56.

Pursuant to the Rules of this Court, MetroCast requests summary affirmance of the February 6 Order, as (1) “no substantial question of law is presented,” (2) the agency decision is not “unjust or unreasonable,” and (3) “other just cause exists for summary affirmance....” N.H. Sup. Ct. R. 25(1)(c), (d). In accordance with PUC 400 Rules for Telecommunications (“PUC Rules”), duly revised and promulgated in 2005, the Commission determined as a matter of regulatory policy not to “adjudicate” telephone certification requests.³ The February 6 Order found that the statutory changes effective in September 2008 reflected a legislative intent to treat all incumbents equally concerning competitive entry and authorized the Commission to apply the non-rural incumbent’s streamlined administrative process to rural incumbents as well. A. 52

¹ Appendix filed by Union Telephone Company.

² See 2008 NH Ch. 350, “An Act Relative to Service Territories Served by Several Telephone Utilities” (the “Act”) (effective September 5, 2008, repealing RSA 374:22-f and amending RSA 374:22-g) (Supplement to Appendix filed by Union Telephone Company, p. 1-2 (hereinafter “Supp. A.1-2”).

³ See PUC Rules 431.01, 431.02 (establishing a nonadjudicative “registration” process). By “adjudicate,” MetroCast refers to a process with a mandatory publicly noticed hearing, the taking of evidence and issuance of a Commission Order that includes specific findings.

(February 6 Order at 7). Union does not and cannot show that the February 6 Order should be reversed because of the Commission's determination that it need not conduct an adjudication and issue formal findings on the MetroCast application.

Accordingly, summary affirmance is appropriate because Union cannot meet its burden of proving that the Commission's February 6 Order is "contrary to law" or "unjust or unreasonable." Appeal of the Office of the Consumer Advocate, 148 N.H. 134, 136 (2002). Fully litigating this appeal also would harm the public interest by delaying MetroCast's ability to bring competitive telecommunications services to customers in the Union communities.

COUNTER-STATEMENT OF THE CASE

MetroCast concurs with the Names of the Parties and Counsel (Petition at 1), the Matters Appealed (id. at 2), the Documents Involved in the Case (id. at 4) and the Jurisdictional Basis for Appeal (id. at 9). MetroCast has supplemented the Record Appendix filed with the Petition. Union's Statement of the Case (Petition at 4-9) is accurate in its first three paragraphs that discuss Union's business and MetroCast's successful receipt on September 30, 2008 of a Commission authorization to provide competitive telecommunications services within Union's footprint without the necessity of a hearing. The remaining paragraphs consist of an incomplete one-paragraph description of the lengthy analysis section in the February 6 Order (id. at 5), followed by legal argument relative to statutes, regulations and constitutional provisions that, Union claims, should have compelled the Commission to adjudicate MetroCast's application. Id. at 6-9. MetroCast will address the February 6 Order, the legal sources cited by Union, and the reasons that this appeal should not be accepted (see id. at 9-11) in the Argument section infra. Similarly, without conceding that Union's six Questions for Review (id. at 2-3) properly frame the issues before the Court, MetroCast states that each question should be answered in the negative.

BACKGROUND

In May 2005, the Commission readopted the PUC Rules with significant amendments and replaced the predecessor PUC 1300 Local Competition Rules. PUC Rules Revision Note (available at <http://www.puc.nh.gov/Regulatory/Rules/puc400.pdf>). The PUC Rules include a streamlined process for telephone entry whereby applicants submit the CLEC-10 Application for Registration, CLEC-1 Contact Form, Evidence of Surety Bond (if applicable), Tariff Information and a Rate Schedule, and receive a non-transferable Certification to operate. See PUC 431.01 (Registration); PUC 431.02 (Denial of Registration); see also PUC 449.07, Supp. A. 3 (contents of CLEC-10 Form); PUC 449.02, Supp. A. 6 (contents of CLEC-1 Form).⁴ Insofar as telephone companies with fewer than 25,000 access lines (i.e., all incumbents but FairPoint) were subject to limited competition as a result of barriers in former RSA 374:22-f, the streamlined process in the PUC Rules was not applied to rural applications. See former RSA 374:22-f (prohibiting competitive entry into service territory of a rural telephone utility except upon request by the rural utility and when the service rendered is found to comport with RSA 374:22-e and RSA 374:22-g). See Supp. A.9-10 (1995 Act codified as former RSA 374:22-f).

Less than four years later, the New Hampshire legislature sought to enable competition in rural areas of New Hampshire by enacting the Act. Effective as of September 5, 2008, the Act repealed the RSA 374:22-f limitation on rural entry and deleted such references in the RSA 374:22-g service territory statute. One week later, on September 15, 2008, MetroCast applied to expand its existing authorization to encompass the Union territory. A. 13-25. MetroCast received its amended Certification on September 30, 2008. A. 27-29.

