

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Graham J. Morrison
Clifton C. Below

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland



PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

March 5, 2009

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, New Hampshire 03301

Re: Notice No. 2008-219
Puc 402.49 and 431.01, Rules for Telecommunications
Commission Docket No. 08-126
Final Proposal

Dear Mr. Eaton:

On October 24, 2008, the Commission voted pursuant to RSA 541-A to initiate a Readoption with Amendment to Puc 402.49 and 431.01, Rules for Telecommunications. A rulemaking notice form required by RSA 541-A:6 was filed with the Office of Legislative Services on November 4, 2008. The notice scheduled the public hearing on the proposed Readoption with Amendment for December 16, 2008.

The hearing was held as scheduled, and comments were received from the parties involved. On March 5, 2009, the Commission voted to approve that document as the Final Proposal for the Readoption with Amendment of Puc 402.49 and 431.01.

The Commission asks that the JLCAR consider this proposal for Approval.

As required by the Rulemaking Manual, you will find enclosed two copies of the following:

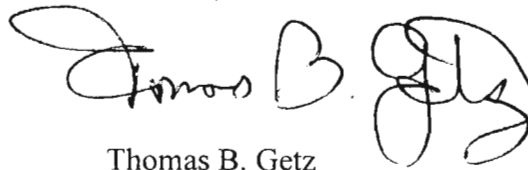
- A completed Appendix II-G, Cover Sheet for Final Proposal;
- A copy of the full text of the statutory rulemaking authority for the rule;
- The established text of the final proposed rule as the "Final Proposal—Fixed Text";

DRM 08-126
Puc 402.49 and 431.01, Rules for Telecommunications
Final Proposal

- The established text of the final proposed rule as the “Final Proposal—Annotated Text”; and
- The cross reference table relative to implementation of statutes.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Getz". The signature is written in a cursive, flowing style with a large initial "T" and "G".

Thomas B. Getz
Chairman

Enclosures

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2008-219 Rule Number Puc 402.49 and 431.01

<p>1. Agency Name & Address:</p> <p>NH Public Utilities Commission 21 S. Fruit St Suite 10 Concord NH 03301-2429</p>	<p>2. RSA Authority: RSA 365:8, VI, VII & XII; RSA 374:3; 374:22-g</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p><input type="checkbox"/> Adoption</p> <p><input type="checkbox"/> Amendment</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input checked="" type="checkbox"/> Readoption w/amendment</p>
---	---

5. Short Title: **Rules for Telecommunications**

6. Contact person for copies and questions:

Name:	F. Anne Ross, Esq.	Title:	General Counsel
Address:	NH Public Utilities Commission 21 South Fruit Street, Suite 10 Concord NH 03301-2429	Phone #:	603-271-2431

7. Yes No Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on November 14, 2008

SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET AND 2 COPIES OF THE FOLLOWING: (and numbered correspondingly)

9. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

10. The full text of the RSA passage granting rulemaking authority.

11. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

The agency shall then indicate, by checking the appropriate box on Item 7, whether it is requesting that it receive and respond to comments of the Committee legal counsel prior to the Committee meeting that is at least 28 days, but not more than 60 days, after the proposal is filed. In effect, this would be a request for postponement of Committee action. See RSA 541-A:12, I-a and Section 2.14 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules (Manual).

In Item 8 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

Items 9 through 13 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE 2 COPIES OF EVERYTHING SUBMITTED. NUMBER THEM ACCORDINGLY. Items 9 and 10 are required in every filing, and therefore are listed without a check-box. Items 11 through 13 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 9. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 10. The full text of each RSA passage that grants rulemaking authority for the rules contained in the proposal. See RSA 541-A:12, II(c).
- Item 11. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

TITLE XXXIV
PUBLIC UTILITIES

CHAPTER 365
COMPLAINTS TO, AND PROCEEDINGS BEFORE, THE COMMISSION

Proceedings Before the Commission

Section 365:8

365:8 Rulemaking Authority. – The commission shall adopt rules, pursuant to RSA 541-A, relative to:

- I. The conduct of its hearings, including alternative processes in hearings and other forms of alternative dispute resolution.
- II. Standards and procedures for streamlined review or other alternative processes to enhance the efficiency of the commission and respond to the needs of the utility's ratepayers and shareholders.
- III. Standards and procedures for the creation, monitoring and evaluation of alternative forms of regulation.
- IV. Standards and procedures for the handling of confidential information, in accordance with RSA 91-A.
- V. Standards and procedures for filing requirements for tariffs, engineering, accounting, and other commission matters.
- VI. Standards and procedures for franchise terms and conditions, including extended area telephone service.
- VII. Standards and procedures for safe and reliable utility service and termination of service subject to RSA 363-B.
- VIII. Standards and procedures for matters related to the proper administration of RSA 366 relative to utility relations with affiliates.
- IX. Standards and procedures relative to a reasonable amount of the short-term notes, bonds or other evidences of indebtedness based upon the amount of the utility's respective plant investment which each utility shall not exceed without first obtaining the approval of the commission pursuant to RSA 369:7.
- X. Standards and procedures for determination and recovery of rate case expenses.
- XI. Standards and procedures for the conduct of investigations authorized under this title.
- XII. Procedures necessary to provide for the proper administration of and to further the purposes of this title.
- XIII. Standards and procedures by which those electricity suppliers and utilities that choose to offer renewable energy options will provide information to customers who take such service of the fuel source or sources and emissions associated with the electrical service that they take and to inform such customers of the resource mix and emissions associated with the electricity generated and sold in the New England region as a whole.

Source. 1911, 164:2. PL 238:9. RL 287:9. 1951, 203:11 par. 8. RSA 365:8. 1981, 220:4. 1994, 193:1, eff. July 23, 1994. 2005, 102:1, eff. June 15, 2005.

TITLE XXXIV
PUBLIC UTILITIES

CHAPTER 374
GENERAL REGULATIONS

Supervisory Power of Department of Transportation

Section 374:3

374:3 Extent of Power. – The public utilities commission shall have the general supervision of all public utilities and the plants owned, operated or controlled by the same so far as necessary to carry into effect the provisions of this title.

Source. 1911, 164:5. PL 240:3. RL 289:3. 1951, 203:20, eff. Sept. 1, 1951.

TITLE XXXIV
PUBLIC UTILITIES

CHAPTER 374
GENERAL REGULATIONS

Telephone Utilities Service Territories

Section 374:22-g

374:22-g Service Territories Served by Certain Telephone Utilities. –

I. To the extent consistent with federal law and notwithstanding any other provision of law to the contrary, all telephone franchise areas served by a telephone utility that provides local exchange service, subject to the jurisdiction of the commission, shall be nonexclusive. The commission, upon petition or on its own motion, shall have the authority to authorize the providing of telecommunications services, including local exchange services, and any other telecommunications services, by more than one provider, in any service territory, when the commission finds and determines that it is consistent with the public good unless prohibited by federal law.

II. In determining the public good, the commission shall consider the interests of competition with other factors including, but not limited to, fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility's opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.

III. The commission shall adopt rules, pursuant to RSA 541-A, relative to the enforcement of this section.

Source. 1995, 147:3, eff. July 23, 1995. 2008, 350:1, eff. Sept. 5, 2008.

CHAPTER Puc 400 RULES FOR TELECOMMUNICATIONS

PART Puc 402 DEFINITIONS

Readopt with Amendment Puc 402.49, effective 5-10-05 (Document # 8348) to read as follows:

Puc 402.49 "Significant service outage" means outages in New Hampshire that affect:

- (a) An entire exchange;
- (b) All customers in a similar manner, such as interconnection failures;
- (c) 250 or more access lines and last more than 30 minutes;
- (d) 5000 or more access lines; or
- (e) Signaling system or tandem failures having a statewide impact; or
- (ef) In the case of a CLEC, the majority of customers in a particular area.

