

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DRM 12-036
RULEMAKING

New Hampshire Code of Administrative Rules
PART Puc 400, Rules for Telephone Service

**WRITTEN COMMENTS OF NEW ENGLAND
CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC.**

Introduction and Summary

The New England Cable and Telecommunications Association, Inc. ("NECTA") offers the following written comments in response to the February 14, 2012 Order of Notice ("Order") of the Public Utilities Commission ("Commission" or "PUC") soliciting changes to the Part Puc 400, Rules for Telephone Service ("Rules").

NECTA welcomes the opportunity to provide comments to help inform the Commission in its development of an Initial Proposal for amending the Rules before their scheduled sunset date in 2013. As contemplated at the April 17, 2012, technical session, the New Hampshire legislature has enacted legislation (SB 48) to deregulate Voice over Internet Protocol ("VoIP") and Internet protocol-enabled ("IP enabled") services and also create new, less regulated, classifications for competitive local exchange carriers ("CLECs") and certain other providers eligible for the new Excepted Local Exchange Carrier ("Excepted LEC" or "ELEC") category. The legislation was signed by Governor Lynch on June 11, 2012 and it becomes effective on August 10, 2012 ("Telecom Deregulation Law" or "the Law").¹ The Telecom Deregulation Law requires fundamental changes to the Rules to reflect the lack of jurisdiction over VoIP

¹ The enacted version of SB 48 can be found at the following link:
<http://www.gencourt.state.nh.us/legislation/2012/SB0048.pdf>.

and IP enabled services and providers (with very limited exceptions) and similar limitations on Commission jurisdiction over CLECs.

In recognition of these and other legal and regulatory changes as well as the increase in communications service competition and consumer choice, the Commission's Initial Proposal should eliminate nearly all of the detailed retail regulatory requirements in the current Rules as applied to VoIP, IP enabled and Excepted LEC providers and services. This regulatory streamlining is required by the Telecom Deregulation Law and is consistent with what many other states have already done.² The passing of such legislation illustrates, in New Hampshire as in other states, that a competitive, market-based environment is the best way to spur new offerings and improved customer service.

General Comments

A. The Revised Rules Should Reflect Fundamental Recent Legislative Changes to the Commission's Authority.

Significant legislative changes have unequivocally affected the telecommunications landscape in New Hampshire. On June 11, 2012, Governor Lynch signed into law SB 48, sweeping deregulatory legislation that broadly curtails the Commission's jurisdiction over specified communications services and providers. The revised Rules must be substantially pared back to reflect these fundamental changes.

² In addition to the New Hampshire Telecom Deregulation Law, jurisdictions that have deregulated retail voice services, either all services or all VoIP services, include Massachusetts (2010), Maine (2012), Wisconsin (2011), Michigan (2011), Texas (2011), Ohio (2010), Illinois (2010), Rhode Island (2009), Alabama (2009), Missouri (2008 and 2011), Pennsylvania (2008), Washington, DC (2008), Tennessee (2007), New Jersey (2007), Delaware (2007), Maryland (2007), Indiana (2006), Kentucky (2006), Georgia (2006 and 2010), Virginia (2006), and Florida (2003 and 2005). This list does not include the many states which have by statute limited cable television regulation.

At this time, NECTA would like to draw attention to two major aspects that should be accounted for in the revised Rules.

1. VoIP and IP Enabled Services Deregulation

First, pursuant to the new RSA 362:7, the Telecom Deregulation Law specifically precludes the Commission or other New Hampshire agencies from enacting or enforcing, "either directly or indirectly," any law, regulation or other enactment 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." Telecom Deregulation Law, Section 177:1 (enacting new RSA 362:7, II). The limited powers retained by New Hampshire authorities with respect to VoIP or IP enabled services include: (1) civil and criminal laws generally applicable to New Hampshire businesses; (2) taxes and fees of general applicability and 911 and telecommunications relay services fees; (3) interconnection and related duties and powers of carriers and the Commission pursuant to 47 U.S.C. §§ 251 and 252; (4) rights-of-way management; and (5) additional enumerated New Hampshire statutes regarding various specific subjects, the majority of which are beyond the scope of the PUC's 400 Rules. *Id.* (enacting new RSA 362:7, III). The broad deregulation of VoIP and IP enabled services and providers, coupled with limited jurisdictional authority retained with respect to these services and providers, dictate that the Commission's Initial Rules Proposal, at a minimum, should exempt such services and providers from all substantive Commission retail telecommunications regulation. In fact, under the new Chapter 362:7 III, the only areas of retail jurisdiction retained by the Commission over VoIP providers touched by the 400 rules appear to be Puc 432.08 and

432.09 (Slamming and Cramming respectively, as well as Puc 432.02 and 432.03 (relating to the collection of TRS and E911 surcharges). Each of these provisions is an exception from the broad deregulation of VoIP and IP enabled services. The remainder of the Puc 400 rules, as of August 10, 2012, are inapplicable to the retail services of VoIP and IP enabled service providers.

