

STATE OF NEW HAMPSHIRE
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

Order Suspending Order on Remand for Further Consideration Pursuant to RSA 541:5

ORDER NO. 25,542

July 9, 2013

I. PROCEDURAL STATUS

On May 28, 2013, the Commission issued Order No. 25,513 on remand from the New Hampshire Supreme Court (Order on Remand). The Court in an order dated October 12, 2012 had directed the Commission to reconsider Order No. 25,262 and Order No. 25,274, and any related orders in DT 09-044, in light of the enactment of Laws of 2012, Chapter 177 (SB 48); the Court otherwise retained jurisdiction of Comcast's appeal of these earlier orders. SB 48 addressed the regulatory status of Voice over Internet Protocol (VoIP) and Internet Protocol enabled (IP-enabled) services. In the Order on Remand, the Commission held that: (1) Comcast's digital voice (CDV) service constitutes an IP-enabled service as that term is defined in SB 48 and RSA 362:7, I(e) (West Supp. 2012); (2) CDV service constitutes the conveyance of telephone messages to the public; (3) Comcast is a public utility; (4) Comcast is an excepted local exchange carrier (ELEC); and (5) the minimal state regulation imposed on Comcast as a provider of CDV service is not preempted by federal law. *See* RSA 362:2 (West 2009); RSA 362:7, I (c) and (e) (West Supp. 2012). The background and context of the Order on Remand are discussed at length therein and are not repeated here.

On June 27, 2013, Comcast Corporation and its affiliates, Comcast Phone of New Hampshire, LLC and Comcast IP Phone, II, LLC (collectively, Comcast), filed a motion for rehearing of the Order on Remand asserting that the Commission erred in its decisions in the Order on Remand and noting the recent passage by both houses of the legislature of House Bill 542 (HB 542).¹ HB 542, which has not yet been signed by the governor, would effectively amend the language of SB 48 regarding the public utility status of providers of VoIP service and IP-enabled service, and the regulatory treatment of such providers and services under RSA 362:7 and other statutes administered and enforced by the Commission.

On July 3, 2013, the rural incumbent local exchange carrier members of the New Hampshire Telephone Association² (RLECs) filed an objection to Comcast's motion for rehearing. In addition to their objection to the motion for rehearing, the RLECs moved the Commission to suspend the Order on Remand under RSA 365:28, pending the signing of HB 542 and its final enactment into law. If and when such enactment occurs, the RLECs assert the Commission should reopen the record in this proceeding to consider the views of interested parties as to whether it should reconsider its prior orders in light of HB 542.

No other objection was received by the Commission within the five-day period specified by Puc 203.07(f).

II. COMMISSION ANALYSIS

Under RSA 541:5 the Commission may, within ten days following the filing of a motion for rehearing, suspend the order complained of in the motion pending further consideration, and

¹ Motion at 19, fn. 12. Comcast also states, in the cover letter filed with its motion for rehearing, that it "expressly reserves the right to supplement the enclosed Motion, if necessary, in light of the adoption" of HB 542.

² These members of the New Hampshire Telephone Association are Bretton Woods Telephone Company, Inc., Dixville Telephone Company, Dunbarton Telephone Company, Inc., Granite State Telephone, Inc., Hollis Telephone Company, Inc., Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company.

any order of suspension may be upon such terms and conditions as the Commission may prescribe.

HB 542, if it is enacted into law, would exclude VoIP and IP-enabled service providers from the definition of a public utility under RSA 362:2 and the definition of an ELEC under RSA 362:7, I(c). The RLECs have requested that the Commission consider the prospective potential effects of HB 542 on these proceedings, should it become law, and Comcast has indicated in its motion and cover letter that it may also seek to have the Commission consider this new legislation.

Should HB 542 become law, the Commission believes its consideration of the effects of HB 542 as part of its decision on the merits of Comcast's motion for rehearing would serve the interests of judicial economy and administrative efficiency and would clarify the effect of this recent legislation on the Commission's prior determinations. We believe our consideration of HB 542 in such context falls within the spirit if not the letter of the Court's remand order dated October 12, 2012. The Commission has notified the Court today of its interest in considering the effects of HB 542 in this docket and has informed the Court of its intent to reconsider its prior orders, including Order No. 25,513, in light of the passage of HB 542, should it become law, in connection with its decision on the merits of Comcast's motion for rehearing.

In view of these considerations, we have determined that the Order on Remand should be suspended pending further consideration pursuant to RSA 541:5.

Based upon the foregoing, it is hereby

ORDERED, that Order No. 25,513, the Order on Remand issued in this docket, is hereby suspended pending further consideration pursuant to RSA 541:5.

By order of the Public Utilities Commission of New Hampshire this ninth day of July,
2013.



Amy D. Ignatius
Chairman

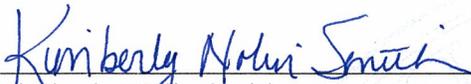


Michael D. Harrington
Commissioner

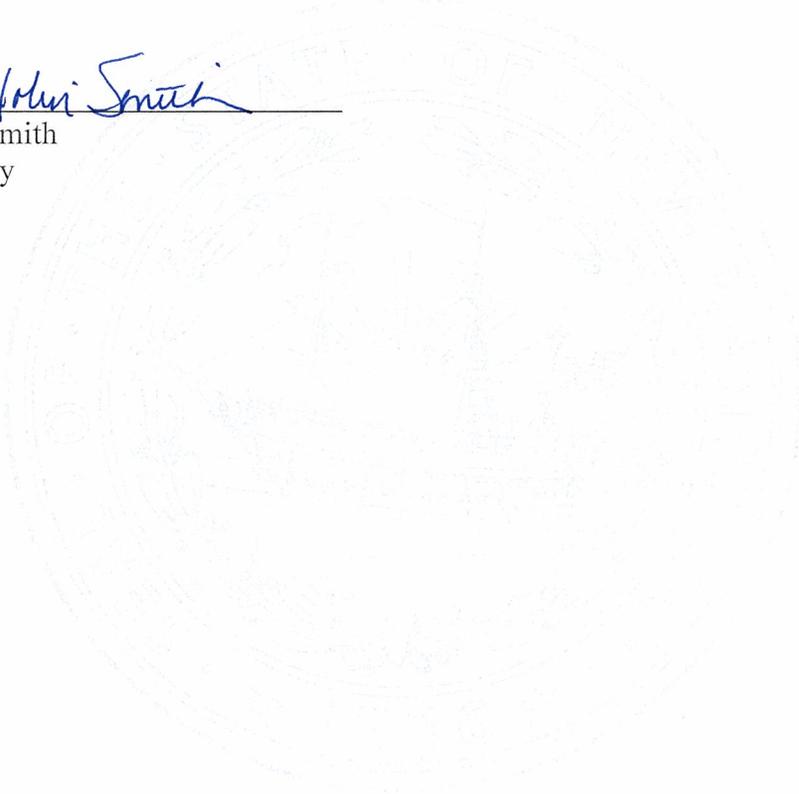


Robert R. Scott
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary



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