⁴ “CLEC” refers to “competitive local exchange carrier,” another term for a competitive phone company. The counterpart term for incumbent phone companies is “incumbent local exchange carrier” or “ILEC.”

ARGUMENT

I. **The Commission Was Not Required to Adjudicate MetroCast's Application to Serve Customers in the Union Territory.**

A. The Amended RSA 374:22-g Telephone Entry Statute Does Not Mandate a Hearing and Displaces Inconsistent Laws and Rules.

Union does not claim that the MetroCast application to the Commission was in any way deficient. See Petition passim. Rather, Union relies on a host of legal provisions, including RSA 374:22-g, RSA 363:17-b, RSA 374:26, RSA 541-A:31, RSA 374:22-e, RSA 541-A:39, and New Hampshire and United States Constitutions, to contend that the Commission erred by granting MetroCast's application without first noticing an evidentiary proceeding and making formal findings. Petition at 4-9 (Statement of Case). These claims are unpersuasive and summary affirmance of the Commission's February 6 Order is appropriate.

As amended effective September 5, 2008, no text in the Revised Statutes requires the Commission to conduct a formal adjudication in granting telephone certifications. The amended telephone entry statute, RSA 374:22-g, provides in pertinent part as follows:

The commission, upon petition or on its own motion,⁵ shall have the authority to authorize the providing of telecommunications services, including local exchange services, and any other telecommunications services, by more than one provider, in any service territory...

(Emphasis supplied.) The statute also provides that the Commission "shall consider" various factors, but does not require an adjudication. Based on the absence of a statutory mandate, the Commission elected to promulgate the streamlined nonadjudicative certification procedure in PUC 431.01. A. 52 (February 6 Order at 7). In enacting these rules, the Commission balanced each of the competing factors enumerated in RSA 374:22-g. A. 54 (February 6 Order at 9).

⁵ That the Commission may authorize telecommunications services by "more than one" provider "on its own motion" also is indicative that adjudicative proceedings are not required for each of possibly many providers.

Consequently, since the September 2008 statutory change eliminated any differences between “exempt” rural incumbents (e.g., Union) and non-exempt incumbents (i.e., FairPoint), the Commission interprets the Act as granting it discretion to extend the nonadjudicative certification process to rural carriers. A. 51 (February 6 Order at 6).⁶ The Commission finds that the Rule 431 nonadjudicative process “strikes an appropriate balance” among the factors enumerated in RSA 374:22-g “regardless of whether the [incumbent’s] service territory is large or small.” A. 54 (February 6 Order at 9). Furthermore, the Commission finds that the express statutory text in RSA 374:22-g authorizing the Commission to grant multiple service authorizations in formerly exempt areas “to the extent consistent with federal laws and notwithstanding any other provision of law to the contrary” strengthened the Commission’s conclusion that it permissibly could apply the PUC 431 rules to Union. A. 55 (February 6 Order at 10). These reasonable policy determinations⁷ comport with the text and pro-competitive intent of the Act’s statutory changes and the Revised Statutes as a whole and merit summary affirmance, especially given the deferential appellate standard of review. Appeal of the Office of the Consumer Advocate, 148 N.H. 134, 136 (2002) (Commission policy determinations are entitled to “considerable deference”); Appeal of Pinetree Power, Inc. & a.; 152 N.H. 92, 96 (2004) (“Where statutory language is ambiguous, we examine the statute’s overall objective, and give substantial deference to the interpretation of those charged with its administration”).

⁶ The Commission separately opened a rulemaking to conform the PUC Rules to the 2008 legislation by proposing language to reflect that former exempt territories are subject to the PUC 431.01 nonadjudicative application process. DRM 08-126, RULEMAKING: PUC Chapter 400 – Telephone Revisions (October 3, 2008).

⁷ See also 1995 NH Ch.147, Supp. A. 9 (“It is the policy of the State of New Hampshire to encourage competition for all telecommunications services, including local exchange services, which will promote lower prices, better service, and broader consumer choice for the residents of New Hampshire.”).

