STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DT 10-183

Petition by Certain Rural Telephone Companies Regarding CLEC Registrations within Their Exchanges

INITIAL BRIEF OF THE RURAL TELEPHONE COMPANIES

Bretton Woods Telephone Company, Inc., Dixville Telephone Company, Dunbarton Telephone Company, Inc. and Granite State Telephone, Inc., each a rural local exchange carrier and a rural telephone company (together, the "RLECs"), hereby submit their Initial Brief in the above captioned proceeding.

I. BACKGROUND

In its Order No. 24,939 in Docket DT 08-130, the Commission held that competitive local exchange carriers ("CLECs") could register to provide service in the territories of rural local exchange carriers ("RLECs"), notwithstanding its Rule Puc 431.01, which restricts the registration process to the territories of non-exempt local exchange carriers, and RSA 374:26, which requires a hearing for actions of this type. The Commission explained its decision by asserting that federal law and the recently enacted RSA 374:22-g preempted or superseded its registration rule and the hearing requirement. On appeal of this decision, the New Hampshire Supreme Court disagreed with the Commission and held that, in regard to market entry by CLECs into the territories of exempt LECs, state law required that the PUC must hold a hearing under RSA 374:26 and conduct a "searching inquiry" under 374:22-g.[1]

[1] In re Union Tel. Co., 160 N.H. 309, 316 (2010).

This was not the end of the matter, however. The Court did concede that there may be merit to the Commission's position that the respective statutes were preempted by federal law, and it remanded this matter to the Commission for any further fact finding that may be required to resolve the question of whether federal law preempts the state law requirements of a hearing and an inquiry regarding the factors that must be considered in accordance with RSA 374:22-g.

Subsequently, the RLECs filed a petition instituting the instant proceeding, alleging that Rule 431.01 only provides for authority to be granted in the territory of non-exempt ILECs and not in the territories of the petitioner RLECs. The RLECs asserted that entities that file applications for authority to provide service in the service territory of an RLEC, *i.e.* not a non-exempt ILEC, are required to file a petition that complies with Commission rules PUC 203.05 and 203.06, among others. Accordingly, the RLECs respectfully requested this Commission to declare null and void, or rescind, any CLEC authorization, granted pursuant to a Form 10 registration, to engage in business as a telephone utility within the service territories of the RLECs and to forbear from issuing such authority absent the proceedings required under RSA 374:22-g and RSA 374:26. The Commission issued an Order of Notice in which it stated the purpose of this proceeding as involving "*inter alia*, issues related to the requirements for registration of CLECs under state law and the degree to which that process is preempted by federal law."

II. STATEMENT OF THE ISSUES

Despite that the Supreme Court's remand and the Order of Notice focus on the issue of federal preemption of RSA 374-22:g, much testimony has been offered in this proceeding concerning entry barriers, the benefits of competition and, to some extent, universal service. However, the RLECs respectfully submit that the purpose of this proceeding is focused on the preemption issue, *i.e.* the comparison of the state and federal statutes.[2] Any other concerns specific to any particular RLEC territory or CLEC petition are distinct and separate matters meriting their own inquiry under rules that the Commission must propagate pursuant to RSA 374:22-g, III.

As such, the RLECs respectfully submit that this proceeding is not about whether entry barriers exist in New Hampshire. Unless a competitor is handed a completely functioning existing network at no cost, it must of necessity encounter entry barriers, most of which are completely unrelated to any government action. (NECTA's witness, Dr. Pelcovits, confirmed this in his direct testimony when he stated that "an entry barrier is anything that prevents an entrepreneur from instantaneously creating a new firm in a market."[3]) This proceeding, then, is about whether a *state imposed* entry requirement rises to such a level that it is effectively an outright prohibition.

This proceeding is also not about whether competition is a good thing for consumers. In both the federal Telecommunications Act and RSA 374-22-g, Congress and the General Court have established that it is -- as long as it does not conflict with universal service goals or affect the public good by merely substituting one dominant provider for another.

This proceeding is not about whether possible implementations of RSA 374:22-g can be conjured in such a way that they amount to an outright prohibition against entry. Rather, it is about whether we can imagine any effective process in which it is *not* a prohibition. No particular CLEC application will be predetermined by this proceeding. In the same vein, this is not a rulemaking proceeding in accordance with RSA 374:22-g, III, and it could well be that the

[2] *Swift & Co. v. Wickham*, 382 U.S. 111, 120 (1965) ('the basic question involved in [preemption claims] is . . . inevitably one comparing two statutes.").

