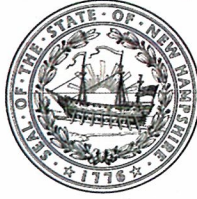


STATE OF NEW HAMPSHIRE



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NHPUC 23JAN14AM9:24

January 23, 2014

Debra A. Howland
Executive Director
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: DRM 12-036, Puc 400 Rules for Telephone Utilities
JLCAR Preliminary Objection Letter**

Dear Ms. Howland:

Enclosed for filing in the above-referenced docket is a copy of the letter dated January 17, 2014 from Michael Morrell, staff attorney for the Joint Legislative Committee on Administrative Rules, regarding the preliminary objection entered by JLCAR with respect to Final Proposal 2013-51, the Puc 400 Rules for Telephone Utilities.

Sincerely,

A handwritten signature in cursive script that reads "David K. Wiesner".

David K. Wiesner
Staff Attorney/Hearings Examiner

cc: Service List



STATE OF NEW HAMPSHIRE
JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES
ROOM 219
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6312

January 17, 2014

Public Utility Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: Preliminary Objection to Final Proposal 2013-51

Dear Commission Members:

At its meeting on January 17, 2014, the Joint Legislative Committee on Administrative Rules (Committee) voted, pursuant to RSA 541-A:13, IV, to enter a preliminary objection to Final Proposal 2013-51 of the Public Utility Commission (Commission) containing Puc 400 relative to telephone utilities. The Committee's preliminary objection was based on public testimony to Final Proposal 2013-51. A copy of written testimony is attached. A copy of the Committee's transcript will be sent to you as soon as it is available.

You may respond to the Committee's preliminary objection by amending the rules in the Final Proposal to resolve the bases for objection, by withdrawing the rules, or by making no changes. You are required to respond in writing to the Committee's preliminary objection within 45 days of the date on which it was made, which is January 17, 2014. In this instance, the 45th day is March 3, 2014.

After the Committee has received your response, the Committee may take further action ranging from approval of the objection response to voting to support the sponsorship of a joint resolution to address the issues remaining with the proposal. Pursuant to RSA 541-A:13, VII(b), the Committee will have up to 50 days after the end of your response period to take action concerning a joint resolution, although the Committee can take action prior to that date. In this instance the 50th day is Tuesday, April 22, 2014. Please note that there is no deadline by which the Committee must act to approve the rules or to enter final objections, and the Committee may do so even after the adoption of the rules by the Commission.

Please be advised that, pursuant to RS 541-A:14, I. you may not adopt the rules until one of the following as occurred: 1) the expiration of the objection response review period without the Committee having taken action with respect to voting to support the sponsorship of a joint resolution; or 2) the Committee has taken action that is specifically in lieu of voting to support the sponsorship of a joint resolution.

Public Utility Commission
FP 2013-51
January 17, 2014
Page 2

If you have any question concerning the provisions in RSA 541-A relative to objections, responses, or adoptions, please call me at 271-3680.

Sincerely,



Michael A. Morrell
Committee Attorney

Enc.

cc: Amy L. Ignatius, Esq., Chairman, PUC
✓ David K. Wiesner, Esq., Staff Attorney, PUC
Richard W. Head, Esq., Associate A.G., DoJ

JAN 17 2014

**DRM 12-036, Rulemaking, Puc 400, Rules for Telephone Service-Summary of Comcast Comments
JLCAR - 1/17/2013**

Issue #1 Proposed Rule ("PR") 404.01; PR 402.23; RSA 362:7;

The Proposed Rules fail to define an essential term - "telecommunications" - despite its use in the statute created by SB 48 (2012) and its historical use throughout the public utility statutes and rules. See, e.g., RSA 362:7, I, (c)(3), RSA 362:7, I (a), RSA 374:22-g, I, RSA 374:22-o and existing Chapter Puc 400 "Rules for Telecommunications".

Instead of permitting registration of ELECs (Excepted Local Exchange Carriers) that are "providers of telecommunications services" as required by RSA 367:2, I(c)(3), Proposed Rule 404.01 limits registration to those providers that offer "voice service" (see issue 2, below), a narrower and impermissible subset of telecommunications services.

- JLCAR should object because the proposed rule is; **Contrary to the intent of the legislature RSA 541-A:13, IV(b); Determined not to be in the public interest RSA 541-A:13, IV(c); Substantial economic impact not recognized in fiscal impact statement RSA 541-A:13, IV(d)**

Issue #2 PR 404.01; PR 402.23; RSA 362:7; RSA 362:2

Proposed Rule 404.01 is contrary to the intent (and plain language) of RSA 362:7, I(c)(3), because it limits ELEC registration to entities offering "voice service," a subset of telecommunications services, which the proposed rules define at Puc 402.23 as "the conveyance of telephone messages for the public."

