

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DT 12-036

RULEMAKING
Puc 400 – Telephone Service

COMMENTS OF THE
NEW HAMPSHIRE TELEPHONE ASSOCIATION

November 7, 2013

TABLE OF CONTENTS

Puc 401.02 Application.....	3
Puc 402.07 Cyber attack	5
Puc 402.11 Gross utility revenue	6
Puc 402.1X Nonbasic service	7
Puc 402.16 Reportable accident.....	8
Puc 402.19 Significant facility disruption	10
Puc 404.02 Authorization required to provide voice service.....	12
Puc 404.03 Denial of Registration	15
Puc 404.04 Assessment.....	16
Puc 404.07 Accident Notifications	18
Puc 405.02 Slamming Prohibited	21
Puc 405.03 Transfers of Customer Base.....	23
Puc 405.04 Cramming Prohibited.....	26
Puc 405.05 Number Portability Notice	28
Puc 406.01 Construction, Installation and Maintenance of Physical Plant	30
Puc 406.02 Emergency Operations.....	33
Puc 406.03 Significant facility disruption	35
Puc 407.03 Network Changes.....	36
Puc 407.05 Carrier to Carrier Migrations	37
Puc 407.06 Directories.....	39
Puc 409.03 Form T-3 Utility Accident Report	40
Puc 410.03 Basic Service.....	42
Puc 410.04 ILEC Discontinuations of Basic Service	46
Puc 410.05 Complaints regarding basic service	48
Puc 4XX.01 Basic Service Rate Changes.....	50
Puc 411.0X Basic Service.....	51
Puc 412.01 Form ILEC-1 Annual Report.....	53

INTRODUCTION AND SUMMARY

Pursuant to the Commission's Secretarial Letter dated October 3, 2013, the member companies of the New Hampshire Telephone Association ("NHTA")¹ are pleased to comment on the Commission's latest proposed Chapter Puc 400 Rules for Telecommunications.²

Last year, Title 34 of the New Hampshire Revised Statutes was substantially revised by 2012 N.H. Laws Chap. 177 ("SB 48"). SB 48 was intended to overhaul a regulatory scheme that was a relic of an era when local exchange telephone service was considered a "natural monopoly," and replace it with a scheme that recognizes that robust competition for local telecommunications services abounds in New Hampshire and that all telephone service providers should be free to compete on a level playing field. To that end, SB 48 deregulated end user telephone services to a very great extent, with a few safeguards to ensure that no customer would be completely without access to telephone service, and that competition would continue to develop. By so altering the regulatory landscape in New Hampshire, SB 48 has made it necessary to rewrite and readopt most of the rules by which the Commission regulates telephone service. Accordingly, the Commission released a proposal on April 11, 2013 which, following a series of hearings and technical sessions, it revised on June 4, 2013. Shortly afterwards, the legislature enacted 2013 N.H. Laws Chap. 279 ("HB 542") which clarified certain aspects of SB 48. Accordingly, the Commission made further revisions to its proposed rules, which it released on October 3, 2013.

As the following comments explain, NHTA believes that the Commission's latest proposal is considerably more reflective of the intent of SB 48, although there is still room for refinement in many respects. Some of the proposed rules continue to draw on laws and policy that are either beyond the Commission's statutory purview or which do not confer the authority that is presumed. For example, the proposed rules still reflect a conviction that the Commission has a continuing role in basic network survival of all telephone companies, as if competition is not a factor in ensuring network quality. Furthermore, the Commission has maintained the change in its interpretation of the distinction between service discontinuance and service disconnection as they relate to rules regarding termination of service. These examples are non-exclusive, and there are others that are explained in greater detail in the following pages.

¹ NHTA is comprised of 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; Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE, Union Telephone Co. and Wilton Telephone Company, Inc.

² Please note that FairPoint Communications abstains from the comment regarding proposed rules Puc 404.02 and 404.03. FairPoint's territory is already open to competitive entry, and so it takes no position on this issue.

The following comments are accompanied by recommendations for revisions to the proposed rules that make them conform with the letter and intent of SB 48. The comments are comprised of two parts: 1) a discussion of each rule with which NHTA takes issue and 2) a separate “redline” of the proposed rules as an aid for visualizing how the recommendations are reflected in the rules. NHTA appreciates the cooperative effort of the Commission Staff and other industry parties in this major undertaking, and looks forward to further discussions to narrow any differences the parties may have.

Puc 401.02 Application

In proposed rule Puc 401.02, the Commission describes the extent to which the Chapter 400 rules apply:

Puc 401.02 Application. Parts 401 through 409 of this chapter shall apply to all telephone utilities except to the extent preempted by the Telecommunications Act of 1996. Part 410 of this chapter shall apply to all ILECs except to the extent preempted by the Telecommunications Act of 1996. Parts 411 through 412 of this chapter shall apply to all ILECs not operating as ELECs except to the extent preempted by the Telecommunications Act of 1996. These rules do not apply to VoIP and IP enabled services pursuant to RSA 362:7, II. In addition, the following commission rules shall apply to all telephone utilities except to the extent preempted by the Telecommunications Act of 1996:

Puc 102, relative to definition of terms
Puc 200, procedural rules;
Puc 800, underground utility damage protection program;
Puc 1300, utility pole attachments; and
Puc 1600, tariffs.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:3 (Extent of Commission power)

DISCUSSION: To the extent that the rules are designating the services to which the Chapter 400 rules do not apply, this rule should also mention that, except where expressly stated, the rules also do not apply to nonbasic service.

RECOMMENDATION: Proposed rule Puc 401.02 should be revised as follows:

Puc 401.02 Application. Parts 401 through 409 of this chapter shall apply to all telephone utilities except to the extent preempted by the Telecommunications Act of 1996. Part 410 of this chapter shall apply to all ILECs except to the extent preempted by the Telecommunications Act of 1996. Parts 411 through 412 of this chapter shall apply to all ILECs not operating as ELECs except to the extent preempted by the Telecommunications Act of 1996. Except where expressly stated, these rules do not apply to VoIP and IP enabled services pursuant to RSA 362:7, II or to nonbasic service pursuant to RSA 374:22-p, I(c). In addition, the following commission rules shall apply to all telephone utilities except to the extent preempted by the Telecommunications Act of 1996:

Puc 102, relative to definition of terms

Puc 200, procedural rules;

Puc 800, underground utility damage protection program;

Puc 1300, utility pole attachments; and

Puc 1600, tariffs.

Puc 402.07 Cyber attack

In proposed rule Puc 402.07, the Commission proposes to define a “cyber attack”:

Puc 402.07 “Cyber attack” means a deliberate, unauthorized exploitation of computer systems, technology-dependent enterprises and networks.

As support for its authority to create this definition, the Commission cites:

- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:4 (Duty to keep informed)

This definition is referenced solely in proposed rule Puc 406.02, which requires ELECs and ILECs to make provisions for various emergencies and make those plans available for Commission inspection. Cyber attacks are included in the list of emergencies:

Puc 413.03 Emergency Operations.

ELECs and ILECs shall make reasonable provisions to meet emergencies resulting from any of the following:

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(f) Cyber attacks;

DISCUSSION: NHTA disagrees with the establishment of this definition. First, on its face, this definition is vague and insufficient to describe all of the actions that are generally considered to be cyber-attacks, (*e.g.* identity theft, malware, DDOS attacks, slander, stalking) and does not provide an objective standard. Furthermore, this definition exists solely in reference to proposed Rule 413.03, which itself is invalid as to most VSPs and unreasonably burdensome as to non-ELEC ILECs and should be deleted, as explained later in these comments. Consequently, this definition serves no purpose.

RECOMMENDATION: Proposed Rule Puc 402.07 should be deleted in its entirety.

Puc 402.11 Gross utility revenue

In proposed rule Puc 402.11, the Commission proposes the definition of “gross utility revenue” for purposes of calculating the annual utility assessment:

Puc 402.11 “Gross utility revenue” means revenue earned by the utility from New Hampshire customers for voice service. Gross utility revenue includes any payphone revenues.

