

COPY

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2012 TERM

Case No: 2011-0762

Appeal of Comcast Phone of New Hampshire, LLC and
Comcast IP Phone II, LLC

MOTION TO VACATE ORDERS UNDER REVIEW
AS MOOT

NOW COMES Comcast Corporation and its affiliates, Comcast Phone of New Hampshire, LLC and Comcast IP Phone, II, LLC (collectively “Comcast”), and, pursuant to Rule 21 of this Court’s rules, respectfully move this Court to vacate the Orders of the New Hampshire Public Utilities Commission (“Commission”) currently under review by this Court, in light of the newly-enacted New Hampshire Laws of 2012, Chapter 177 (“Senate Bill 48”). In support of this Motion, Comcast states as follows:

INTRODUCTION AND PROCEDURAL HISTORY

On May 22, 2012, this Court accepted Comcast’s appeal of two Orders of the Commission which subjected Comcast’s Voice over Internet Protocol (“VoIP”) service to the Commission’s regulatory jurisdiction. After the Court accepted Comcast’s appeal, the New Hampshire legislature enacted a new statute that rendered the Commission’s decisions moot. For the reasons explained below, Comcast respectfully requests that the Court issue an order vacating the Commission’s decisions. As the U.S. Supreme Court has held, vacatur of a judgment is the proper course where a case becomes moot on appeal through no fault of the appellant, as is the case here, where superseding legislation has mooted the need for the instant appeal – a circumstance that has been universally recognized as warranting vacatur. Comcast is also concurrently filing a separate motion

requesting that the Court stay the briefing schedule in this appeal pending consideration of this motion, given that its disposition could obviate the need for consideration of Comcast's appeal on the merits (and spare the parties and the Court the time and expense of litigating this appeal needlessly).

The orders under review in this appeal were issued by the Commission in proceedings that were initiated by petition filed on March 6, 2009, by the rural local exchange carriers of the New Hampshire Telephone Association ("the RLECs") requesting a Commission inquiry into the appropriate regulatory treatment of Voice over Internet Protocol ("VoIP") services. Following discovery, briefing and participation by the various parties, the Commission on August 11, 2011, issued the first of the relevant orders under review, Order No. 25,262 (the "*Order*"). The *Order* found, *inter alia*: 1) that VoIP services offered by Comcast and Time Warner in New Hampshire constitute the "conveyance of telephone ... messages" under RSA 362:2, thus deciding that providers of such services are "public utilit[ies]" subject to the Commission's jurisdiction; 2) that Comcast's and Time Warner's VoIP services are not "information services" under Section 153(24) of the federal Communications Act, 47 U.S.C. § 153(24); and 3) that state regulation of cable voice service is not preempted by federal law. The *Order* further directed Comcast and Time Warner to comply with registration and other competitive local exchange carrier ("CLEC") requirements for their intrastate cable voice services pursuant to New Hampshire law and Commission rules.

Comcast moved for rehearing and suspension of the *Order* on September 12, 2011, and the Commission on September 22, 2011 suspended the *Order* pending consideration of the issues raised in Comcast's motion. However, the Commission

subsequently on September 28, 2011 denied Comcast's Motions in Order No. 25,274 (the "*Reconsideration Order*"). The *Reconsideration Order* reasserted the Commission's "finding that the cable voice service offered by Comcast and Time Warner constitutes the conveyance of a telephone message that falls within the jurisdiction of the Commission pursuant to RSA 362:2, and that state regulation of such services is not expressly or implicitly preempted by federal law." Order No. 25, 275 (Sept. 28, 2011) at 10.

Comcast appealed both the *Order* and the *Reconsideration Order* (collectively, the "*Orders*") to this Court.¹ On May 22, 2012, this Court issued an order accepting Comcast's appeal, and on June 11, 2012, issued an order directing the Commission to file a certified copy of the record in this proceeding with the Court on or before August 10, 2012. The Commission made the required filing with the Court on August 8, 2012. On August 13, 2012, the Court ordered a briefing schedule requiring Comcast's brief to be filed on or before September 12, 2012 and opposing briefs to be filed on or before October 12, 2012.