By creating a subset of telecommunications service providers that are eligible for ELEC registration, the Proposed Rule impermissibly creates a specific category or level of license (i.e. voice service providers) that is not supported or authorized by statute. See JLCAR Rules 401.05(b).

The term "voice service" appears nowhere in RSA 362:7, and the statute does not permit this limitation to the ELEC registration provision. It is well settled that rules cannot add to, detract from, or in any way modify statutory law. See Appeal of Campaign for Ratepayers' Rights, 162 N.H. 245, 252 (2011).

- JLCAR should object because the proposed rule is; **Beyond the authority of the agency RSA 541-A:13, IV(a) and like Issue #1 violates RSA 541-A:13, IV(b); RSA 541-A:13, IV(c); RSA 541-A:13, IV(d)**

Issue #3 PR 404.01(f)

Proposed Rule 404.01(f) states that previous competitive local exchange carrier ("CLEC") authorizations shall expire 90 days after the effective date of the rules. Neither SB 48 nor HB 542 expressed any intent to eliminate CLEC status in New Hampshire. Moreover, the PUC's "Request for Fiscal Impact Statement" (Apr. 12, 2013) at page 2 expressly states that the ELEC category includes competitive local exchange carriers.

- JLCAR should object because the proposed rule violates RSA 541-A:13, IV(a); RSA 541-A:13, IV(b); RSA 541-A:13, IV(c) and RSA 541-A:13, IV(d).

Issue #4

404.02(c) compels an applicant to undergo an adjudication of its status as an "eligible telecommunications carrier" ("ETC") under federal law as part of the state's process for allowing entry into a rural carrier's service territory. This is directly contrary a recent New Hampshire Supreme Court case (In Re Bretton Woods.)

- JLCAR should object because the proposed rule is a violation of RSA 541-A:13, IV(c) and RSA 541-A:13, IV(a).

JAN 08 2014

1-8-14

Comcast's Concerns Regarding PUC's Final Proposal for "Chapter Puc 400 Rules for Telephone Utilities"

SUMMARY OF MAJOR ISSUES/CONCERNS:

1) The proposed rules terminate competitive local exchange carrier ("CLEC") status (*see* Puc 404.01 (f)). There is no basis to do so. The statutes have not changed in any way that would merit the termination of the CLEC category, and many existing agreements and orders would be upset by eliminating a regulatory category well defined by state and federal law and incorporated and referenced in those agreements.

2) The proposed rules do not define "telecommunications" or "telecommunications services." The term "telecommunications services" is not defined in the rules, despite the fact that it is a component of the statutory definition of the term "Excepted Local Exchange Carrier" ("ELEC"), resulting in too narrow a definition of ELEC. The statute defines an ELEC as, *inter alia*, "[a]ny provider of telecommunications services" that is not an ILEC, RSA 362:7, I(c)(3), and defines as a "public utility" any entity "owning, operating, or managing any plant or equipment or any part of the same for the conveyance of telephone ... messages ... for the public..." RSA 362:2. Providers that offer certain wholesale inputs, such as offering interconnection service to retail providers or exchange access to interexchange carriers ("IXCs"), are providing "telecommunications service" under federal law, and are therefore both ELECs under RSA 362:7 and public utilities under RSA 362:2, respectively. However, the proposed rules limit ELEC registration to a narrower set of retail "voice" providers and thus fail to cover the range of providers that are ELECs under the statute, in particular CLECs currently authorized to provide wholesale or data services. *See Letter to Director Scott F. Eaton from Chairman Amy L. Ignatius* (Dec. 12, 2013) at 2. The term telecommunications is a well-defined term under federal law that should be afforded its accepted meaning. Inclusion of this term would, without question, include wholesale services provided by many New Hampshire providers. Failure to define and recognize the term telecommunications services could jeopardize some existing CLECs' state certification rights.

3) The proposed rules jeopardize current interconnection rights and access to numbering resources. Although a telecommunications provider's rights to interconnection and numbering resources are governed by federal law and thus should not depend upon how the provider is classified or regulated under state law, losing CLEC status and not being registered as an ELEC under New Hampshire law could create unnecessary disputes and pose practical roadblocks to a CLEC's ability to interconnect to the public switched telephone network and obtain new telephone numbers, both of which would have anti-competitive effects upon New Hampshire's telecommunications market.

