

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

DT 18-_____

**Petition of Dixville Telephone Company
For Approval to Discontinue Operations**

Pursuant to RSA § 374:22-p, VIII(a), Dixville Telephone Company (“DTC”), a division of Tillotson Corporation (“Tillotson”), a Massachusetts corporation, respectfully requests approval from the Public Utilities Commission (“Commission”) to permanently discontinue its local telephone operations in New Hampshire, and represents to the Commission as follows:

I. BACKGROUND AND STATEMENT OF FACTS

1. DTC has its principal place of business at 450 Bedford Street, Lexington, Massachusetts 02420 and provides telecommunications service, including without limitation exchange service, intrastate toll and exchange access service, to a portion of the Dixville township area of Coos County, New Hampshire, principally the former Balsams Grand Resort Hotel (the “Balsams Grand”).

2. DTC is an incumbent local exchange carrier (“ILEC”) that elected, on August 24, 2012, to be classified as an excepted local exchange carrier (“ELEC”) under R.S.A. 362:7, I(c)(2). Dixville serves a single telephone exchange (603-555, Dixville) in New Hampshire.

3. Dixville is also a “rural telephone company” as defined in 47 U.S.C. § 153(44). The Universal Service Administrative Company (“USAC”) has assigned Study Area Code (“SAC”) 120042 (DIXVILLE TEL CO) to Dixville’s rural study area.

4. DTC is the only wireline company designated as an Eligible Telecommunications Carrier (“ETC”) in its rural study area. The FCC has designated one or more wireless ETCs in

Dixville's rural study area who, by the terms of their ETC designations, stand ready to offer Lifeline services to qualifying low-income residential customers.¹

5. All of DTC's assets are owned by Tillotson. Tillotson in turn is wholly owned by OCG, LLC, a Minnesota nonprofit limited liability company, which is itself wholly owned by the New Hampshire Charitable Foundation ("NHCF"), a New Hampshire nonprofit corporation.

6. The Balsams Grand closed in September 2011, terminating telephone service for the vast majority of DTC's approximately 450 access lines.

7. Since the closing of the Balsams Grand, DTC has been attempting to find a purchaser to operate DTC's existing franchise, but those efforts have not been successful.

8. On August 24, 2012, DTC and Balsams View, LLC ("Balsams View") jointly petitioned the Commission to approve the transfer of DTC's assets to Balsams View. Balsams View is a New Hampshire limited liability company established for the purpose of purchasing the Balsams Grand. The Commission opened Docket DT 12-263 to review the joint petition.

9. On December 10, 2012, the Commission Staff recommended the suspension of proceedings in DT 12-263 "to accommodate ongoing informational exchanges regarding this petition." Letter from Alexander F. Speidel, Staff Attorney, to Debra A. Howland, Executive Director (Dec. 10, 2012), at 1.

10. By Secretarial Letter dated December 14, 2012, the Commission suspended proceedings in DT 12-263 "until further notice." Letter from Debra A. Howland to Parties in DT 12-263 (Dec. 14, 2012). No further proceedings have occurred in Docket DT 12-263 since the date of the suspension. Docket DT 12-263 remains open as of this petition date. The transfer of DTC's assets to Balsams View is no longer being considered by the parties.

¹ *i-wireless, LLC Amended Petition for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia*, WC Docket No. 09-197, Order (FCC DA 12-934, June 13, 2012), at 13; *Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire, et al.*, WC Docket No. 09-197, Order (FCC DA 10-2433, Dec. 29, 2010), at 15; *Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire*, CC Docket No. 96-45, Order (FCC 08-100, Apr. 11, 2008).

11. On September 22, 2014, DTC filed a Petition of Dixville Telephone Company for Approval to Discontinue Operations (the “2014 Petition”), in which DTC noted that it was then only billing for four (4) access lines in service. The Commission opened Docket DT 14-240 to review DTC’s petition.