As support for its authority to create this definition, the Commission cites:

- RSA 363-A:2 (Assessments)
- RSA 363-A:4 (Collection of assessments)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)

This definition is referenced solely in proposed rules Puc 404.04 and Puc 409.02, which relate to assessments.

DISCUSSION: Under the terms of RSA 363-A:2 as it is currently written, this rule should be revised to emphasize that, for purposes of the rule, assessments should be based solely on *intrastate* revenues. However, as discussed below in the comment to proposed rule Puc 404.04, it may be prudent to simply table this rule pending developments regarding pending legislation and the current Commission proceeding related to assessments.

RECOMMENDATION: Proposed rule Puc 402.11 should be eliminated for the time being. Should it be retained, it should be revised as follows:

Puc 402.11 “Gross intrastate utility revenue” means revenue earned by the utility from New Hampshire customers for intrastate voice service. Gross intrastate utility revenue includes any payphone revenues.

Furthermore, consistent with this recommendation, rule Puc 409.02(b) (Form T-2 Assessment Report), should also be revised to refer to “gross intrastate utility revenue.”

Puc 402.1X Nonbasic service

DISCUSSION: The proposed rules do not include a definition of “nonbasic” service. This definition should be included in order to reinforce the distinction between basic service and all other services, and to clarify that basic service is not a component of any other services, but is a distinct offering alone. This is particularly important in delineating the Commission’s authority in regard to basic service as opposed to all other end user services.

RECOMMENDATION: An additional rule, consistent with the language of SB 48, should be added as follows:

<p>Puc 402.1X “Nonbasic service” means any telecommunications service that is not basic service as described in Puc 402.02. Any combination of basic service along with any other service offered by the telecommunications service provider is nonbasic service.</p>

Puc 402.16 Reportable accident

In proposed rule Puc 402.16, defining a reportable accident, the Commission retains a number of characteristics from the existing rule, including that the utility report accidents of “comparable” severity, and incorporates elements of the current definition of a “significant accident”:

Puc 402.16 “Reportable accident” means an accident in connection with the utility’s property, facilities or service which:

- (a) A fatality has occurred;
- (b) Any person has received an injury which requires in-patient hospitalization, to the extent known by the utility;
- (c) Any person has received an injury which incapacitates that person from active work for a total of 6 days or more during the 10 days immediately following the accident, to the extent known by the utility;
- (d) Property damage over \$25,000 has occurred, to the extent known by the utility;
- (e) An electrical contact has occurred;
- (f) A public road has been closed;
- (g) Damage to the utility’s facilities interrupts service to all of the utility’s customers in an entire telephone exchange or municipality for a period of 15 minutes or longer; or
- (h) Consequences of a magnitude or severity comparable to those described in (a) through (g) above are involved.

As support for its authority to create this definition, the Commission cites:

- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1 (Safe and adequate service)
- RSA 374:3 (Extent of Commission power)

This definition is referenced in proposed rule Puc 407.04, which describes the accident reporting procedures, and in proposed rule Puc 409.03, the Form T-3 Utility Accident Report.

DISCUSSION: Subsections (b) through (h) are overly burdensome and beyond the scope of providing safe and reliable utility service to end users. Also, subsection (h) in particular is vague and ambiguous and, unlike the ones preceding it, does not provide an objective standard. The fact that it is part of the existing rules does not cure this defect.

RECOMMENDATION: Proposed Rule Puc 402.16, subsections (b) through (h), should be deleted in their entirety. The revised rule should read as follows:

Puc 402.16 "Reportable accident" means an accident in connection with the utility's property, facilities or service which:

- (a) A fatality has occurred.

Puc 402.19 Significant facility disruption

In proposed rule Puc 402.19, defining a significant facility disruption, the Commission proposes to revise the current definition of a “significant service outage” in current rule Puc 402.49 by invoking the concept of a “facilities disruption”:

Puc 402.19 “Significant facilities disruption” means the inability of an ELEC or ILEC’s facilities to reliably carry telephone messages in New Hampshire that affects:

- (a) all customers in a similar manner, such as interconnection failures;
- (b) where dial tone is interrupted for at least 900,000 user minutes.

As support for its authority to create this definition, the Commission cites:

- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1 (Safe and adequate service)
- RSA 374:3 (Extent of Commission power)

This definition is referenced in the following proposed rules:

- Puc 408.02(d), ELEC and ILEC Common Reports and Filings, Event driven

DISCUSSION: This and related rules manifest a belief in the Commission’s continuing authority over basic network survival and integrity. For a complete discussion of the Commission’s interpretation of its authority to ensure basic network survival, please refer to the discussion of proposed rule Puc 406.01 (Construction, Installation and Maintenance of Physical Plant), later in these comments.

In regard to this rule, it is unnecessary as it is redundant of the requirements in Part 4 of the FCC rules, 47 CFR § 4.1 - 4.13, describing service outage reporting. Moreover, to the extent that the Commission retains any authority over service outages, this authority only extends to service provided by ILEC-NELECs, consistent with the discussion later regarding rule Puc 406.01. Even in that case, if any part of this rule is retained, the phrase “service outage” should remain. The phrase “Inability to reliably carry telephone messages” is ambiguous and, unlike the terminology in the current rule, does not provide an objective standard.

RECOMMENDATION: Proposed rule Puc 402.19 should be deleted in its entirety.

Furthermore, consistent with this recommendation, rules Puc 406.03 (Significant Facility Disruption) and Puc 408.02(d) (ELEC and ILEC Common Reports and Filings, Event driven, Form T-5 Facility Disruption Report) should also be deleted in their entirety, because they involve reporting of significant facilities disruptions.

Puc 404.02 Authorization required to provide voice service

[NOTE: *FairPoint abstains from the comment on this rule*]

In proposed rule Puc 404.02, the Commission proposes to modify existing rule Puc 431.01 pertaining to the authorization required to provide voice service. Subsections (c) and (e) apply to entry by voice service providers into the franchise territory of rural ILECs:

Puc 404.02 Authorization Required to Provide Voice Service.

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(c) If the applicant seeks to provide service in the territory of an RTC, such RTC shall be provided an opportunity to propose to the commission that the ELEC be required by the commission to meet the requirements of 47 USC 253(f) regarding eligible telecommunications carrier qualifications. The commission shall determine whether to impose such a requirement through an adjudicative proceeding.

(d) Unless the commission denies an application for ELEC registration pursuant to Puc 404.03, the commission shall issue a telephone utility identification number authorizing the applicant to provide voice service in the specified territory. Such authorization may include any requirement imposed pursuant to (c) above.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:3 (Extent of Commission power)
- RSA 374:22, I (Permission to conduct business)

DISCUSSION:

Section 253 of the federal Communications Act provides that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the

ability of any entity to provide any interstate or intrastate telecommunications service,³

but that, still,

[i]t shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214 (e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service.⁴

Proposed Rule 404.02(c) is consistent with section 253(f), in that it provides an opportunity for the Commission to require telecommunications carriers in rural areas to meet the requirements of an eligible telecommunications carrier (“ETC”). It is also consistent with relevant holdings by the New Hampshire Supreme Court, which has held that “Section 253(a) . . . does not evince Congress’s determination that competition in a single service territory always is in the public good” and that the Commission must still make that public good determination under RSA 374:22-g, I.⁵ The Court also affirmed the Commission’s intention to adopt administrative rules to address govern competitive entry into rural territories, reserving for later as to whether such rules comported with the relevant law.⁶

The Commission has never held that it could not place conditions on market entry. It has only found that the considerations of RSA 374:22-g, II were so burdensome as to represent a material inhibition to market entry. In making this finding, it determined to

commence a rulemaking to address, in a competitively neutral manner, whether additional or modified requirements are necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers in the context of competitive entry.⁷

The proposed rule is the outcome of that process and comports with the law, because it is competitively neutral and applies to all prospective market entrants.

³ 47 U.S.C. § 253(a).

⁴ 47 U.S.C. § 253(f).

⁵ Appeal of Bretton Woods Tel. Co. *et al.* 164 N.H. 379, 390 (2012) (emphasis original).

⁶ *Id.*

⁷ DT 10-183; Order No. 25,277 at 36.

NHTA does, however, believe that the proposed rule can be improved in certain respects. First, it must be modified to clarify that no registration will be approved and no telephone utility identification number will issue until the RTC has had the opportunity to propose the ETC requirements and the Commission has made its decision. NHTA can conceive of no workable method by which the proposal can be entertained after the registration has been approved. By this time, the new entrant will have had time to enter the market and obtain customers, at which point it seems unlikely that the Commission could find it is reasonably in the public good to force the new entrant to discontinue services if the new entrant declines to accept the conditions of service that the Commission hands down.

Second, a sub-paragraph should be added to paragraph (a) of rule 404.03(a), confirming that the refusal of an applicant to accept the section 253(f) conditions, if imposed by the Commission, is cause for denial of the registration.

RECOMMENDATION: Proposed Rule Puc 404.02 should be revised to read as follows:

Puc 404.02 Authorization Required to Provide Voice Service.

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(c) If the applicant seeks to provide service in the territory of an RTC, before the commission issues the applicant a telephone utility identification number, such RTC shall be provided an opportunity to propose to the commission that the ELEC be required by the commission to meet the requirements of 47 USC 253(f) regarding eligible telecommunications carrier qualifications. The commission shall determine whether to impose such a requirement through an adjudicative proceeding.

Puc 404.03 Denial of Registration

[NOTE: *FairPoint abstains from the comment on this rule*]

In proposed rule Puc 404.03, the Commission proposes to modify existing rule Puc 431.02 pertaining to the denial of a requested authorization required to provide voice service.

Puc 404.03 Denial of Registration. When determining whether to grant or deny an application for registration pursuant to Puc 404.02, the following provisions shall apply:

- (a) The commission shall deny an application for registration if, and only if, it determines that the applicant or its general partners, corporate officers, directors of the company, limited liability company managers or officers:
 - (1) Have committed an act that would constitute good cause to find a violation under these rules;
 - (2) Have, within the 10 years immediately prior to registration, had any civil, criminal or regulatory sanctions or penalties imposed against them pursuant to any state or federal consumer protection law or regulation;
 - (3) Knowingly made a material false statement of fact in the application; or
 - (4) Demonstrated on its application such flagrant or repeated violations of the requirements to operate as a utility or a competitive carrier in other state(s) that the commission determines that it is not in the public good to allow registration; and
- (b) In the event that the commission denies an application for registration, the applicant may, within 30 days, file a request for reconsideration.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:3 (Extent of Commission power)
- RSA 374:22, I (Permission to conduct business)

DISCUSSION: As discussed above, a sub-paragraph should be added to paragraph (a) of rule 404.03(a), confirming that the refusal of an applicant to accept the section 253(f) conditions, if imposed by the Commission, is cause for denial of the registration.

RECOMMENDATION: Proposed Rule Puc 404.03 should be revised to read as follows:

Puc 404.03 Denial of Registration. When determining whether to grant or deny an application for registration pursuant to Puc 404.02, the following provisions shall apply:

- (a) The commission shall deny an application for registration if, and only if, it determines that the applicant or its general partners, corporate officers, directors of the company, limited liability company managers or officers:
 - (1) Have committed an act that would constitute good cause to find a violation under these rules;
 - (2) Have, within the 10 years immediately prior to registration, had any civil, criminal or regulatory sanctions or penalties imposed against them pursuant to any state or federal consumer protection law or regulation;
 - (3) Knowingly made a material false statement of fact in the application; or
 - (4) Demonstrated on its application such flagrant or repeated violations of the requirements to operate as a utility or a competitive carrier in other state(s) that the commission determines that it is not in the public good to allow registration; or
 - (5) Have declined to meet all requirements resulting from any proceeding pursuant to Rule 404.02(c) preceding and
- (b) In the event that the commission denies an application for registration, the applicant may, within 30 days, file a request for reconsideration.

Puc 404.04 Assessment

This is a new proposed rule that implements the RSA 363-A, the statute related to the funding of the operations of the Commission.

Puc 404.04 Assessment.

- (a) Telephone utilities shall be assessed pursuant to RSA 363-A:2 based on their gross utility revenues, and shall remit such assessment to the commission, pursuant to RSA 363-A:4.
- (b) When a telephone utility offers a combination of voice services and non-utility services such as Internet or video for a single price, the gross utility revenue portion shall be calculated based on the prices at which the voice services are offered on a standalone basis.
- (c) If the utility does not offer the voice services on a standalone basis, the calculation shall be based on the prices at which the largest ILEC in the state offers such services.

As support for its authority to establish this rule, the Commission cites:

- RSA 363-A:2 (Assessment)

DISCUSSION: The subject of utility assessments and their enabling statute are the subject of pending legislation and a Commission proceeding. It is uncertain if this proposed rule will reflect the enabling statute once it is established.

RECOMMENDATION: Proposed Rule Puc 404.04 should be eliminated and the subject tabled pending further developments.

Puc 404.07 Accident Notifications

Proposed rule Puc 404.07 retains the substance of current rule Puc 411.08 and provides that:

Puc 404.07 Accident Notifications.

- (a) ELECs and ILECs shall notify the commission of reportable accidents occurring within the state of New Hampshire in connection with its facilities or property.
- (b) The ELEC or ILEC shall notify the commission by telephone as follows:
 - (1) During regular commission hours, the ELEC or ILEC shall contact the first representative listed for telephone accident notifications on the accident notification roster, at the commission telephone number provided, and, if that representative is unavailable, the ELEC or ILEC shall work sequentially through the accident notification roster until it speaks directly with one of the commission representatives listed therein;
 - (2) Outside of regular commission hours, the ELEC or ILEC shall:
 - a. Contact a commission representative listed on the accident notification roster at the after-hours telephone number provided, starting with the representative listed for telephone accident notifications, and working sequentially through the list until the ELEC or ILEC speaks directly with one of the commission representatives listed therein; and
 - b. If direct contact with a commission representative pursuant to a. above is not successful, the ELEC or ILEC shall call the commission general telephone listing, provided in the accident notification roster, and leave a voice mail message:

1. Identifying the ELEC or ILEC and the name and return telephone number of the individual attempting to report; and

1. Stating that an accident requiring notification has occurred and will be reported when the commission next opens;

(3) The ELEC or ILEC shall provide the commission with the following information:

a. The name of the ELEC or ILEC;

b. The name of the person making the report and the telephone number at which they can be reached;

c. A brief description of the accident or event and location;

d. The time at which:

1. The accident or event occurred; and

2. The ELEC or ILEC was first notified of the accident or event;

e. A description of any fatalities, personal injuries, and damages; and

f. Any other information relevant to the cause of the accident and the extent of the damages; and

(4) Notification of a reportable accident shall not be deemed complete until an ELEC's or ILEC's representative:

a. Speaks to a commission representative listed on the accident notification roster; and

b. Communicates to the commission representative the information required by (3) above;

(c) In addition to notifying the commission, an ELEC or ILEC shall file Form T-3 Utility Accident Report as described in Puc 409.03, for each reportable accident within 10 business days of the accident.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1 (Safe and adequate service)
- RSA 374:3 (Extent of Commission power)

DISCUSSION: As with rule Puc 402.17, discussed above, proposed rule Puc 404.07 is overly burdensome, ambiguous in its standards and more than necessary for providing safe and reliable utility service to end users.

RECOMMENDATION: Subsection (b) of proposed rule Puc 404.07 should be deleted in its entirety. The revised rule should read as follows:

Puc 404.07 Accident Notifications

- (a) ELECs and ILECs shall notify the commission of reportable accidents occurring within the state of New Hampshire in connection with its facilities or property by filing Form T-3 Utility Accident Report as described in Puc 409.03, for each reportable accident within 10 business days of the accident.