4) The proposed rules are contrary to New Hampshire Supreme Court case relating to certification of competitive providers. The process set out in the rules for authorizing

the argument “that services provided on a wholesale basis to carriers or other providers are not telecommunications services because they are not offered ‘directly to the public’...”).

- See also Order No. 25,005, *Comcast Phone of New Hampshire d/b/a Comcast Digital Phone, Petition for Arbitration of Rates, Terms and Conditions of Interconnection with TDS*, at 19 n.6 (Aug. 13, 2009) (“TDS Interconnection Order”) (“[W]hether a telecommunications service is offered on a retail or wholesale basis is not determinative as to whether it is offered on a common carrier basis.”).
- The definition of a public utility under RSA 362:2 was unchanged by SB 48 and HB 542; there is thus no basis under either bill to exclude providers from the public utility definition.
 - The legislative history to SB 48 (2012 session) states that the bill “modernized the regulation of telecommunications services” and indicates the legislature did not intend VoIP or IP enabled services to be regulated as “telecommunications services,” demonstrating the legislature’s intent that “telecommunications services” would continue to be regulated by the PUC.
 - Other than limitations specific to VoIP and IP-Enabled retail providers, SB 48 and HB 542 (2013 session) contain no additional limitations on the scope of entities subject to regulation as public utilities under 362:2.

2. Wholesale Providers Can be ELECS under RSA 362:7.

- The statute defines an ELEC as, *inter alia*, “[a]ny provider of telecommunications services” that is not an ILEC. RSA 362:7, I (a).
 - “Telecommunications services,” under federal law, include certain wholesale services as well as retail services.
 - See *Time Warner Interconnection Order & TDS Interconnection Order, supra*.
 - “Telecommunications services” is also a term used repeatedly in the governing statutes. (See, e.g., RSA 362:7, I, (c)(3), RSA 362:7, I (a), RSA 374:22-g, I, and RSA 374:22-o).
- The term “telecommunications service” has a longstanding and accepted meaning under federal law as encompassing wholesale services offered on a common carrier basis. The term “telecommunications services” as part of the definition of an ELEC in 362:7 I, (c)(3) must be read consistent with the federal definition as including certain wholesale services. Because the term is undefined in either the statute or the proposed rules, it must be ascribed its plain and ordinary meaning. See *New Hampshire Motor Transport Ass’n Employee Benefit Trust v. N.H. Ins. Guar. Trust*, 154 N.H. 618, 621 (2006). It also must be interpreted in accordance with its common and approved usage, unless from the statute it appears a different meaning was intended. See *State v. McGuirk*, 163 N.H. 584, 587 (2012). There is no basis in the statute to believe that the legislature intended anything other than the settled meaning of the term under federal law.

3. The Rules Do Not Define an Important Statutory Term – “Telecommunications.”

The PUC very recently decided to abandon its longstanding use of the term telecommunications and replace it with telephone and/or voice service. For the past several years, the PUC’s 400 rules, including its October 3, 2013 “Fixed Text Draft Final Proposal” were entitled “Rules for Telecommunications,” and the term “telecommunications” was used throughout the rules.

- “Telecommunications services” is a term used in the governing statutes. (See, e.g., RSA 362:7, I, (c)(3), RSA 362:7, I (a), RSA 374:22-g, I, and RSA 374:22-o). SB 48 adopted a new term set forth in RSA 362:7, I (c)(3) (Excepted Local Exchange Carrier (“ELEC”)) which is defined as “[a]ny provider of telecommunications services that is not an incumbent local exchange carrier.” In view of the foregoing, the rules should include definitions of telecommunications and telecommunications services.

4. The Proposed Rules Improperly Limit ELEC Registration to Entities Offering Retail “Voice” Service.

- RSA 362:7, I(c)(3) plainly states that ELEC status turns upon whether an entity is offering “telecommunications service.”
- For the past several years, the PUC’s 400 rules, including its October 3, 2013 “Fixed Text Draft Final Proposal” were entitled “Rules for Telecommunications,” and the term “telecommunications” was used throughout the rules.
- However, the proposed Puc 404.01 now limits ELEC registration to entities offering “voice service,” which the proposed rules define at Puc 402.23 as “the conveyance of telephone messages for the public.”
- The PUC has signaled that it intends this proposed “voice service” limitation as extending only to retail services, excluding both wholesale and data services.
 - For instance, the PUC’s letter to Mr. Eaton, dated December 12, 2013, states that “[t]he proposed rules cover only telephone utilities engaged in the conveyance of telephone messages for the public under the state law definition of ‘public utility,’ and do not expand the Commission’s state law jurisdiction to cover other data or wholesale services covered under the broader federal definition of ‘telecommunications services.’”
- The term “voice service” appears nowhere in RSA 362:7, and the statute does not permit this limitation to the ELEC registration provision. It is well settled that rules cannot add to, detract from, or in any way modify statutory law. *See Appeal of Campaign for Ratepayers’ Rights*, 162 N.H. 245, 252 (2011).
 - RSA 362:7 I, (c)(3) does not permit a limitation to retail services only. On its face, it extends ELEC status to *all* providers of “telecommunications services,”