2. CLEC (Excepted Local Exchange Carrier) Deregulation

Second, the Telecom Deregulation Law (at Section 177:1 (adding new sections to Chapter 362: Definition of Terms; Utilities Exempted) similarly limits Commission regulation of CLECs by creating the new Excepted LEC category that includes CLECs³. The Law also treats certain ILECs as akin to CLECs for regulatory purposes except for obligations arising pursuant to the Commission's authority under the federal Communications Act of 1934, as amended, past broadband commitments, wholesale services afforded to CLECs and long distance/IXCs, the provision of universal service, and similar core ILEC duties. Telecom Deregulation Law at Section 177:1, adding new RSA 362:8. The Law also precludes Commission regulation of all Excepted LECs with respect to rate regulation and consumer advocate investigations and general utility regulation pursuant to Chapter 374 (unless jurisdiction is specifically retained according to the new section 374:1-a⁴). Telecom Deregulation Law at Section 177:2, 177:3, 177:4 and 177:9, revising RSA 363:22, RSA 363:28; RSA 363:28-a, and RSA 374

³ An Excepted LEC means "(1) an incumbent local exchange carrier providing telephone services to 25,000 or more lines; or (2) An incumbent local exchange carrier providing service to less than 25,000 lines the elects to be excepted, upon the filing with the commission of a written notice advising of said election; or (3) Any provider of telecommunications services that is not an incumbent local exchange carrier." RSA 362:7, I (as amended by Law at Section 177.1).

⁴ Certain obligations of Chapter 374 continue to apply with respect to regulation of basic local exchange service provided by ILECs regardless of whether they are qualified as excepted local exchange carriers. See new RSA 374:22-p (VIII).

respectively, and at Section 177:5 enacting new RSA 365:1-a. These broad exemptions require substantial curtailment in the scope of the current CLEC Rules and associated CLEC forms.

3. CLEC Certification

Third and finally, in Order No. 25,277 in Docket 10-183 dated October 21, 2011, the Commission preempted, pursuant to 47 U.S.C. § 253, the burdensome multi-factor adjudicative hearing process required for competitive entry into New Hampshire rural ILEC territories pursuant to RSA 374:22-g and 26. Based on this ruling, which reflects federal law, the Rules should make clear that current Part Puc 431 ("Puc 431") and related definitions that protect rural CLECs from competition, are no longer in effect. Similarly, if Puc 431 is determined no longer to apply to ELECs that are not rural LECs, the Rules or the Commission's accompanying Order should state expressly that RSA 374:22-g and 26 no longer operate as a competitive barrier. All competitors in New Hampshire rural territories should be subject to the same streamlined, non-adjudicative registration process that applies to competitors in FairPoint territories.

B. Where Commission Jurisdiction is Retained, Market Forces Should Be Presumed to Protect Consumers Absent a Demonstrated Need for Commission Intervention.

As recognized by the New Hampshire legislature in passing SB 48, vibrant, multi-provider retail competition is a reality for nearly all New Hampshire consumers across all forms of communications services. The existence of competitive alternatives should be recognized in the Commission's consideration of alternatives to the longstanding Rules. In a competitive environment, customers dissatisfied with the terms or service quality offered by one voice provider can readily switch to another provider over the

same or alternative communication platforms,⁵ and often receive promotional incentives to do so.

The Commission should be aware that for any provider, losing a customer to a competitor is a substantial penalty to pay for failing to meet that customer's expectations. As a result, service providers naturally focus their financial, operational and managerial resources on providing innovative, high quality services, not only to attract new customers but also to retain their existing customer base. Contrary to the virtually monopoly environment in which the Rules originated, New Hampshire consumers can purchase communications services in much the same way that they can obtain any other freely available consumer good or service.

