

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: March 29, 2019
AT (OFFICE): NHPUC

FROM:  Kath Mullholand, Director – Regulatory Innovation and Strategy Division
Mary Schwarzer, Staff Attorney

SUBJECT: Docket DT 18-175 Dixville Telephone Company Petition for Approval to Discontinue Operations
Staff Recommendation to Approve Petition

TO: Commissioners
Debra A. Howland, Executive Director

CC: David K. Wiesner, Director, Legal Division

I. SUMMARY

Dixville Telephone Company (Dixville), a New Hampshire telephone utility, seeks Commission approval to discontinue its operations and relinquish its status as an eligible telecommunications carrier. Staff recommends that Dixville's *Petition for Approval to Discontinue Operations* be approved without a hearing for the reasons stated herein. The parties concur with this recommendation.

II. PROCEDURAL HISTORY

On November 15, 2018, Dixville filed a *Petition for Approval to Discontinue Operations* (Petition). Dixville is an incumbent local exchange carrier (ILEC), designated by the Universal Service Administration Company as a rural telephone company (RTC), and is also an excepted local exchange carrier (ELEC) as defined in RSA 362:7 (Supp. 2018). In 1997, the Commission designated Dixville to be an eligible telecommunications carrier (ETC), as defined by federal law. *See* Order No. 22,793 (November 26, 1997).

A prehearing conference was held on January 14, 2019, at which the intervention of New Cingular Wireless PCS, LLC (AT&T Mobility) was granted. The prehearing conference was followed by a technical session among Dixville, AT&T Mobility, and Commission Staff. Staff filed a *Report of Technical Session and Proposed Procedural Schedule* on January 15, 2019. On March 18, 2019, the parties filed a *Stipulation of Facts with Exhibits* (Stipulation) in lieu of Staff testimony. The Commission cancelled the technical session scheduled for March 19, 2019.

II. FACTUAL BACKGROUND

A. The Dixville Franchise is No Longer Sustainable.

Dixville is the only wireline telephone utility serving the Dixville Notch franchise area. Dixville's founding and history is unique. The company was established to serve a single customer, the Balsams Resort and Hotel (Balsams), which closed in 2011. As of the filing of the Petition there were a handful of customers: one wholesale customer, and retail lines to individuals who remain in the area primarily due to their relationship to the Balsams, or to the family who owned the Balsams. The services provided to the sole wholesale customer, AT&T Mobility, and to the single residential basic service customer, are the only services falling under this Commission's jurisdiction.

Under RSA 374:22-p, VIII (a), the Commission is required to determine that the public good will not be adversely affected if an ILEC wishes to discontinue residential basic service. The general discontinuance of service by a public utility is governed by RSA 374:28; however, Dixville is exempted from the requirements of that section by virtue of its ELEC status, pursuant to RSA 374:1-a. This is a case of first impression, so there is a lack of precedent regarding application of the public good standard in such circumstances.

Dixville's primary sources of revenue apart from its few customers are subsidies from universal service fund (USF) programs and the National Exchange Carrier Association (NECA). Although the company has sufficient revenue at the present time to continue to provide service, it would be unable to recover through rates the funds required to replace the switch or other costly capital investments, should such improvements become necessary. *See* Stipulation Paras 13-16, Exhibit D.

None of Dixville's retail customers participated in this proceeding nor otherwise lodged any objection to Dixville's petition. The single remaining residential basic service customer has been using wireless services as his primary service. *See* Stipulation Para. 13, Exhibit C. The wholesale customer anticipates having alternative service in place no later than June 30, 2019. *See* Stipulation Paras. 17-19. Other cellular ETCs are available in the franchise areas. *See* Stipulation, Paras 9-12, Exhibits A and B.

Further, the possibility of future demand is extremely unlikely. Staff notes a recent New Hampshire Public Radio report dated February 10, 2019, which stated: "[i]n November 2016, Dixville Notch had eight people on its voter checklist. By last fall, it was down to just five: [the town moderator], his wife, his son and two people working on the Balsams redevelopment project. The future of the Balsams project is uncertain, and if it stalls, that could leave just the [town moderator's] family for next year's presidential election."¹

¹ Retrieved from the Internet on March 20, 2019, at URL <https://www.nhpr.org/post/amid-election-scrutiny-dixville-notch-s-midnight-voting-tradition-could-be-risk#stream/0>

Staff believes that Dixville is not viable over the long-term, and that the benefits to its customers in the short-term are insufficient to outweigh the continued subsidies from USF and NECA. Those subsidies are being used by Dixville not to expand infrastructure or service opportunities, but merely to remain solvent. The subsidy amounts may be put to more productive use by other carriers in different areas. For the foregoing reasons, Staff supports the relief sought by Dixville in its Petition.