Puc 405.02 Slamming Prohibited

Proposed rule Puc 405.02 is a non-controversial prohibition against slamming:

405.02 Slamming Prohibited.

- (a) ELECs and ILECs shall comply with RSA 374:28-a and FCC slamming regulations, 47 CFR 64.1100-1170 and 1190.
- (b) If, after notice and opportunity for hearing, the commission finds that an ELEC or ILEC has switched a customer's selection of carrier without authorization, the ELEC or ILEC shall be subject to an administrative fine, not to exceed \$2,000 per customer line switched without authorization, pursuant to RSA 374:28-a, II.
- (c) After notice and opportunity for hearing, the commission may withdraw any authorization granted to an ELEC or ILEC found to have engaged in slamming in violation of RSA 374:28-a.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, I (Obligations imposed by the federal Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1-a (Savings clause for slamming violations)
- RSA 374:28-a (Slamming prohibition)

DISCUSSION: In its comments to proposed rule Puc 401.02, NHTA has proposed that the language of that rule include an exemption for nonbasic service, *except where expressly stated*. This rule is one example of where an express statement including nonbasic service is needed.

RECOMMENDATION: Proposed rule 405.02 should be revised as follows:

405.02 Slamming Prohibited.

- (a) Notwithstanding any of the exceptions in Rule Puc 401.02, ELECs and ILECs shall comply with RSA 374:28-a and FCC slamming regulations, 47 CFR 64.1100-1170 and 1190.
- (b) If, after notice and opportunity for hearing, the commission finds that an ELEC or ILEC has switched a customer's selection of carrier without authorization, the ELEC or ILEC shall be subject to an administrative fine, not to exceed \$2,000 per customer line switched without authorization, pursuant to RSA 374:28-a, II.
- (c) After notice and opportunity for hearing, the commission may withdraw any authorization granted to an ELEC or ILEC found to have engaged in slamming in violation of RSA 374:28-a.

Puc 405.03 Transfers of Customer Base

Proposed rule Puc 405.03 is a non-controversial complement to the slamming rule for situations in which a mass migration of a customer base is involved:

Puc 405.03 Transfers of Customer Base.

- (a) Notwithstanding any of the exceptions in Rule Puc 401.02, in connection with any transfer of customer base in which the acquiring carrier is a telephone utility, the acquiring carrier shall file with the commission the following documents:
 - (1) A copy of the letter notification and any subsequent notices of changed information submitted to the FCC pursuant to 47 CFR 64.1120(e), to be filed at the same time of submission to the FCC; and
 - (2) Form T-4 Transfer of Customer Base Report as described in Puc 409.04, to be filed 30 days prior to the occurrence of the transfer of customer base.
- (b) In connection with any transfer of customer base in which the acquiring carrier is not a telephone utility, the selling or transferring carrier shall file with the commission the following documents:
 - (1) A copy of the letter notification and any subsequent notices of changed information submitted by the acquiring carrier to the FCC pursuant to 47 CFR 64.1120(e), to be filed within 3 days of submission to the FCC; and
 - (2) Form T-4 Transfer of Customer Base Report as described in Puc 409.04, to be filed 30 days prior to the occurrence of the transfer of customer base.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:7, III(e) (Savings clause related to slamming statute)
- RSA 362:8, I (Obligations imposed by the federal Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1-a (Savings clause for slamming violations)
- RSA 374:28-a (Slamming prohibition)

DISCUSSION: In its comments to proposed rule Puc 401.02, NHTA has proposed that the language of that rule include an exemption for nonbasic service, *except where expressly stated*. This rule is one example of where an express statement including nonbasic service is needed.

Puc 405.03 Transfers of Customer Base.

- (a) In connection with any transfer of customer base in which the acquiring carrier is a telephone utility, the acquiring carrier shall file with the commission the following documents:
 - (1) A copy of the letter notification and any subsequent notices of changed information submitted to the FCC pursuant to 47 CFR 64.1120(e), to be filed at the same time of submission to the FCC; and
 - (2) Form T-4 Transfer of Customer Base Report as described in Puc 409.04, to be filed 30 days prior to the occurrence of the transfer of customer base.
- (b) In connection with any transfer of customer base in which the acquiring carrier is not a telephone utility, the selling or transferring carrier shall file with the commission the following documents:
 - (1) A copy of the letter notification and any subsequent notices of changed information submitted by the acquiring carrier to the FCC pursuant to 47 CFR 64.1120(e), to be filed within 3 days of submission to the FCC; and
 - (2) Form T-4 Transfer of Customer Base Report as described in Puc 409.04, to be filed 30 days prior to the occurrence of the transfer of customer base.

RECOMMENDATION: Proposed rule 405.03 should be revised as follows:

Puc 405.03 Transfers of Customer Base

(a) Notwithstanding any of the exceptions in Rule Puc 401.02, In connection with any transfer of customer base in which the acquiring carrier is a telephone utility, the acquiring carrier shall file with the commission the following documents:

- (1) A copy of the letter notification and any subsequent notices of changed information submitted to the FCC pursuant to 47 CFR 64.1120(e), to be filed at the same time of submission to the FCC; and
- (2) Form T-4 Transfer of Customer Base Report as described in Puc 409.04, to be filed 30 days prior to the occurrence of the transfer of customer base.

(b) In connection with any transfer of customer base in which the acquiring carrier is not a telephone utility, the selling or transferring carrier shall file with the commission the following documents:

- (1) A copy of the letter notification and any subsequent notices of changed information submitted by the acquiring carrier to the FCC pursuant to 47 CFR 64.1120(e), to be filed within 3 days of submission to the FCC; and
- (2) Form T-4 Transfer of Customer Base Report as described in Puc 409.04, to be filed 30 days prior to the occurrence of the transfer of customer base.

Puc 405.04 Cramming Prohibited

In proposed rule Puc 405.04, the Commission proposes to apply the cramming prohibition of RSA 378:44-48 to telephone utilities:

405.04 Cramming Prohibited.

(a) “Cramming” means a submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on a customer's utility bill. Cramming does not include charges required or explicitly authorized by law.

(b) Telephone utilities shall not engage in cramming.

(c) If, after notice and opportunity for hearing, the commission finds that a telephone utility has engaged in cramming, the telephone utility shall be subject to an administrative fine not to exceed \$1,000 per offense, pursuant to RSA 378:46.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, I (Obligations imposed by the federal Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 378:44-48 (Cramming prohibition)

DISCUSSION: RSA 378:46 provides that:

No billing aggregator or service provider shall engage in cramming. Any billing aggregator or service provider that engages in cramming shall be subject to an administrative fine in an amount to be determined by the commission, not to exceed \$1,000 per offense. The commission may consider intent as a factor when assessing administrative fines. The commission may prohibit a billing aggregator or service provider that engages in cramming from billing through the utility company.

On its face, then, the cramming prohibition of RSA 378:46 does not apply to “telephone utilities”; it only applies to separately and particularly defined third party, non-utility “billing aggregators” and “service providers.” It is intended to prohibit cramming by *third parties*. To the extent that it implicates telephone utilities at all, this pertains to the Commission’s authority

to require account blocking and to prohibit termination of service for failure to pay third party charges.⁸

RECOMMENDATION: As suggested in the October 28, 2013 hearing on the Chapter 400 rules, this particular rule may be more appropriate in the Chapter 1200 Customer Service rules. Regardless of where they eventually reside, it should be revised to reflect the respective duties and exposure of the relevant actors:

Puc 405.04 Cramming Prohibited

(a) “Cramming” means a submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on a customer’s utility bill. Cramming does not include charges required or explicitly authorized by law.

(b) “Billing aggregator” means a person, other than a service provider, who forwards a charge for a product or service offered by a service provider to the utility company for billing to the customer

(c) “Service provider” means a person that offers a product or service to a customer and directly or indirectly sends the billable charges or credits to the utility company for billing to the customer.

(d) Billing aggregators or service providers shall not engage in cramming.

(e) If, after notice and opportunity for hearing, the commission finds that a billing aggregator or service provider has engaged in cramming, the billing aggregator or service provider shall be subject to an administrative fine not to exceed \$1,000 per offense, pursuant to RSA 378:46.

⁸ RSA 378:47, I(a), (b).

