

DT 02-009

MERRIMACK COUNTY TELEPHONE COMPANY

Merger with Telephone & Data Systems

Prehearing Conference Order

O R D E R N O. 23,936

March 18, 2002

APPEARANCES: Frederick Coolbroth, Esquire, of Devine, Millimet & Branch, for Merrimack County Telephone; John Lightbody, Esquire, of Murray Plumb & Murray, for TDS; Anne Ross, Esquire, of the Office of Consumer Advocate, for New Hampshire ratepayers; and Lynmarie Cusack, Esquire, for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

Pursuant to RSA 369:8,II(b), on January 23, 2002, MCT, Inc. (MCT), Merrimack County Telephone Company (MCTelco), and Telephone and Data Systems, Inc. (TDS), filed with the New Hampshire Public Utilities Commission (Commission) a notification of a proposed merger between MCT and TDS. On February 8, 2002, MCT filed supplemental papers with the Commission concerning the proposed merger.

The filing indicates that pursuant to the Agreement and Plan of Merger dated November 15, 2001, a newly-formed subsidiary of TDS will be merged with and into MCT, resulting in the survival MCT. All of the stock of MCT will be held by TDS. According to the filing, post-merger TDS Telecom will become the parent of post-merger MCT, consistent with the

ownership structure of other TDS-operated Incumbent Local Exchange Carriers (ILECs).

The filing contains a representation that the transaction as described will have no adverse impact on the rates, terms, service, or operation of MCT or its subsidiaries within the State of New Hampshire. Additionally, it is asserted that the jurisdiction of the Commission over the operations of the post-merger MCT will not be changed.

On February 21, 2002, the Commission issued an Order of Notice establishing a Prehearing Conference, which was held at the Commission on March 6, 2002. On February 22, 2002, the Office of Consumer Advocate (OCA) filed its intent to participate in this docket. No other party sought intervention.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Merrimack County Telephone Company

MCT explained that it embarked on a process to sell the Company with very specific objectives and goals. For example, it noted it is a privately-owned company that wished to meet shareholder expectations regarding the value of their shares of stock in the Company. It also asserted that customer care was critical in selecting a purchaser and, as such, MCT's objectives were to provide for the continuation of

high-quality service to its customers, to preserve an excellent work environment for the Company's employees, and to provide for continued service to the communities that surround the Company's service territories. In signing a purchase and sales agreement with TDS, MCT asserts that the buyer met the specific objectives MCT desired.

MCT commented that TDS is an industry leader in owning and operating rural telephone companies throughout the country, including the northeast. MCT claims that TDS is a financially strong company in an industry where the financial circumstances of many other companies have declined or are in question. MCT believes that TDS offers an opportunity for another strong presence in New Hampshire, will provide an excellent work environment for MCT's employees, and is a company interested in community service as well as quality telephone service.

Finally, MCT avers that there will be no adverse impact on rates, terms, service, or operations as a result of the proposed merger with TDS.

B. Telephone & Data Systems

TDS joins and agrees with the position of MCT. In addition, TDS states that it is already well-known to this Commission, and it currently operates other entities in New

Hampshire.

C. Office of Consumer Advocate

The OCA is generally supportive of the application for the merger and has for the most part received favorable feedback regarding TDS companies. The OCA has some concerns, however, regarding this transaction. The first concern is the allocation of the cost of the non-compete clause which the OCA believes should be a cost of the merger and should not be allocated to the regulated entity. The OCA is also concerned about the operations of the company as it takes a more predominant role in New Hampshire. The OCA is concerned that issues in other jurisdictions regarding the allocation of expenses within the TDS companies between the regulated and non-regulated entities do not become issues in New Hampshire.

D. Staff

Staff agrees with MCT that the proposed merger is governed by RSA 369:8. However, Staff is concerned that the Companies' assertion that there will be no adverse impact on rates, terms, service, or operations as a result of the proposed merger with TDS has not been tested. Therefore, Staff asserts that it will need to conduct discovery to

determine if that statement is accurate, and to determine if the merger is in the public good. Staff indicates it will focus on two main issues in the discovery: information regarding the financial impacts of the merger; and information to ensure that the quality of service of both companies continues to meet that of the pre-merger MCT. Staff notes that it anticipates that this matter may proceed under a short schedule, but reserves its right to a more thorough investigation under 374:30 in the event it is deemed necessary.

III. PROCEDURAL SCHEDULE

Following the Prehearing Conference, the Parties and Staff agreed upon the following schedule and recommended it to the Commission by letter from Staff dated March 6, 2002.

Data Requests	03/18/02
Data Responses	
	03/28/02
Technical Session/Settlement Conference (including oral data requests)	04/08/02
Responses to Oral Data Requests	04/15/02
Hearing	04/23/02

In the event an equitable settlement is not reached in this matter, Staff and the Parties agreed to continuing the procedural schedule as follows:

Testimony

04/22/02

Rebuttal Testimony

04/29/02

Hearing

05/02/02

IV. PREHEARING DETERMINATIONS

The Procedural Schedule proposed herein is reasonable and meets the requirements of RSA 369:8.

In addition, we will require the Company to place a display advertisement notifying customers of the proposed merger in a newspaper with statewide circulation or of general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as proposed herein is reasonable and is hereby adopted; and it is

FURTHER ORDERED, that the Company is to place a display advertisement in a newspaper with statewide circulation or of general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission by March 30,

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2002.

By order of the Public Utilities Commission of New
Hampshire this eighteenth day of March, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary