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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

NHPUC NOV12'14 PM 3:37

October 28, 2014 - 1:34 p.m.
Concord, New Hampshire

RE: DT 14-240
DIXVILLE TELEPHONE COMPANY:
Petition for Approval to Discontinue
Operations. (Prehearing conference)

PRESENT: Commissioner Robert R. Scott, Presiding
Commissioner Martin P. Honigberg

Sandy Deno, Clerk

APPEARANCES: Reptg. Dixville Telephone Company:
Harry N. Malone, Esq. (Devine Millimet)

Reptg. New Cingular Wireless PCS
(AT&T Mobility):
Mary Burgess, Esq.
Nancy J. Hertel, Esq. (via teleconference)

Reptg. PUC Staff:
David Wiesner, Esq.
Kate Bailey, Director/Telecommunications Div.
Michael Ladam, Asst. Dir./Telecomm. Division

Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

1
2 CMSR. SCOTT: Good afternoon. We'll
3 open the prehearing conference for Docket DT 14-240,
4 excuse me, Dixville Telephone Company's Petition for
5 Approval to Discontinue Operations. Dixville Telephone
6 Company provides local exchange service, intrastate toll,
7 exchange access, and other telecommunications services to
8 portions of the Dixville township, primarily to the former
9 Balsams Grand Resort Hotel. The filing covers the current
10 level of service provided, namely four billed access lines
11 in service, and wholesale special access service to one
12 telecommunications carrier, and discusses alternatives
13 available to its customers.

14 The Commission issued an order of notice
15 on September 26 setting today's prehearing conference, to
16 be followed by a technical session.

17 Why don't we start with appearances
18 please.

19 MR. MALONE: Thank you, Mr.
20 Commissioner. I'm Harry Malone, with the firm of Devine
21 Millimet, representing the Dixville Telephone Company.

22 CMSR. SCOTT: Welcome.

23 MS. BURGESS: Thank you, Commissioner.
24 For AT&T Mobility, New Cingular Wireless PCS, Mary E.

1 Burgess.

2 CMSR. SCOTT: Thank you.

3 MR. WIESNER: David Wiesner, for
4 Commission Staff. With me today are Kate Bailey, Director
5 of the Telecommunications Division; Michael Ladam,
6 Assistant Director of the Division. And, I'd like to
7 point out, we have a conference bridge opened at the
8 request of certain parties who wanted to monitor the
9 proceedings by telephone. And, I believe we have
10 representatives on the phone of AT&T, Dixville, and
11 potentially the Maine Office of Public Advocate.

12 CMSR. SCOTT: Why don't we have them
13 identify themselves now, if they can hear us.

14 MR. BLACK: -- Black, from Maine Public
15 Advocate.

16 (Court reporter interruption.)

17 CMSR. SCOTT: Could you start again
18 please.

19 MR. BLACK: William Black, attorney for
20 the Public Advocate's Office.

21 MS. BAILEY: Attorney for Maine Public
22 Advocate.

23 CMSR. SCOTT: Is anybody else on the
24 line?

1 (Court reporter interruption.)

2 MR. WIESNER: We advised the parties
3 monitoring the proceeding that they should be on mute and
4 not participate.

5 CMSR. SCOTT: Okay. Well, since we
6 can't really hear them here, we'll press on.

7 MR. PATNAUDE: Thank you.

8 CMSR. SCOTT: Especially for
9 Mr. Patnaude. Anybody else who would like to identify
10 themselves?

11 MS. WALSH: Ann Walsh for Dixville
12 Telephone Company.

13 CMSR. SCOTT: Okay. Thank you.

14 MR. NURSE: Chris Nurse, with AT&T.

15 MS. HERTEL: Appearing on behalf of
16 AT&T, Nancy Hertel.

17 CMSR. SCOTT: Thank you, everybody.
18 Before we go to statements, we have two motions. One's a
19 Petition for Intervention from New Cingular Wireless. I'd
20 like to -- are there any objections to that intervention
21 request?