PART Puc 431 CLEC REGULATORY REQUIREMENTS

Readopt with Amendment Puc 431.01, effective 5-10-05 (Document # 8348) to read as follows:

Puc 431.01 Registration.

(a) No person or entity shall install or offer local exchange service in New Hampshire unless and until that person or entity is registered as a CLEC.

(b) Before commencing operations as a CLEC in New Hampshire the entity proposing to provide CLEC service shall register with the commission and receive its CLEC ~~A~~authorization ~~N~~number.

(c) To register with the commission a CLEC shall file:

(1) A completed Form CLEC-10 Application for Registration, described in Puc 449.07, which including the following attachments:

- a. A completed Form CLEC-1 Contact Information;
- b. Evidence of a surety bond pursuant to Puc 431.04 if applicable;
- c. A completed Form CLEC-11 Intent to Use Uniform Tariff, if the CLEC wishes to use the uniform tariff pursuant to Puc 431.05; and
- d. A rate schedule pursuant to Puc 431.06.

(d) Unless the commission denies an application for CLEC registration pursuant to Puc 431.02, it shall issue a CLEC authorization number which authorizes the applicant to provide competitive local exchange service in the territory of ~~non-exempt~~ ILECs.

(e) A CLEC authorized prior to the effective date of these rules shall use the commission's order number granting it authority to operate as a CLEC as its authorization number.

(f) Any authorization number obtained by a CLEC under this part shall be non-transferable.

APPENDIX

Puc 402.49	RSA 365:8, VII & XII; RSA 374:3
Puc 431.01	RSA 365:8, VII & XII; RSA 374:3; RSA 374:4; RSA 374:15; RSA 374:22-g; RSA 378:17-b; RSA 374:22, I, 24, & 25 IV; RSA 378:45

CHAPTER Puc 400 RULES FOR TELECOMMUNICATIONS

PART Puc 402 DEFINITIONS

Readopt with Amendment Puc 402.49, effective 5-10-05 (Document # 8348) to read as follows:

Puc 402.49 "Significant service outage" means outages in New Hampshire that affect:

- (a) An entire exchange;
- (b) All customers in a similar manner, such as interconnection failures;
- (c) 250 or more access lines and last more than 30 minutes;
- (d) 5000 or more access lines;
- (e) Signaling system or tandem failures having a statewide impact; or
- (f) In the case of a CLEC, the majority of customers in a particular area.

PART Puc 431 CLEC REGULATORY REQUIREMENTS

Readopt with Amendment Puc 431.01, effective 5-10-05 (Document # 8348) to read as follows:

Puc 431.01 Registration.

(a) No person or entity shall install or offer local exchange service in New Hampshire unless and until that person or entity is registered as a CLEC.

(b) Before commencing operations as a CLEC in New Hampshire the entity proposing to provide CLEC service shall register with the commission and receive its CLEC authorization number.

(c) To register with the commission a CLEC shall file:

(1) A completed Form CLEC-10 Application for Registration, described in Puc 449.07, which including the following attachments:

- a. A completed Form CLEC-1 Contact Information;
- b. Evidence of a surety bond pursuant to Puc 431.04 if applicable;
- c. A completed Form CLEC-11 Intent to Use Uniform Tariff, if the CLEC wishes to use the uniform tariff pursuant to Puc 431.05; and
- d. A rate schedule pursuant to Puc 431.06.

(d) Unless the commission denies an application for CLEC registration pursuant to Puc 431.02, it shall issue a CLEC authorization number which authorizes the applicant to provide competitive local exchange service in the territory of ILECs.

(e) A CLEC authorized prior to the effective date of these rules shall use the commission's order number granting it authority to operate as a CLEC as its authorization number.

(f) Any authorization number obtained by a CLEC under this part shall be non-transferable.

APPENDIX

Puc 402.49	RSA 365:8, VII & XII; RSA 374:3
Puc 431.01	RSA 365:8, VII & XII; RSA 374:3; RSA 374:4; RSA 374:15; RSA 374:22-g; RSA 378:17-b; RSA 374:22, I, 24, & 25 IV; RSA 378:45