

DT 02-009

MERRIMACK COUNTY TELEPHONE

**Notification by Merrimack County Telephone Company
Pursuant to RSA 369:8,II(b)**

O R D E R N O. 23,961

May 1, 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 residential ratepayers; and Lynmarie Cusack, Esquire, for the Staff of the New Hampshire Public Utilities Commission.

I. INTRODUCTION

On January 23, 2002, Merrimack County Telephone Company (MCT) filed with the New Hampshire Public Utilities Commission (Commission), notification pursuant to RSA 369:8,II(b), that MCT and Telephone and Data Systems, Inc. (TDS) entered into an Agreement and Plan of Merger dated November 15, 2001 (Agreement). The notice provides that a newly formed subsidiary of TDS will be merged with and into MCT, where MCT survives and all of its stock 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 the other TDS companies.

The filing represents that the transaction as described will have no adverse impact on the rates, terms, service or operation of MCT or its subsidiaries within New

Hampshire. Additionally, it is asserted that the jurisdiction of the Commission over the operations of the post-merger MCT will not be changed.

II. CURRENT STRUCTURE OF COMPANIES

A. MCT

MCT is a New Hampshire corporation engaged in business as a telecommunications public utility and is subject to the jurisdiction of the Commission. MCT stock is owned by MCT, Inc., a New Hampshire corporation and the parent company of MCT. MCT provides telecommunications services to all or portions of the towns of Antrim, Bennington, Bradford, Deering, Frankestown, Greenfield, Hancock, Henniker, Hillsboro, Hopkinton, Moultonborough, Newbury, Salisbury, Sutton, Tuftonboro, Warner, Webster and Wilmot, New Hampshire. New Hampshire Telephone Company, Inc. (MCTLD), a New Hampshire corporation and an affiliate of MCT, is a competitive toll provider, and provides intraLATA and interLATA toll service and Internet service. MCTLD stock is also owned by MCT, Inc.

B. TDS

TDS is a Delaware corporation and the parent company of subsidiaries that provide, among other things, local exchange and exchange access service in 28 states throughout the United States, including New Hampshire. TDS's wholly-owned

subsidiary, TDS Telecommunications Corporation (TDS Telecom) is the sole stockholder of more than 100 independent local exchange carriers (LECs) including Kearsarge Telephone Company (Kearsarge) an independent LEC and a telephone public utility operating in New Hampshire under the jurisdiction of the Commission. TDS's 80% owned subsidiary, US Cellular, is a provider of wireless telecommunication services in New Hampshire.

III. PROCEDURAL HISTORY

Docket No. DT 02-009 was initiated upon receipt of the filing. MCT supplemented the filing on February 8, 2002, with additional material concerning the proposed merger. As a result, the Commission issued an Order of Notice on February 21, 2002, indicating it would investigate the transaction for issues related to RSA 369:8; RSA 374:4 regarding Commission oversight of the management of utility operations as well as the safety, adequacy and accommodation of the utility service provided; RSA 374:30 relative to the authority of public utilities to transfer or lease franchises, works, or systems when th Commission finds it in the public good; and, RSA 374:33 relative to the acquisition being lawful, proper and in the public interest.

The Company and interested parties were also notified

of a Prehearing Conference that would be held on March 6, 2002. The Office of the Consumer Advocate (OCA) filed its intent to participate in the docket on February 22, 2002.

After the prehearing conference, the Commission issued Order No. 23,936 laying out the preliminary positions of the Staff and Parties and establishing a procedural schedule for the docket. In accordance with the procedural schedule, the Parties and Staff held settlement conferences on April 8, 2002, and April 12, 2002. On April 12, 2002, a Stipulation was entered into between MCT, Inc., TDS, OCA, and Staff that constituted their recommendation concerning the resolution of this docket. The Stipulation was submitted to the Commission on the same day. A hearing on the docket was held before the Commission to review the Agreement on April 23, 2002.

IV. COMPREHENSIVE SETTLEMENT

The Parties and Staff agreed that the transfer of MCT stock to TDS was in the public interest and that TDS had the requisite financial, managerial and operational abilities to run the Company. The Parties and Staff also agreed that no portion of a noncompetitive agreement associated with the transaction would be included in current or future revenue requirements or included in any regulated expenses reported to the Commission. The Parties and Staff stipulated similarly

with regard to any acquisition premium. The Parties and Staff also agreed to keep current rates in effect for a period of two years.