22 MR. MALONE: We have no objection,
23 Mr. Commissioner.

24 MR. WIESNER: Staff does not object.

1 CMSR. SCOTT: Okay. Then, we approve
2 that. We also have a Motion for Confidential Treatment.
3 Are there any objections to the motion?

4 MS. BURGESS: AT&T does not object.

5 MR. WIESNER: Staff does not object
6 either.

7 CMSR. SCOTT: Okay. And, I'll note that
8 given the -- as laid out in the motion, given the small
9 number of lines, where normally I think we expect some
10 aggregation data, I think that that doesn't make sense in
11 my mind that, given the small number, it's a little bit
12 unique situation here. Okay. We approve that motion
13 also.

14 So, why don't we move onto the statement
15 of the parties please.

16 MR. MALONE: Thank you,
17 Mr. Commissioner. You have in front of you a Petition
18 from Dixville Telephone Company for Approval to
19 Discontinue Operations pursuant to RSA 374:28. The
20 Petition and accompanying testimony describe how, since
21 the closure of the Balsams Resort, DTC's customer base has
22 dwindled to an extremely small number, and, as a
23 consequence, it is operating at a loss, even with generous
24 subsidies from various federal programs. Furthermore,

1 theses subsidies will be reduced progressively over the
2 next few years, further exacerbating the financial
3 problems. There are alternatives to DTC's service that
4 are currently operating or are technically and financially
5 feasible. Accordingly, we believe that the public
6 interest will not be adversely affected, and indeed will
7 benefit, if DTC is granted the requested approval.

8 Now, while we believe that the case for
9 the Commission to grant approval is straightforward, the
10 process for DTC to ultimately discontinue service is not,
11 because it involves a combination of state and federal
12 law. In fact, we envision a series of four procedural
13 steps. The first is the instant Commission proceeding, in
14 which DTC seeks approval under state law. Once this
15 approval is obtained, the next step would be to seek
16 approval from the Federal Communications Commission to
17 discontinue DTC's federally regulated services pursuant to
18 Section 214(a) of the Federal Communications Act, which
19 provides that no carrier can discontinue service in a
20 community without FCC approval.

21 Then, the third and fourth steps involve
22 DTC relinquishing its designation as a so-called "Eligible
23 Telecommunications Carrier" in its territory. Section
24 214(e) of the Communications Act defines an "ETC" as a

1 carrier that provides the minimum service required to be
2 eligible to receive subsidies from the federal Universal
3 Service Fund. And, while we leave it to the FCC to issue
4 the final word on this interpretation, the federal statute
5 does seem to establish that an ETC may not relinquish its
6 designation as an ETC until a replacement ETC has been
7 designated by the state commission or, if the state
8 commission does not or cannot act, the FCC. And, the
9 reason that we believe that the ETC re-designation is an
10 FCC matter in this case is because the universe of
11 possible ETC replacements includes wireless carriers, over
12 which this Commission has previously determined it has no
13 jurisdiction.

14 Lastly, once we have cleared the FCC
15 process, we would return to this Commission for what we
16 hope would be the ministerial function of altering its
17 Order Number 22,793, in which it originally designated DTC
18 as an ETC -- as an ETC, and to lift that designation.
19 Then, and only then, would DTC go dark.

20 Finally, we acknowledge that there are
21 stakeholders with various interests in this proceeding,
22 and we want to emphasize that we are open to reasonable
23 ways to accommodate all those interests. And, we look
24 forward to working with the Commission and the

1 stakeholders to arrive at a result that is satisfactory to
2 all.

3 CMSR. SCOTT: Thank you for that. And,
4 a real quick question on that front, because this
5 sounds -- certainly, it's nothing that I've seen happen in
6 New Hampshire before. Is there a model for you to follow
7 someplace else?

