

State of New Hampshire
Public Utilities Commission

DT 07-027

KEARSARGE TELEPHONE COMPANY, WILTON TELEPHONE COMPANY,
HOLLIS TELEPHONE COMPANY, AND MERRIMACK COUNTY TELEPHONE
COMPANY PETITIONS FOR APPROVAL OF ALTERNATIVE FORM OF
REGULATION.

**Request For Hearing and Response On Behalf of Daniel Bailey To Filings by
Kearsarge Telephone Company and Merrimack County Telephone Company and
Motion of Merrimack County Telephone Company**

The following is set forth on behalf of Daniel Bailey, a party to these proceedings:

I. Request for Hearing

1. Daniel Bailey, by his undersigned counsel, respectfully requests a hearing, as authorized by Order No. 25,103 (pages 26 and 28), dated May 14, 2010, with respect to the Affidavits of Thomas Murray, dated June 10, 2010, on behalf of Kearsarge Telephone Company (hereinafter "KTC") and June 14, 2010 on behalf of Merrimack County Telephone Company (hereinafter, "MCTC").

II. Response to Motion of Merrimack County Telephone Company To Hold Open the Record

1. The Commission found that "TDS failed to demonstrate that competitive alternatives are currently available to a majority of customers in each exchange" of MCTC. Order, page 21. Accordingly, the Commission denied MCTC's request for approval of an alternative form of regulation plan. Order, page 28.
2. Notwithstanding the Commission's ruling, MCTC requested that the record be held open for an additional 90 days in order to produce evidence of wireless coverage in the Bradford and Warner exchanges and "possible other exchanges as MCTC deems appropriate." Motion, paragraph 5.
3. The Commission stated that "we do not construe this order as a final order..." Order, page 28.

4. Should the Commission decide to grant MCTC's motion to hold open the record, Daniel Bailey urges the Commission to consolidate the procedural schedule and hearing for KTC with the procedural schedule and hearing for MCTC.
5. Mr. Bailey suggests that creating two separate and sequential procedural schedules and hearings for each TDS Company would be time consuming and expensive for the parties and staff. Two sets of hearings would require the parties to prepare at least two sets of prefiled testimony and require that their witnesses, including out of state experts, travel to two sets of hearings regarding what is essentially the same subject. This would be impractical, expensive and unduly burdensome.
6. Instead, Mr. Bailey respectfully suggests that it would promote judicial and administrative economies to consolidate the Companies' requests and create one procedural schedule, with provision for discovery, and one hearing. This would not result in undue prejudice to the Companies, and the public interest would be promoted thereby.

III. Response to Order No. 25, 103 and to the Subsequent Affidavits of Thomas Murray On Behalf of KTC and MCTC.

1. In order No. 25,103 (hereinafter, "the Order") the Commission stated that if TDS submits evidence within 30 days, such as through an affidavit with supporting documentation as advertisements, establishing that voice service is currently being offered in MCTC exchanges, this will be sufficient to demonstrate that a competitive alternative is available. Order, page 21. Similarly, the Commission stated that KTC will meet its evidentiary burden if it files evidence such as an Affidavit within 30 days that a voice service is currently being offered in the KTC exchanges and this will be sufficient to demonstrate that a competitive alternative is available. Order, page 26. The Commission further stated that it does "not" construe this order as a "final order that would trigger a rehearing pursuant to RSA 541:3." Order, page 28.¹

¹ Mr. Bailey respectfully reserves his right to seek rehearing and to appeal with respect to a final order when issued with respect to the Commission's above and other legal rulings in Order No 25,103. Such other rulings include the Commission's ruling that the drive tests performed by C-Squared, LLC demonstrated the "availability" of wireless service to a majority of retail customers in the Sutton and Salisbury exchanges. Order No. 25,103, pages 22-23.