The proceedings before this Court, however, have been superseded by events in the legislature. On June 11, 2012, Governor Lynch signed Senate Bill 48, Chapter 177 of the New Hampshire Laws of 2012 ("*Senate Bill 48*"), a copy of which is submitted herewith as Exhibit 1. Among other things, the legislation amends RSA 362 by adding a new section, RSA 362:7, which defines VoIP service, and prohibits, with limited exceptions, any state department, agency, commission or political subdivision from enacting, adopting *or enforcing*, either directly or indirectly "any law, *rule*, regulation,

¹ Comcast has also requested from the Commission a waiver of certain rules and regulations, on which the Commission has yet to issue a final order. The disposition of Comcast's waiver requests (which are likewise mooted by Senate Bill 48) does not affect the issues raised by this motion.

ordinance, standard, *order* or other provision ... that regulates or has the effect of regulating the market entry, market exit, transfer of control, rates, terms, or conditions of any VoIP service or IP enabled service or any provider of VoIP service or IP-enabled service.” RSA 362:7, II. (emphasis added). Senate Bill 48 became effective on August 10, 2012.

ARGUMENT

I. SENATE BILL 48 MOOTS THIS APPEAL.

Under New Hampshire law, “a matter is moot when it no longer presents a justiciable controversy because [the] issues involved have become academic or dead.” *New Hampshire Ass’n of Counties v. State*, 158 N.H. 284, 292 (2009). Consistent with this standard, a “challenge seeking only prospective or declaratory relief is generally mooted where intervening legislative activity renders the prior law inapplicable.” *Londonderry Sch. Dist. SAU #12 v. State*, 157 N.H. 734, 736 (2008). As explained below, Senate Bill 48 supersedes the *Orders*, as those rulings cause Comcast to be subject to New Hampshire regulatory requirements that are now unenforceable pursuant to Senate Bill 48. It therefore renders this controversy moot.

The mandate of the Commission’s *Orders* that Comcast comply with (or seek waivers from) various Commission regulations has been clearly superseded by Senate Bill 48’s directive that prohibits application or enforcement of “any law, rule, regulation, ordinance, standard, order or other provision ... that regulates or has the effect of regulating the market entry, market exit, transfer of control, rates, terms, or conditions of any VoIP service or IP enabled service or any provider of VoIP service or IP-enabled service.” RSA 362:7, II. Because Senate Bill 48 expressly prohibits the Commission from enforcing, either directly or indirectly, any rule or order that regulates or has the

effect of regulating any VoIP service or any provider of VoIP service, the *Orders* no longer have any legal effect on Comcast. As the statute's legislative history emphasizes, "Voice over Internet Protocol services and IP enabled services are not subject to regulation as telecommunications services in New Hampshire." House Calendar, Vol. 34, No. 37 (May 11, 2012), Page 2046-2047 (website copy attached hereto as Exhibit 2).²

Moreover, although Senate Bill 48 does not directly speak to the legal analysis the Commission conducted in the *Order* concerning the federal regulatory classification of Comcast's (and Time Warner's) VoIP services as "telecommunications service[s]" rather than "information service[s]" under the federal Communications Act, it has rendered that analysis moot as well. The *purpose* of the Commission's federal legal analysis was to determine whether New Hampshire state regulatory requirements were preempted by federal law. Now that the Commission is prohibited by Senate Bill 48 from imposing its rules or regulations relating to telephone service to VoIP services in New Hampshire (with the exceptions noted in footnote 2, below), the question of how those services should be *federally* classified in New Hampshire has ceased to be relevant to the Commission's present treatment of Comcast and its interconnected VoIP service.

