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

PRELIMINARY COMMENTS OF THE CLEC ASSOCIATION OF NORTHERN NEW ENGLAND, INC.

The CLEC Association of Northern New England, Inc. ("CANNE") respectfully submits these preliminary comments on reauthorization of the Commission's Part 400 telecommunications rules.

Introduction

CANNE is a not-for-profit association of facilities-based CLECs in Maine, New Hampshire and Vermont. Members of CANNE are among the earliest post-Telecommunications Act entrants into the telecommunications market in New Hampshire, several having been authorized to provide services as early as 1997.[1] In addition to providing innovative and high-value telecommunications and broadband services to New Hampshire customers, members of CANNE have participated in numerous Commission proceedings that have established rights, obligations, rules, procedures, policies, and practices governing the functioning of the wholesale

[1] *See, e.g., In re Freedom Ring Communications, LLC,* DE 96-165, Order No. 22,530 (Mar, 24, 1997) (granting authority to operate as a competitive provider); *In re CTC Communications Corp.,* DE 97-203, Order No. 22,791 (Nov. 19, 1997) (same); *In re Business Communications Networks, d/b/a Lightship Telecom — Petition for Authority to Provide Local Telecommunications Services,* DE 98-072, Order *Nisi* Granting Authorization, Order No. 23,009 (Sept. 1, 1998); *In re New England Voice and Data LLC — Petition for Authority to Provide Local Telecommunications Services,* DE 98-094, Order *Nisi* Granting Authorization, Order No. 23,010 (Sept. 2, 1998); *In re segTEL, Inc. — Petition for Authority to Provide Local Telecommunications Services,* DT 99-048, Order *Nisi* Granting Authorization, Order No. 23,208 (May 3, 1999).

and retail telecommunications markets in the State.[2] Thus, for over fifteen years, members of CANNE have contributed to the development, shaping, and operation of the State's telecommunications marketplace and the Commission's rules and practices.

CANNE appreciates the opportunity to assist the Commission in amending and reauthorizing its rules in light of changes both in the telecommunications marketplace and in the Commission's regulatory authority, in particular the recent enactment of "An act relative to state regulation of telephone service providers and clarifying the authority of the Public Utilities Commission to regulate pole attachments," Ch. 177. While these changes are cause to examine and, where appropriate, to amend the Commission's regulations, they do not justify a rush to "anything goes" deregulation. Indeed, the Commission retains authority in numerous important areas: basic service, Ch. 177, §§ 11 & 12 (amending RSA 374:22-p, I and enacting new 374:22-p, VII); sale, lease, or transfer of ILEC franchise, works, or system (Ch. 177, 13 (amending RSA 374:30); wholesale relationships and enforcement of federal requirements, Ch. 177, § 1 (enacting RSA 362:8); certain consumer issues such as slamming and cramming, Ch. 177, §§ 9 (enacting new RSA 374:1-a) and 15 (enacting new RSA 378:1-a); and utility poles and plant, Ch. 177, §§ 9 (enacting new RSA 374:1-a). CANNE is confident that the Commission will look carefully at its rules and evaluate each one in light of what is permissible, what is desirable, and what best serves the industry and the consumers of the State.

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[2] *See, e.g., In re Bell Atlantic — Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996,* DE 97-171, Order Granting in Part and Denying in Part, Order No. 23,738 at 9 (July 6, 2001) (BayRing was granted intervenor status on November 4, 1997).

Comments

I. Regulation of Wholesale Services.

Whether it is changes in the marketplace, Ch. 177, or some other force that is driving the movement to deregulate, that force is much weaker in the wholesale market place than in the retail marketplace. Accordingly, the Commission should largely retain the existing regulatory structure on the wholesale side.