Puc 405.05 Number Portability Notice

In proposed rule Puc 405.05, the Commission proposes to impose a 14 day notice for the termination of any VSP service and to advise customers on how to port their telephone numbers:

Puc 405.05 Number Portability Notice.. Before terminating any customer's telephone service for any reason other than customer request, a ELECs and ILECs shall provide 10 days' notice to the customer. This notice shall include a description of the process by which the customer may transfer the telephone number to another provider.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, I (Obligations imposed by the federal Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1-a (Savings clause for telephone number conservation)
- RSA 374:59 (Number conservation and area code implementation)
- 47 U.S.C. § 251(b)(2) (Duty to provide number portability)

DISCUSSION: This rule pertains to end users and end user services, over which the Commission has no authority except as it pertains to ILEC-NELECs. Therefore, the Commission may not impose a notice period on any other carrier.

Furthermore, the Communications Act confers no authority to the Commission in this regard. The number portability statute, § 252(b)(2), as implemented by the FCC, 47 CFR §§ 52.1 – 52.111, imposes no affirmative duty on carriers to aid individual customers (as opposed to other carriers) in implementing the number porting process. Moreover, customers have no rights to port a number for service that has been terminated, and there is no process in place by which a customer may execute a number port on their own; only LECs can do this. The only initiative customers may take on their own is to switch providers before their service is terminated.

No independent authority is conferred on the Commission by RSA 374:59, IV either. This statute provides that:

The commission should adopt measures, *to the maximum extent allowable by federal law* and availability of technology, to provide for local number portability by all suppliers of local exchange service. (emphasis supplied).

As discussed in the preceding paragraph, federal law does not provide for as broad an implementation of the number portability rules as are represented in proposed rule Puc 412.07. Furthermore, number porting has no long term effect on number conservation. To the extent that a disconnected number is not ported to another service provider, it goes back into the original carrier's number pool and becomes available for reassignment shortly thereafter.

RECOMMENDATION: Proposed rule Puc 405.05 should be deleted in its entirety.

Puc 406.01 Construction, Installation and Maintenance of Physical Plant

Proposed rule Puc 406.01 contains rules for network construction:

Puc 406.01 Construction, Installation and Maintenance of Physical Plant.

(a) Telephone utilities shall construct, install and maintain its [sic] plant, structures, equipment, and lines in accordance with the National Electrical Safety Code, 2012 edition.

(b) Telephone utilities shall construct, install and maintain its [sic] plant, structures, equipment, and lines to prevent interference with service furnished by other carriers and by other public service facilities, such as cable, fire alarm, electric, water, sewer, gas, or steam facilities .

As support for its authority to impose this rule, the Commission cites:

- RSA 365:8, I (Savings clause related to Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1 (Safe and adequate service)
- RSA 374:3 (Extent of Commission power)
- RSA 374:4 (Duty to keep informed)
- RSA 374:34-a (Equipment in public right of way and lands)
- 47 U.S.C. § 251(a) (General duty of telecommunications carriers to interconnect)

This and related rules manifest a belief in the Commission's continuing authority over basic network survival and integrity.

DISCUSSION: To start with, the Commission has no authority to regulate end user service other than service provided by ILEC-NELECs. Title 34, as amended by SB 48, provides the Commission with no jurisdiction over end user services of ELECs other than the two aspects of basic service discussed below regarding proposed rule Puc 410.03. Chapter 365 is qualified by RSA 365:1-a, which provides in pertinent part that "this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user." Similarly, Chapter 374 is qualified by RSA 374:1-a, which provides in pertinent part the "the provisions of this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user."

As to any references in SB 48 to provisions of the federal Communications Act, these references are only savings clauses related to *existing* Commission authority and do not enlarge this

authority in any way. In particular, the Commission has no “enforcement” power under the Communications Act. Its authority is limited to:

- Designating an ETC for a service area under §214(e)
- Numbering administration under §251(e)(1)
- Approving rural exemptions under §251(f)
- Arbitrating interconnection agreements under §252(b)
- Approving interconnection agreements and, arguably, resolving interconnection disputes under §252(e)
- Approving SGATs under §252(f)

Accordingly, the Commission only has the authority to adjudicate a complaint for breach of an interconnection agreement, wholesale tariff, or performance plan. It has no independent authority under the Communications Act to police the operations of a telecommunications carrier. These would hold even if the Commission did have authority over the quality of interconnection, because the Federal Communications Commission has held that the interconnection obligations pertain only to the *physical* connections between networks, and not the actual transmission and termination of traffic.⁹ Consequently, network integrity and service quality are issues over which the Commission has no statutory jurisdiction as it concerns end user services, and which are contract issues, not regulatory violations, as they concern wholesale customers.

Furthermore, the Commission authority conferred by RSA 374:34-a pertains *only* to plant and equipment located in public rights of way and on, over, or under state lands and water bodies. As an express provision, it is much too narrow to support any interpretation conferring the plenary authority that the Commission proposes to adopt in this and similar proposed rules.

⁹ “We conclude that the term “interconnection” under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic.” Local Competition Order ¶ 176. Furthermore, the Communications Act does not specify an objective level of quality for this interconnection, only that it be nondiscriminatory, *i.e.* “at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection.” Local Competition Order ¶ 221. Thus, section 251(c)(2) implies no quality of service obligations for a carriers’ own network, but only that the interconnection service it offers an interconnector be no worse than that provided to its own customers.

RECOMMENDATION: Proposed Rule Puc 406.01 should be revised as follows:

Puc 406.01 Construction, Installation and Maintenance of Physical Plant.

(a) ILEC-NELECs shall construct, install and maintain its [sic] plant, structures, equipment, and lines in accordance with the National Electrical Safety Code, 2012 edition.

(b) ILEC-NELECs shall construct, install and maintain its [sic] plant, structures, equipment, and lines to prevent interference with service furnished by other carriers and by other public service facilities, such as cable, fire alarm, electric, water, sewer, gas, or steam facilities .

Puc 406.02 Emergency Operations

Proposed rule Puc 406.02 contains rules for network construction:

Puc 413.03 Emergency Operations. ELECs and ILECs shall make reasonable provisions to meet emergencies resulting from any of the following:

- (a) Failures of commercial power service;
- (b) Sudden and prolonged increases in traffic;
- (c) Illness, strike, or labor unrest of employees;
- (d) Failure of a supplier to deliver materials or supplies;
- (e) Civil unrest;
- (f) Cyber attacks; or
- (g) Any other significant disasters, including, but not limited to, fire, storms, floods, or other “acts of God” causing loss of communication to a large population or area of the state to the extent that the magnitude or duration is foreseeable.

As support for its authority to impose this rule, the Commission cites:

- RSA 365:8, I (Savings clause related to Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XI (Standards and procedures for conduct of investigations)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1 (Safe and adequate service)
- RSA 374:3 (Extent of Commission power)
- RSA 374:4 (Duty to keep informed)
- RSA 374:34-a (Equipment in public right of way and lands)
- 47 U.S.C. § 251(a) (General duty of telecommunications carriers)

DISCUSSION: As with proposed rule Puc 406.01, this proposed rule derives from the Commission’s perceived authority to ensure basic network survival. For the reasons explained in the comment to proposed rule Puc 406.01, the Commission has no authority to oversee the facilities for providing end user service other than service provided by ILEC-NELECs. Title 34, as amended by SB 48, provides the Commission with no jurisdiction over end user services of ELECs other than the two aspects of basic service discussed below regarding proposed rule Puc 410.03. There is no authority in the cited statutes or any other state or federal statute that confers

on the Commission the authority to establish or enforce this provision as it pertains to telephone companies in general.

Furthermore, as explained in the comment to proposed rule Puc 402.09, the term “cyber attack is vague and insufficient to describe all of the actions that are generally considered to be cyber-attacks. It does not provide an objective standard and should be deleted.

RECOMMENDATION: Proposed rule Puc 406.02 should be revised as follows:

Puc 406.02 Emergency Operations. ILEC-NELECs shall make reasonable provisions to meet emergencies resulting from any of the following:

- (a) Failures of commercial power service;
- (b) Sudden and prolonged increases in traffic;
- (c) Illness, strike, or labor unrest of employees;
- (d) Failure of a supplier to deliver materials or supplies;
- (e) Civil unrest;or
- (f) Any other significant disasters, including, but not limited to, fire, storms, floods, or other “acts of God” causing loss of communication to a large population or area of the state to the extent that the magnitude or duration is foreseeable.

