

STATE OF NEW HAMPSHIRE
SUPREME COURT

CASE NO. 2009-0168 (CONSOLIDATED)

APPEAL OF
UNION TELEPHONE COMPANY d/b/a UNION COMMUNICATIONS

**UNION TELEPHONE COMPANY REQUEST FOR RECONSIDERATION OF
ORDER DATED APRIL 15, 2010, AND
OBJECTION TO METROCAST CABLEVISION OF NEW HAMPSHIRE, LLC'S
REQUEST FOR LEAVE TO FILE SUPPLEMENTAL REPLY MEMORANDUM**

Union Telephone Company ("Union"), appellant herein, moves to reconsider the Court's order of April 15, 2010 as it was issued prior to the time for Union to respond, and objects to the request of MetroCast Cablevision of New Hampshire, LLC ("MetroCast") for leave to file a supplemental reply memorandum to the supplemental memorandums of Union, of the PUC, and of Bretton Woods Telephone Company, Inc., Dixville Telephone Company, Dunbarton Telephone Company, Inc., Granite State Telephone Company, Inc., Kearsarge Telephone Company, and Merrimack County Telephone Company ("NHTA") herein.

MOTION TO RECONSIDER ORDER OF APRIL 15, 2010

MetroCast filed a request to file a supplemental reply memorandum dated April 12, 2010. Union's undersigned counsel drafted an objection which was pending client review in anticipation of filing it by April 22, 2010 pursuant to the ten day response time provided under Supreme Court Rule 21 (3). Because the Court issued its April 15 Order without allowing Union its opportunity to provide its timely objection, the Court should reconsider its ruling in light of Union's response provided below.

OBJECTION TO METROCAST REQUEST

MetroCast states that the Union and NHTA raise “heretofore new arguments that should be responded to for the Court’s benefit”. The only example MetroCast provides is that Union and NHTA “raise new arguments with respect to communications entry requirements in the former Verizon territories in New Hampshire and neighboring states.”

The Court should deny MetroCast’s request. The Court essentially invited in its March 3, 2010 Order that “new” arguments be made regarding constitutional due process issues because the parties did not raise them in prior briefs. Union responded directly and accordingly in its supplemental memorandum. MetroCast cannot now be heard to complain about Union and other parties raising “new arguments” when the Court specifically requested that they be raised.

In responding to the Court’s Order, Union presented supplemental facts regarding historic PUC orders *nisi*. Union had already addressed such orders in prior briefs. Union Reply Brief, pp. 3-4. MetroCast had opportunity to address such orders in its supplemental memorandum, and did not. The Court should not give MetroCast another “bite at the apple” that it could have taken in its own prior briefs.

Union also presented a case from New York citing facts stated therein, and provided the case in its entirety in an appendix. Union Supplemental Memorandum, pp. 2-3; App. pp. 1 -31. The case speaks for itself, and its presentation by Union should not be a basis for granting MetroCast an opportunity to submit a supplemental reply memorandum. Union also supplemented previously presented argument supported by *Appeal of Public Service of New Hampshire*, 122 N.H. 1062, 1072, 454 A.2d 435, 441

(1982) at Union Initial Brief, pp. 20-25, and there is no basis therefore to grant MetroCast's request.

With regard to NHTA's supplemental memorandum, there was not a "new" argument presented which was outside of what the Court requested nor any discussion of "entry requirements into the former Verizon territories in New Hampshire." With regard to "entry requirements ... in neighboring states", the last paragraph on page 8, including footnote 2, identifies legal requirements in other states to develop facts on burdens, which is responsive to the Court's requests for argument concerning administrative burdens.

Union notes that Rule 21 requires motions to the Court to "state with particularity the grounds on which it is based." MetroCast does not identify any "new" arguments raised by other parties with particularity, which is sufficient reason to deny MetroCast's request.

The Court should not grant MetroCast's request to file a supplemental reply memorandum. However, if it does grant such request, in the interest of fairness all parties should have the opportunity to submit supplemental reply memoranda.

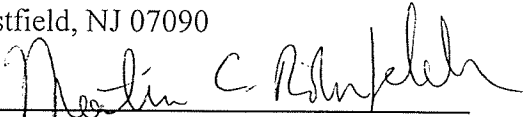
Respectfully submitted,

**UNION TELEPHONE COMPANY d/b/a
UNION COMMUNICATIONS**

By its Attorneys
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Date:

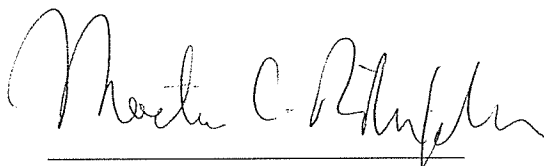
4/14/2010

By: 
Martin C. Rothfelder (NH Bar. No. 2880)

CERTIFICATE OF SERVICE

I certify that I have, this date, mailed copies of Union Telephone Company Request for Reconsideration of Order Dated April 15, 2010 and Objection to MetroCast Cablevision of New Hampshire, LLC's Request for Leave to File Supplemental Reply Memorandum and this certificate of service, via first class United States mail, postage prepaid to: Robert J. Munnely, Jr., Murtha Cullina LLP, 99 High Street, Boston, MA 02110; Frederick J. Coolbroth, Devine, Millimet & Branch, Professional Association, 43 North Main Street, Concord, NH 03301; Susan S. Geiger, Orr & Reno, One Eagle Square, PO Box 3550, Concord, NH 03302-3550; Carl Billek, IDT America Corp., 550 Broad Street, 17th Floor, Newark, NJ 07102-3111; Olga L. Bogdanov, Esq., Murtha Cullina LLP, 99 High Street, Boston, MA 02110; Meredith A. Hatfield, Consumer Advocate, Office of Consumer Advocate, 21 S. Fruit Street, Suite 18, Concord, NH 03301; Glenn A. Perlow, Assistant Attorney General, Civil Bureau, New Hampshire Department of Justice, Department of Justice, 33 Capitol Street, Concord, NH 03301; and F. Anne Ross, Esq., General Counsel, New Hampshire Public Utilities Commission, 21 S. Fruit Street, Suite 10, Concord, New Hampshire 03301; Debra A. Howland, Executive Director and Secretary, NH Public Utilities Commission, 21 South Fruit Street, Suite 10, Concord, NH 03301-2429.

Date: 4-14/10



Martin C. Rothfelder