[3] Direct Testimony of Michael D. Pelcovits on Behalf of New England Cable and Telecommunications Association, Inc., at 10 (Oct. 22, 2010) ("Pelcovits Direct").

Commission will grant a CLEC application following an RSA 374:22-g inquiry under the rules that it eventually does adopt.

III. RSA 374:22-g IS NOT A PROHIBITION UNDER 253(a).

Section 253 of the Communications Act states:

> Section 253 [47 USC Section 253]. Removal of Barriers to Entry
>
> (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.

Notwithstanding its title, Section 253(a) on its face is not concerned with entry barriers *per se*, or even prohibitive entry barriers, but in *state actions* that prohibit competitive entry. In its decision, the Court focused on the issue of whether, in the context of Section 253 of the Telecommunications Act, a state law "*materially* inhibits or limits the ability of any competitor or potential competitor to compete in a *fair and balanced* legal and regulatory environment."[4]

The Court has indicated that it is not enough that the important public interest considerations embodied RSA 374:22-g be merely inconvenient to CLECs. Rather, they must amount to a *material* impediment to their ability to compete. Accordingly, before the Commission can even begin to find that state law is preempted, the CLECs (some of whom are associated with the biggest communications companies in the country[5]) must provide evidence that they are *materially* hampered by these laws.

Furthermore, Section 253 is not an absolute prohibition against market entry conditions, but instead is tempered by considerations of fairness and balance. For example, Section 253(f) provides that the Commission can grant authority in RLEC territories on condition that the new

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[4] Union Tel. Co., 160 N.H. at 321.

[5] *See* Response to RLEC-NECTA-1-1, attached hereto as Exhibit 1.

entrant compete on a level playing field, providing all of the services, to all customers, that are supported by federal universal service support mechanisms:

> (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) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service.

Moreover, Section 253(b) permits the Commission to impose requirements to protect universal service in general:

> (b) State Regulatory Authority.--Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

The FCC has explained that if "the challenged law, regulation or requirement satisfies subsection (b), we may not preempt it under section 253, even if it otherwise would violate subsection (a) considered in isolation."[6] Furthermore, " irrespective of subsection (a), states retain authority to impose on carriers the types of requirements specified in subsection (b) provided that such measures satisfy the criteria set forth in that subsection."[7]

Not coincidentally, the concerns expressed in Section 253(b) are included in the criteria that the General Court established for determining the public good under RSA 374:22-g. Specifically, that statute requires, among other things, that:

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[6] *Public Utility Commission of Texas, et al. Petitions for Declaratory Ruling and/or Preemption*, CCBPol 96-13, Memorandum Opinion and Order, 13 FCC Rcd 3460 ¶ 42 (1997) (*"Texas PUC Order"*) (citing to *Silver Star Telephone Company Petition for Preemption and Declaratory Ruling*, Memorandum Opinion and Order, CCB Docket No. 97-1, 12 FCC Rcd 15639 ¶ 37 (1997) (*"Silver Star Order"*) (finding that "[i]f a law, regulation, or legal requirement otherwise impermissible under subsection (a) does not satisfy the requirements of subsection (b), we must preempt the enforcement of the requirement in accordance with section 253(d). If, however, the challenged law, regulation or requirement satisfies subsection (b), we may not preempt it under section 253, even if it otherwise would violate subsection (a) considered in isolation."
[7] *Id.* para. 43.

> 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; [and] the incumbent utility's opportunity to realize a reasonable return on its investment . . .

Using identical or similar phrasing, both of these statutes are consistent in protecting universal service and supporting the ability of the incumbent carrier to remain economically viable so that it can continue to promote the public welfare as the carrier of last resort in providing quality service.

These added provisions are critical to the success of truly fair competition, because they ensure that the benefits of new competition redound to *all* customers in the territory, not just the high-revenue/low-cost ones that a competitor cherry-picks from the RLEC, as well as ensuring that the RLECs' carrier of last resort obligations do not dragoon them into backstopping the state's policies favoring competition. Thus, RSA 374:22-g is entirely consistent with federal law and not in conflict.

