

**STATE OF NEW HAMPSHIRE**  
**Before the**  
**PUBLIC UTILITIES COMMISSION**

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

DRM 12-036

**COMMENTS OF THE**  
**CLEC ASSOCIATION OF NORTHERN NEW ENGLAND, INC.**  
**ON THE INITIAL PROPOSAL**

The CLEC Association of Northern New England, Inc. (“CANNE”) respectfully submits these comments on the Commission’s initial proposal for amendment and reauthorization of the Part 400 telecommunications rules.

**Introduction**

CANNE is a not-for-profit association of facilities-based CLECs in Maine, New Hampshire and Vermont. Members of CANNE are among the earliest post-Telecommunications Act entrants into the telecommunications market in New Hampshire, several having been authorized to provide services as early as 1997.<sup>1</sup> In addition to providing innovative and high-value telecommunications and broadband services to New Hampshire customers, members of CANNE have participated in numerous Commission proceedings that have established rights, obligations, rules, procedures, policies, and practices governing the functioning of the wholesale

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<sup>1</sup> See, e.g., *In re Freedom Ring Communications, LLC*, DE 96-165, Order No. 22,530 (Mar, 24, 1997) (granting authority to operate as a competitive provider); *In re CTC Communications Corp.*, DE 97-203, Order No. 22,791 (Nov. 19, 1997) (same); *In re Business Communications Networks, d/b/a Lightship Telecom — Petition for Authority to Provide Local Telecommunications Services*, DE 98-072, Order Nisi Granting Authorization, Order No. 23,009 (Sept. 1, 1998); *In re New England Voice and Data LLC — Petition for Authority to Provide Local Telecommunications Services*, DE 98-094, Order Nisi Granting Authorization, Order No. 23,010 (Sept. 2, 1998); *In re segTEL, Inc. — Petition for Authority to Provide Local Telecommunications Services*, DT 99-048, Order Nisi Granting Authorization, Order No. 23,208 (May 3, 1999).

and retail telecommunications markets in the State.<sup>2</sup> Thus, for over fifteen years, members of CANNE have contributed to the development, shaping, and operation of the State's telecommunications marketplace and the Commission's rules and practices.

CANNE appreciates the opportunity to assist the Commission in amending and reauthorizing its rules in light of changes both in the telecommunications marketplace and in the Commission's regulatory authority, in particular last year's enactment of "An act relative to state regulation of telephone service providers and clarifying the authority of the Public Utilities Commission to regulate pole attachments," Ch. 177.

CANNE believes that the Commission largely got it right in trying to balance the interests of consumers, competition, and competitors. In particular, the Commission attempted to maintain a level playing field among carriers serving similar customers with similar services, regardless of technology, in terms of the regulatory obligations to which they are subject and the assessments they are required to pay.

CANNE's interests primarily lie in its understanding that the new law was not intended to reduce or affect regulation of wholesale services. The initial proposal does recognize this, but further tuning is necessary. Among other issues, the requirements regarding ILEC wholesale tariffs contain some ambiguities and inconsistencies that should be resolved to avoid problems later. In addition, the ILEC wholesale tariffing requirements in the initial proposal are less extensive than the requirements in the current rules and less extensive than what is in FairPoint's current wholesale tariffs. CANNE does not believe such a relaxation justified or appropriate.

In addition, the initial proposal correctly recognizes that the smooth functioning of the

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<sup>2</sup> See, e.g., *In re Bell Atlantic — Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996*, DE 97-171, Order Granting in Part and Denying in Part, Order No. 23,738 at 9 (July 6, 2001) (BayRing was granted intervenor status on November 4, 1997).

telecommunications system in New Hampshire requires a certain level of Commission authority and oversight. This is to ensure that any end user in the state can make or receive calls ubiquitously and transparently. This goal also requires that the Commission have the authority and ability to ensure that networks interconnect seamlessly and that communications networks and facilities are built, maintained, and operated to a floor of standards regarding interoperability and safety.

## Comments

### I. Wholesale Services.

Chapter 177 expressly retains the Commission's authority to impose differential regulations as between excepted local exchange carriers in areas in which the Commission has authority under the federal Communications Act. Ch. 177, § 1 (enacting new RSA 362:8, I). Further, under new RSA 362:8, III, the Commission may impose differential regulations as between ELECs with respect to the provision of services to CLECs, IXCs, and wireless carriers — in other words, wholesale services.

The Commission's authority reflects the different legal obligations governing different classifications of telecommunications carrier in the Telecommunications Act. Under the Act, all carriers have certain obligations, such as the duty to interconnect. 47 U.S.C. § 251(a)(1). Local exchange carriers have additional obligations, such as the duty to resell and to pay reciprocal compensation. *Id.*, § 251(b). ILECs have further obligations, including the duty to negotiate, to unbundle network elements, to provide resale, and to permit collocation. *Id.*, § 251(c). Further, as the only Bell operating company (BOC) in the state, FairPoint is subject to an additional layer of obligation, including the duty to satisfy the competitive checklist of § 271(c) regarding its obligations to other telecommunications carriers. Thus, different providers that all may be

classified as “excepted local exchange carriers” under state law have differing obligations under the Act, which the Commission is both permitted to maintain under chapter 177, and required to enforce under the Act itself.