B. Other Statutes and Provisions Cited by Union Do Not Require Hearings and Formal Findings in Certification Requests.

Union puts forth a broad array of statutes, constitutional provisions and rules to attempt to support its contention that the Commission was required to conduct a full evidentiary proceeding and issue findings on MetroCast's application. Union first argues that the Commission erred by failing to make "findings specific" to each public good criterion listed in RSA 374:22-g. Petition at 2, 6. By its terms, however, RSA 374:22-g does not require a hearing or formal findings in granting telephone authorizations in the public good. It requires only that the Commission "consider" several factors – far short of the mandatory hearing dictate argued for by Union. RSA 374:22-g(II); compare RSA 374:22-e (expressly mandating "due notice to all interested parties and hearing" in Commission proceedings to determine service boundary disputes); see St. Joseph Hosp. of Nashua v. Rizzo., St. Joseph Hosp. of Nashua v. Savard, 141 N.H. 9, 11-12 (applying the well established principle of *expressio unius est exclusio alterius*, that "the expression of one thing in a statute implies the exclusion of another") (internal citations omitted).⁸ As discussed in the preceding section, the Commission did consider the RSA 374:22-g criteria in promulgating the PUC 400 Rules and in applying them to Union following the 2008 amendment. A. 54 (February 6 Order at 9).

Union also contends that the failure to make specific findings on each RSA 374:22-g criterion constitutes a violation of RSA 363:17-b, the statute governing the content of Commission final orders on matters presented to it. Petition at 2, 7. This argument also fails for the reason that 374:22-g requires only that the Commission "consider" these factors but does not

⁸ Union apparently argues that RSA 374:22-e compels a hearing on the MetroCast application (Petition at 6) (stating that it "addresses telephone authority applications where there is more than one service provider") but ignores that it applies only in petitions to "define, alter or establish service territories" with regard to boundary lines between two territories.

specify a formal proceeding or formal findings on each criterion. Moreover, the highly detailed February 6 Order plainly meets all of the formal requirements for Commission orders as listed in the statute (i.e., identity of parties, positions of each party on each issue, a decision on each issue including the reasoning and whether the Commissioners concurred or dissented).

Union separately points to RSA 374:26, the general franchising statute for all New Hampshire public utilities that permits authorizations after “due hearing” and “without hearing when all interested parties are in agreement.” Petition at 2, 6. In response, the February 6 Order states that RSA 374:22-g, enacted in 1995 and recently amended in 2008, “deals specifically with telecommunications services” whereas RSA 374:26, enacted in 1911 and last amended almost 50 years ago, “deals generally with all types of utility franchises.” A. 51-52 (February 6 Order a 6-7). The Commission concluded that “RSA 374:22-g is the more specific statute and should control in cases regarding telephone franchises.”⁹ A. 52 (February 6 Order at 7) (citing Bel Air Assocs. v. Dep’t. of Health and Human Servs., 154 N.H. 228, 233 (2006)). This is a reasonable and appropriate construction of these statutes that the Commission is charged with enforcing and it should be affirmed. See Appeal of Pinetree Power, Inc. & a., 152 N.H. at 96 (establishing that substantial deference should be given to the statutory interpretation of those charged with the administration of the statute). Even if application of this statutory construction principle alone did not resolve this argument, the Commission supported the Order by relying on the text in RSA 374:22-g preempting inconsistent legal provisions. RSA 374:22-g (establishing entry requirements “notwithstanding any other provision of law to the contrary”). Finally, given

⁹ The Commission’s affirmance of the specific statutory procedure in the Act over the PUC’s general procedures fully comports with the Commission’s longstanding approach in the promulgation of the PUC Rules. For example, while PUC 203 generally requires petitioners asking the Commission to take action to initiate an adjudicative proceeding, PUC Rule 202.01, Supp. A. 11, expressly exempts applications of competitive local exchange carriers from the general rule and refers them to the non-adjudicative application process in PUC 431. See PUC 202.01 (“Except as provided in (b) through (m) below, any person seeking the action of the Commission shall do so by submitting a petition pursuant to Puc 203 [Adjudicative Proceedings]... (i) A person seeking to register as a competitive local exchange carrier (CLEC) shall do so by complying with Puc 431.”

the statutory change to RSA 374:22-g in the Act expressly authorizing applications by “more than one provider” in rural territories, a rural incumbent likely would not possess sufficient legal standing to claim “party” status relative to a single competitor under RSA 374:26. See Nautilus of Exeter, Inc. v. Town of Exeter and Exeter Hosp., 139 N.H. 450 (1995) (finding that increased competition is insufficient to establish legal standing to appeal).¹⁰

Union also claims that the lack of notice, evidence and fact finding constitutes a due process violation under New Hampshire and United States Constitutions. Petition at 8. For the reasons discussed above, the statutory scheme applicable to telephone certifications, with the absence of a state law hearing requirement, fails to create a constitutional property interest in Union relative to MetroCast’s entry application. See Appeal of the Office of the Consumer Advocate, 148 N.H. at 137-40 (discussing test for protected property interests); see also 424 (Nottingham v. Bonser and Cedar Waters Village, Inc., 146 N.H. 418, 424 (2001)).