² RSA 362:7, III contains a savings clause providing that "[t]he prohibitions of paragraph II shall not be construed to" affect certain other provisions of New Hampshire law. But that savings clause preserves provisions that are either (1) laws of general applicability that apply regardless of "public utility" status, or (2) apply equally to cable video services, such that Comcast is already subject to them in its capacity as a cable video provider. The Commission's determination as to whether the provision of VoIP service by a cable video provider renders a provider a "public utility," therefore, is irrelevant to the enforceability of those provisions to the provider. Indeed, Comcast has been unable to identify any currently-existing statute or regulation having any present effect on its VoIP service, the enforceability of which would turn on the Commission's decision.

Finally, Comcast seeks purely prospective relief in this appeal – i.e., to prevent the application of certain of the Commission’s rules to its VoIP service. Because the new legislation took effect as of August 10, 2012, the prospective application of those regulations is now impossible. There is therefore no remaining controversy between Comcast and the Commission, and the case is moot.

II. BECAUSE THIS CASE IS MOOT, THE COURT SHOULD NOT HEAR THIS APPEAL ON THE MERITS.

This Court “generally will refuse to review a question that no longer presents a justiciable controversy because issues involved have become academic or dead.” *Exeter Hosp. Medical Staff v. Board of Trustees of Exeter Health Resources, Inc.*, 148 N.H. 492, 498 (2002). Although this Court has the discretion to “review a question that has become moot if it involves a significant constitutional question or an issue of significant public concern,” *id.*, there is no reason for the Court to so exercise its discretion here. With the enactment of Senate Bill 48, this case now concerns only whether the Commission may exercise its regulatory jurisdiction under a statutory scheme that is no longer applicable to VoIP providers. As such, this appeal involves neither a “significant constitutional question” nor a matter of “significant public concern” that would warrant the Court’s review.

In *Londonderry School District*, for example, the Court declined to hear a constitutional challenge to a statute concerning educational funding, on the ground that the statute had been amended. The Court acknowledged that it had “previously decided disputes that are moot when the matter involves a pressing public interest.” 157 N.H. at 737 (internal quotation marks omitted). But it found that because “the relevant statutory provisions at issue in this case are no longer in effect,” the public interest in hearing the

controversy no longer existed. *Id.* For the same reason, no public interest exists in resolving this controversy on the merits.

Moreover, to the extent legal issues presented in this case (e.g. whether Comcast's VoIP service is an "information service" or "telecommunications service" for federal regulatory purposes) have any significance whatsoever, it would only be with respect to their potential impact on other controversies not before the Court, such as among different parties or in other jurisdictions. But it is well established that resolution of such issues should occur, if at all, in the context of those concrete controversies, rather than in the context of issues that are "academic or dead." *Londonderry*, 157 N.H. at 736 (quotation marks omitted). Indeed, the federal legal classification of interconnected VoIP services remains unresolved by the Federal Communications Commission ("FCC"), which is best situated to resolve questions of interpretation of the Communications Act. This Court should not reach out to decide legal questions unnecessarily, in a moot case, that the FCC may resolve differently and on a national scale.

III. THE COURT SHOULD VACATE THE COMMISSION'S ORDERS.

Because, as explained above, there is no longer a live controversy concerning the Commission's authority to regulate VoIP in the manner previously decided by the Commission in the *Orders*, the Court should vacate the Commission's *Orders*. As the U.S. Supreme Court has stated, when a case becomes moot pending appeal, "vacatur must be decreed for those judgments whose review is . . . prevented through happenstance – that is to say, where a controversy presented for review has become moot due to circumstances unattributable to any of the parties." *U.S. Bancorp. Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 23 (1994) (internal quotation marks omitted); accord *Van Schaack Holdings, Ltd. v. Fulenwider*, 798 P.2d 424, 427-29 (Colo. 1990); *District*