A. Differential Regulatory Requirements are Both Permitted and Desirable in the Wholesale Context.

Chapter 177 expressly retains the Commission's authority to impose differential regulations as between excepted local exchange carriers in areas in which the Commission has authority under the Communications Act. Ch. 177, § 1 (enacting new RSA 362:7 III (c) and RSA 362:8, I). Further, under new RSA 362:8, III, the Commission may impose differential regulations as between carriers with respect to the provision of services to CLECs, IXCs, and wireless carriers "regardless of technology"— in other words, wholesale services.

The Commission's authority reflects the different legal obligations governing different classifications of telecommunications carrier in the Telecommunications Act. Under the Act, all carriers have certain obligations, such as the duty to interconnect. 47 U.S.C. § 251(a)(1). Local exchange carriers have additional obligations, such as the duty to resell and to pay reciprocal compensation. *Id.,* § 251(b). ILECs have further obligations, including the duty to negotiate, to unbundle network elements, to provide resale, and to permit collocation. *Id.,* § 251(c). Further, as the only Bell operating company (BOC) in the state, FairPoint is subject to an additional layer of obligation, including the duty to satisfy the competitive checklist of § 271(c) regarding its obligations to other telecommunications carriers. Thus, different providers that all may be classified as "excepted local exchange carriers" under state law have differing obligations under the Act, which the Commission is both permitted to maintain under chapter 177, and required to enforce under the Act itself.

Therefore, the Commission not only can but should retain the current regulatory structure for wholesale operations and services. A principal requirement that should be maintained is the requirement that FairPoint file and maintain a wholesale tariff. This obligation arose under FairPoint's predecessor Verizon's request for § 271 authority to offer interLATA service in New Hampshire. It serves the salutary purpose of reducing transaction costs for competitors to obtain network elements and wholesale services from FairPoint, driving prices lower for the benefit of consumers.

Likewise, the Commission also should retain those provisions of the rules that give CLECs rights to obtain wholesale services from incumbent providers. These would include PUC 418 and 437 (ILEC and CLEC Intercarrier Obligations), 419 and 438 (ILEC Resale and CLEC Access to Resale), 420 and 439 (ILEC Unbundling and CLEC Access to Unbundling), 421 and 440 (ILEC and CLEC Interconnection).

It also would be appropriate for the commission to require FairPoint to maintain intraLATA access tariffs, as under the current regulations. FairPoint operates the tandem switches that carry substantial amounts of access traffic for, to, and from CLECs and CTPs in the state. It therefore is appropriate to impose regulations on FairPoint that do not apply to other, smaller, carriers, in particular those that do not provide tandem services.

Further, the Commission should require FairPoint to continue filing all reports germane to its provision of network elements and other wholesale services, *even if those reports address service at the retail level*. Such reports include, but are not limited to, all reports that FairPoint currently files and may be required to file in the future under the C2C and PAP guidelines. Such reports are necessary for the Commission and competitive providers to monitor and assess FairPoint's wholesale service quality performance. Retail service quality data included in those reports are relevant, among other things, to assessing FairPoint's performance under "parity" metrics in the C2C and PAP.

Finally, while Ch. 177, § 15 has limited the Commission's authority over retail rates and tariffs of excepted local exchange carriers, ILECs like FairPoint still have a duty to permit resale of their retail offerings. The Commission must ensure that FairPoint and the other ILECs maintain a readily available, user-friendly, and complete system under which resellers can determine what those offerings are, along with their rates, terms, and conditions.

B. CLEC Access Rates

CANNE believes that the Commission's rule capping CLEC access rates at the level of the ILEC's rates, PUC 431.07, is consistent with the new federal regulations governing intraLATA access rates promulgated in the *Connect America Fund Order, In re Connect America Fund,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (Nov. 18, 2011). The rule continues to serve a useful purpose and should be retained.

II. Continued Use of Tariffs on a Permissive Basis.

Ch. 177, § 15 enacted RSA 378:1-a, which states that the provisions of RSA 378 (except for provisions governing cramming) "shall not apply" to the retail services of excepted local exchange carriers. RSA 378 includes requirements related to tariffs and rates. However, it is not clear whether "shall not apply" refers to retail tariffs in general or to the mandatory requirement that telephone companies file tariffs. In other words, does new RSA 378:1-a entirely eliminate retail tariffs or merely make them non-mandatory?