Union also argues that the Commission failed to provide for mandatory notice to municipalities of the MetroCast application pursuant to RSA 541-A:39. Petition at 2, 7. Union lacks legal standing to raise claims on behalf of municipalities. See Roberts v. Gen. Motors Corporation, 138 N.H. 532, 536 (1994) (determining that an injured party not protected by a statutory scheme lacks standing to make a claim). Moreover, this argument was persuasively rejected by the Commission in the February 6 Order. See A. 53 (February 6 Order at 8). The Commission found that the statute applied only to actions that directly affect a municipality and here “MetroCast already provides cable service and operates cable plant in the municipalities

¹⁰ Union also cites to RSA 541-A:31 which requires an adjudicative proceeding for a “contested case.” However, Union has failed to demonstrate that there is a contested case triggering application of this statute. Union never requested nor was granted status as a “party,” cannot provide authority that it has any “legal rights, duties or privileges” affected by this matter under the new statutory scheme, and nor can Union establish that notice and a hearing were “required by law.” Furthermore, as discussed above, the Commission has not treated telephone entry applications as contested cases since the 2005 enactment of the PUC 400 Rules, and reasonably, following that precedent, determined not to do the same here.

where it proposes to provide telephone services. We do not find the provision of telephone service over existing cable plant to cause any direct effect on these municipalities.” Id.

Finally, Union argues that since Rule 431.01 by its terms only applies to applications in territories served by non-exempt telephone incumbents (i.e., FairPoint), the Commission is barred from reviewing MetroCast’s application using the streamlined PUC 431.01 process after the statutory change. Petition at 9. Union cites no authority for this proposition and this argument lacks any support under the new statutory scheme or in the text of Rule 431.01 which prescribes a nonadjudicatory process for CLEC entry applications and does not preclude use of such process, nor specify alternative procedures, for the territories of exempt (i.e., rural) incumbents.¹¹ Even if the terms of the Rule were to limit its application to non-exempt telephone incumbents, state precedent supports the Commission’s ability to respond to a statutory change on a case-by-case basis pending revisions to the applicable regulations. See Stuart v. The State of New Hampshire, Div. for Children and Youth Servs., 134 N.H. 702, 705 (determining that the promulgation of rules is not necessary to carrying out a statute).

II. Union Should Not Be Allowed to Delay Entry of Telephone Competition That Will Benefit Consumers in its Service Territory.

In addition to the Section I arguments supporting summary affirmance because “no substantial question of law is presented” and the Commission’s February 6 Order was not “unjust or unreasonable,” see NH Sup. Ct. R. 25(1)(c), summary affirmance is also supported because “other just cause exists for summary affirmance....” NH Sup. Ct. R. 25(1)(d). Specifically, delayed resolution of this appeal will adversely affect the businesses and residents of the seven

¹¹ While Rule 431.01(d) uses the word “shall” specifically to mandate the Commission, under express circumstances, to authorize a CLEC applicant “to provide competitive local exchange service in the territory of non-exempt ILECs,” there is nothing in the rest of Rule 431.01, or any other Rule, that prohibits the Commission from applying the 431 streamlined process to territories of exempt ILECs in its consideration of CLEC entry applications and there is no longer any statutory authority to suggest an alternative procedure. See Act (repealing RSA 374:22-f).

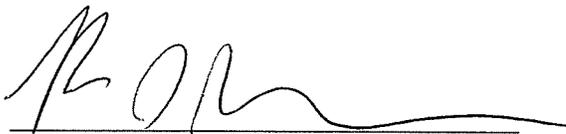
Union communities within which MetroCast already has telecommunications facilities that stand to benefit from introduction of competitive choice for telephone service. Given the lack of a sound legal basis for Union's claims and the public interest in bringing the benefits of competition to affected New Hampshire communities, the Court should resolve this Petition through summary affirmance of the February 6 Order as promptly as possible.

CONCLUSION

For the reasons discussed above, the Court should grant summary affirmance of the February 6 Order of the Public Utilities Commission granting MetroCast leave to operate in Union's service territory or otherwise dismiss Union's Petition for Appeal.

Respectfully submitted,

METROCAST CABLEVISION OF
NEW HAMPSHIRE LLC



Date: March 24, 2009

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STATE OF NEW HAMPSHIRE
SUPREME COURT

SUPREME COURT DOCKET NO. 2009-0168

APPEAL OF
UNION TELEPHONE COMPANY d/b/a UNION COMMUNICATIONS

SUPPLEMENT TO APPENDIX
FILED BY UNION TELEPHONE COMPANY

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March 24, 2009

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2008 NH ALS 350, *; 2008 NH Ch. 350;
2007 NH SB 386

NEW HAMPSHIRE ADVANCE LEGISLATIVE SERVICE

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NEW HAMPSHIRE SECOND YEAR OF THE 160TH SESSION OF THE GENERAL COURT

CHAPTER 350

SENATE BILL 386

2008 NH ALS 350; 2008 NH Ch. 350; 2007 NH SB 386

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT STATE OF NEW HAMPSHIRE In the Year of Our Lord Two Thousand Eight AN ACT relative to service territories served by several telephone utilities.