12. On December 8, 2014, the Commission Staff recommended the suspension of proceedings in DT 14-240 to allow “ongoing negotiations for a potential sale transaction involving a third party that would obviate the need for adjudication of Dixville’s petition.” Letter from David K. Wiesner, Staff Attorney, to Debra A. Howland, Executive Director (Dec. 8, 2014), at 1.

13. By Secretarial Letter dated December 9, 2014, the Commission accepted Staff’s recommendation and suspended proceedings in DT 14-240 “until further notice.” Letter from Debra A. Howland to Parties in DT 14-240 (Dec. 9, 2014). Docket DT 14-240 remains open as of this petition date.

14. On March 1, 2015, Tillotson entered into a Purchase and Sale Agreement (the “P & S”) with the Balsams Telephone Company, LLC (“BTC”), a Maine limited liability company, by which BTC would purchase all the operating assets of DTC. BTC is a wholly owned subsidiary of Dixville Capital, LLC, a Maine limited liability company, which is also the ultimate parent company of Balsams Resort Properties, LLC (“Balsams Resort”), a New Hampshire limited liability company.

15. Despite numerous extensions of the P & S, to date BTC has not consummated its purchase of the assets of DTC and does not appear likely to do so within the foreseeable future. The most recent extension of the P & S has expired, without having been renewed.

16. At the time of the 2014 Petition, DTC asserted that “even with subsidies . . . from the federal Universal Service Fund and pooled interstate access settlements from the National Exchange Carrier Association, DTC is losing money and has become a financial drain on the resources of NHCF.” 2014 Petition, at ¶10.

17. Since filing the 2014 Petition, the financial situation of DTC has deteriorated further, as the customer base has continued to contract. In the four years since filing the 2014 Petition, DTC's customer base has been reduced to a single basic residential customer.

18. Since 2014, federal subsidies have shifted support away from voice service in favor of broadband service, which DTC cannot and does not provide, as discussed further below.

19. Under the *Transformation Order* and related orders issued thereafter, the Federal Communications Commission ("FCC") requires designated ETCs to offer broadband service, as well as voice service, "[u]pon receipt of a reasonable request for service."² For a carrier like DTC, which has so few access lines and which has not previously built out any broadband infrastructure in its rural study area, the FCC presumes that "a request [to provide broadband service] would not be reasonable."³ Accordingly, DTC has been exempted from the usual broadband buildout requirements for ETCs.

20. Nonetheless, DTC is still required, under the FCC's *Lifeline Modernization* orders and rules, to offer broadband Internet access service ("BIAS") as a Lifeline-supported service.⁴

21. By letter dated July 21, 2017, DTC submitted a notice of election of forbearance to the FCC for any obligation to provide Lifeline-supported BIAS. *See* Letter dated July 21, 2017, from Paul J. Phillips to Marlene H. Dortch, attached hereto as **Exhibit A**. DTC is not currently, and is not likely ever to become, able to afford the network upgrades required to provide BIAS to its single regulated customer.

² *In re Connect America Fund*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking (FCC 11-161, Nov. 18, 2011) ("*Transformation Order*") at ¶ 19 ("While continuing to require that all eligible telecommunications carriers (ETCs) offer voice services, we now require that they also offer broadband services.") and at ¶ 208 ("Upon receipt of a reasonable request for service, carriers must deploy broadband to the requesting customer within a reasonable amount of time.")

³ *In re Connect America Fund*, WC Docket No. 10-90, et al., Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (FCC 14-54, June 10, 2014) ("*Seventh Reconsideration Order*"), at ¶ 65.

⁴ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration (FCC 16-38, Apr. 27, 2016), ¶¶ 30-32; *see also* 47 C.F.R. § 54.500(n).

22. DTC does not have any interconnection agreements with competitive providers and does not have any other wholesale service arrangements (including, without limitation, pole attachment agreements) that are subject to regulation under federal or New Hampshire law.

