

STATE OF NEW HAMPSHIRE
BEFORE
THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DRM 08-189

DRM 08-126, Rulemaking - Revisions to Puc 400

COMMENTS OF segTEL, INC.

December 18, 2008

segTEL appreciates this opportunity to comment on the proposed rules implementing SB 386 and clarifying the requirements for reporting of outages. segTEL supports the rules as proposed.

At the hearing and technical session, parties raised issues concerning whether the changes to the rules adequately reflect the requirements of RSA 374:24-g. On that topic, segTEL submits the following comments.

From the outset of local competition in 1996, the Commission established rules and procedures for registering Competitive Local Exchange Carriers, and authorizing those carriers to provide service. Beginning with the first authorization granted, carriers provided an application, including any information required by Commission rules, which Staff thoroughly reviewed. Upon Staff's favorable recommendation, the Commission issued an order NISI authorizing the CLEC to provide service.

Now, twelve years later, there are three non-controversial applications from CLECs who have already met the Commission's requirements to provide service that are awaiting approval simply for an expansion of territory. Although there should be no question that these CLECs are public utilities, the incumbent ILECs want the Commission to adopt adjudicative procedures to assess that these CLECs meet the identical requirements for authorization that have been in existence since rules were first promulgated under RSA 374:24-g.

In fact, the NH Supreme Court held that Commission has the authority, even without RSA 374:24-g, to admit competitors into the ranks of public utilities, if such admission was in the public good. See *Appeal of Public Service Co. of New Hampshire* 168 P.U.R.4th 596, 676 A.2d 101, N.H.,1996.

segTEL believes that to change the certification process, particularly for CLECs who are already providing services in the state, would be a barrier to entry and would not meet the public good requirement of the statute. Further, segTEL believes that adopting a more burdensome process would run afoul of federal law, specifically 47 USC § 253 regarding Removal of barriers to entry, which states, in pertinent part:

(a) In general: No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

The only mention of rural markets in § 253 specifically does not apply here:

(f) Rural markets: It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service.

The FCC interpreted the requirements of Section 253 in this way: “Section 253(b) preserves a State's authority to impose a legal requirement affecting the provision of telecommunications services, but only if the legal requirement is: (i) “competitively neutral”; (ii) consistent with the Act's universal service provisions; and (iii) “necessary” to accomplish certain enumerated public interest goals. Thus, we must preempt [...] the rural incumbent protection provision pursuant to section 253(d) ***unless they meet all three of the criteria set forth in section 253(b).***” See *In The Matter Of Silver Star Telephone Company, Inc. Petition For Preemption* 12 F.C.C.R. 15639 September 24, 1997. [Emphasis added.]

Providing service in a territory is a multi-step process already requiring significant expense and investment by a carrier. It is not a step any carrier undertakes lightly. Registration and certification to provide service is a requirement intended to ensure that a competitor is responsible, managerially and technically competent, and financially sound. Certification itself cannot include an assessment of the various requirements of the statute, namely, “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.” unless and until there are specific services requested from the incumbent.

For the foregoing reasons, segTEL supports the current language of the proposed rule.

Respectfully submitted by segTEL, Inc.