NOTICE:

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

[D> Text within these symbols is deleted <D]

To view the next section, type .np* TRANSMIT.

To view a specific section, transmit p* and the section number. e.g. p*1

Be it Enacted by the Senate and House of Representatives in General Court convened:

[*1] 350:1 Service Territories Served by Certain Telephone Utilities. Amend RSA 374:22-g to read as follows:

374:22-g Service Territories Served by Certain Telephone Utilities [D> With More Than 25,000 Access Lines <D] .

I. [A> TO THE EXTENT CONSISTENT WITH FEDERAL LAW AND <A] notwithstanding any other provision of law to the contrary, all telephone franchise areas served by a telephone utility that provides local exchange service [D> and that has more than 25,000 access lines <D] , subject to the jurisdiction of the commission, shall be nonexclusive. The commission, upon petition or on its own motion, shall have the authority to authorize the providing of telecommunications services, including local exchange services, and any other telecommunications services, by more than one provider, in any service territory, when the commission finds and determines that it is consistent with the public good [A> UNLESS PROHIBITED BY FEDERAL LAW <A] .

II. In determining the public good, the commission shall consider 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:

III. The commission shall adopt rules, pursuant to RSA 541-A, relative to the enforcement of this section **[D>** and RSA 374:22-f **<D]** .

[*2] 350:2 Repeal. RSA 374:22-f, relative to service territories served by several telephone utilities with fewer than 25,000 access lines, is repealed.

[*3] 350:3 Effective Date. This act shall take effect 60 days after its passage.

Effective Date: September 5, 2008

HISTORY:

Approved by the Governor on July 7, 2008.

SPONSOR:

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Date/Time: Tuesday, March 24, 2009 - 9:32 AM EDT



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N.H. Admin. Rules, Puc 449.07

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PUBLIC UTILITIES COMMISSION
CHAPTER Puc 400 RULES FOR TELECOMMUNICATIONS
PART Puc 449 CLEC FORMS

N.H. Admin. Rules, Puc 449.07 (2009)

Puc 449.07 Form CLEC-10 Application for Registration.

(a) On the "Application for Registration" required by Puc 431.01 the CLEC shall include:

- (1) The applicant's legal name;
- (2) The trade name the applicant will use with its New Hampshire customers;
- (3) The applicant's FEIN;
- (4) Contact information for the person responsible for the information on the form, to include:
 - a. The name and title;
 - b. The mailing address;
 - c. The telephone and fax numbers; and
 - d. Email address;
- (5) The printed name and title of the signatory; and
- (6) The date of application.

(b) The application shall include responses as to:

- (1) Whether the applicant, or any of the general partners, corporate officers, director of the company, limited liability company managers or officers has ever been convicted of any felony that has not been annulled by a court.
- (2) Whether the applicant, or any of the general partners, corporate officers, director of the company, limited liability company managers or officers have had any civil, criminal or regulatory sanctions or penalties imposed against them pursuant to any state or federal consumer protection law or regulation.
- (3) Whether the applicant, or any of the general partners, corporate officers, director of the company, limited liability company managers or officers have settled any civil, criminal or regulatory investigations or complaints.

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(4) Whether the applicant, or any of the general partners, corporate officers, director of the company, limited liability company managers or officers is currently the subject of any pending civil, criminal or regulatory investigation or complaint involving any state or federal consumer protection law or regulation.

(5) Whether the applicant, or any of the general partners, corporate officers, director of the company, limited liability company managers or officers has been denied registration or authorization, or had registration or authorization revoked, in any other state or jurisdiction.

(c) If an affirmative answer is given to any item in (b) above, the applicant shall provide an explanation of the event and the relevant states or jurisdictions.

(d) The applicant shall list 3 primary telecommunications services the applicant will offer in New Hampshire.

(e) The applicant shall identify its proposed service area.

(f) The applicant shall attest to the following statements:

(1) The applicant agrees to comply with, and shall operate in accordance with, all provisions and requirements of all applicable statutes, rules and orders;

(2) The applicant has the necessary managerial qualifications, technical competence, and financial resources for which it is applying; and

(3) The applicant's intraLATA switched access rates in an ILEC territory will not exceed the rates, approved by the commission, for the ILEC serving that territory;

(g) The applicant shall attach a copy of the company's Secretary of State Certificate of Authority, pursuant to Puc 402.45.