Although the existing customers are aware of Dixville's request, Staff recommends that Dixville give each customer at least ten days advance notice of disconnection, in the absence of agreement between the company and any customer with respect to a specific disconnection date for existing service.

In Staff's view, the Commission does not need to condition its approval on a showing by Dixville that all customers have successfully found alternative services, as the single retail customer over which the Commission has authority (solely by virtue of that customer being a basic service customer) has indicated he already has alternative service. Accordingly, Staff recommends that the discontinuance be effective July 1, 2019, which is one day after the wholesale customer anticipates its replacement facilities will be operational. See Petition Para. 18.

B. Dixville's ETC status

Dixville was designated an ETC by the Commission in 1997 by Order No. 22,793, in which the Commission found that "the public interest, convenience and necessity are best served by designating [Dixville] as an ETC under 47 USC 214(e) and in compliance with 47 CFR 54.201." A requirement of ETC status is to provide Lifeline service directly to qualifying low-income consumers. See 47 C.F.R. §54.201 (a)(1).

Although ready to serve Lifeline customers since 1997, when it was designated an ETC, Dixville has not received a Lifeline application, nor has it ever served any Lifeline customers. Petition at 25. In addition, with the FCC's recent policy shift to include broadband as an integral part of ETC universal service, Dixville would not meet the current requirements for ETC status were it to apply for that status today. See 47 U.S.C. §254(b).

Nonetheless, Dixville's ETC status must be addressed. There is no state statute governing the Commission's duty with respect to relinquishment of ETC status. Under federal law, a carrier may relinquish its ETC status in certain circumstances. 47 U.S.C. §214(e) states in pertinent part:

(4) RELINQUISHMENT OF UNIVERSAL SERVICE

A State commission (or the [FCC] in the case of a common carrier designated under paragraph (6)) **shall permit** an eligible telecommunications carrier to relinquish its designation as such a carrier **in any area served by more than one eligible telecommunications carrier**. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give

advance notice to the State Commission (or the [FCC] in the case of a common carrier designated under paragraph (6)) of such relinquishment. **Prior to permitting** a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, **the State commission (or the [FCC] in the case of a common carrier designated under paragraph (6)) shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served**, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. (Emphasis added.)

(6) COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the [FCC] shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law.

Before designating an eligible telecommunications carrier for an area served by a rural telephone company, the [FCC] shall find that the designation is in the public interest.

Turning to the facts at issue, there are presently six cellular ETCs serving the Dixville area. See Stipulation Paras 9-11, Exhibit A. The existence of additional ETCs means that the Commission must permit Dixville to relinquish its ETC status. Since there are no Lifeline customers in the Dixville exchange, the requirement that the Commission (or the FCC) require another carrier to serve is inapplicable.

Staff recommends that the Commission permit Dixville to relinquish its ETC status, provided that any relevant FCC approvals required under 47 U.S.C. §214 are granted in connection with Dixville's discontinuance of operations and relinquishment of its ETC status.

C. The Dixville Notch Exchange

The Dixville Notch exchange consists of one exchange, which has no ported numbers and has never been pooled. All numbers will have service disconnected prior to Dixville's discontinuance of operations. See Stipulation Paras. 1-4. Staff recommends that Dixville's exchange code be returned to the North American Numbering Plan Administrator (NANPA) for assignment to another rate center.

IV. RECOMMENDATION

Dixville's Petition is based on a unique set of specific facts. Should the Commission grant the Petition, conditioned on Dixville's receipt of any FCC approvals necessary under 47 U.S.C. §214 with respect to its discontinuance of operations and relinquishment of ETC status, Dixville will in fact have no customers as of Staff's proposed effective date of its permanent discontinuance of telephone utility service in New Hampshire.

For all of the reasons described herein, Staff recommends that the Commission:

- (1) suspend the procedural schedule in this docket;
- (2) conditionally approve Dixville's Petition, effective July 1, 2019, without a hearing;
- (3) condition its approval on Dixville's receipt of any FCC approvals required under 47 U.S.C. §214;
- (4) require that the Dixville Notch exchange code be returned to the NANPA; and
- (5) require that Dixville attempt to negotiate mutually-agreeable dates for disconnection of customer services, or provide at least ten days' notice prior to disconnecting service to any customer.

Staff has sought and obtained the concurrence of the parties to this recommendation.

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