of Columbia v. Am. Univ., 2 A.3d 175, 181-82 (D.C. 2010); *State v. Barclay*, 232 P.3d 327, 330 (Idaho 2010); *City of Eugene v. State, PERB*, 137 P.3d 1288, 1291 (Or. 2006); *Byerly v. South Carolina Nat'l Bank Corp.*, 438 S.E.2d 233, 233 (S.C. 1993); *see also Panterra Corp. v. Am. Dairy Queen*, 908 S.W.2d 300, 300-01 (Tex. App.-San Antonio 1995) (noting that under Texas law, when a case becomes moot while on appeal, all previous orders of lower courts must be vacated regardless of reason case became moot).³ This rule serves the salutary interest of ensuring that “[a] party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment.” *U.S. Bancorp.*, 513 U.S. at 25; *see also In re Burrell*, 415 F.3d 994, 999 (9th Cir. 2005) (noting that “collateral estoppel engenders legal consequences from which a party may continue to suffer harm after a claim has been rendered moot,” and that vacatur is warranted “because of the unfairness of the enduring preclusive effect of an unreviewable decision in the case of a civil action that has become moot on appeal”).⁴

Courts have uniformly held that when an appeal is mooted due to intervening legislation, that legislation qualifies as “circumstances unattributable to any of the parties,” and the decision under review must therefore be vacated. *Diffenderfer v.*

³ Comcast is unaware of any New Hampshire case squarely addressing the issue, but as noted in the text, many state courts follow the U.S. Supreme Court’s view and vacate an order when the case becomes moot on appeal through no fault of the appellant. States that do not follow this rule make clear that such an order, although not vacated, has no collateral estoppel effect. *See, e.g., Personhood Nevada v. Bristol*, 245 P.3d 572, 576 (Nev. 2010). Thus, if the Court were not to vacate the Commission’s decision despite the mootness in this case, Comcast respectfully asks that the Court rule that the Commission’s *Orders* are without any collateral estoppel or other legal effects.

⁴ The concern regarding the collateral effects of the Commission’s *Orders* is not academic; the federal regulatory classification of VoIP service is an issue that is currently pending at the FCC and has also arisen in unrelated disputes with private parties and in other jurisdictions.

Gomez-Colon, 587 F.3d 445, 451-52 (1st Cir. 2009) (“[V]acatur is generally appropriate’ when mootness results from intervening events outside the losing party’s control All circuits to address this issue have held that such legislation is generally considered an intervening, independent event”) (quoting *Kerkhof v. MCI WorldCom, Inc.*, 282 F.3d 44, 53-54 (1st Cir. 2002)); *Chem. Producers & Distribs. Ass’n v. Helliker*, 463 F.3d 871, 879 (9th Cir. 2006) (holding that lower-court decision that becomes moot due to intervening legislation must be vacated, and citing authority from U.S. Supreme Court and Third, Fourth, and D.C. Circuits); accord *Lewis v. Hotel & Rest. Employees Union, Local 25, AFL-CIO*, 727 A.2d 297, 299-302 (D.C. 1999); *West Virginia Educ. Ass’n v. Consol. Pub. Ret. Bd.*, 460 S.E.2d 747, 757, 761 n.37 (W. Va. 1995). Accordingly, this Court should vacate the Commission’s *Orders* as moot.

WHEREFORE, for the reasons stated above, Comcast respectfully requests that this honorable Court:

- A. Issue an order vacating the Commission’s *Orders* because the case is now moot; and
- B. Grant such further relief as it deems just and appropriate.

Date: August 21, 2012

Respectfully submitted,

Comcast Phone of New Hampshire, LLC
And Its Affiliates
By its Attorneys

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Certificate of Service

I hereby certify that a copy of the foregoing Motion has on this 21st day of August, 2012 been sent by first class mail, postage prepaid, to persons listed on the Service List.

S S Geiger
Susan S. Geiger

CHAPTER 177
SB 48 - FINAL VERSION

01/18/12 0200s
05/23/12 2371EBA

2012 SESSION

11-1025
06/03

SENATE BILL **48**

AN ACT relative to state regulation of telephone service providers and clarifying the authority of the public utilities commission to regulate pole attachments.