(h) The applicant shall attach proof of a surety bond, if applicable, pursuant to Puc 431.04.

(i) The applicant shall attach a completed Form CLEC-1 Contact Information, as described in Puc 449.02.

(j) The applicant shall attach its complete rate schedule, pursuant to Puc 449.10.

(k) The applicant shall attach Form CLEC-11 Intent to Use Uniform Tariff, if it elects to adopt the uniform tariff.

(l) The applicant shall include a sworn and notarized attestation that states that the application and its attachments are complete, true and accurate, and fairly represent the applicant and its qualifications.

(m) The attestation pursuant to (l) above shall be signed and dated by the authorized representative of the applicant.

(n) The "Application for Registration" shall include notice that the applicant shall forfeit its CLEC authorization if it fails to file an annual report pursuant to Puc 431.08.

Statutory Authority: RSA 365:8

Source: # 2011, eff 5-4-82; # 2125, eff 8-19-82; # 2549, eff 12-26-83; # 2912, # 4330, eff 10-23-87; eff 11-26-84; # 4378, eff 3-1-88; # 5000, eff 11-26-90; # 5286, eff 11-27-91; #

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5616, eff 4-20-93; # 5795, effective 2-28-94; # 6245, eff 5-14-96; # 6381, INTERIM, eff 11-27-96, EXPIRED: 3-27-97; # 6512, eff 5-21-97; # 6527, INTERIM, eff 6-25-97, EXPIRES: 10-23-97; # 6591, eff 9-30-97; # 6776, eff 6-24-98; # 7200, effective 2-10-00; # 7283, eff 5-23-00; # 8255, eff 1-13-05; # 8348, eff. 5/10/05

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N.H. Admin. Rules, Puc 449.02

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PUBLIC UTILITIES COMMISSION
CHAPTER Puc 400 RULES FOR TELECOMMUNICATIONS
PART Puc 449 CLEC FORMS

N.H. Admin. Rules, Puc 449.02 (2009)

Puc 449.02 Form CLEC-1 Contact Information.

(a) On the "Contact Information" form required by Puc 434.03 and 434.04 the CLEC shall include:

- (1) The CLEC's legal name;
- (2) The trade name the CLEC uses with its customers;
- (3) The CLEC's complete mailing address;
- (4) The CLEC's telephone and fax numbers;
- (5) The CLEC's email address;
- (6) The CLEC's internet address, if the CLEC maintains a website;
- (7) The CLEC's federal employer identification number (FEIN);
- (8) The CLEC's authorization number, or date of application if the authorization number is not yet available;
- (9) The CLEC's toll-free number, fax number and email address for customer service;
- (10) The CLEC's toll-free number, fax number and email address for repair service;
- (11) The hours of operation for customer service and repair service;
- (12) An indication of whether the CLEC wishes to receive reports and reminders via email;
- (13) The names and titles of the principal officers of the CLEC;
- (14) The printed name and title of the signatory; and
- (15) The current date.

(b) On the "Contact Information" form the CLEC shall include contact information for the following individuals:

- (1) The person responsible for preparing the annual report;
 - (2) The person responsible for regulatory matters;
 - (3) The person that the commission's consumer affairs division shall call regarding consumer complaints from customers;
 - (4) The director of the CLEC's customer service department;
 - (5) The officer responsible for customer service; and
 - (6) The person responsible for paying assessment bills.
- (c) Contact information for each individual identified in (b) above shall consist of:
- (1) The name and title;
 - (2) The complete mailing address;
 - (3) The telephone and fax numbers; and
 - (4) The email address.
- (d) The CLEC shall attach a copy of its escalation lists for network, provisioning, and interconnection issues.
- (e) The authorized representative of the CLEC shall:
- (1) Sign and date the form; and
 - (2) Certify by signature that the information on the form is true and correct to the best of the individual's knowledge and belief, subject to the penalty for making unsworn false statements under RSA 641:3.

Statutory Authority: RSA 365:8

Source: # 2011, eff 5-4-82; # 2125, eff 8-19-82; # 2549, eff 12-26-83; # 2912, # 4330, eff 10-23-87; eff 11-26-84; # 4378, eff 3-1-88; # 5000, eff 11-26-90; # 5286, eff 11-27-91; # 5616, eff 4-20-93; # 5795, effective 2-28-94; # 6245, eff 5-14-96; # 6381, INTERIM, eff 11-27-96, EXPIRED: 3-27-97; # 6512, eff 5-21-97; # 6527, INTERIM, eff 6-25-97, EXPIRES: 10-23-97; # 6591, eff 9-30-97; # 6776, eff 6-24-98; # 7200, effective 2-10-00; # 7283, eff 5-23-00; # 8255, eff 1-13-05; # 8348, eff. 5/10/05

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Code of Administrative Rules 

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1995 NH ALS 147, *; 1995 NH LAWS 147;
1995 NH Ch. 147; 1995 NH SB 106

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NEW HAMPSHIRE 1995 REGULAR SESSION

CHAPTER 147

SENATE BILL 106

1995 NH ALS 147; 1995 NH LAWS 147; 1995 NH Ch. 147; 1995 NH SB 106

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT relative to competition among telecommunications providers.