New Hampshire laws regarding CLEC market entry do not conflict with federal law, but in fact are conducive to the fair and balanced competition that is contemplated by the Telecommunications Act in general and Section 253 of the Act in particular. The Commission should find that state law is not preempted, and proceed to inquire into the relative merits of the CLECs applications in accordance with state law.

IV. THE STIPULATED PROCEDURES ARE REASONABLE AND LAWFUL IN LIGHT OF OTHER STATE PROCEDURES.

The parties in this proceeding have already stipulated to the procedures that would be followed in proceedings related to CLEC entry into RLEC territories. Assuming that the state statute is not preempted, the stipulation would require the following:

- CLEC will request entry via petition, application or other form of request.
- Public Notice will be published and served on the affected RLEC(s).
- The affected RLEC(s) will be a mandatory party to the proceeding.
- Commission will hold a pre-hearing conference and technical session.
- RLEC(s) and others will have an opportunity to file testimony.
- Parties will have an opportunity to propound discovery.
- Parties will have an opportunity for a public evidentiary hearing.
- Parties will have an opportunity to file briefs and/or requests for findings of fact or law.
- Commission will issue an Order.
- Parties can petition for reconsideration or appeal.

The procedure to which the parties have stipulated, while not uniform among all states, is also not out of the ordinary. There is evidence in the record that state CLEC entry requirements range from simple registration procedures,[8] to full-blown application proceedings which can take many months.[9] As examples of the latter, Mr. Meredith testified that Connecticut requires the CLEC to address specific state goals, including universal service, in its statement supporting the public good; Alabama limits a CLEC's application for a non-RBOC territory until the commission can determine the impact of the CLEC's entry on the incumbent local exchange carrier; Georgia requires the CLEC to obtain an interconnection agreement with rural carriers prior to offering service, and the Commission explicitly recognizes that rural carriers are exempt from Section 251(c) of the Communications Act under Section 251(f); North Carolina requires

[8] *See* Rebuttal Testimony of Michael D. Pelcovits on Behalf of New England Cable and Telecommunications Association, Inc., at 5 (Dec. 8, 2010) ("Pelcovits Rebuttal").
[9] *See* Direct Testimony of Douglas Meredith on Behalf of Granite State Telephone, Inc., Dunbarton Telephone Company, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company at 10:20-23 (Oct. 22, 2010) ("Meredith Direct").

the CLEC to prepare an application and serve it on all affected LECs in North Carolina, presumably so that the affected LECs may be heard; South Carolina accepts stipulations that excludes rural areas from consideration when a CLEC seeks a statewide application, and the public interest finding for rural areas is delayed until the rural carriers have an opportunity to file a petition or motion concerning the impact competitive entry may have in rural areas of the state.[10]

There are no cases in the record of this proceeding in which a market entry proceeding like that described in the stipulation has been preempted by the FCC. On the infrequent occasions when the FCC has exercised its preemption authority under Section 253(b), it has been in the face of state requirements that were either an express ban on CLEC entry, or vested veto power in the hands of the ILEC. For example, in the *Silver Star Order*, the FCC preempted a provision of the Wyoming Telecommunications Act of 1995 that allowed incumbent LECs serving 30,000 or fewer access lines to preclude anyone from providing competing local exchange service in their territories until at least January 1, 2005.[11] Similarly, in the *Texas Preemption Order* the Commission preempted a section of the Texas Public Utility Act of 1995 that prohibited certain competitive LECs from offering service in exchange areas of incumbent LECs serving fewer than 31,000 access lines.[12] Finally, in the *Hyperion Order*, the FCC preempted a Tennessee statute that protected ILECs serving fewer than 100,000 access lines from competition until the LEC either "voluntarily" entered into an interconnection agreement with a CLEC or the ILEC applied for authority to provide telecommunications services in an

[10] Meredith Direct at 9:15-10:13.
[11] *Silver Star Oder* ¶¶ 38-39.
[12] *Texas PUC Order* ¶¶ 106-107.

area outside its service area.[13]

Thus, unlike RSA 374:22-g, all of the statutes involving these key cases served as outright prohibitions against CLEC entry, and did not address statutes or regulations directing the applicant to demonstrate how competitive entry served the public good in the situation involving the particular parties. As Mr. Meredith testified, carrier of last resort obligations are borne by incumbents and not by CLECs that are not designated as eligible telecommunications carriers. These obligations may require RLECs to provide service to all end-user customers in the study area even when the costs to provide service are greatly in excess of the revenues and supports received for high cost customers. Revenues from lower cost customers in the study area help support the higher cost customers through implicit support derived from study area average pricing.