SPONSORS: Sen. Odell, Dist 8; Sen. Lambert, Dist 13; Sen. Luther, Dist 12

COMMITTEE: Energy and Natural Resources

AMENDED ANALYSIS

This bill defines excepted local exchange carriers and modifies laws regulating rates, charges, and billing as pertain to such carriers.

This bill authorizes the public utilities commission to regulate the safety, vegetation management, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of public utilities and other private entities located within public rights-of-way and on, over, or under state lands and water bodies.

.....
Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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1 II. Except as set forth in paragraph III, notwithstanding any other provision of law to the
2 contrary, no department, agency, commission, or political subdivision of the state, shall enact, adopt,
3 or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order, or other
4 provision having the force or effect of law that regulates or has the effect of regulating the market
5 entry, market exit, transfer of control, rates, terms, or conditions of any VoIP service or IP enabled
6 service or any provider of VoIP service or IP-enabled service.

7 III. The prohibitions of paragraph II shall not be construed to:

8 (a) Affect or limit the application or enforcement of criminal or other laws that apply
9 generally to the conduct of business in the state, including, without limitation, consumer protection,
10 or unfair or deceptive trade practice protections;

11 (b) Affect, mandate, or prohibit the assessment of taxes or nondiscriminatory 911 fees,
12 telecommunications relay service fees, or other fees of general applicability;

13 (c) Modify or affect the rights or obligations of any telecommunications carrier, or any
14 duties or powers of the public utilities commission, under 47 U.S.C. section 251 or 47 U.S.C. section
15 252, as applicable;

16 (d) Affect the authority of the state or its political subdivisions, as applicable, to manage
17 the use of public rights-of-way, including, but not limited to, any requirement for the joint use of
18 poles or other structures in such rights-of-way;

19 (e) Affect or limit the application or enforcement of RSA 371:17 through RSA 371:24,
20 RSA 374:2-a, RSA 374:28-a, RSA 374:34-a, RSA 374:48 through RSA 374:56, RSA 374:59, RSA
21 378:44 through RSA 378:48, or RSA 374:30, II;

22 (f) Affect or modify any obligations for the provision of video service by any party under
23 applicable law.

24 IV. Nothing in this chapter shall be construed to give the commission any additional
25 authority over wireless carriers.

26 362:8 Obligations on Excepted Local Exchange Carriers. Notwithstanding any other law, rule,
27 or order, the commission shall have no authority to impose or enforce any obligation on any excepted
28 local exchange carrier that is not also applicable to all other excepted local exchange carriers,
29 excluding providers of commercial mobile radio service, except:

30 I. Such obligations that arise pursuant to the commission's authority under the
31 Communications Act of 1934, as amended; or

32 II. Such obligations that arose prior to February 1, 2011 that relate to the availability of
33 broadband services, soft disconnect processes and capital expenditure commitments within the state;
34 or

35 III. Such obligations that relate to the provision of services to competitive local exchange
36 carriers, interexchange carriers, and wireless carriers, regardless of technology; or

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1 370:1-a Exceptions. The provisions of this chapter shall not apply to any excepted local
2 exchange carrier.

3 177:9 New Section; General Regulations; Exceptions. Amend RSA 374 by inserting after section
4 1 the following new section:

5 374:1-a Exceptions. Except as provided otherwise in this chapter, and except for RSA 374:2-a,
6 RSA 374:28-a, RSA 374:34-a, RSA 374:48 through RSA 374:56, and RSA 374:59, the provisions of
7 this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service
8 provided to such end user.

9 177:10 Other Public Utilities. Amend RSA 374:22, I to read as follows:

10 I. No person or business entity, *including any person or business entity that qualifies*
11 *as an excepted local exchange carrier*, shall commence business as a public utility within this
12 state, or shall engage in such business, or begin the construction of a plant, line, main, or other
13 apparatus or appliance to be used therein, in any town in which it shall not already be engaged in
14 such business, or shall exercise any right or privilege under any franchise not theretofore actually
15 exercised in such town, without first having obtained the permission and approval of the
16 commission.