2. Mr. Bailey respectfully suggests that the above statements in Order 25,103 appear to be inconsistent with other sections of Order No. 25, 103 and with prior rulings of the Commission in Order No. 24, 852 (Initial Order) dated April 23, 2008. In Order No. 24, 852, the Commission ruled that with respect to the competitiveness test, the use of the word “competitive” means that “mere availability” of alternatives is “not sufficient to approve a plan...” Order No. 24, 852, page 26.
3. The Commission’s statements in section III.1 above also appear to be inconsistent with the Commission’s ruling regarding the “Applicable Law” on page 19 of Order No. 25, 103. The Commission stated:

We continue to construe this statute within the framework established in the Initial Order. The TDS Companies bear the burden of proof in this matter and must therefore establish factual propositions by a preponderance of the evidence in order to prevail. NH Code Admin. R. Puc 203.25.
Order, page 19.
4. Mr. Bailey respectfully suggests that the Affidavits and Attachments of Thomas Murray on behalf of KTC and MCTC, on their face, fail to meet the statutory test for approval of a petition for alternative regulation set forth in RSA 374:3-b. The Companies have not made the necessary showing that “Competitive wireline, wireless, or broadband service is available to a majority of the retail customers in each of the exchanges served by such small incumbent local exchange carrier. RSA 374:3-b, III (a). Nor have the Companies demonstrated that the plan “preserves universal access to affordable basic telephone service.” RSA 374:3-b, III(e).
5. Mr. Bailey respectfully suggests that it would be helpful to the parties in preparing for the hearing if the Commission’s Order setting a procedural schedule provides guidance with respect to what is expected of the Companies in order to meet their burden of proof under RSA 374:3-b. Specifically:
 - a. That the word “available” in RSA 374:3-b, III(a) requires that voice service is actually available to a majority of customers in the exchange rather than just offered in the exchange in general.
 - b. That mere availability of the service to the majority of retail customers does not necessarily mean that the service is “competitive.”

- c. That a determination that a product is “competitive” requires consideration of price.
- d. That separate determinations are required of “availability” and “competitiveness.”
- e. That the burden of proof is on the Companies; that the parties and staff do not bear any burden to demonstrate that a product or service is not available or not “competitive.”
- f. That proof of availability of “competitive” wireline service includes a showing of the following:
 - i. Wireline [Comcast] is actually providing voice service in each exchange,
 - ii. Wireline [Comcast] is physically available to the majority of customer locations in each TDS exchange,
 - iii. The wireline [Comcast] prices for voice services in each exchange, by packages that are offered and that are physically available, and including the terms and conditions of the packages,
 - iv. The number of customers in each exchange that have access to cable voice service,
 - v. The number of customers in each exchange that are actually receiving cable voice service,
 - vi. The number of wireline [Comcast] customers in each TDS exchange, by voice service only, by cable service only, by bundles,
 - vii. The number of wireline [Comcast] cable only customers in each TDS exchange that are being offered stand alone voice service as an addition to cable,
 - viii. The number of wireline [Comcast] cable only customers in each TDS exchange that are only being offered voice service as part of a “bundle” of services;
 - ix. That the wireline [Comcast] prices for the voice service(s) that are offered and physically available to the majority of customers are “competitive” with TDS basic local exchange service,

- g. That TDS demonstrate that its proposed prices under its plan will preserve universal access to affordable basic telephone service.

IV. Conclusion

Wherefore Daniel Bailey requests that the Commission:

- A. Schedule an evidentiary hearing.
- B. Consolidate the KTC hearing with the MCTC hearing.
- C. Issue a procedural order.
- D. Provide guidance to the parties and staff with respect to the Companies' burden of proof under RSA 374:3-b as set forth herein.

Respectfully submitted,
On Behalf of Daniel Bailey
By His Attorney,

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Dated: June ^{25,}~~24~~, 2010
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Certification of Service

I certify that a copy of this document was sent to staff and all parties to this docket by email on this date.

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Dated: June ²⁵~~24~~, 2010
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