23. Despite concerted and continuous efforts by DTC, no third party, other than the previous unsuccessful offerors, has indicated any interest in purchasing DTC or its assets at any price, nor will any party even accept reasonable compensation to assume DTC's operations or assets. As noted above, the P & S with BTC has now expired and BTC has not demonstrated any willingness to proceed with the previously contemplated asset sale.

24. As was the case when the 2014 Petition was filed, there exist acceptable third party alternatives to DTC's local exchange service ("Alternative Technologies") that are comparable to, or exceed, the quality of regulated communications service that DTC currently provides or can reasonably hope to provide in the future. These Alternative Technologies have improved in quality since DTC filed the 2014 Petition, including, on information and belief, by the installation of a 4G cellular transmission tower in Dixville.⁵

25. One or more wireless ETCs have been designated to provide Lifeline-supported services in Dixville's rural study area.⁶ While DTC does not now have, and has not previously had, any qualifying Lifeline customers in its study area, any customers who may hereafter request Lifeline service would have sufficient substitute service available to them.

26. Finally, DTC asserts that the Commission must take into account the charitable nature of DTC's present ownership when evaluating the public benefits of discontinuing DTC's operations. DTC has experienced operating losses for several years that have resulted in a depletion of DTC's charitable resources. Continued operation of DTC's business, without any realistic prospect of a transfer of DTC's utility franchise to a qualified purchaser, would cause further wasting of charitable resources that could be better directed to charitable causes.

⁵ J. Koziol, "Initiative will bring improved cell service to North Country," *New Hampshire Union Leader* (Apr. 2, 2015), available at <http://www.unionleader.com/apps/pbcs.dll/article?AID=/20150403/news02/150409737>.

⁶ See footnote 1, *supra*.

II. LEGAL FRAMEWORK AND STANDARD

A. “No Net Harm” Test

RSA 374:22-p, VIII(a), provides as follows:

Incumbent local exchange carriers, whether qualified as an excepted local exchange carrier or otherwise, may not discontinue residential basic service, regardless of technology used, in any portion of their franchise area unless the commission determines that the public good will not be adversely affected by such withdrawal of service[.]

While RSA 374:28 governs the general discontinuance of service by a public utility, DTC has elected ELEC status and so is excepted from the requirements of RSA 374:28. See RSA 374:1-a.

The New Hampshire Supreme Court has held that “the public good” standard in New Hampshire’s public utility statutes

is equivalent to a declaration that the proposed action must be one not forbidden by law, and that it must be a thing reasonably to be permitted under all the circumstances of the case. *If it is reasonable that a person or a corporation have liberty to take a certain course with his or its property, it is also for the public good.* It is the essence of free government that liberty be not restricted save for sound reason. Stated conversely: It is not for the public good that public utilities be unreasonably restrained of liberty of action, or unreasonably denied the rights as corporations which are given to corporations not engaged in the public service.⁷

The Court’s interpretation has subsequently been described by the Commission as the “no net harm” test.⁸

Under the “no net harm” test, the Commission must approve the proposed transaction “if the public interest is not adversely affected.”⁹ As the Commission has explained:

⁷ *Boston & Maine R.R. v. State*, 102 N.H. 9, 10 (1959), quoting *Grafton County Elec. Light and Power Co.*, 77 N.H. 539, 540 (1915) (emphasis added) (applying “public good” standard to discontinuance of service under RSA 3743:28); see also *Appeal of Legislative Utility Consumers’ Council*, 120 N.H. 173, 174-75 (1980) (applying “public good” standard to transfer of utility system under RSA 374:30).

⁸ See *In re Kearsarge Telephone Co.*, Docket No. DE 98-147, Order No. 23,147 (N.H. Pub. Utils. Comm’n, Feb. 18, 1999), at 4 (“the ‘no net harm’ test” was first “articulated as the public good test in *Grafton Cty. Elec. Light and Power Co. v. State*, 77 N.H. 539 (1915)”). See also *In re CCI Telecommunications of N.H., Inc.*, Docket No. DE 96-272, Order No. 22,395 (N.H. Pub. Utils. Comm’n, Nov. 4, 1996), at 2 (“no net harm” test is “indistinguishable from the more generally applied ‘public good’ standard articulated in *Grafton County*”).