17 177:11 Affordable Telephone Service; Rulemaking; Standards. Amend RSA 374:22-p, I to read
18 as follows:

19 I.(a) For the purposes of this section, "Federal Telecommunications Act" means the federal
20 Telecommunications Act of 1996, Public Law [~~104-458~~] *104-104*, 110 Stat. 56.

21 (b) For purposes of this section "basic service" means:

- 22 (1) *Safe and reliable single-party, single line voice service;*
23 (2) *The ability to receive all noncollect calls, at telephone lines capable of*
24 *receiving calls, without additional charge;*
25 (3) *The ability to complete calls to any other telephone line, which is capable*
26 *of receiving calls, in the state;*
27 (4) *The opportunity to presubscribe to interLATA toll carriers;*
28 (5) *The opportunity to presubscribe to intraLATA toll carriers;*
29 (6) *Dialing parity;*
30 (7) *Number portability;*
31 (8) *Enhanced 911, pursuant to the requirements of the department of safety,*
32 *bureau of emergency communications, or its successor agency;*
33 (9) *Access to statewide directory assistance;*
34 (10) *Telecommunications relay service (TRS);*
35 (11) *A published directory listing, at the customer's election;*
36 (12) *A caller identification blocking option, on a per-call basis;*

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1 franchise, works, or system, exercised or located in this state, or contract for the operation of its
2 works and system located in this state, when the commission shall find that it will be for the public
3 good and shall make an order assenting thereto, but not otherwise, *except that commission*
4 *approval shall not be required for any such transfer, lease, or contract by an excepted local*
5 *exchange carrier*. The commission may, by general order, authorize a public utility to transfer to
6 another public utility a part interest in poles and their appurtenances for the purpose of joint use by
7 such public utilities.

8 II. *An incumbent local exchange carrier that is an excepted local exchange carrier*
9 *may transfer or lease its franchise, works, or system, or any part of such franchise, works,*
10 *or system, exercised or located in this state, or contract for the operation of its works and*
11 *system located in this state, when the commission finds the utility to which the transfer is*
12 *to be made is technically, managerially, and financially capable of maintaining the*
13 *obligations of an incumbent local exchange carrier set forth in RSA 362:8 and RSA 374:22-*
14 *p.*

15 374:31 Leases, Etc., When Void. *If commission approval is required pursuant to*
16 *RSA 374:30 for any transfer, lease, or contract, any such attempted transfer, lease, or contract*
17 *shall be void unless the same shall have been approved by the commission.*

18 374:32 Corporate Authorization. *Except when the public utility is an excepted local*
19 *exchange carrier, if such public utility, or the other party to any such transfer, lease, or contract,*
20 *be a corporation and if the commission shall find that the public good so requires, such transfer,*
21 *lease, or contract shall first be authorized by the vote of 2/3 of the shares of the capital stock of each*
22 *of the interested corporations present and voting at meetings duly called to consider the subject; and*
23 *all statutes regulating, protecting, and determining the rights of a dissenting stockholder of a*
24 *railroad in the case of a lease or union with another railroad shall be applicable, and the rights of*
25 *any stockholder of such corporation dissenting from such transfer, lease, or contract, if the same*
26 *shall be authorized as above provided, shall be regulated, protected, and determined by such*
27 *statutes.*

28 374:33 Acquiring Stocks, Etc. No public utility or public utility holding company as defined in
29 section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935 shall directly or indirectly
30 acquire more than 10 percent, or more than the ownership level which triggers reporting
31 requirements under 15 U.S.C. section 78-P, whichever is less, of the stocks or bonds of any other
32 public utility or public utility holding company incorporated in or doing business in this state, unless
33 the commission finds that such acquisition is lawful, proper, and in the public interest, *except that*
34 *commission approval shall not be required for any acquisition of an excepted local*
35 *exchange carrier*. Nothing in this section shall prevent a public utility being in fact the owner on
36 June 1, 1911, of the majority of the capital stock of any other public utility, or leasing or operating

HOUSE RECORD

Second Year of the 162nd General Court Calendar and Journal of the 2012 Session

Vol. 34 Concord, N.H.	Friday, May 11, 2012	No. 37
Contains: Reports and Amendments for May 15 and May 16, Committee of Conference Procedures, House Bills Amended by Senate, Hearings, Meetings and Notices.		