On the other hand, the predominant CLEC business model focuses on services to low cost, high volume services such as business service, high capacity private lines, and middle mile transport and backhaul. This was confirmed in response to Data Request RLECS-NECTA 1-4, in which Exhibit RLECS-NECTA 1-4[14] states on page 6 that "[o]nce a market is deregulated, competitors have a strong incentive to target high return/low investment opportunities, and to ignore low return/high investment opportunities. During the late 1990s, competitive local exchange carriers (CLECs) predictably targeted medium business customers in urban areas." Thus, a key factor to be considered is the issue of high cost versus low cost subscribers and the effect of mandatory rate averaging, which directly affects the ILEC's rate of return and its ability

[13] Hyperion of Tennessee, L.P. Petition for Preemption, CC Docket No. 98-92, Memorandum Opinion and Order, 14 FCC Rcd 11064 ¶ 12 (1999).
[14] Attached hereto as Exhibit 2 ("Cable VoIP Investment Report").

to sustain its obligations as the carrier of last resort (a state term that is closely related to ETC designation federally).[15]

RSA 374:22-g addresses important issues that must be given proper review and analysis. In her testimony on behalf of segTEL, Ms. Mulholland provided anecdotal evidence that CLEC market entry can take anywhere from a twelve to eighteen months.[16] At the same time, she testified that cable companies can turn up telephone service "relatively quickly,"[17] an observation that NECTA did not dispute. Whatever the case, these intervals appear to be part of the normal part of business. The Commission should not attempt to mitigate these concerns by giving RSA 374:22-g inquiries short shrift.

V. APPLICATION COSTS HAVE NOT BEEN SHOWN TO BE PROHIBITIVE COMPARED WITH OTHER MARKET ENTRY COSTS.

A major theme of the CLECs' testimony in this proceeding, particularly that of NECTA witness Dr. Pelcovits, is that considering all of the costs of purchasing and installing facilities and equipment, as well as marketing and contracting, the additional costs of a commission proceeding could tip the balance against a competitor entering a particular market.

This marks a recent evolution in Dr. Pelcovits' thinking. In previous testimony before this Commission, he testified that "[c]ompetition has been slow to develop in the local residential (and small business) telephone market across the United States, not just in New Hampshire. The main reason for this is that it has been prohibitively expensive for any entrant, such as the CLECs spawned by the Telecommunications Act of 1996, to construct outside telephone wire or

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[15] Meredith Direct at 18:14-20.
[16] Direct Testimony of Kath Mullholand on Behalf of segTEL, Inc. at 3:19-21, 4:5-6 (Oct. 22, 2010).
[17] *Id.* at 2:21.

fiber optic cable that can come close to matching the ubiquity of the ILECs' plant."[18] At that time, Dr. Pelcovits attributed the cost of constructing a network to be the main factor in discouraging competition, without mention of any administrative or regulatory costs.

Now, in his direct testimony in this proceeding, he has stated that "[i]n order to provide voice service, a cable company must deploy facilities to connect to the public switched telephone network, and to add voice capability to its network," and then concludes that "[a]dding significant additional costs of entry, including certification and/or interconnection as discussed below, would discourage a new entrant from providing competitive services in these ILEC areas."[19] He elaborated by stating that:

> [t]he entrant would have to invest in any service-related facilities or equipment, obtain interconnection or traffic exchange rights from the RLEC or other carriers, and undertake marketing to publicize its new services, among other costs in addition to the cost of complying the actual Commission entry process. Hence, given the combination of the potentially burdensome adjudicative hearing requirement on each entry application and other service-related investment costs, the potential for successful profitable entry is far from assured in these markets."[20]

In sum, he strongly implied that the cost of a commission proceeding would be so high compared to all other market entry costs that it could result in a decision not to move forward.