8 MR. MALONE: No. This is the first time
9 that an incumbent local exchange carrier has ever asked to
10 discontinue its operations entirely.

11 CMSR. SCOTT: Trendsetting. Okay.

12 MR. MALONE: We're blazing a new path at
13 this Commission.

14 CMSR. SCOTT: Would AT&T like to say
15 something?

16 MS. BURGESS: Yes. Thank you,
17 Commissioner. AT&T Mobility does not oppose the Petition
18 by Dixville Telephone Company for approval to discontinue
19 operations in its service territory. AT&T Mobility's
20 interest in this proceeding is limited to having a
21 reasonable opportunity to develop and execute alternative
22 service arrangements in the provision of the facilities it
23 purchases from Dixville. We look forward to discussing
24 those issues in greater detail in the technical session

1 that will follow today's hearing.

2 CMSR. SCOTT: Thank you. Staff.

3 MR. WIESNER: As Attorney Malone noted,
4 this is a -- this is a novel case involving special
5 circumstances, and may be precedential within the country,
6 as the first case where an ILEC seeks to discontinue
7 operations throughout its entire franchise territory.
8 This raises interesting issues of state law, as well as
9 federal law, which Attorney Malone has outlined.

10 The Petition before the Commission deals
11 only with the state law issues, which require a "public
12 good" finding. And, we look forward to working with the
13 Company, as well as with AT&T as intervenor, to develop
14 the factual record that will permit the Commission to make
15 that finding in this case.

16 CMSR. SCOTT: Thank you. Commissioner?

17 CMSR. HONIGBERG: Understanding that
18 this has never happened before, how long do we think it
19 will take to get through Steps 1 through 4?

20 MR. MALONE: I'll waffle a little bit,
21 Mr. Commissioner.

22 CMSR. HONIGBERG: Oh, feel free. I
23 can't imagine you're going to give me -- state a date,
24 like "November 13, 2016", or something like that.

1 MR. MALONE: Yes. We hope it would be
2 quickly, but the FCC will have never seen a petition like
3 ours before. The FCC gets many petitions under
4 Section 214 of the Act for companies to discontinue a
5 portion of their services, usually a type of service, or
6 to transfer control of one telephone company to another
7 entity.

8 As far as I know, they have never
9 received a Section 214 petition asking for an incumbent
10 local exchange carrier to completely cease operations and
11 abandon its service territory. It's -- our plan is to
12 socialize this with the staff of the FCC before we file,
13 you know, a petition. We have not filed a petition yet,
14 because we felt like there was no sense in doing so until
15 we had the approval of the New Hampshire Commission,
16 because the FCC, of course, would not move on this if they
17 didn't feel like the New Hampshire Commission was
18 amenable.

19 With the approval of the Commission and
20 with working with the FCC staff in advance, hopefully we
21 won't get a lot of intervenors or opposition, and I would
22 hope that we could fast track this and have it done at the
23 FCC within three to six months.

24 CMSR. HONIGBERG: That is optimistic.

1 MR. MALONE: I am an optimistic person,
2 Mr. Commissioner, and so is my client.

3 CMSR. HONIGBERG: That's all I was
4 interested in for now. Thank you.

5 CMSR. SCOTT: So, to follow up on that.
6 So, have you been in communication with FCC staff yet?

7 MR. MALONE: Not yet, no.

8 CMSR. SCOTT: Well, that answers my
9 question, obviously.

10 Okay. Before the Commissioners depart
11 anyways, is there any outstanding procedural issues we
12 should address before we leave?

13 MR. WIESNER: I don't believe there are,
14 Commissioner.

15 CMSR. SCOTT: All right. That being the
16 case, we'll close the prehearing conference and leave you
17 to your technical sessions. Thank you.

18 MR. MALONE: Thank you.

19 **(Whereupon the prehearing conference was**
20 **adjourned at 1:45 p.m., and a technical**
21 **session was held thereafter.)**

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