The Commission should consider interpreting §15 as stating that the tariffing of rates, terms and conditions no longer is *mandatory* for excepted local exchange carriers, but that such carriers may elect to file tariffs on a permissive basis. Such filings would constitute an agreement by the filing carrier that the Commission may review the tariff upon complaint. Tariffs would be effective on filing, and the Commission would not review such permissive tariffs unless a complaint is brought. This interpretation would apply uniformly to all excepted local exchange carriers under new RSA 362:8 (enacted by Ch. 177, § 1).

CANNE believes that permissive tariffing could serve several useful purposes. The practice increases mutual certainty and protection for customer and carrier alike. It also would provide increased transparency into carriers' rates, terms and conditions, because they would be available from the Commission as well as the carrier. Further, they would avoid issues that could arise if the carrier/customer relationship is solely contractual, such as questions of contractual privity for users who are not the contracting parties.

Alternatively, the Commission could allow permissive use of the Uniform Tariff. The Uniform Tariff covers a limited number of issues, but within that range of issues it offers protections for carriers and customers alike. It has served that purpose well since 2005.[3] The Uniform Tariff (and its predecessor) has been available to most of the carriers in the State[4] since that time. Its provisions are familiar and well-tested. In short, "If it ain't broke, don't fix it." The Commission should continue to allow excepted local exchange carriers to adopt the Uniform

[3] The same is true of the Model Tariff, predecessor to the Uniform Tariff, which was in effect from 1998 through 2005. *See In re Uniform Tariff for CLECs and CTPs,* DT 05-146, Order *Nisi* Approving Uniform Tariff for CLECs and CTPs, Order No. 24,524 (Sept. 30, 2005).

[4] Most end-users, however, have been subject to Verizon's and FairPoint's tariffs.

Tariff on a permissive basis. As is the case with CLECs and CTPs today, any provisions going beyond that, however, would have to be negotiated between the carrier and it is customer(s).[5]

III. Eliminate Provisions Relating to Billing, Notice, and Other Requirements Made Inapplicable by Ch. 177.

Chapter 177 divested the commission of its authority to regulate many aspects of telephone utilities' retail rates and practices. Section 9 eliminated most regulation of retail services. Section 15 restricted the ability to regulate retail rates, terms, and conditions. Section 5 eliminated the ability of retail customers to bring a complaint before the commission regarding most aspects of retail telecommunications services in the state.

Because of the changes made by chapter 177, the Commission must carefully scrutinize its regulations governing the practices of CLECs and CTP's with respect to their retail customers to ensure consistency with the new statutory provisions. Examples of such regulations may include requirements such as notices to customers (431.04), application of payments (432.06), notices regarding changes in rates 437.07), and exit fees (432.13) The equivalent provisions relating to CTP's, Puc 452.01-.04, also should be scrutinized.

CANNE also notes that Chapter 177's deregulation of retail services and practices affects other Commission regulations beyond Part 400. In particular, it will be necessary for the Commission to revise various of its Part 1200 (customer relations) and Part 1600 (tariffs) regulations as well. Examples include Puc 1203.03 (deposits), 1203.05 (implementation of rate changes), 1203.07 (payment arrangements as this section relates to non-basic service customers), 1203.08 (late payment charges); and 1203.09 (complaints).

[5] In addition, it will be necessary to examine the Uniform Tariff to ensure that its provisions are consistent with current law.

IV. Elimination of Unnecessary Reporting Requirements.

The Commission's current reporting requirements applicable to CLECs and CTPs place an undue burden on carriers that is far out of proportion to the benefits realized. In addition, under Ch. 177, the Commission will no longer regulate certain aspects of CLECs' and CTPs' business and operations. Therefore, it no longer is necessary for the Commission to gather information regarding such operations and activities. The Commission should eliminate the corresponding reporting requirements. Specific examples are discussed below.