HOUSE CALENDAR

MEMBERS OF THE HOUSE:

The House will meet in Session on Tuesday, May 15, 2012 and Wednesday, May 16, 2012 at 10:00 a.m. If necessary to complete our work on Senate Bills by the deadline set in House Rules, the House will also meet on Thursday, May 17, 2012. This is the time during Session when the situation can change quickly, so I would ask members to be alert and attentive to the bills coming before us.

In furtherance of our efforts to contain costs in the Legislative Branch, the number of printed copies of the daily House Journals will be reduced. Each daily run costs approximately \$1600 and many do not appear to be used. They will no longer be distributed to every member and will not be mailed. Journals will be available in the House anteroom for those who wish to have one. Any member wishing copies of all daily Journals should notify the House Clerk's Office.

Please remember that Representatives Hall is not to be used for any purpose, whether legislative or non-legislative, without the express permission of the Speaker.

You are reminded that material is not to be placed in members' mailboxes in the anteroom behind the Chamber unless and until it has been approved for such distribution by the House Chief of Staff. Also, material is not to be distributed by members in Representatives Hall while the House is in Session.

Members are requested to review House Rules 9 through 16, 24 and 27 with regard to decorum. As the election draws near, civility in general is obviously becoming strained, but even for those who are not well-grounded in acceptable standards of behavior and discourse, these rules establish a minimum level of expected conduct while the House is in Session. In particular, we need to be attentive to the last sentence of Rule 14, which states, "[W]hile a member is speaking, no one shall pass between that member and the other members of the House, nor shall anyone engage in private conversation."

Chairmen and Vice-Chairmen will meet on Tuesday, May 15, 2012 in LOB 305 – 307 at 8:15 a.m. Please make every effort to attend.

William L. O'Brien, Speaker

NOTICE

There will be a Republican Caucus on Tuesday, May 15 at 9:30 a.m. in Representatives Hall.

D.J. Bettencourt, Majority Leader

NOTICE

There will be a Democratic Caucus on Tuesday, May 15, Wednesday, May 16 and Thursday, May 17 at 9:00 a.m. in Rooms 302-304, LOB. (Please note room change.)

Terie Norelli, Democratic Leader

NOTICE OF RECONSIDERATION

This day, May 9, 2012 at 2:25 p.m., Rep. Jerry Bergevin, having voted with the prevailing side, served notice of reconsideration on *SB 270, relative to civil commitment of persons found incompetent to stand trial*, which the House voted

expenses and lost earnings reduced to present value and paid as one lump sum, there will be no possibility of compensation for further complications. Fourth, not only is the bill potentially harmful to the injured party, it is opposed by some of the major insurers in the state, who say they are not set up to pay wages and medical bills on a weekly basis for an undetermined time into the future. An insurance company representative testified that, at best, her company would never make a settlement offer under this bill (thus raising the possibility that four more months could be added to the existing process) or at worst, insurance companies would leave the state. In addition to more difficulty in obtaining coverage, increased medical malpractice premiums are also a risk. Fifth, a representative from the court system has also warned of the difficulty of obtaining qualified hearings officers and advisors because of conflicts with the current definitions, and of the inappropriateness of court involvement in the process. Sixth, members of the minority believe that the best way to ensure justice required by the NH Constitution for injured persons is to fully fund the court system to provide adequate judges and staffers to ensure cases are heard in a timely manner. Finally, although the attachment to the bill of two unrelated matters is allowable under our rules, the minority thinks this maneuver does not further good government.

