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THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2011-0762

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

**OBJECTION TO COMCAST MOTION TO VACATE
COMMISSION ORDERS UNDER REVIEW AS MOOT**

NOW COMES the State of New Hampshire, Public Utilities Commission, by and through its attorneys, the Office of the Attorney General, and respectfully objects to the Motion to Vacate Orders Under Review as Moot (Motion to Vacate) filed on August 21, 2012 by the appellants (collectively, Comcast). Comcast's interpretation of the recently enacted Laws of 2012, chapter 177 as set forth in its Motion to Vacate, poses issues, the resolution of which may significantly impact the jurisdiction of the New Hampshire Public Utilities Commission (the Commission) in a manner not consistent with or intended by the statute.

Comcast's Motion to Vacate requests that this Court vacate the two orders of the Commission under appeal in the instant proceeding, Order No. 25,262 (August 11, 2011) and Order No. 25,275 (September 28, 2011), as a result of the enactment of Laws of 2012, Chapter 177 (SB 48) effective on August 10, 2012. In these orders the Commission ruled that Comcast is a public utility providing telephone service as defined in RSA 362:2 and that, because federal law does not preempt state regulatory authority on this issue, the Commission has jurisdiction under state law to regulate Comcast as a public utility.

Comcast argues that SB 48 limits the scope of the Commission's jurisdiction to regulate Comcast's retail operations as a provider of VoIP service. Even so, this would not eliminate the Commission's jurisdiction over Comcast entirely. Rather, SB 48 specifies a narrow list of areas in which the Commission no longer regulates VoIP service, including the market entry, market

exit, transfer of control, rates, terms or conditions of VoIP or IP-enabled service or any provider of such services. What Comcast fails to make clear, however, is that SB 48 specifies a broad list of areas in which regulation by the Commission must be continued, including enforcement of certain provisions of the federal Telecommunications Act of 1996 (Telecom Act), as well as RSAs 371:17-24 (acquisition of property or rights), 374:2-a (herbicide use), 374:28-a (slamming), 374:34-a (pole attachments), 374:48-56 (underground utility damage prevention), 374:59 (telephone number conservation), 378:44-48 (billing by public utilities) and 374:30,II (public utility leases). *See* RSA 362:7, III.

Importantly, SB 48 does *not* change or affect the definition of public utility in RSA 362:2. Thus, Comcast's argument that SB 48 supersedes the Commission's rulings in Order Nos. 25,262 and 25,275 that Comcast is a public telephone utility as defined in RSA 362:2 is not valid. Nor does SB 48 deprive the Commission's rulings of practical significance, as Comcast asserts. RSA 362:7, III(c), for example, preserves Commission authority delegated under 47 U.S.C. §251 and §252 *et seq.* of the Telecom Act regarding interconnections between telecommunications carriers.

Regulation of telephone utilities under state and federal law is complex. SB 48 is also complex and its implementation is not as straightforward as Comcast's arguments suggest. Implementation should be done carefully in order to avoid unintended consequences. The Commission is undertaking a comprehensive review of its telephone utility rules in Docket No. DRM 12-036 for just that purpose and all interested parties, including Comcast, are encouraged to participate in that ongoing stakeholder process.

The rural incumbent carriers, except the affiliates of FairPoint Communications, Inc., of the New Hampshire Telephone Association (the RLECs), filed an objection to the Motion to

Vacate on September 6, 2012. The State joins the RLECS in objecting to the Motion to Vacate.¹ In particular, the State agrees with the RLECs that Comcast's view of SB 48 is "an overbroad and erroneous interpretation of the law as enacted"; that "nothing in SB 48 has disturbed [the] holding that Comcast's VoIP offering is a telephone utility service"; that SB 48 "did not create a blanket exemption for VoIP from any and all laws related to telecommunications service"; and that SB 48 "has no prior effect on the VoIP Order (issued one year earlier)." NHTA Objection at 2, 3 and 4. Further, the effect of SB 48 on the Commission's authority regarding utility assessments and pole attachments discussed by the RLECs in their objection are among the areas that need to be carefully considered as SB 48 is implemented through rulemaking and Commission adjudication.

Comcast's arguments suggest that its VoIP services would no longer be subject to Commission authority in any manner, contrary to the plain meaning of SB 48. For the reasons stated above, vacating the Commission's orders on the basis of Comcast's mootness argument would be inappropriate.

WHEREFORE, the State of New Hampshire, Public Utilities Commission, respectfully requests that this Court:

- A. Deny the Motion to Vacate Orders Under Review as Moot; and
- B. Grant such other and further relief as justice may require.

¹ Doing so should not be construed as a prejudgment of any issue that may arise in the implementation of SB 48.

Respectfully submitted,

STATE OF NEW HAMPSHIRE,
PUBLIC UTILITIES COMMISSION

By its attorney,

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September 7, 2012



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CERTIFICATE OF SERVICE

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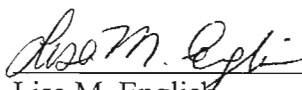
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