

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DT 09-044

New Hampshire Telephone Association  
Petition for an Investigation into the Regulatory Status of  
IP Enabled Voice Telecommunications Services

**SUR-REPLY BRIEF OF THE RURAL CARRIERS OF THE  
NEW HAMPSHIRE TELEPHONE ASSOCIATION**

NOW COME the incumbent carriers (excluding affiliates of FairPoint Communications, Inc.) of the New Hampshire Telephone Association, a New Hampshire voluntary corporation<sup>1</sup> (the "RLECs"), and hereby submit the following Sur-Reply Brief in connection with the Petition for Investigation into the Regulatory Status of IP Enabled Voice Telecommunications Services.

In their Initial Brief and Reply Brief, the RLECs explained how Cable VoIP service is a telephone message service under RSA 362:2 and should be regulated as such, and they rebutted arguments that Cable VoIP is an interconnected VoIP and/or information service beyond the Commission's jurisdiction, or that state regulation of Cable VoIP services would be detrimental to the public interest. These subjects have been extensively covered by all parties and merit no further discussion. However, in their Reply Briefs, both Comcast and TWC introduced an issue regarding the legislative history of E911 surcharges in this state, to which the RLECs respond in this brief.

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<sup>1</sup> Bretton Woods Telephone Company, Inc.; Dixville Telephone Company; Dunbarton Telephone Company, Inc.; Granite State Telephone, Inc.; Hollis Telephone Company, Inc.; Kearsarge Telephone Company; Merrimack County Telephone Company; Wilton Telephone Company, Inc.

Apropos of nothing in the RLECs' Initial Brief, Comcast and TWC have both recounted the legislative history of various E911 surcharge bills, apparently to support the proposition that "VoIP providers are unregulated"<sup>2</sup> – an unremarkable and well-established fact that, far from being conclusory, has been the impetus for this proceeding. In their Reply Briefs, both Comcast and TWC referenced the Science, Technology and Energy Committee reports regarding rejection of two identical bills from the 2006 and 2009 sessions of the New Hampshire House that would have amended the E911 funding statute, RSA 106-H:9 (Title VII - Sheriffs, Constables and Police Officers) to "extend[] the enhanced 911 system surcharge to voice over internet protocol providers and prepaid wireless telecommunications services."<sup>3</sup>

Bearing in mind that the purpose of this proceeding is to investigate "whether fixed voice over internet protocol (VoIP) service in general . . . constitutes conveyance of a telephone message within the context of RSA 362:2,"<sup>4</sup> it is hard to fathom how the history of unreported amendments to a New Hampshire public safety statute can have any bearing on this discussion. Neither of these bills related to RSA 362:2 in any way, nor did the committee address or explore whether VoIP was a telephone service under 362:2 or should be regulated as such. To the extent that the committee determined that "VoIP providers are unregulated,"<sup>5</sup> this was merely an observation, not a finding or prescription. The bills were found "Inexpedient to Legislate," because the committee found that there was no 911 funding crisis and that the FCC had yet to

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<sup>2</sup> Comcast at 3; TWC at 3.

<sup>3</sup> H.B. 643 (2009 sess.) TWC also emphasized that the Legislature rejected "another proposal" (*i.e.* found "Inexpedient to Legislate") to extend E911 funding to VoIP in 2010, TWC at 4, but it should be noted that this involved not a separate bill, but the same H.B. 643 from 2009. H.B. 643-FN, N.H.H.R. Jour. 85-86 (2010), available at < [http://www.gencourt.state.nh.us/house/caljournals/calendars/2010/houcal2010\\_02.html](http://www.gencourt.state.nh.us/house/caljournals/calendars/2010/houcal2010_02.html)>.

<sup>4</sup> DT 09-044, Order of Notice (May 6, 2009).

<sup>5</sup> Comcast at 3; TWC at 3 (quoting H.B. 1232-FN, N.H.H.R. Jour. 414 (2006)).

make a determination on the issue of local funding of VoIP 911,<sup>6</sup> or because of testimony that no mechanism existed to collect the surcharge.<sup>7</sup> (It is unfortunate that the committee did not consider how the current law is unfair to POTS and wireless subscribers, who must pay the surcharge, while VoIP customers are not so required, even though they avail themselves of 911 services.)

It is also quite a stretch for TWC to assert that the future prospect of contradictory FCC decisions was “sufficient to convince the Legislature not to move forward with revisions to the E911 statutes.”<sup>8</sup> This is pure speculation, for which TWC cites no support, and for which the RLECs have found none after a diligent search. All that can be concluded here is that the legislature has found it “inexpedient” to solve a potential 911 funding problem by extending the surcharge to VoIP services. Far from “vividly illustrating” the legislature’s preferences regarding VoIP,<sup>9</sup> the legislative history that Comcast and TWC have referenced does not demonstrate any legislative intent that Cable VoIP services should be excluded from state regulation, nor does it indicate a general policy of abstaining from VoIP issues. It is, in all pertinent respects, irrelevant to the investigation at hand.

Finally, the RLECs disagree with TWC’s claims that there is no compelling reason for the Commission to adopt rules regarding Cable VoIP.<sup>10</sup> To the contrary, the Commission has the most compelling reason of all -- a statutory mandate to regulate telephone service under RSA 362:2. For all of the reasons provided by the RLECs in many rounds of briefing, the Commission should find that Cable VoIP providers are telephone public utilities and must

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<sup>6</sup> H.B. 1232-FN, N.H.H.R. Jour. 414 (2006).

<sup>7</sup> H.B. 643-FN, N.H.H.R. Jour. 85-86 (2010).

<sup>8</sup> TWC at 4.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 4.

comply with New Hampshire's utility statutes and the rules and orders of this Commission.

Respectfully submitted,

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