

**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
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COMMENTS OF VERIZON ON DRAFT FINAL 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 Draft Final Proposed Puc 400 Rules issued by the Commission on October 3, 2013. Verizon understands that the Commission does not intend to apply the revised Puc 400 rules to providers of VoIP service or IP-enabled services, consistent with the statutory changes effected by Senate Bill 48 and House Bill 542, or to providers of cellular mobile radio communications services. That is the correct approach. Nevertheless, some of the draft rules in Puc 401 and 402 are overly broad and could be read to extend the rules to these providers contrary to statute and the Commission’s intent. Verizon proposes clarifications to these rules in Part I, below, so that they align more closely with relevant state statutes. In addition, some Draft Rules exceed the Commission’s new, more limited authority over ELECs and require revision or elimination. *See* Part II.

I. THE COMMISSION SHOULD CLARIFY CERTAIN RULES TO ALIGN THEM WITH ITS INTENT NOT TO REGULATE VOIP, IP-ENABLED OR WIRELESS SERVICES AND PROVIDERS.

The General Court recently amended RSA 362:7, II to clarify that:

VoIP services and IP-enabled services are not public utility services and a provider of VoIP service or IP-enabled service is not a public utility under RSA 362:2, or an excepted local exchange carrier under RSA 362:7, I(c) and shall not

be regulated as a public utility in any manner other than as set forth in paragraph III.

Likewise, RSA 362:6 provides that a provider of cellular mobile radio communications services is not included in the term “public utility” and that “such services shall not be subject to the jurisdiction of the public utilities commission pursuant to this title.”

Accordingly, the statement in draft rule Puc 401.02 that “[t]hese rules do not apply to VoIP and IP enabled services pursuant to RSA 362:7, II,” although consistent with the law, is overly narrow. The Commission should revise the rule to be co-extensive with the statutes and exclude providers of VoIP and IP-enabled services as well as cellular mobile radio communications services and providers. Attached hereto is a redlined version of the Draft Final Proposed Rules showing the specific changes proposed by Verizon.

Three definitions in draft Puc 402 require similar clarification. First, draft Puc 402.09 defines “Excepted Local Exchange Carrier (ELEC)” by lifting verbatim the definition in RSA 362:7, I. That would usually be appropriate, but here it results in an overly broad definition because it fails to incorporate the recent amendment of RSA 362:7, II by HB 542 to clarify that “a provider of VoIP service or IP-enabled service is not ... an excepted local exchange carrier under RSA 362:7, I(c)....” As this clarification was important enough to the General Court to amend the statute only a year after passage, it should be incorporated into the Commission’s rules.

Second, draft Puc 401.21 defines “telephone utility” broadly as anyone owning, operating or managing plant or equipment “for the conveyance of telephone messages for the public....” On its face, that would include providers of cellular mobile radio communications service in contravention of RSA 362:6. The rule might also be read to apply to providers of VoIP and/or IP-enabled services, in light of the Commission’s rulings in Order 25,262 in DT 09-044 and

Order No. 25,513 in DT 12-308 that the phrase “conveyance of telephone messages” encompasses Comcast’s CDV service. The rule would thus run afoul of RSA 362:7, II and conflict with draft Puc 401.02, providing that the rules do not apply to VoIP and IP providers. To avoid misreading and potential inconsistency with the statutes, the Commission should clarify in Puc 402.21 that “telephone utility” does not include providers of VoIP service, IP-enabled service or cellular mobile radio communications service.

Third, the definition of “voice service” in draft Puc 402.24 properly excludes providers of VoIP and IP-enabled services. It should also, but does not, exclude cellular mobile radio communications service providers. Verizon understands that the draft rules are not intended to apply to wireless service, but if promulgated as is the rules could be read otherwise. For example, draft Puc 404.02 provides that, “no person or entity shall provide voice services in any area of New Hampshire unless and until that person is registered as an ELEC authorized in that area.” Under the draft definition of “voice service,” this rule could be read to require providers of cellular mobile radio service to register with the Commission as ELECs, in direct contravention of RSA 362:6.

II. A NUMBER OF PROPOSED RULES EXCEED THE COMMISSION’S AUTHORITY.

A draft rules discussed below overstep the new limits on the Commission’s authority imposed by SB 48 and HB 542 and require revision or elimination.

Draft rules Puc 404.09 (regarding TRS) and Puc 404.10 (regarding E911) should be limited to the obligation to collect 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. These should also be revised to exclude Competitive Toll

Providers, which are not subject to collection of these fees. *See e.g.* RSA 106-H:9 (requiring each LEC, VoIP service provider and cellular mobile radio communications service provider to remit the E911 surcharge).

The draft rule on cramming, Puc 405.04, is misdirected at providers of voice service. As Verizon and other carriers noted in comments filed in May on the initial proposed rules and at the public hearing on October 29, 2013, 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 telephone utilities, however, effectively subjecting them to fines for any errors in their own bills. Verizon agrees with other parties who suggest that this rule be moved to the Puc 1200 rules, but no matter where the rule is located, it should apply only to billing aggregators and “service providers” as provided in the statute.

Draft rules Puc 406 and 407 would regulate aspects of telephone service over which the Commission no longer has authority. Draft Puc 406 would regulate the equipment and facilities of all telephone utilities 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 of ELECs. The Table of Authorities for Draft 400 Rules issued by Commission staff cites in support of this rule a number of sources of the Commission’s general rulemaking authority, but no such rulemaking power authorizes promulgation of a rule in a subject matter area over which the Commission has no substantive authority.

Nor would such rulemaking authority support draft Puc 407, imposing intercarrier obligations. The Commission's authority over interconnection arises solely from the federal Communications Act, which does not support the promulgation of state regulations on these matters. The Table of Authorities cites 47 U.S.C. § 251(a) as authority for Puc 407, but nothing in that provision of the Act authorizes a state commission to take action. Section 252 of the Act authorizes state commissions to approve and arbitrate interconnection agreements between certain telecommunications carriers, approve rural exemptions and approve certain SGATs. It does not, however, authorize state commissions 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 or otherwise police the operations of telecommunications carriers absent a complaint regarding an interconnection agreement.

Conclusion

Verizon appreciates the opportunity to comment on the Draft Final Proposed Rules. For the reasons stated above, the Commission should revise those rules in the manner discussed above and as shown in the attachment.

Respectfully submitted,

VERIZON BUSINESS SERVICES and
VERIZON ACCESS TRANSMISSION
SERVICES

By their attorney,



Alexander W. Moore
125 High Street
Oliver Street Tower, 7th Floor
Boston, MA 02110
(617) 743-2265

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