Puc 406.03 Significant facility disruption

In proposed rule Puc 406.03, the Commission modifies its existing “significant service outage” reporting rule by invoking the concept of a “facilities disruption”:

406.03 Significant Facility Disruption. ELECs and ILECs shall report significant facility disruptions by calling the commission within the following time frames:

- (a) For disruptions which occur during regular commission hours, within 60 minutes of occurrence; and
- (b) Otherwise, by 9:00 a.m. on the business day following the outage; and
- (c) ELECs and ILECs shall report significant facility disruptions in writing to the commission on Form T-5 Facility Disruption Report as described in Puc 409.05, which shall be filed within 10 days of the disruption.

As support for its authority to impose this rule, the Commission cites:

- RSA 365:8, I (Savings clause related to Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XI (Standards and procedures for conduct of investigations)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1 (Safe and adequate service)
- RSA 374:3 (Extent of Commission power)
- RSA 374:4 (Duty to keep informed)
- RSA 374:34-a (Equipment in public right of way and lands)
- 47 U.S.C. § 251(a) (General duty of telecommunications carriers)

DISCUSSION: As NHTA explained in its comments regarding proposed rule 406.01, above, this and related rules manifest a belief in the Commission’s continuing authority over basic network survival and integrity. For a complete discussion of the Commission’s interpretation of its authority to ensure basic network survival, please refer to the discussion of proposed rule Puc 406.01 (Construction, Installation and Maintenance of Physical Plant), previously in these comments.

In regard to this rule, it is unnecessary as it is redundant of the requirements in Part 4 of the FCC rules, 47 CFR § 4.1 - 4.13, describing service outage reporting.

RECOMMENDATION: Proposed rule Puc 406.03 should be deleted in its entirety, or restricted to ILEC-NELECs.

Puc 407.03 Network Changes.

Proposed rule Puc 414.03(a) requires an ILEC or ELEC to take affirmative steps to maintain compatibility with interconnecting carriers:

Puc 407.03 Network Changes.

(a) Network changes made by a VSP that affect direct interconnection shall be backward compatible for 3 years from the introduction of the change.

As support for its authority to impose this rule, the Commission cites:

- RSA 365:8, I (Savings clause related to Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- 47 U.S.C. § 251(a) (General duty of telecommunications carriers)

DISCUSSION: As explained previously in the comment to proposed rule Puc 406.01, the Commission has no independent authority under the Communications Act's interconnection provisions to police the operations of a telecom carrier. Rules related to coordination among telecommunication providers for interconnectivity are the province of the FCC, pursuant to 47 U.S.C. § 256. Those rules, found primarily at 47 CFR §§ 51.325 – 51.335 (and which apply only to ILECs), require a telecommunications carrier to provide notice of network changes, to publish specifications, and to permit physical linking. However, none of them impose an affirmative duty on a carrier to design its network to accommodate any differences in the network technology of a requesting carrier. Such a requirement would hinder innovation and impede competition by requiring a carrier to maintain obsolete equipment and facilities, and to absorb the costs created by another.

RECOMMENDATION: Proposed rule Puc 407.03 should be deleted in its entirety.

Puc 407.05 Carrier to Carrier Migrations

Proposed rule Puc 407.05 revises current rule 418.06 to apply it to ELECs as well, rather than just ILECs, and eliminates the “winback” prohibition in the current rule:

Puc 407.05 Carrier to Carrier Migrations.

- (a) ILECs and ELECs shall accept and respond to requests for customer information, service and feature information, and migration and installation orders without regard to whether the service is being resold or migrated.
- (b) When migrating end users, ILECs and ELECs shall work together in good faith with other carriers to minimize or avoid any problems, including, but not limited to, service interruptions and billing problems.
- (c) When porting a customer’s number to another carrier, ILECs and ELECs shall release the number without delay or consideration of any issue such as the customer’s account balance.
- (d) ELECs and ILECs shall port a customer’s number to another carrier within one business day of the request.

As support for its authority to impose this rule, the Commission cites:

- RSA 365:8, I (Savings clause related to Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1-a (Savings clause for slamming violations)
- RSA 374:28-a (Slamming prohibition)
- RSA 378:44-48 (Cramming prohibition)¹⁰

DISCUSSION: Subsection (d) differs from the FCC rules in that it makes no allowance for complex porting requests, or for ILECs that are yet to implement a long term database number portability method.

¹⁰ It is not clear how this rule implicates the cramming statute; however, NHTA agrees that the other cited statutes support the Commission’s authority in this case.

RECOMMENDATION: For the sake of simplicity, proposed Rule Puc 407.05 should be revised to conform to FCC rules:

Puc 407.05 Carrier to Carrier Migrations.

(a) ILECs and ELECs shall accept and respond to requests for customer information, service and feature information, and migration and installation orders without regard to whether the service is being resold or migrated.

(b) When migrating end users, ILECs and ELECs shall work together in good faith with other carriers to minimize or avoid any problems, including, but not limited to, service interruptions and billing problems.

(c) When porting a customer's number to another carrier, ILECs and ELECs shall release the number without delay or consideration of any issue such as the customer's account balance.

(d) ELECs and ILECs that have implemented a long-term database number portability method pursuant to 47 C.F.R. § 52.23 shall port a customer's number to another carrier in accordance with 47 CFR § 52.35.

Puc 407.06 Directories

Proposed rule Puc 407.06 extends the ILEC obligation to ELECs as well to include other carriers' listings in their published directory and to provide directory listing information to other parties for publishing their own directories:

Puc 407.06 Directories.

- (a) ELECs and ILECs shall permit any carrier to list its customers' telephone numbers in the ELEC or ILEC's published white and yellow pages telephone directory or directories.
- (b) ELECs and ILECs provide subscriber listing information to publishers for the purpose of publishing telephone directories and/or offering directory assistance on a nondiscriminatory basis.
- (c) ELECs and ILECs shall not publish or list numbers for which other VSPs request non-directory listed or non-published status.

As support for its authority to impose this rule, the Commission cites:

- RSA 365:8, I (Savings clause related to Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:22-p (Affordable telephone service)
- 47 CFR Part 64, Subpart X (Subscriber list information)

DISCUSSION: None of the authority cited by the Commission requires any telephone company, including ILECs, to publish another carrier's listings, so subsection (a) is invalid.

RECOMMENDATION: Proposed Rule Puc 407.06 should be revised as follows:

Puc 407.06 Directory Obligations.

- (a) ELECs and ILECs provide subscriber listing information to publishers for the purpose of publishing telephone directories and/or offering directory assistance on a nondiscriminatory basis.
- (b) ELECs and ILECs shall not publish or list numbers for which other VSPs request non-directory listed or non-published status.

Puc 409.03 Form T-3 Utility Accident Report

Rule 409.03 greatly reduces the amount of information required in an accident report, compared to the current form:

Puc 409.03 Form T-3 Utility Accident Report. The “Utility Accident Report” required by Puc 415.02(b) shall include:

- (a) Utility filing information;
- (b) Date of the report;
- (c) Information regarding each reportable accident for the period, to include:
 - (1) The date of the accident;
 - (2) The location of the accident;
 - (3) A description of the extent of any property damage;
 - (4) A description of the extent of any injuries;
 - (5) The name of any injured person;
 - (6) An indication of whether any injury was fatal;
 - (7) An indication of whether the accident involved electric contact;
 - (8) Location information for any poles involved in the accident.

As support for its authority to impose this rule, the Commission cites:

- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XI (Standards and procedures for conduct of investigations)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1 (Safe and adequate service)
- RSA 374:3 (Extent of Commission power)
- RSA 374:4 (Duty to keep informed)
- RSA 374:34-a (Equipment in public right of way and lands)
- RSA 374:37-39 (Duty to investigate accidents)

DISCUSSION: NHTA does not disagree that the Commission has the authority to investigate accidents “in connection with the operation of public utilities in the state.”¹¹ However, although the level of detail that this rule requires is greatly reduced from the current rules, it still is burdensome to the extent goes beyond the amount of information that is required to notify the Commission of the scope of the accident.