To support his theory that "entry barriers will be very significant if the sunk costs of entry are high relative to the level of profits that the firm expects to earn after it successfully enters the market,"[21] Dr. Pelcovits prepared what he described as a "back of the envelope"[22] estimate of the potential revenue for a cable company entering an ILEC market. He estimated that over a period

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[18] Direct Testimony of Michael D. Pelcovits on Behalf of New England Cable and Telecommunications Association, Inc. and Comcast Phone of New Hampshire, LLC at 8 (August 1, 2007), referenced in Pelcovits Direct at 3, (attached hereto as Exhibit 3).
[19] Pelcovits Direct at 15:8-15.
[20] *Id.* at 18:2-9.
[21] *Id.* at 11:5-7
[22] *Id.* at 18:13.

of ten years, a new entrant cable company could expect the discounted value of the revenue of 1000 potential customers to be $82,575. This amounts to only $82.58 per potential customer over *ten years,* or an average of *less than seventy cents per month* per potential customer – and this is discounted revenue, not net income.[23] So low an expectation cannot be reasonable.

The record of this proceeding contains no data specific to New Hampshire markets, ILECs, CLECs or cable companies, so Dr. Pelcovits relied for his estimate on data found in reports for cable voice competition on a nationwide basis. According to his testimony, three of them come from an FCC paper, The Broadband Availability Gap, OBI Technical Paper No. 1, April 2010.[24] One of the figures, the average revenue per customer of $33.46 comes from page Exhibit 3-V on page 50. The second figure is the discount rate of 11.25%, which is taken from the second column of page 33, and represents the rate determined by the FCC in 1990 to be an appropriate rate for telecom carriers earning a rate of return on interstate operations. The third figure is the expected operating margin of 40%. There does not appear to be a citation for this figure in the OBI Technical Paper, although it could possibly be derived from Exhibit 4-AY on page 98, which reports Comcast's estimate breakeven EBITDA as 39%. (Note that this then assumes that Comcast would only expect to *break even* on its foray into any market.)

All of these figures are of questionable veracity; more reliable figures indicate that Dr. Pelcovits' assumptions produce a gross underestimation of the benefits of entering a potential market. As Exhibit DDM 04 to his rebuttal testimony, Mr. Meredith provided the "United States Securities and Exchange Commission Washington DC 20549 Form 10-Q" for Comcast Corporation for the quarterly period ending June 30, 2010. On page 28 of the document there is a section entitled "Segment Operating Results," Comcast states that:

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[23] Pelcovits Direct at 20:1.
[24] *Id.* at 19:12-15. "OBI Technical Paper," attached hereto as Exhibit 4.

"our segment operating results are presented based on how we assess operating performance and internally report financial information. To measure the performance of our operating segments, we use operating income (loss) before depreciation and amortization, excluding impairments related to fixed and intangible assets, and gains or losses from the sale of assets, if any. This measure eliminates the significant level of non-cash depreciation and amortization expense that results from the capital intensive nature of our business and from intangible assets recognized in business combinations. Additionally, it is unaffected by our capital structure or investment activities. We use this measure to evaluate our consolidated operating performance and the operating performance of our operating segments and to allocate resources and capital to our operating segments. It is also a significant performance measure in our annual incentive compensation programs."

Under "Cable Segment Results of Operations" for the six months ended June 30, 2010, Comcast reported revenues for "phone" of \$1.793 billion (and also indicated that for that six month period, phone revenues were up 13.6% over the corresponding period in 2009, with video revenues down by a half of one percent in comparison to the prior year.) Later, on page 30 of the Form 10-Q under "Cable Segment Operating Expenses" for the six months ended June 30, 2010, Comcast reported phone operating expenses of \$286 million. Using this metric, \$286 million dollars of expense produced \$1.793 billion of revenue, establishing that for the phone component of the business, expenses are about 16% of revenues or, put another way, a gross margin of 83%, more than twice as great as Dr. Pelcovits assumed.

This result is validated by the Cable Voice Investment Report, which on page 9 states that "[i]ncremental margins are very attractive. Recall that residential service, which is sold for a fraction of the price of business services, already carries 95% margins for broadband and 80% for voice, according to trending schedules published by both Comcast and Time Warner Cable." This report therefore indicates that the 80% margin figure must be on the very low end of projections, since it applies only to residential service, which sells for a "fraction of the price" of business service.