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

Be it Enacted by the Senate and House of Representatives in General Court convened:

[*1] 147:1 Findings and Purpose. The general court recognizes that in order for the state to maintain its position as a business and commercial center and to attract new business and industry, the state's telecommunications infrastructure must contain state-of-the-art technology and that its consumers must have access to new, innovative, and sophisticated telecommunications services. The general court further recognizes that competition is emerging in the telecommunications market sectors. Such competition can be fostered through statutory and regulatory changes by federal and state governments. Competitive markets generally encourage greater efficiency, lower prices, and more consumer choice. It is the policy of the state of New Hampshire to encourage competition for all telecommunications services, including local exchange services, which will promote lower prices, better service, and broader consumer choice for the residents of New Hampshire.

[*2] 147:2 Service Territories. RSA 374:22-f is repealed and reenacted to read as follows:

374:22-f Service Territories Served by Certain Telephone Utilities With Fewer Than 25,000 Access Lines. A telephone utility shall not construct or extend its facilities in order to furnish, or otherwise furnish or offer to furnish, its service to premises within the service territory of another telephone utility that provides local exchange service and that has fewer than 25,000 access lines, except when requested by the utility in the territory of which the premises are located and when the commission, upon petition, finds and determines that the service proposed to be rendered will be consistent with the criteria set forth in RSA 374:22-e and RSA 374:22-g.

[*3] 147:3 New Section; Service Territories Served by Certain Telephone Utilities With More Than 25,000 Access Lines. Amend RSA 374 by inserting after section 22-f the following

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new section:

374:22-g Service Territories Served by Certain Telephone Utilities With More Than 25,000 Access Lines.

I. Notwithstanding any other provision of law to the contrary, all telephone franchise areas served by a telephone utility that provides local exchange service and that has more than 25,000 access lines, subject to the jurisdiction of the commission, shall be nonexclusive. The commission, upon petition or on its own motion, shall have the authority to authorize the providing of telecommunications services, including local exchange services, and any other telecommunications services, by more than one provider, in any service territory, when the commission finds and determines that it is consistent with the public good.

II. In determining the public good, the commission shall consider 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.

III. The commission shall adopt rules, pursuant to RSA 541-A, relative to the enforcement of this section and RSA 374:22-f.

[*4] 147:4 Application.

I. The commission shall take steps to ensure that all new and incumbent providers of telecommunications services cooperate fully to accomplish the purposes of this act.

II. The commission shall adopt rules, pursuant to RSA 541-A, necessary to enforce the provisions of this act, no later than December 31, 1996.

[*5] 147:5 Effective Date. This act shall take effect 60 days after its passage.

HISTORY:

Approved: May 24, 1995

Effective: July 23, 1995

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N.H. Admin. Rules, Puc 202.01

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PUBLIC UTILITIES COMMISSION
CHAPTER Puc 200 RULES OF PRACTICE AND PROCEDURE
PART Puc 202 OPERATIONS AND REQUIREMENTS

N.H. Admin. Rules, Puc 202.01 (2009)

Puc 202.01 Requests for Commission Determinations.

(a) Except as provided in (b) through (m) below, any person seeking the action of the Commission shall do so by submitting a petition pursuant to Puc 203.

(b) A person seeking to implement or amend a tariff or special contract pursuant to RSA 378 shall make the appropriate filing required by Puc 1600.

(c) A person seeking authorization of a corporate transaction pursuant to RSA 369:8, II shall file an application that includes a copy of the document memorializing the transaction and the detailed representation concerning the effects of the transaction as set forth in the statute.

(d) Except in connection with an adjudicative proceeding, a person seeking waiver of a commission rule pursuant to Puc 201.05 shall do so by filing a letter with the executive director requesting the waiver.

(e) A person seeking the adoption, amendment or repeal of a commission rule shall do so by complying with Puc 205.03.

(f) A person seeking to make a complaint against a utility shall do so by complying with Puc 204 or Puc 1200.

(g) A person seeking to register as a competitive electric power supplier or aggregator shall do so by complying with Puc 2003.

(h) A person seeking to register as a competitive natural gas supplier or aggregator shall do so by complying with Puc 3003.

(i) A person seeking to register as a competitive local exchange carrier (CLEC) shall do so by complying with Puc 431.

(j) A person seeking to register as a competitive intraLATA toll provider (CTP) shall do so by complying with Puc 451.

(k) A person seeking a certificate of compliance with the design requirements of the Code for Energy Conservation in New Building Construction shall do so by complying with Puc 1804.

(l) A person seeking a certification that a building as constructed complies with the Code for

Energy Conservation in New Building Construction shall do so by complying with Puc 1805.01.

(m) A utility filing a compliance plan, amendment to a compliance plan or notification related to affiliates or affiliate transactions shall do so by complying with Puc 2100.

(n) All filings made pursuant to (a), (b) or (c) above shall comply with the provisions of Puc 203.02, Puc 203.03, Puc 203.04 and Puc 203.05.

STATUTORY AUTHORITY: RSA 365:8

Source. # 2011, eff 5-4-82; ss by # 2912, eff 11-26-84; ss by # 4998, eff 11-26-90; ss by # 6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97
New. # 6559, eff 8-19-97, EXPIRED: 8-19-05
New. # 8420, INTERIM, eff 8-23-05, EXPIRED: 2-19-06
New. # 8657-A & # 8657-B, eff 6-10-06

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STATE OF NEW HAMPSHIRE
SUPREME COURT

SUPREME COURT DOCKET NO. 2009-0168

APPEAL OF
UNION TELEPHONE COMPANY d/b/a UNION COMMUNICATIONS

VERIFIED APPLICATION OF ROBERT J. MUNNELLY, JR.
TO APPEAR PRO HAC VICE

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March 24, 2009

Pursuant to Supreme Court of the State of New Hampshire Procedural Rule 33, the undersigned requests permission to appear pro hac vice and participate in this appeal on behalf of MetroCast Cablevision of New Hampshire, LLC (“MetroCast”). In support of this request, the undersigned counsel affirms under pains and penalties of perjury as follows:

1. I reside at 104 Westgate Road, Wellesley Hills, Massachusetts, 02481.
2. I am a partner with Murtha Cullina LLP with a principal place of business at 99 High Street, 20th Floor, Boston, Massachusetts 02110.
3. I seek to represent MetroCast, a limited liability company located at 9 Apple Road, Belmont, New Hampshire 03220. The contact person for MetroCast is Joshua Barstow, Vice President of Advanced Services, whose telephone number is 603-527-3632.
4. I am a member in good standing of the Massachusetts Bar and have been so continuously since my admission in 1989. I have also been admitted to practice law in the U.S. District Court for the District of Massachusetts since 1991 and the U.S. Court of Appeals, First Circuit, since 1994.
5. I have not been denied admission pro hac vice in New Hampshire; I have not had admission pro hac vice revoked from me in New Hampshire; and I have not otherwise been formally disciplined or sanctioned by any court in New Hampshire.
6. There has not been a formal, written disciplinary proceeding brought against me by any disciplinary authority in any other jurisdiction within the last five years.
7. I have not been held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders.
8. I have not applied to appear pro hac vice in New Hampshire within the preceding two years.

9. Should this appeal require oral argument, I will be accompanied by one of my fellow partners with Murtha Cullina LLP, Olga L. Bogdanov, who is an active member in good standing of the New Hampshire Bar (Attorney No. 17094), resides at 43 Afreton Road, Needham, Massachusetts 02494 and has a business telephone number of 617-457-4030.

For the foregoing reasons, the undersigned counsel requests that the Supreme Court of the State of New Hampshire approve this application to appear pro hac vice as counsel for MetroCast in this appeal.

Respectfully submitted,

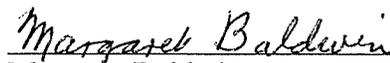


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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

On this 24th day of March, 2009, before me, the undersigned notary public, personally appeared Robert J. Munnelly, Jr., proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Margaret Baldwin
Notary Public
My commission expires: October 19, 2012

STATE OF NEW HAMPSHIRE
SUPREME COURT

SUPREME COURT DOCKET NO. 2009-0168

APPEAL OF
UNION TELEPHONE COMPANY d/b/a UNION COMMUNICATIONS

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of (1) Motion of MetroCast Cablevision of New Hampshire LLC for Summary Affirmance of Agency Decision; (2) Memorandum in Support thereof; (3) Supplement to Appendix; and (4) Verified Application of Robert J. Munnely, Jr. to Appear Pro Hac Vice was served upon the following parties by overnight mail.

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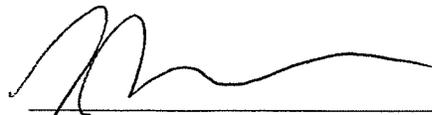
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March 24, 2009