RECOMMENDATION: Proposed Rule Puc 409.03 should be shortened to only four items in subsection (c) and nothing following. It should be revised as follows:

Puc 409.03 Form T-3 Utility Accident Report. The “Utility Accident Report” required by Puc 415.02(b) shall include:

- (a) Utility filing information;
- (b) Date of the report;
- (c) Information regarding each reportable accident for the period,
to include:
 - (2) The date of the accident;
 - (2) The location of the accident;
 - (3) A description of the extent of any property damage;
 - (4) A description of the extent of any injuries.

¹¹ RSA 374:37.

Puc 410.03 Basic Service

Proposed Rule 410.03 is a new rule that describes obligations regarding the offering of basic service in its territory:

Puc 410.03 Basic Service.

- (a) An ILEC shall offer basic service throughout its service territory.
- (b) An ILEC shall not impose any additional contractual requirements as a condition for purchasing basic service.
- (c) An ILEC shall not impose exit fees on a customer who cancels basic service.
- (d) An ILEC–ELEC shall change its rates for basic service only through the following process:
 - (1) After August 10, 2020, the ILEC–ELEC may increase its rates to any level without commission review or approval;
 - (2) Without commission review or approval, the ILEC–ELEC shall limit increases to its rates for basic service subject to the following cap in each twelve-month period beginning August 10, 2012 or the effective date of an existing alternative plan of regulation approved by the commission, pursuant to RSA 374:22-p, VIII(b);
 - a. For customers who are enrolled in the Lifeline Telephone Assistance program, the cap is 5%;
 - b. For all other customers, the cap is 10%.
 - (3) The ILEC–ELEC shall seek commission approval for additional rate increases in the event of changes in federal, state, or local government taxes, mandates, rules, regulation, or statutes.

(e) Any ILEC proposing to change its basic service coverage area shall comply with the following provisions:

(1) An ILEC which seeks to change geographic boundaries or other policies that would change the number of end users with whom a basic service customer can connect using a local call, shall petition the commission for review and approval of the change.

(2) Such petition may include a proposed rate adjustment to reflect the change in coverage.

(3) In deciding whether to approve the proposal, the commission shall consider whether the ILEC has demonstrated that the proposed change:

- a. Results in service comparable to or superior to the basic service offered on August 10, 2012; and
- b. Does not effectively increase the price of basic service by more than the rate cap pursuant to (d) above.

(f) An ILEC that is unable to provide basic service to a current or prospective customer upon application therefor shall comply with the following provisions

(1) An ILEC shall keep a record as to each instance in which it is not able to supply basic service to prospective customers within 10 days following the customer's application for service.

(2) The record required by (f)(1) above shall be provided to the commission on request.

(3) The record shall include:

- a. The name, address, and telephone number of each applicant who was not provided service within 10 days;
- b. The date of application for service;
- c. The class of service applied for; and
- d. The reason the ILEC was unable to provide service within 10 days of the customer's application.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, IV (Savings clause for obligations under RSA 374-22-p and RSA 374:30, II)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:22-p (Affordable telephone service)

DISCUSSION: It should be emphasized that basic service is an end user service which, as it concerns all but ILEC-NELECs, the Commission has no oversight other than 1) discontinuing basic service throughout the service territory and 2) rate increases above the statutory cap. Subsection (b) of this proposed rule, however, imposes a contractual requirement on an end user service that has no support in the statutes that the Commission has cited or in any other law. Furthermore, even in the case of ILEC-NELECs, this rule is invalid because it is vague and ambiguous. All services, including basic service, will be provided under some sort of service contract, with contract requirements including rates, terms and conditions of service. “Additional” contract requirements are not defined and provide no objective standard by which this rule can be interpreted. Likewise, subsection (c) imposes a contract requirement on all ELECs, not just ILEC-NELECs, that is beyond the Commission’s authority in regard to end user services and is also invalid as it concerns any telephone company other than an ILEC-NELEC.

Finally, subsection (f) imposes a “self-investigation” requirement that is unduly burdensome and incongruous with the process for discontinuing basic service. This subsection requires an ILEC to record all instances of when basic service cannot be provided on request. This rule, however, serves no purpose. ILECs have a statutory obligation not to discontinue offering basic service within their territories without petitioning the Commission for authorization to do so. Consistent with the Commission’s procedural rules, the Commission may then inquire of the ILEC as to the facts supporting the request, to which the ILEC may respond based on information that it has collected and organized as best serves the purposes of the petition. The Commission has no authority to impose what is, in effect, a preemptive data request regarding a proceeding that may never occur.

RECOMMENDATION: Although not discussed above, subsection (a) of the rule should be revised to conform to the language of the statute pertaining to discontinuance of basic service, particularly in qualifying the rule to apply only to *residential* basic service. The contract related provisions of subsections (b) and (c) should be deleted as they apply to all ILECs and moved to Part 411, applying only to ILEC-NELECs. Paragraph (d) should be moved to a new Part 4XX devoted exclusively to ILEC-ELECs (See new proposed Part 4XX, below). Finally, subsection (f) should be deleted in its entirety. The revised rule should appear as follows:

Puc 410.03 Basic Service.

(a) An ILEC may not discontinue residential basic service as defined in Puc 402.02 within its service territory without Commission approval..

(b) Any ILEC proposing to change its basic service coverage area shall comply with the following provisions:

(1) An ILEC which seeks to change geographic boundaries or other policies that would change the number of end users with whom a basic service customer can connect using a local call, shall petition the commission for review and approval of the change.

(2) Such petition may include a proposed rate adjustment to reflect the change in coverage.

(3) In deciding whether to approve the proposal, the commission shall consider whether the ILEC has demonstrated that the proposed change:

- a. Results in service comparable to or superior to the basic service offered on August 10, 2012; and
- b. Does not effectively increase the price of basic service by more than the rate cap pursuant to (d) above.

Puc 410.04 ILEC Discontinuations of Basic Service

Proposed rule Puc 410.04 perpetuates the current rules regarding disconnection of service to an individual customer:

Puc 410.04 ILEC Discontinuations of Basic Service.

(a) An ILEC shall not discontinue basic service to a customer without commission authorization unless:

- (1) The ILEC has notified the customer that basic service will be discontinued unless prompt payment is received;
- (1) Fourteen days have passed since the notice was given; and
- (3) The customer's balance includes at least two months of basic service charges.

(b) If an ILEC has received notification within the past 60 days from a licensed physician or mental health professional that a medical emergency exists at the location, or would result from the service discontinuation, the ILEC shall not discontinue service to the customer without commission authorization unless the customer has failed to enter into or comply with an arrangement for repayment of the outstanding balance.

(c) Nothing in (a) or (b) above shall prevent an ILEC from discontinuing basic service to a customer without commission authorization or notice to the customer when:

- (1) A customer or resident in the customer's household has undertaken an action or a situation has been created with respect to the customer's utility service which results in conditions dangerous to the health, safety, property or utility service of the customer or others and disconnection will lessen or eliminate the risk or danger;
- (2) The customer has clearly abandoned the premises;
- (3) The customer refuses to provide access to his premises for a necessary inspection of utility property; or
- (4) A customer or resident in the customer's household has participated in or created the following:
 - a. Fraudulent use or procurement of the utility service; or
 - b. Tampering with the connections or other equipment of the utility.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, IV (Savings clause for obligations under RSA 374:22-p and RSA 374:30, II)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:22-p (Affordable telephone service)

DISCUSSION: This rule inappropriately conflates the terms “discontinuance” and “disconnection” with the effect of bringing the Commission’s current service disconnection rules within the ambit of RSA 374:22-p, VIII(a), which provides that ILECs “may not discontinue residential basic service, regardless of technology used, in any portion of their franchise area unless the commission determines that the public good will not be adversely affected by such withdrawal of service.”