MUNICIPAL AND COUNTY GOVERNMENT

SB 231, relative to municipal liens. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Philip L Munck for Municipal and County Government: This bill limits the amount of money that a municipal utility can bill for mutually agreed upon work performed on a customer's property to \$250 without a written contract. The bill arises out of a situation where a customer agreed to have a utility work on a water service for about \$2,000 and subsequently was billed approximately \$20,000. The language is similar to provisions imposed by the Public Utilities Commission on investor owned utilities for these situations. **Vote 16-0.**

SB 243, relative to the management of trust funds and capital reserve funds. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Franklin W Sterling for Municipal and County Government: This bill was submitted with language that would add investment advisors to the list of institutions that maybe hired by the trustees of the trust funds to assist in the management of funds under their control and direction; the manner in which the advisors are remunerated for their services is unchanged from existing statute. This bill also adds a new section to RSA 34 that would put capital reserve funds under the same management rules as trust funds. The option to hire investment or management advisors for either trust funds or for capital reserve funds is a decision made at the local level and is not mandated by this legislation. **Vote 15-2.**

PUBLIC WORKS AND HIGHWAYS

SB 324-FN, relative to the use of funds generated by the Hampton Beach parking facilities. **OUGHT TO PASS WITH AMENDMENT.**

Rep. John A Graham for Public Works and Highways: The committee amendment replaces the entire bill, while preserving the original intent to provide additional revenues to the state park fund. As amended, \$200,000 a year will be transferred from the Hampton Beach meter fund to the Hampton Beach capital improvement fund. This is a reduction from the current formula, and will allow additional funds to be placed in the state park fund for use not only at Hampton Beach, but also at other state parks. The second major change to the bill made by the committee is to have 50 percent of the bond approved in the last Capital Budget for rehabilitation of the seawall in Hampton be paid for from the parking meter fund as required by RSA 216:6. Currently 100 percent of the bond would be paid for out of general funds. The committee was unanimous in support of this bill as amended. **Vote 15-0.**

SCIENCE, TECHNOLOGY AND ENERGY

SB 48, relative to state regulation of telephone service providers and clarifying the authority of the public utilities commission to regulate pole attachments. **OUGHT TO PASS.**

Rep. Frank R Holden for Science, Technology and Energy: This bill modernizes the regulation of telecommunications services in four important ways. One, it offers local exchange carriers relief from monopoly era retail regulation, freeing them to compete more effectively. Two, it confirms that Voice over Internet Protocol services and IP enabled services are not subject to regulation as telecommunications services in New Hampshire. Three, it preserves Incumbent local exchange carrier obligations to serve as the carrier of last resort and ensures that all residents have an affordable Basic Service option for phone service. Four, it preserves incumbent local exchange carrier obligations to provide wholesale services to competitors further encouraging competition among providers. Today's communications landscape offers consumers more choice of providers and services than at any other time in history. Modernization of monopoly era regulations will further encourage investment and innovation in New Hampshire's communications infrastructure. The committee believes that this legislation finds the right balance between continued Public Utilities Commission oversight and modernization of regulation to allow consumers and the state of New Hampshire to benefit from a highly competitive communications environment. **Vote 17-0.**

SB 215, establishing a study committee on updating and improving the procedures and criteria for review of projects by the site evaluation committee. **INEXPEDIENT TO LEGISLATE.**

Rep. Frank R Holden for Science, Technology and Energy: The site evaluation committee makes decisions about the selection of sites for energy facilities, including the routing of high voltage transmission lines and energy transmission pipelines. In making these decisions it balances the state's need for new energy facilities with environmental considerations. The site evaluation committee is able to strike that balance and the changes and additional oversight that would result from this bill are not needed. **Vote 16-1.**

SB 218-FN, relative to electric renewable portfolio standards. **OUGHT TO PASS WITH AMENDMENT.**