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 VERIZON ON INITIAL PROPOSED RULES

MCI Communications Services, Inc., d/b/a Verizon Business Services, and MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services (collectively, "Verizon") submit these comments on the Initial Proposed Rules issued by the Commission on April 11, 2013.[1] In 2012, the Legislature passed and the Governor signed Senate Bill 48, eliminating (with limited exceptions) Commission authority over providers of VoIP and IP-enabled services and significantly curtailing its authority over Excepted Local Exchange Carriers (ELECs). The proposed rules substantially overstep these new limits and must be revised.

I. THE PROPOSED RULES EXCEED THE COMMISSION'S AUTHORITY OVER VOIP AND IP-ENABLED SERVICES AND PROVIDERS.

Verizon agrees with NECTA's comments demonstrating that most of the proposed rules would regulate or have the effect of regulating VoIP and IP-services in contravention of both the plain language of SB 48 and the Legislature's intent in adopting the bill. The express terms of RSA 362:7, II, enacted by SB 48, are clear:

> [N]o department, agency, commission or political subdivision of the state, shall enact, adopt or enforce, either directly or indirectly, any law, rule regulation ordinance, standard, order or other provision having the force or effect of law 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....

[1] Verizon has not had time to review and comment on the revisions to the proposed rules issued on June 5, 2013, and reserves its rights to do so at a later time.

This prohibition could hardly be broader. It applies not just to the PUC and other state agencies but also to all departments, commissions and political subdivisions of the state. It prohibits those entities not merely from enacting, adopting or enforcing regulations, but from doing so even "indirectly." It applies not only to formal regulations and rules, but to any "provision having the force or effect of law." It bans not only provisions of law that regulate VoIP or IP-enabled services or providers but also extends to any such provision that even "has the effect of regulating" these services or providers. Lastly, the aspects of VoIP and IP-enabled services that are protected – market entry, market exit, transfer of control, rates, terms or conditions – effectively cover the waterfront and leave no aspect open for agency regulation. Due to the breadth of this ban, the Legislature specifically and expressly enumerated in RSA 362:7, III the sole matters on which regulation of VoIP and IP-enabled services is allowed.

Consequently, paragraph II of RSA 362:7 precludes Commission regulation of VoIP or IP-enabled services or providers except for the matters specifically excepted in paragraph III. That paragraph II does not simply provide a series of narrow exceptions to underlying Commission authority over such services and providers is clear not only from the express terms of the statute but also the legislative history. The House Science, Technology and Energy Committee reported that, among other things, SB 48 "... confirms that Voice over Internet Protocol services and IP enabled services ***are not subject to regulation as telecommunications services in New Hampshire***."[2]

The vast majority of the proposed rules would directly or indirectly regulate or have the effect of regulating VoIP or IP-enabled services or providers on issues on which Commission authority was not preserved under RSA 362:7, III. Such proposed rules would violate the plain

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[2] House Calendar, Vol. 34, No. 37 (May 11, 2012), pp. 2046-2047 (emphasis added).

language of the statute and defeat the Legislature's intent not to burden these new, innovative services with legacy-style telecommunications regulation. For example, proposed Rule 411.04, Assessments, would impose a fee on anyone who provides VoIP or IP-enabled services in New Hampshire, a classic regulation of market entry. Proposed Rule 411.05 would require such providers to file wholesale tariffs, in contravention of the statutory bans on regulation of market entry and regulation of rates, terms and conditions of service.[3] And proposed Rules 411.06 (publication of information on website) and 412.06 (publication of telephone numbers in directories) would violate the prohibition on regulation of the terms and conditions of service.

Moreover, very few of the proposed rules fall within the narrow areas for which RSA 362:7, III preserved existing Commission authority. As prime examples, Staff has suggested that the network management rules in proposed Rule 413 and the interconnection obligations in proposed Rule 414 fall within the savings provisions of RSA 362:7, III(d), preserving the Commission's "duties or powers" under 47 U.S.C. §§ 251 and 252. Those duties and powers are not plenary, however, but are restricted to the powers expressly delegated by the statute, namely the powers to approve and arbitrate interconnection agreements between telecommunications providers, approve rural exemptions and approve certain SGATs. State commissions have no authority to implement the provisions of section 251 by other means, for example by promulgating regulations directly governing providers' conduct. Consequently, the Commission has no authority under section 251 or section 252 to impose its own interconnection obligations

[3] Nor would this rule fall within the savings clause of RSA 362:7, III(c), preserving the powers of the Commission under 47 U.S.C. §§ 251 and 252. Neither of those sections authorizes a state commission to require carriers to file tariffs. *See* Part II, below.

or otherwise police the operations of telecommunications carriers absent a complaint regarding an interconnection agreement.[4]

With a few exceptions, the proposed rules are unlawful as applied to VoIP or IP-enabled services or providers and must be revised or eliminated. Filed herewith is a redlined version of the Initial Proposed Rules showing the changes Verizon proposes in order to bring the rules into statutory compliance with respect to VoIP and IP-enabled services.[5]

I. THE PROPOSED RULES EXCEED THE COMMISSION'S AUTHORITY OVER ELECs.

Many of the proposed rules are also unlawful as applied to ELECs. Verizon agrees with and supports generally the comments of NHTA demonstrating that SB 48 eliminated Commission authority over most aspects of retail telephone service of ELECs and that many of the proposed rules overstep these new limitations. Section by section, SB 48 systematically revised existing statutes to remove Commission authority over, among other things:

- investigations of ELEC retail rates and rules (RSA 362:22);
- consumer complaints other than for basic service (RSA 365:1-a);
- affiliates of ELECs (RSA 366:1-a);
- ELEC stock issuance or securities (RSA 369:1-a);
- the service equipment of ELECs (RSA 370:1-a);
- corporate transactions of ELECs (RSA 374:30-33); and
- the rates and charges of ELECs (with exceptions) (RSA 378:1-a).

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[4] Verizon disagrees with the Commission's rulings in Docket DT 09-044 and 12-308 to the effect that certain VoIP services are telecommunications services under federal law. For the reasons stated in the text, however, the proposed rules exceed the Commission's authority over any service provider – VoIP providers and ELECs alike – under sections 251 and 252.

[5] Verizon believes that these changes are consistent with those proposed by NECTA with the exception of NECTA's revisions to Rules 411.02(c), 414.09, 414.10 and 422.

Many of the proposed rules would regulate aspects of telephone service over which the Commission no longer has authority. For example, proposed Rule 413 would regulate the equipment and facilities of all ELECs even though RSA 370:1-a expressly excluded ELECs from the Commission's authority to regulate the "Service Equipment of Public Utilities" under RSA 370. As a result, the Commission no longer has state law authority to regulate network operations procedures of ELECs. Nor would the Commission's authority over wholesale services support this proposed rule or proposed Rule 414. Such authority arises solely from the federal Communications Act, which as explained in Part 1, above, does not support the promulgation of state regulations on these matters.

Other proposed rules that would overstep the Commission's authority include Rule 412.08 (Cessation of Service) and the E911 and TRS rules, to the extent they impose obligations beyond collection of the appropriate fees. The Department of Safety has general authority over E911; the Commission's role is limited to approving any required tariff filings establishing the E911 surcharge.

Verizon also agrees with the comments of NECTA and others regarding the proposed rules on slamming and cramming, Rules 412.04 and 412.05 respectively. Among other things, the slamming rule addresses the transfer of control of an intact corporate entity. However, such a transfer would not change a customer's subscribed telecommunications carrier and therefore would not implicate the slamming statute, RSA 374:28-a. No notification of the Commission or customers is required for such a transaction; it would be pointless and confusing to customers. Further, the provisions regarding the bulk transfer of customer base should explicitly state their purpose, to clarify that such transfers, properly noticed, do not constitute slamming.

The cramming rule is misdirected at providers of voice service. As carriers noted at the public hearing, the cramming prohibition of RSA 378:46 applies only to third-party "billing aggregators" and "service providers." Thus, any "unauthorized charge" or billing practice by a voice provider for its own service is simply an incorrect bill and would fall outside the scope of the statute. The proposed rule would extend the statutory prohibition to voice service providers, however, effectively subjecting them to fines for any errors in their own bills. The rule should be revised to apply only to billing aggregators and "service providers" as provided in the statute.

The above rules exceed the Commission's statutory authority with respect to ELECs and to providers of VoIP or IP-enabled services alike, and must be eliminated or revised.

Conclusion

For the reasons stated above, the Commission should revise the proposed rules in the manner addressed here and in the attached redline. Verizon appreciates the opportunity to comment on the proposed rules and looks forward to working with Staff and other parties to develop a set of rules consistent with statute.

Respectfully submitted,

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