Specifically, the stipulation provides that MCT's current rates shall remain in effect following the closing on the merger, subject to the following provisions:

No signatory to this stipulation will commence or seek to commence a general rate proceeding for rates that are to be effective prior to June 1, 2004, with respect to MCT. This prohibition shall not apply to rate changes for one or more of the following reasons: the adoption, amendment, or implementation of any rule or regulation, requirement, or order of any judicial or administrative body, including but not limited to the Commission; of a state or federal statute, including any change in the state or federal tax; of an accounting order or standard by any state or federal agency or recognized accounting body; or the occurrence of any other change beyond the control of MCT.

In the event that MCT petitions the Commission to increase revenues to offset the changes described above, the Staff or OCA may request the Commission to examine MCT's overall intrastate revenues and revenue requirement, or the

Commission may do so on its own motion. Likewise, in the event that Staff or the OCA seeks to decrease revenue to offset the described changes, MCT may request the Commission to examine its overall intrastate revenues and revenue requirement. Nothing shall prevent any person from requesting prior to June 1, 2004, a rate change to be effective on or after June 1, 2004, nor shall this prevent MCT from offering new services upon terms filed with the Commission pursuant to applicable statutes and rules.

Finally, the Parties and Staff agreed that TDS would continue to supply MCT customers with reliable and quality telephone service, that they would provide certain quality of service reports for a period of 18 months and that TDS would maintain a regulatory presence in telephony dockets before the Commission.

In addition to the Stipulation, the parties provided a copy of the Draft Master Affiliate Transaction Agreement between MCT affiliates. This agreement delimits the types of transactions that may take place between such affiliates, and the rate at which such affiliates will be compensated.

V. COMMISSION ANALYSIS

In considering the proposed stock transfer, the Commission is mindful of the statutory framework within which

it must act. We first note that we have general supervisory authority over utilities operating in this state, requiring us to assure that the rates are just and reasonable and imposing on us the obligation to assure citizens of this state that the transactions as in issue here are in the public interest. As the Commission said in *New England Electric System*, 84 NH PUC 502 (1999), we do not read RSA 369:8, II in isolation. We, therefore, cannot accept at face value the bare assertion that the transaction complies with the statutory standard.

In the context of the instant transaction, we conclude we are vested with both the power and the obligation to conduct an inquiry to verify the representations made by the Petitioners. As we have discussed in our previous decisions involving mergers or acquisitions of public utilities, this inquiry is guided by the directive in RSA 369:8, II that the transaction "will not adversely affect the rates, terms, service, or operation of the public utility within the state" and the requirement in RSA 374:33 that the result is "lawful, proper and in the public interest." See, *Hampton Water Works, Inc.*, DW 01-215, Order No. 23,924, March 1, 2002, at 9-10.

Accordingly, our initial inquiry here is one in which we undertake to verify that the "transaction will not have an adverse effect on rates, terms, service or the operation of the

public utility within the state." RSA 369:8, II (b)(1). In considering the stipulation as filed by the Parties and Staff, the testimony at the hearing, and all of the evidence submitted in the record, we find that the transaction meets the applicable standard. The Stipulation provides for rates to remain stable, it does not increase rates for an acquisition premium and it does not change revenue requirements to reflect the non-compete agreement that was entered between the Companies. In essence, it places the responsibility for those acquisition related items where it belongs: on the shareholders. We also note that the formula under which affiliate transactions are compensated, at least as presently provided by the FCC Part 32 regulations, protects consumers from risks of cross-subsidization of non-jurisdictional affiliates. So long as Part 32 is not amended or waived, the Master Affiliate Transaction Agreement adequately protects consumers. Taking all the factors together, the transaction, as agreed to by the Parties and Staff, does not harm ratepayers.

In verifying the assertion made by the Parties at the hearing that there are no adverse effects, or no net harm associated with the transaction, we also inquired as to whether the acquisition provides net benefits to consumers. The record

reflects that there are such net benefits. Accordingly, we will approve the transaction and find that it is in the public good, so long as the affiliate transaction agreements between MCT and its affiliates, including the use of FCC Part 32 as now in effect, are not changed without prior approval of the Commission.

Based upon the foregoing, it is hereby

ORDERED, that the proposed merger of Merrimack County Telephone Company into Telephone & Data Systems, Inc. is hereby APPROVED, subject to the condition that the affiliate transaction agreement, including the use of the present version of FCC Rule Part 32.27, shall apply to inter-affiliate transactions between MCT and its affiliates, unless changed with prior approval of the Commission.

By order of the Public Utilities Commission of New Hampshire this first day of May, 2002.

Thomas B. Getz
Chairman

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary