

Approval Request and approve the underlying Final Proposal on 2013-124.

CHAIRMAN REAGAN: Motion by Schmidt, second by Kelly.

REP. MCGUIRE: I have a comment. Include the deletion of the three-hole punch bit. That was something that came in the letter. It's not an actual Conditional Approval Request, but it makes a lot of sense.

CHAIRMAN REAGAN: Further discussion? All those in favor? Opposed? Rules for telephone utilities.

**12 (b) FP 2013-51 PUBLIC UTILITIES COMMISSION  
Rules for Telephone Utilities**

ATTORNEY MORRELL: And we have a handout from the PUC. Ned's going to pass it out. It's a -- I believe it's a Conditional Approval Request.

With this Conditional Approval Request that you're receiving now, and which I have already been able to review electronically, all the issues that I have raised have been addressed. However, as you're probably aware, there is a lot of concern among the Utilities regarding these rules, and you're going to hear quite a bit of testimony about it.

I've talked to the PUC a couple two or three times. I've talked with or met with several Utilities. Some of the -- some of the issues may border on policy. Some of them are, you know, raise important questions that the Committee might want to discuss with the Commission. There are other issues which may be just a matter of interpretation, different interpretations and interpretations of Senate Bill 84 and its subsequent legislation but that's all I have.

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CHAIRMAN REAGAN: Okay.

MS. IGNATIUS: Thank you, Mr. Chairman. Again, for the record, my name is Amy Ignatius. I'm Chairman of the Public Utilities Commission. Seated with me is Dave Wiesner who is one of our staff attorneys and has worked extensively on these rules.

We're pleased to present the Chapter 400 Rules regarding telephone service and providers. It has been a long time in coming. It's been a two-year process with two trips through the Legislature, numerous stakeholder meetings, far beyond the required through the rulemaking process, numerous drafts exchanged and we have made, I think, huge progress and have a very good package to present to you today.

The legislation required significant changes, significant reduction of regulation of telephone providers, and coming out of those two legislative sessions my directive to our staff was to develop rules that implement the language of the statute as exactly as it is written. Not what they wish it had said, not what it might have said, but what it says, and no more and no less, and that is exactly what we present to you today.

The drafting issues that were raised by the legislative staff have been addressed in the packet that you received this morning, contains a few pages to be substituted that would make the final drafting issues resolved. I can go through those if you want; but they're, you know, they're straightforward. There were a few mistakes we've made in how we constructed some sentences. We used the word may when we should have shall. In one case we had a couple of incorporation by reference statements that were off and we needed to get those all aligned. So they're now all there. They're clearer. We appreciate the

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careful review. And so we would ask for a Conditional Approval with those changes that are in the packet that was handed out to you this morning.

I understand that there's some in the industry who think that we've overreached in our regulatory -- in how we have interpreted the statute, and there's some in industry who think we didn't go far enough and we should have included things that we did not. We're confident that we have carried through the language of the statute in the requirements here. We're not trying to create regulation that the Legislature has asked us to stop doing. This is a big change in what we do. And we're supportive of a lot of the change and dropping regulation and moving much more to competitive markets to play some of the role that regulators have in the past.

There were provisions we disagreed with during the legislative process. We did some -- had some battles over but the Legislature spoke, and it went against us on some things and that's what the rules now do. And it -- it is not an effort on our part to undue any effort of the Legislature. It is our best read of what the statutes actually say, and they're not the most straightforward pieces of legislation, I have to say.

To the extent there are still policy disputes, that's something that should be addressed through the legislative process. And if need be, we'll go back a third time to go to the Legislature and have that resolved in front of the policy committees. We've given the draft to the two policy committees in the House and the Senate, and we have not received back instructions that we got it wrong or that we need to change -- change what we were providing for. And so I think we are at the point now of adopting these with a conditional approval with the changes that the staff had recommended and that we've agreed to and move towards

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living under this new regime which is far reduced. We've gone from 200 pages of regulations down to 40 or 42, and we're proud of that. And we think we have done the right thing and we are ready to move forward in implementation.

CHAIRMAN REAGAN: Okay. We are going to hear from the persons opposing these rules, and then you'll get a chance to respond to their objection.

MS. IGNATIUS: Appreciate that.

CHAIRMAN REAGAN: Maura Weston, Chris Hodgdon, Susan Geiger.

MAURA WESTON, Lobbyist, New England Cable and Telecommunications Association: Good morning. Good morning, Members of the Committee. For the record, my name is Maura Weston. I'm here today representing the New England Cable and Telecommunications Association. I'm going to begin my brief remarks this morning by posing six rhetorical questions.

In the passage of Senate Bill 48 and House Bill 542, did the Legislature, in fact, intend that the term "telecommunications services" not be defined or understood to have the meaning attached to it that is under Federal law?

Second question. Did the Legislature intend that a new term of voice service be created by the PUC and defined by the PUC?

Did the Legislature intend that only those who provide voice services be classified as telephone utilities?

Did the Legislature, in fact, intend that the status of Competitive Local Exchange Carrier be terminated in the

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rulemaking process?

Did the Legislature intend to impact the rights and obligations of wholesale telecommunications provider; and did the Legislature, in fact, intend to create anti-competitive effect on New Hampshire's telecommunications market?

We believe that the answers to those questions is no. That, in fact, the Legislature did not intend that those ramifications occur. However, that is, in fact, the effect of the proposed rules.

We believe that the Legislature, in fact, intended that all ELECS, Excepted Local Exchange Carriers, would be certified as Public Utilities, and governed under modernized but not eliminated regulation to allow consumers in the State of New Hampshire to benefit from the more competitive marketplace. To support this conclusion we point you to the House blurb on Senate Bill 48. I'm sure it's part of your record, but I'll just read a brief portion of that blurb.

In part, the blurb states, Senate Bill 48 offers local exchange carriers relief from monopoly-era retail regulation bringing them to compete more effectively. It preserved Incumbent Local Exchange Carrier obligations to provide wholesale services to competitors, further encouraging competition among providers, and this legislation finds the right balance between continued Public Utilities Commission oversight and modernization of regulation to allow consumers in the State of New Hampshire to benefit from a highly-competitive communications environment.

So we appeal to you this morning to ask for a preliminary objection in the hopes that the stakeholders

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can continue to work together as with further revisions to the rule such that they would be, which we think, a few minor tweaks consistent with statutory intent and the public interest. Thank you.

And with me is Chris Hodgdon from Comcast and Susan Geiger also representing com cast.

CHRIS HODGDON, Senior Director of Government Affairs, Comcast: Good morning. As Maura said, my name is Chris Hodgdon, Senior Director of Government Affairs for com cast. We serve 300,000 consumers, customers, in 105 towns in New Hampshire. And Susan represented us during the process of -- stakeholder process where these new rules were developed and, ultimately, promulgated. And I would ask her to just real quickly summarize some of the specific points of concern that we continue to have. And there's a reference document that was passed out when we took our seats that you could refer to as Susan's going through them. There are four principal areas where we think the process has not been consistent with the statutory intent and Susan's going to quickly summarize those.

SUSAN GEIGER, Esq., Orr & Reno: Sure. Good morning. Thank you for the opportunity to comment. For the record, my name is Susan Geiger from the law firm of Orr & Reno, and I represent com cast. And as Chris has indicated, there are a four areas of concern that com cast has about the proposed rules which we find that the Committee would have grounds to object to. Three of those issues are related. And I think you may have been given a sheet that expresses in more detail what those issues are. But very briefly, as Maura touched on in her comments, the rules don't define the term telecommunications and Comcast believes that that term is an essential term and it should be defined consistent with Federal law.

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The second issue is that in creating this new category of providers, Excepted Local Exchange Carriers under Senate Bill 48, the Legislature chose to define that term by saying that it is any provider of a telecommunications service. So, therefore, we feel that that term is very critical, it's important, and it should be defined.

Thirdly, what happens under the rules is certification of these new providers, these new ELECS, Excepted Local Exchange Carriers, whether they provide not telecommunications services but voice service and that's inconsistent with the law. I think the law is very clear that ELECS' classification and status depends on the provision of telecommunication services, not voice services.

So those three issues are related. The other one is or two issues. The third related issue is the elimination of the current status of Competitive Local Exchange Carrier. And there's nothing in Senate Bill 48 or House Bill 542 that eliminated that status. And elimination of that status creates problems for current providers who are CLECS, Competitive Local Exchange Carriers, because they would be at risk of being unable to get numbers from the Federal numbering authority if their certification lapses. So this would present hardship to customers who want to continue to obtain service from new customers that want to obtain service from existing Competitive Local Exchange Carriers who might be unable to get phone numbers.

The last issue that we have put forth in our handout relates it to an unrelated matter, actually, that -- that pertains to the certification or the authorization of a competitor who wants to do business in the territory of a rural telephone company or rural carrier. And we believe that the process set out in the rules, the adjudicatory process in the rules that's proposed is contrary to a

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Supreme Court case. And the case is the *Bretton Woods* case. And I'm not sure if you have the cite, but I will give it to you. It's 164 New Hampshire 379 and that's a 2012 case.

So I know that this is a complicated subject matter to those that don't follow telecommunications and that may be unfamiliar with the statutes, but we would be happy to answer any questions that you might have. Thank you very much for the opportunity to --

CHAIRMAN REAGAN: Here's my question. At the public hearing you voiced all of these concerns?

MS. GEIGER: Yes.

CHAIRMAN REAGAN: Okay. And they showed up in the rules anyway.

MS. GEIGER: Yes.

CHAIRMAN REAGAN: Okay. So let's hear from Ms. Ignatius in response to this.

MS. GEIGER: Thank you.

MR. HODGDON: Thank you.

MS. WATSON: Thank you very much.

MS. IGNATIUS: Sir, do you want to do issue by issue or wait for all of the comments --

CHAIRMAN REAGAN: Want to hear what you have to say to their --

MS. IGNATIUS: All right. Thank you. The primary one is whether the telecommunications providers should be under

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the purview of the rules as opposed to telephone providers, and the description that there's some fallout from that if you do that. Our concern is that if you shift to using telecommunications providers and you broaden the people who would be regulated, you would pick up some people who currently are not regulated that we don't touch. We have no intentions of touching, and the Legislature didn't ask us to touch.

For example, there's a kind of data service, Ethernet and frame relay services, those are things that we don't regulate. They currently are in business in the state and they're considered telecommunications providers under Federal standards, but they are not conveying telephone messages under State law, which is what we have to live by. 362:2 says conveying telephone messages and a data service is not a telephone message. If you broaden it under State law, suddenly we have companies that we don't think should be regulated that are now in violation, and we have to haul them in. So we don't want to do that.

There are some wholesale services as well. We don't -- we are not looking to pick those up. And that is our concern about the -- to use telecommunications under the Federal definition would have that consequence that we think is contrary to what the Legislature wanted to do.

We -- we have tried very hard to follow our way through the statutes and be consistent with what they said. One of the real concerns people said was, well, you can't get telephone numbers if we don't change the rules and that's just not correct. You wouldn't get telephone numbers the way you currently get telephone numbers. But there's a way you do it. There are already companies that work through sort of a two-stage process that you go to another carrier that is entitled to get telephone numbers, and they do. And so that the non-regulated providers, these whole

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rules began with VoIP providers, Voice Over Internet Protocol service providers which Comcast is, is now deregulated. They would no longer be under our purview but they would be able to go to one who is regulated to obtain telephone numbers. So it's not correct to say that no customer will ever be able to get a phone number if they're a new Comcast customer. That's just -- it would be done differently, but it can still be done. And there are already companies that are doing it that way.

CHAIRMAN REAGAN: So it's your -- it's your opinion that the people that object to these rules are seeking changes to reduce competition in their industry. And your rules were to -- the effect of your rules were to broaden competition for ease of entry.

MS. IGNATIUS: Well, certainly, the purpose of the legislation is to broaden competition and to lighten up and remove regulation from this new class called VoIP providers. And that is -- so it's ironic that at end of the day there's now a request to put more regulation back in and maintain it for some when we were a little confused by it, frankly, because it seemed like we were trying to get away from that. All I can guess is that there was a few aspects of regulation that Comcast enjoyed and now wants reinstated. And although it asked to be deregulated and it achieved that through the legislation, it now finds some ways it would prefer to have some limited regulation. And I -- I don't -- I don't think that's appropriate. It either, you know, the statute says you're not regulated if you're a VoIP provider. That's what we have done.

CHAIRMAN REAGAN: Questions from the Committee?

SEN. RAUSCH: Unfortunately, I think what was said previously is this is not my area of expertise. And sitting here in a short time period to decipher what the intent of

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this legislation was supposed to be is going to be almost impossible for me to right and wrong and what battle. Is there a way to get them to continue battling it out before making a decision? Because I don't know about the rest, I'll go with the some of you are experts on this, I'll seek your advice, but this is out of my area of expertise.

SEN. CATALDO: I have a question, Mr. Chairman. Amy, if I live in Farmington and I have a phone number and I go down to Manchester, will I have the same phone number?

MS. IGNATIUS: Yes. These rules wouldn't change that. You could still port your number to the new location or to a new carrier.

SEN. CATALDO: Even with the new carrier?

MS. IGNATIUS: No? I'm sorry, I'm being told I'm wrong. This is Kate Bailey, the head of our telephone division. Can you explain, please?

KATHRYN BAILEY, Director of Telecommunications, Public Utilities Commission: If you wanted to move your number from one provider and not change --

CHAIRMAN REAGAN: Excuse me. You're not -- just please be seated.

MS. IGNATIUS: I apologize, that was my doing.

CHAIRMAN REAGAN: How do we send this back for further discussion?

ATTORNEY EATON: Well --

ATTORNEY MORRELL: There are two mechanisms. One, there's a Committee deadline to act on the Final Proposal.

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If that were waived by the Director of Legislative Services, that would give the Committee and the Agency more time to work on it. If there's Preliminary Objection based on public testimony that would give the statutory amount of time, I think 45 days for the Agency to respond to that, which would give them some time to hammer out. The problem is if the PUC feels that what it has right now is in the exact compliance with the law, and if they make changes that they're going to be violating the statute --

CHAIRMAN REAGAN: Right.

ATTORNEY MORRELL: -- then we'll be right back where we are now.

CHAIRMAN REAGAN: Senator.

SEN. RAUSCH: Is it possible for us to get an opinion from the committees who actually -- I mean, this blurb, you know, if you read it, it says what they intended. How do you find out if, in fact, the rules mimic what the people who worked on it believe?

CHAIRMAN REAGAN: That's up to them to hash out.

ATTORNEY MORRELL: Again, if there is an objection, the Committee can seek input from the policy committees.

SEN. RAUSCH: Okay.

ATTORNEY MORRELL: There's a specific provision in 541-A that authorizes that.

SEN. RAUSCH: Okay. Thank you.

CHAIRMAN REAGAN: Senator Kelly.

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SEN. KELLY: I just -- that's an interesting question that you brought up was that the work that the PUC has done, if you are asked to make changes, do you feel -- this would be a question I would ask to them.

CHAIRMAN REAGAN: Right.

SEN. KELLY: That you would then be adhering in putting regulations in and that you feel were unlawful. I mean, can you answer that question of the work that you've done?

MS. IGNATIUS: Well, there are some provisions I can imagine that I would very much oppose and think are improper. There's some that we may be able to find language that meets -- meets everyone's concerns without violating a principle. You know, we are certainly willing to try. I think it's more than a few minor tweaks was how it was described by one of the speakers. I think that's -- we're past the minor tweak stage. But we are certainly willing, if the Committee's interest is that we go back and try again, we're certainly willing to try.

CHAIRMAN REAGAN: Motion.

ATTORNEY MORRELL: Mr. Chairman, I believe there are other utilities that have not testified.

CHAIRMAN REAGAN: Well -

ATTORNEY MORRELL: If the Committee makes a preliminary objection based on public testimony and they haven't actually testified, then the objection won't go to their concern. And I know there are Utilities that have differing concerns than what has been presented by the ones you've heard from already.

CHAIRMAN REAGAN: I have another witness card, but it

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came in a half an hour after the announced time for these rules to be heard. So just because they're in the room, I mean, does that -- can they just walk in the room whenever they want and expect to be heard?

ATTORNEY EATON: As long as the Committee is still taking testimony, yes.

CHAIRMAN REAGAN: Okay. Let's hear from Ryan Taylor and Harry Malone.

HARRY MALONE, ESQ., Devine, Millimet, and Branch: Good morning. Thank you for hearing us. My name is Harry Malone. I'm with Devine, Millimet and Branch. I'm representing the New Hampshire Telephone Association which is an association of the telephone companies that traditionally serve the various geographic areas in the state. With me is Ryan Taylor who's the president of NHTA. I will try to be very brief.

You have before you or most of you have had delivered to you a package with our concerns. I'm going to summarize them very quickly just to get them on the record and then we'll be done.

We have some concerns about certain rules. One is the authorization to provide service. We believe it should be clarified to indicate that any determination by the Commission as to any conditions of market entry should be done before the authorization is granted. We believe that the number portability rule is -- there's no support for it in the statutes and it should be rejected.

We believe that the emergency operations rule is so broad that it is, essentially, that gives the Commission authority to govern the operations of ELECS in their entirety, and it should be struck. And there are various

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rules regarding basic service. Some carrier -- you know, the statute says that carriers shall offer basic service throughout their service territory, whereas the rule says -- no, I'm sorry. The rule says that the carrier should offer basic service throughout their service territory, whereas the statute says that they shall not discontinue service throughout their territory, and there's a distinction that we explained in our memo.

And there also that we feel that the Commission in its service discontinuation rules has mixed up the terms discontinued and disconnect; whereas discontinued means to discontinue service in a territory, whereas disconnect means to disconnect an individual customer and that we tried to preserve some customer relations rules as a result.

For those reasons, we believe that Committee should issue a Preliminary Objection so that the shareholders or stakeholders can continue to work together to develop these rules. Thank you.

REP. MCGUIRE: I have a question.

CHAIRMAN REAGAN: Yes.

REP. MCGUIRE: Entirely different subject.

CHAIRMAN REAGAN: Do you have anything to say?

RYAN TAYLOR, President, NHTA: I don't, Mr. Chair.

CHAIRMAN REAGAN: Okay. Thank you.

MR. TAYLOR: Thank you.

REP. MCGUIRE: Chairman.

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CHAIRMAN REAGAN: Yes.

REP. MCGUIRE: I have a concern about the Fiscal Note. It doesn't say anything. And I got the impression this was a significant change, and I'm wondering if the Fiscal Note is adequate. I'd like to have this Commission address that.

MS. IGNATIUS: Thank you. The -- the fiscal impact of these rules is to, if anything, is to reduce any kind of costs on the part of companies. We haven't quantified that reduction. But it -- but it lessens the reporting requirements, it lessens the amount of issues that the companies will have to respond to the Commission in terms of consumer complaints. There are very few items now that can come before the Consumer Protection Division. And so there's far less that they will be required to respond to. The -- the inter-reactions between the regulated utilities and the Commission will now be greatly, greatly shrunk and so the cost will be reduced for them. There's no new cost by any means.

CHAIRMAN REAGAN: Follow-up.

REP. MCGUIRE: Why does it say there's no difference in cost from comparing the proposed rules to the existing rules?

MS. IGNATIUS: You're right. That's not very well written, is it? There's no increase in cost and it should have been more explicit. I apologize.

REP. MCGUIRE: Yes.

CHAIRMAN REAGAN: Go ahead.

REP. SCHMIDT: Thank you. Can you respond? Well, let

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me ask a more specific question. The objections that Mr. Malone has just voiced and that are incorporated in, at least, partly in his memo, are these issues that came before the Commission in the public hearing and so forth and were discussed before the policy committees?

MS. IGNATIUS: Yes. They have been phrased slightly differently but yes. The -- I'm trying to just sort of look really quickly through all of these. I think it's a misread of, you know, we are not looking to govern their operations. The provision is an emergency situation that's very limited circumstances. There is absolutely no desire that we -- that we take over operational control. We do have -- we do have a -- I think a difference of opinion about the scope of disconnection and discontinuation between those two words and how they're used. And that although they are different things, individual disconnections ultimately could lead to the equivalent of a discontinuation of a service. And that's why we are concerned about that. But those -- these are issues that we had looked at and we had in public hearings had raised and the Commission addressed.

REP. SCHMIDT: Ready?

CHAIRMAN REAGAN: Ready.

\*\* REP. SCHMIDT: I'll move Preliminary Objection based on public input.

SEN. FULLER-CLARK: Second.

REP. MCGUIRE: Second.

CHAIRMAN REAGAN: Second by Fuller-Clark. Any further discussion? All those in favor? Opposed?

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SEN. CATALDO: No.

CHAIRMAN REAGAN: One objection. Thank you.

MS. IGNATIUS: Thank you.

\*\*\* {MOTION ADOPTED}

REP. MCGUIRE: I think we should take a short break now.

CHAIRMAN REAGAN: Let's do one more. Mike, the Higher Education rules, are they --

ATTORNEY MORRELL: Yes, they're here.

CHAIRMAN REAGAN: Are they difficult?

ATTORNEY MORRELL: No.

CHAIRMAN REAGAN: Okay. I got your card. Not going to come in that late. Let's do number 13 and then we'll take a break. Higher Education Commission.

**13. FP 2013-166 HIGHER EDUCATION COMMISSION  
Private Postsecondary Career Schools**

ATTORNEY MORRELL: We have a Conditional Approval Request. If you -- with the changes made in the Conditional Approval Request, I still have two concerns. If you look at the Final Proposal itself, and turn to Pages 12 and 13. At the bottom of Page 12 -- the bottom of Page 12 in Hedc 312, there's a table of licensure fees, other fees, and fines, and this is in the Final Proposal text.

SEN. KELLY: I'm sorry. Did you just --

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