

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 12-308

COMCAST PHONE OF NEW HAMPSHIRE, LLC AND
COMCAST IP PHONE II, LLC

Effect of SB 48 on VoIP and IP-Enabled Services

RLEC OBJECTION TO MOTION FOR REHEARING OF ORDER NO. 25,513

RLEC MOTION TO SUSPEND ORDER NO. 25,513

NOW COME the incumbent local exchange carriers (excluding affiliates of FairPoint Communications, Inc.) of the New Hampshire Telephone Association, a New Hampshire voluntary corporation (the "RLECs"), and respectfully object to Comcast's Motion for Rehearing of Order No. 25,513 on Remand ("Remand Order") and move for temporary suspension of that Order.

I. OBJECTION TO MOTION FOR REHEARING

In its Motion, Comcast maintains that the Commission erred because the Remand Order lacks any prospective significance and that the Commission's affirmative rulings in the Remand Order exceed the scope of the New Hampshire Supreme Court's limited remand order. Comcast is incorrect on both counts.

First, to distract from the issue of whether Comcast's service is a public utility service, Comcast has manufactured a dispute regarding the practical and prospective significance of this designation, and now chides the Commission for failing to resolve this dispute. The fact remains that the inquiry as to whether Comcast's VoIP service is a public utility service as defined in

RSA 362:2 was a straightforward one, correctly decided by the Commission in Order No. 25,262 and Order No. 25,274, and Comcast has provided no new reasons as to why this decision is erroneous or unlawful.

Second, Comcast also claims that the Commission has exceeded its authority by deciding several issues that are beyond the scope of the Court's "limited" remand order. Specifically, Comcast objects to the Commission's reconsidered decisions on whether Comcast's service is a VoIP service or IP enabled service, and whether Comcast is an ELEC.

To begin with, the Supreme Court's remand order, far from being as "limited" as Comcast infers, can scarcely be construed as limited at all. The Order was not restricted to any particular issues, but stated quite simply that "[t]he case is remanded to the Public Utilities Commission for the limited purpose of allowing it to reconsider Order No. 25,262 and Order No. 25,274, and any related orders in docket no. (*sic*) DT 09-044, in light of Laws 2012, chapter 177."¹ Despite the qualifying phrase "limited purpose," clearly the full panoply of issues decided in Order No. 25,262 were available for the Commission to address and, indeed, were required to be addressed by the broad dictates of the Court's remand order to "reconsider Order No. 25,262" without further qualification.

The Commission was compelled to revisit the question of whether Comcast is a VoIP provider or an IP-enabled provider because this distinction was created in SB 48 and had to be addressed if the Commission were to reconsider the VoIP Order "in light of" SB 48. The Commission's decision was a factual one, supported in the record to which the Commission cites.² It is thus entitled to considerable deference and need not be reconsidered.

¹ Appeal of Comcast Phone of New Hampshire, LLC & a., No. 2011-0762, Order on Motion to

² Order No. 25,513 at 21.

Likewise, the Commission was compelled to decide whether Comcast is an ELEC. In Order No. 25,262 the Commission held that Comcast was a CLEC. SB 48 eliminated this distinction, dividing the world of New Hampshire telephone companies into ILECs and ELECs. Consequently, it was necessary to reconsider the designation of Comcast as a CLEC. Because Comcast is not an ILEC, SB 48 provides that it can only be an ELEC. This is a non-controversial determination that does not merit reconsideration. Accordingly, the Commission should deny Comcast's request to vacate Order No. 25,513 or any other orders in DT 09-044.

II. MOTION TO SUSPEND ORDER NO. 25,513

The Commission and all of the parties in this proceeding are presumed to be cognizant of House Bill 542 (2013), which has worked its way through the current legislature. Section 4 of HB 542 amends the language of SB 48 and squarely addresses the Commission's current (and still valid) determination that Comcast's service is a public utility service:

VoIP services and IP enabled services are not public utility services and a provider of VoIP service or IP enabled service is not a public utility under RSA 362:2, or an excepted local exchange carrier under RSA 362:7, I(c) and shall not be regulated as a public utility in any manner other than as set forth in paragraph III.

Although HB 542 has not been signed into law, it has passed both chambers of the legislature and it appears that it will be signed by the governor once it is placed on her desk, presumably in a matter of weeks. Because the language of this bill purports to once again restructure the Commission's regulatory authority, as SB 48 did, it seems inevitable that the Commission will be called on again to consider the effect of such legislation. Accordingly, the RLECs request that the Commission temporarily suspend the Rehearing Order, pursuant to RSA 365:28, pending the signing of HB 542 and its final enactment into law. If and when that occurs, the Commission should reopen the record of this proceeding to consider the views of interested

parties as to whether it should reconsider Order No. 25,262 and Order No. 25,274, and any related orders in DT 09-044, in light of HB 542.

WHEREFORE, the RLECs respectfully request that the Commission DENY the Motion for Rehearing and GRANT the Motion to Suspend Order No. 25,513.

Respectfully submitted,

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INC.
DIXVILLE TELEPHONE COMPANY
DUNBARTON TELEPHONE COMPANY, INC.
GRANITE STATE TELEPHONE, INC.
HOLLIS TELEPHONE COMPANY, INC.
KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE
COMPANY
WILTON TELEPHONE COMPANY, INC.

By Their Attorneys,

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