Now looking at the average revenue per user ("ARPU"), Dr. Pelcovits used a rate of $33.46 in his model. On page 28 of the Comcast 10-Q it states that "average monthly phone revenue per customer declined to approximately $38 as of June 30, 2010." That $38 figure is more than Dr. Pelcovits assumption of $33.46. Furthermore, this figure, although higher, may still not tell the whole story. The Cable Voice Investment Report, also on page 9, reports that "[f]or smaller businesses, the cost of providing service is essentially the same as for a residential customer, but the ARPUs are two to three times greater. *Data and voice carry much higher gross margins than video.*" (Emphasis supplied). The $33.46 used in Dr. Pelcovits' model is presumably a blended ARPU, *i.e.* residential and business, suggesting that if a new entrant followed historic trends and went after small businesses, its ARPU could be much, much higher. In fact, this is confirmed on page 14 of the Cable Voice Investment Report, which reports that:

> [d]espite being relatively small pieces of their businesses, growth in commercial services has materially boosted the companies' overall growth rates. Time Warner Cable discloses sufficient information to calculate ARPUs by product within their commercial segment. In Q2, data subscribers carried an ARPU of $167, video an ARPU of $137, *and voice an ARPU of $115.*" (Emphasis supplied).

That is a voice ARPU over three times higher than the rate used in Dr. Pelcovits' model.

Mr. Meredith has already testified that he also found Dr. Pelcovits' market penetration assumptions to be overly conservative.[25] Using Mr. Meredith's estimate, based on actual market penetration performance by Cablevision,[26] and the better validated gross margin figure of 80%, Dr. Pelcovits' model produces a discounted net revenue over three times the amount that Dr.

[25] Meredith Rebuttal at 7:4-7. Furthermore, even Mr. Meredith's growth estimates may prove to be too conservative, given that the most recent FCC Local Competition Report, attached hereto as Exhibit 5, reports that as of December 2009, 183,000 (24%) of New Hampshire phone subscriptions were provided with "bundled Internet." *See* Table 8. While there is no certainty that this correlates exactly with cable voice subscriptions, it is a strong indicator, since over 93.3% of VoIP broadband bundles nationwide are provided over cable facilities. *See* Figure 6.
[26] *Id.*

Pelcovits calculated. Using the higher ARPU figure of $115 reported in the Cable Voice Investment Report, this number becomes even more attractive to competitors, at $960,428.[27]

Admittedly, because the last figure is based a projected commercial ARPU, it is hard to say if this is representative of the New Hampshire market in general or RLEC markets in particular – but this is the problem. None of the numbers being bandied about are anything more than guesswork of varying levels of reliability. Other than "back of the envelope" estimates, vague assertions and anecdotes, NECTA and segTEL have produced no facts on which to base a determination that the stipulated procedures are so overwhelmingly costly as to negate any benefit to market entry. Suffice it to say, however, that contrary to their assertions, reliable data strongly suggest that the financial rewards to competitors of entry into RLEC territories are significantly greater than they would have the Commission believe – certainly great enough to withstand the administrative costs of conforming to an application process dictated by statute and reasonably accepted by other states nationwide.

VI. CONCLUSION

On its face, RSA 374:22-g does not conflict with Section 253(a), and in fact shares many of the statutory considerations contained within Section 253. Both statutes authorize the Commission to factor universal service, carrier of last resort obligations, and the public welfare into market entry deliberations. The parties have conditionally stipulated to procedures to accomplish this inquiry, procedures that are not uncommon in other states and have withstood both the test of time and the possibility of federal preemption. Furthermore, there is no evidence that these procedures pose a prohibitive barrier to entry, in New Hampshire or any other state. The RLECs respectfully request this Commission find that RSA 374:22-g is not preempted by

[27] *See* Exhibit 6, attached hereto. An electronic version of the worksheet that produced this result is being distributed to the parties in MS Excel format.

any federal statute, and to declare null and void, or rescind, any CLEC authorization, granted pursuant to a Rule Puc 431.01 Form 10 registration, to engage in business as a telephone utility within the service territories of the RLECs.

Respectfully submitted,

BRETTON WOODS TELEPHONE COMPANY, INC.
DIXVILLE TELEPHONE COMPANY
DUNBARTON TELEPHONE COMPANY, INC.
GRANITE STATE TELEPHONE, INC.

By Their Attorneys,

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Dated: February 11, 2011

By: ______________________

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing initial brief was forwarded this day to the parties by electronic mail.

Dated: February 11, 2011

By: ______________________

Harry N. Malone, Esq.