A. Annual Reporting.

The annual reports under Puc 431.09 (CLECs) and 451.07 (CTPs) should be eliminated. These reports require information on the carrier's finances and operations (*e.g.*, §§ 449.04(b), (c), (g); 469.04(c)-(f)), which under Ch. 177 no longer are subject to regulation. In addition, for certain information that remains appropriate for the Commission to obtain, the Commission should consider whether annual reporting is necessary, or whether reporting on an "as-needed" basis serves the purpose for the reporting requirement.

B. Accident and Service Quality Reporting.

Section 8 of chapter 177 makes the provisions of RSA 370 inapplicable to any excepted local exchange carrier. RSA 370 governs the Commission's authority to establish product standards, units of measure, and service quality. Therefore, there no longer is in need for the commission to gather information and to require the filing of annual reports relative to service quality, outages, and accidents (§§ 431.16-.18).

Another reason to eliminate retail service quality reporting for CLECs is that such reports do not accurately reflect CLECs' performance. The service quality of CLECs that rely on FairPoint for underlying facilities and services is largely or totally dependent on FairPoint's performance. CLEC service quality reports, therefore, are mainly a "pass-through" of FairPoint's performance statistics and provide little useful information to gauge the CLECs' service quality.

Note, however, that this recommendation does not include eliminating any wholesale service quality requirements imposed upon FairPoint under the Telecommunications Act or as the commission may deem appropriate in the context of providing service to CLECs and CTPs. In particular, C2C and PAP standards, credits, and reporting requirements are in place as the result of Verizon's (FairPoint's predecessor) § 271 approval and are necessary to determine whether FairPoint is providing nondiscriminatory services to CLECs. These requirements supersede, and are independent of, the Commission's authority (or lack thereof) to regulate under state law.

C. Assessment Report

The assessment reports required by Puc 431.10 and 451.08 may be used only for purpose of obtaining information necessary to collect the statutory telecommunications assessment. The current assessment report serves this purpose and need not be changed. However, it would not be permissible to expand the assessment report to gather information beyond what is necessary to account for and collect the assessment. This is particularly the case as other reporting requirements are eliminated in the aftermath of chapter 177. The assessment report may not be used to gather information no longer germane in light of chapter 177.

V. CANNE's Continued Participation.

CANNE hereby expresses its interest and intent in continuing to participate in this proceeding.[6] Please add to the service list:

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CANNE further notes that this proceeding is at an early stage, and that its comments necessarily are preliminary. Therefore, CANNE reserves its rights to submit further comments as this rulemaking progresses.[7]

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[6] CANNE's understanding is that a petition for intervention in this rulemaking proceeding is not necessary. The requirements for intervention set forth in RSA 541-A:32 are applicable to adjudicative proceedings, which, under RSA 541-A:1, I, are governed by RSA 541-A:31 through RSA 541-A:36. If, however, a petition to intervene is necessary, CANNE states that its and its members' rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding. Some of CANNE's members are telecommunications carriers operating in New Hampshire and, therefore, are subject to the rules under review. Further, the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention. To the contrary, since its members are subject to the regulations in question as CLECs and CTPs, CANNE can offer a perspective on the operation of the rules that the Commission cannot obtain elsewhere. Therefore, CANNE's participation will promote, not impair, the interests of justice and the orderly and prompt conduct of the proceedings.

[7] Among the issues that will ripen as the proceeding goes forward is that numerous additional administrative changes will be required as substantive rules are revised. For example, many definitions in Puc 402 will have to be revised or eliminated. Provisions relating to the substantive content of forms and reports, to the extent they are not eliminated, also will have to be revised.

Conclusion

CANNE thanks the Commission and Staff for the opportunity to comment and looks forward to continuing its participation in the rulemaking process.

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Respectfully Submitted,

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