Absent clear facts demonstrating that these market forces are not sufficient to incent appropriate behavior by competing communications service providers, the Commission should rely on existing generally applicable federal and state consumer protection requirements instead of duplicative, burdensome and costly Commission-specific regulations. Of course, as provided in the Telecom Deregulation Law, which is broadly aimed at retail deregulation, the Commission should maintain its focus on oversight of interconnection, wholesale pricing and carrier-to-carrier competitive safeguards and rights-of-way provisions needed to preserve competition.

⁵ While landline choice in communications services continues to be hampered in rural LEC territories that have resisted certification of other providers, even rural LEC customers may choose from broadband-based VoIP providers to subscribe to competitive voice services.

Specific Comments Regarding Revised Rules

A. Puc 401 – Purpose and Application of Rules.

The Commission should amend the Puc 401.01 Purpose and 401.02 Application sections to match the deregulatory nature of the Telecom Deregulation Law. In addition, the Telecom Deregulation Law suggests that there is a need for changed or new Puc 402 Definitions, including basic service, CLEC, ILEC and end user, Excepted LEC, IP enabled Service and VoIP Service.

B. Changes to Reflect Telecom Deregulation Law.

The revised Rules should include a new provision that, consistently with these comments, exempts VoIP and IP enabled services from Commission jurisdiction. Moreover, the Rules should reflect that certain Excepted LEC services and providers are exempted from all Rules except those that expressly apply to those services pursuant to the Telecom Deregulation Law. For VoIP and IP enabled providers and services, the Commission does not retain jurisdiction except in very limited areas -- such as the administration of slamming and cramming rules and the collection of TRS and 911 surcharges. With respect to slamming and cramming, the Commission could simply adopt the applicable federal regulations. For CLECs that qualify as Excepted LECs, the Commission has no jurisdiction over rates, charges, tariffs and all or virtually all consumer complaints and investigations and, pursuant to the new RSA 365:1-a, has little rulemaking authority. As a practical matter, VoIP and IP enabled service providers and Excepted LECs will be exempted from all or virtually all of the Commission's current CLEC forms as well.

C. Changes to Reflect RLEC Preemption Decision.

As discussed above, in an October 21, 2012 Order, the Commission preempted RSA 374:22-g and RSA 374:26, determining that subjecting CLECs that seek to enter rural LEC territories be subject to a mandatory adjudicative process to address a broad range of issues is an improper barrier to entry pursuant to 47 U.S.C. § 253. The Commission's Order is on appeal to the New Hampshire Supreme Court, where it has been fully briefed and expected to be scheduled for oral argument in September 2012.

Unless the Order is reversed by the Supreme Court, the Rules should make clear that VoIP and IP enabled service providers and Excepted ILECs seeking to enter rural LEC territories need not comply with the RSA 374:22-g and RSA 374:26 adjudicative hearing requirement and, instead, should follow the process, if any, that will apply to such carriers seeking to enter non-rural (FairPoint) territories. To the extent these classifications remain pertinent based on the final form of the Rules and the Telecom Deregulation Law, at a minimum the Commission should eliminate the distinction between "exempt" and "non-exempt" ILECs for entry purposes. See Puc 431.01 (applying current non-adjudicative registration process only to "non-exempt" ILECs (i.e., FairPoint)).

D. Other Changes.

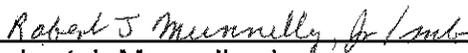
At this time, NECTA reserves making any comments as to changes to other provisions in the Rules, including but not limited to Shared Tenant Services, Services to Customers in Temporary Locations, ILECs, and Competitive IntraLATA Toll Providers. NECTA also reserves the right to furnish additional substantive comment to the extent that the Commission and/or Staff propose specific regulations during the formal or informal rulemaking process scheduled to commence later in 2012.

Conclusion

NECTA appreciates the opportunity to provide the within comments on potential changes to the Puc 400 Rules for Telephone Services, especially with respect to the substantial changes required by the newly-enacted Telecom Deregulation Law. In light of these important legal developments and the competitive environment for telecommunications services in New Hampshire, the revised Rules should reflect the broad deregulation of VOIP and IP enabled services in New Hampshire, and recognize only the limited areas where jurisdiction over Exempted LECs remain. NECTA looks forward to commenting on the Initial Proposal for revised Rules that the Commission plans to issue and circulate later in 2012.

Respectfully submitted,

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