The initial proposal, in proposed § 411.05, requires a VSP to file a complete tariff for services offered to other telecommunications carriers. However, that would impose upon non-ILEC ELECs a tariffing obligation that they currently do not have. CANNE does not believe that imposing new regulatory obligations upon non-ILEC ELECs was the intent of Chapter 177. Instead, CANNE suggests that the current system of rate sheets has worked well and should be retained, but modified to provide that the rate sheets would be posted on the non-ILEC ELEC’s web site rather than filed with the Commission. The Commission also should explore with stakeholders retaining the Uniform Tariff setting forth general terms and conditions, which providers would have the option to adopt.

Regardless of what system is adopted for non-ILEC ELECs, the Commission must ensure that current CLECs and CTPs operating under the Uniform Tariff/rate sheet regime do not lose the protections of that system unless and until new provisions are adopted and in place. CLECs and CTPs may have contracts that reference rate sheets on file with the Commission; the current rate sheets should not be nullified until after a new system is operational and a transition period sufficient to allow necessary revisions of terms and conditions has elapsed.

Proposed § 422.02(a) requires non-exempt ILECs to maintain a wholesale tariff covering interconnection and unbundled network elements. That is appropriate as far as it goes; however, the proposed requirement in § 422.02 includes fewer topics than are covered by FairPoint’s current wholesale tariffs. Among the missing topics are collocation (Tariff No. 2, Part E) and

resale (Tariff No. 4). At a minimum, an ILEC not subject to the rural exemption should file a wholesale tariff that includes no less than what FairPoint's wholesale tariff currently covers.

The goal of ensuring transparent, seamless communications across all networks justifies requiring some level of cooperation and coordination among carriers in the state. Thus, the new regulations appropriately include the requirements contained in proposed Part 414 (which largely reflects current Part 418).

Several aspects of the resale requirements should be clarified. First, as noted above, resale provisions should be tariffed as required in current § 419.01(f).

Second, the proposed provision related to resale service, § 422.01, is unclear in a number of respects. First, under subsection (c), pricing for resale services shall be nondiscriminatory; but pricing to whom: retail customers or resale customers? Second, how is a provider of resale services to know what services are available that may be resold? All services, not just basic services, are eligible for resale. If only a subset of services must be tariffed or posted on a website, the ability of a competitor to offer such services on a resale basis is severely hampered. At a minimum, all ILEC services that are subject to resale should be posted on the carrier's web site so that resellers may know and understand the services that they may resell.

## **II. Comments on Specific Provisions**

CANNE's review of the initial proposal has revealed a number of ambiguities, inconsistencies, contradictions, or technical issues, which CANNE would like to bring to the Commission's attention.

**402.03; see also 402.20.** The requirement that "change in ownership" not involve a change in the carrier's name could be troublesome. When there is a "change in ownership," almost invariably the "doing business as" name of the carrier changes. Does that disqualify a

transaction from being a “change in ownership?” Further, even if a change in the D/B/A does not take a transaction out of the realm of “change in ownership,” what happens if the carrier's corporate name officially changes at some point after the transaction occurs? Does that take the transaction out of the definition of “change in ownership,” and thereby trigger another set of obligations? **There should be no ability on the part of a customer to escape contractual obligations when there only is a change in ownership, even if the carrier’s name changes.**

**402.12(d).** CANNE suggests that this provision should include a reference to 47 U. S. C. §251(f), the source of the rural exemption.

**411.01.** In subsection (a) it appears that a CLEC certification expires and a VSP authorization begins upon the granting of a VSP identification number. However, the first sentence in subsection (a) appears to be triggered upon the effective date of the new rules. This apparent inconsistency could mean that even though there no longer is such thing as a CLEC as of the effective date of the rules, the CLEC authorization continues until such time as the commission is able to issue a PSP identification number.

**411.02(d).** The interplay of the language in subsection 1 that the commission shall deny an application, and the language in subsection 2 that permits a request for reconsideration, is paradoxical. If it is mandatory that the commission deny an application (the word "shall" is used), then what is there to reconsider?

**412.052(d)(7).** This section needs to be redrafted to state that none of these requirements apply if the contract permits rate increases over the term of the contract.

**414.07.** Subsection (a) is too restrictive in its requirement for written authorization. The FCC slamming rules govern the release of customer information, including upon various forms of authorization, not all of which are in writing.

**414.10.** Subsection (b) should state that a VSP shall provide nondiscriminatory access to publishers and should specify that nothing in the provision prohibits a VSP from imposing a charge for such information on a nondiscriminatory basis.

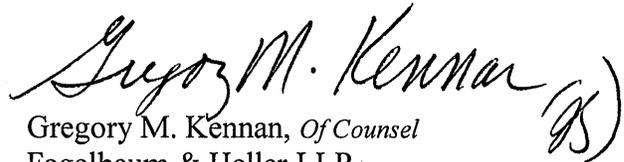
**416.08.** This requirement is defined as "event driven" under proposed § 415.02, but the requested information does not relate to an event, but to ongoing conditions.

### **Conclusion**

CANNE thanks the Commission and Staff for the opportunity to comment and looks forward to continuing its participation in the rulemaking process. CANNE reserves the right to respond or comment further in any appropriate manner to other parties' suggestions, the existing initial proposal, or any modified proposal, as this matter proceeds.

June 10, 2013

Respectfully Submitted,

A handwritten signature in cursive script that reads "Gregory M. Kennan" followed by a circled initial "GK".

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