This represents an abrupt shift in the Commission’s use of the pertinent language. In the current rules, the Commission distinguishes between “discontinuance” and “disconnection.” “Discontinuance” refers to cessation of operations¹² *entirely*, as distinguished from “disconnection,” which means “a technological function which occurs when a customer is physically or effectively separated or shut off from a utility service,”¹³ *i.e.* termination of an *individual* customer’s service. Principles of statutory interpretation explain that guidance can be found in the way a statute, *i.e.* Title 34, was traditionally been construed following enactment.¹⁴ The respective usage described above, as reflected in the current rules, is the usage that was contemplated in the drafting of SB 48 regarding discontinuance of basic service. There is no support in the statutes, current rules or past Commission practice for now conflating the two terms. Thus, the basic service *discontinuation* prohibition in SB 48 cannot be construed to authorize any service *disconnection* rules.

Consequently, this proposed rule is invalid at least as to ILEC-ELECs. Commission jurisdiction over ILEC-ELEC basic service is limited to only two aspects of that service: 1) discontinuing basic service *throughout the service territory* and 2) rate increases above the statutory cap. The Commission has no jurisdiction under this statute to hear customer complaints regarding service quality, billing, payment, disconnection procedures, or the like.

RECOMMENDATION: This rule should be deleted as it applies to all ILECs and moved to Part 411 to reflect that it only applies to ILEC-NELECs.

¹² See *e.g.* rule Puc 431:14, “Discontinuance of Operations” (a CLEC must “notify the commission of its intent to cease operations;” “An ILEC providing wholesale services to a CLEC may petition the commission to initiate an involuntary discontinuance of operations against the CLEC.”)

¹³ Rule Puc 1202.08.

¹⁴ Singer and Singer, Sutherland Statutes and Statutory Construction § 49:1 (7th ed.).

Puc 410.05 Complaints regarding basic service

Proposed rule Puc 410.05 purports to clarify the extent to which end users may complain about basic service.

Puc 410.05 Complaints regarding basic service. The commission shall accept and resolve complaints from ILEC customers regarding basic service.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, IV (Savings clause for obligations under RSA 374:22-p and RSA 374:30, II)
- RSA 365:1 (Complaints against public utilities)
- RSA 365:1-a (Exceptions to application of Chapter 365)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:22-p (Affordable telephone service)
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DISCUSSION: This rule is overbroad, because it refers to “complaints” in an unqualified manner. Moreover, commission jurisdiction over ILEC-ELEC basic service is limited to only two aspects of that service: 1) discontinuing basic service throughout service territory 2) rate increases above the statutory cap.

It must be emphasized that RSA 374:22-p defines “basic telephone service” and in subsection VIII expressly confines the Commission’s jurisdiction to (a) discontinuance of basic service and (b) caps on basic service rate increases. Title 34, as amended by SB 48, provides the Commission with no jurisdiction over end user services of ELEC’s other than the two aspects of basic service described above. Thus jurisdiction is not preserved by RSA 365:8, which is qualified by RSA 365:1-a, which provides in pertinent part that “this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user.” Similarly, RSA 374:22-p is qualified by RSA 374:1-a, which provides in pertinent part the “the provisions of this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user.”

RSA 365:1-a (as amended by HB 542) does go on to provide that “[s]uch end users may make complaints to the commission regarding basic service, as defined by RSA 374:22-p, I, by excepted local exchange carriers.” However, this provision does not expand the Commission’s jurisdiction over basic service, but merely clarifies that it has the authority to accept consumer complaints over those aspects of basic service that it has express authority over.

Accordingly, the Commission has the jurisdiction to entertain Rule 200 complaints as to these two aspects delineated in subsection VIII, but not customer complaints regarding service quality, billing, payment or the like. Furthermore, it should be clarified that basic service bundled or combined with any other service is “nonbasic service,” is expressly *not* basic service and is not subject to Commission jurisdiction in any form. To the point, the legislative intent was to ensure access to basic service by a carrier of last resort, not to preserve continuing Commission oversight of a set of feature common to all telephone services. This means that there is no “basic service” component in any nonbasic service to which any aspect of the Commission’s investigatory authority applies.

RECOMMENDATION: Proposed rule Puc 410.05 should be revised as follows to clarify the extent of Commission authority to investigate complaints, and to maintain stylistic consistency with the other complaint related rule, Puc 405.06.

<p>Puc 410.05 <u>Complaints regarding basic service</u>. The commission shall accept and resolve complaints regarding violations of Puc 410.03 and 410.04.</p>
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**Part Puc 4XX ADDITIONAL REQUIREMENTS APPLICABLE TO ILECS
OPERATING AS ELECS**

For the sake of clarity, NHTA suggests that there be three separate Parts of Chapter 400 relating to ILECs: a Part applicable to all ILECs (Commission-proposed Part 410), a Part applicable to ILECs operating as ELECs (NHTA-proposed Part 4XX), and a Part applicable to ILECs not operating as ELECs (Commission-proposed Part 411).

Puc 4XX.01 Basic Service Rate Changes

Proposed Part 4XX contains only those requirements that a particular to ILEC-ELECs, namely the rule that governs changes in the rates of basic service, which NHTA has proposed be relocated from Part 410. NHTA proposes that these rules be relocated unchanged, other than the substitution of “may” for “shall” in the paragraph (a)(3) so that it is not mandatory that an ILEC seek a rate increase when there is a exogenous rate increase.

Puc 4XX.01 ILEC Basic service rate changes. An ILEC–ELEC shall change its rates for basic service only through the following process:

(a) After August 10, 2020, the ILEC–ELEC may increase its rates to any level without commission review or approval;

(b) Without commission review or approval, the ILEC–ELEC shall limit increases to its rates for basic service subject to the following cap in each 12-month period beginning August 10, 2012 or the effective date of an existing alternative plan of regulation approved by the commission, pursuant to RSA 374:22-p, VIII (b):

(1) For customers who are enrolled in the Lifeline Telephone Assistance program, the cap on rate increases for basic services is 5%; and

(2) For all other customers, the cap on rate increases for basic service is 10%; and

(c) The ILEC–ELEC may seek commission approval for additional increases in the rate for basic service in the event of changes in federal, state, or local government taxes, mandates, rules, regulation, or statutes.

Puc 411.0X Basic Service

NHTA proposes that certain proposed rules that pertain only to ILECs that are not ELECs should be relocated to Part 411. Specifically, as discussed above, the rules related to exit fees and to service disconnection should be relocated to this Part. Furthermore, as discussed in the comments to proposed rule Puc 410.04, the term “discontinuance” should be changed to “disconnection” to clarify the meaning of the rule, consistent with the intent of SB 48. Proposed rule 411.0X reads as follows:

Puc 411.0X Basic service

- (a) An ILEC-NELEC shall not impose exit fees on a customer who cancels basic service.
- (b) An ILEC-NELEC shall not disconnect basic service to a customer without commission authorization unless:
 - (1) The ILEC-NELEC has notified the customer that basic service will be disconnected unless prompt payment is received;
 - (2) Fourteen days have passed since the notice was given; and
 - (3) The customer's balance includes at least 2 months of basic service charges.
- (c) If an ILEC-NELEC has received notification within the past 60 days from a licensed physician or mental health professional that a medical emergency exists at the location, or would result from the service disconnection, the ILEC-NELEC shall not disconnect service to the customer without commission authorization unless the customer has failed to enter into or comply with an arrangement for repayment of the outstanding balance.
- (d) Nothing in (a), (b) or (c) above shall prevent an ILEC-NELEC from disconnecting basic service to a customer without commission authorization or notice to the customer when:
 - (1) A customer or resident in the customer's household has undertaken an action or a situation has been created with respect to the customer's utility service which results in conditions dangerous to the health, safety, property or utility service of the customer or others and disconnection will lessen or eliminate the risk or danger;
 - (2) The customer has clearly abandoned the premises;

(3) The customer refuses to provide access to his premises for a necessary inspection of utility property; or

(4) A customer or resident in the customer's household has participated in or created the following:

a. Fraudulent use or procurement of the utility service; or

b. Tampering with the connections or other equipment of the utility.

Puc 412.01 Form ILEC-1 Annual Report

The ILEC-NELEC members of NHTA applaud the Commission's proposal to simplify the Annual Report.