⁹ *CCI Telecommunications*, at 2.

[O]ur obligation is to ensure that the interests of ratepayers are balanced against the right of shareholders to be free of regulation which unreasonably restrains legitimate corporate activities. In other words, we must assess the benefits and risks of the proposed [transaction] and determine what the overall effect on the public interest will be, giving the transaction our approval if the effect is at worst neutral from the public-interest perspective.¹⁰

B. Analysis

There would be no net harm to the public if the Commission were to grant DTC's petition for permanent discontinuance of service. Although DTC in 2012 elected to operate as an ELEC, DTC continues to be regulated by the Commission with respect to its basic exchange telephone service, its obligations as an ETC under federal law, and any wholesale service obligations it may have. *See* RSA 362:8 & 374:22-p, VIII(b)-(c). In particular, DTC recognizes that it operates as a "carrier of last resort" and that the present petition does not contemplate that a provider with equivalent legal and regulatory obligations will serve in Dixville's service area now or at any time in the foreseeable future. Nonetheless, on the facts presented here, the Commission must conclude that the effect of DTC's permanent discontinuance of service would be, at worst, neutral from a public-interest perspective and that, in fact, the net benefits will likely exceed the net harms.

As an initial matter, DTC does not have any interconnection agreements with competitive providers or other wholesale arrangements that are subject to regulation in New Hampshire. Consequently, permanent discontinuance of DTC's operations would have no impact on any wholesale obligations under RSA 362:8, III.

Over the last several years, the number of active residential access lines that DTC serves has declined from approximately 450 before the Balsams Grand closed to 4 lines in 2014 to just one residential access line as of the date of the present petition. Discontinuance of DTC's regulated residential voice service to that customer would not unduly harm that customer, who

¹⁰ *Re: New England Electric System*, Docket No. DE 99-035, Order No. 23,308 (N.H. Pub. Utils. Comm'n, Oct. 4, 1999), at 7 (citation and internal quotation marks omitted).

would continue to have access to wireless service in Dixville's service area, which has received significant upgrades in recent years.

Moreover, even though DTC does not now serve and has not previously served any Lifeline customers, the FCC has designated one or more wireless ETCs to provide Lifeline-supported services in DTC's rural study area. If DTC's operations were discontinued, a qualifying customer who requests service in the Dixville exchange would have Lifeline service available from a designated ETC.

Discontinuance of Dixville's operations would also have positive public benefits. DTC's assets are ultimately owned by NHCF, a charitable organization that provides significant funding and resources to a wide range of charitable causes and organizations throughout New Hampshire. Currently, NHCF is incurring significant monthly losses operating DTC, essentially to serve a single regulated telephone line that is not needed by the residential customer. In determining whether "the public good" would be adversely affected by the permanent discontinuance of DTC's operations, the Commission should rightly take into account the needless, ongoing depletion of DTC's charitable assets if DTC's petition is denied. While this unique circumstance is perhaps not the particular "public harm" contemplated by the state's regulatory framework, the Commission should determine that "the public good" in this case militates in favor of a permanent discontinuance of DTC's operations.

Accordingly, the effect of DTC's permanent discontinuance would be, at worst, neutral from the public-policy perspective, and if Commission were to consider the positive impact of stemming the ongoing depletion of DTC's charitable assets, the Commission would rightly conclude that there is a public benefit to authorizing such a discontinuance in DTC's case.

III. REQUEST FOR RELIEF

WHEREFORE, DTC respectfully requests that the Commission:

- 1) Approve this petition for permanent discontinuance of DTC's local telephone service in New Hampshire; and
- 2) Provide such other relief as is just and equitable.

Respectfully submitted,

DIXVILLE TELEPHONE COMPANY,
a Division of Tillotson Corporation

By: PRIMMER PIPER EGGLESTON & CRAMER PC,
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