and does not limit those to any particular subset of telecommunications services, such as "voice service."

- If an entity is providing "telecommunications service," it should be permitted to register as an ELEC under 404.01.
- RSA 362:7, II is irrelevant to this limitation. It excludes certain retail providers (of VoIP and IP-enabled services) from the ELEC definition. However, nothing in RSA 362:7, II would exclude wholesale telecommunications providers from the definition of an ELEC merely because some of their *customers* are VoIP providers or IP-enabled service providers, or because the wholesale providers connect telephone calls between subscribers of ILECs or ELECs with subscribers of VoIP providers or IP-enabled service providers not regulated as public utilities or ELECs under the statute.
- RSA 362:2 does not permit this limitation either.
 - The ELEC definition in 362:7 I, (c)(3) is not bounded by the public utility definition in RSA 362:2. The definition of an ELEC is "*any* provider of telecommunications service." (emphasis added).
 - The public utility statute is not limited to entities that provide retail service, but extends more broadly to entities that "own[], operat[e], or manag[e] any plant or equipment or any part of the same for the conveyance of telephone ... messages ... for the public..." For the reasons stated above, a wholesaler can also own, operate, or manage such facilities.

5. Comcast Phone of New Hampshire, LLC (Currently Authorized by the PUC as a CLEC) Qualifies as an ELEC under RSA 362:7, I(c)(3) and a Public Utility Under RSA 362:2.

- There is no dispute that Comcast Phone of NH, LLC is a "provider of telecommunications that is not an ILEC" pursuant to 362:7 I, (c)(3). Based upon a plain reading of that statute, Comcast Phone is an ELEC eligible for certification in NH. The PUC may not by rule add an additional requirement not present in the statute itself.
- Pursuant to the definition of public utility in RSA 362:2, Comcast Phone is also a company that "own[s], operat[es], or manag[es] plant or equipment" that is used to convey "telephone messages... for the public."
 - Comcast Phone manages facilities that carry calls between the subscribers of other providers and Comcast's VoIP affiliate, Comcast IP Phone. As the PUC found in the *TDS Interconnection Order*, this constitutes offering "exchange access" service (as defined in 47 USC §153(16)) to other carriers.
 - Facilities managed by Comcast Phone carry "telephone messages" between Comcast IP Phone's customers and the subscribers of carriers, such as FairPoint, and Comcast Phone carries those calls using the same time division multiplexing ("TDM") protocol used by traditional carriers.

- It does not change anything that the caller on one end of the calls carried by Comcast Phone, the subscriber of Comcast's VoIP affiliate Comcast IP Phone, receives or places the call in VoIP.
 - The caller on the other end of the call (for instance, a subscriber of FairPoint) is often using a traditional telephone, so the call is still a "telephone message."
 - Moreover, under the PUC's Order in 09-044, Comcast IP Phone was found to provide a service that "constitutes a conveyance of a telephone message" pursuant to RSA 362:2. Although the retail VoIP service offered by Comcast IP Phone may no longer be considered a public utility service (under HB 542 and RSA 362:7, II), that does not change the fact that the underlying calls transmitted by Comcast Phone on Comcast IP Phone's behalf are "telephone messages."
 - Indeed, the PUC has expressly refused to vacate this holding in 09-044.

III. The rules include an overly burdensome process for authority to enter RLEC service territories, thereby running afoul of the *Bretton Woods* decision and the federal law cited therein.

The proposed Puc 404.02(c) indicates that as part of the process for approving a competitor's request to operate in a rural telephone company's ("RTC's") territory, the RTC can ask the Commission to adjudicate whether the applicant must meet the requirements of 47 U.S.C. 253(f) relative to eligible telecommunications carrier ("ETC") status. Comcast objects to this burdensome adjudicatory process because it is contrary to the Supreme Court's holding in *In Re Bretton Woods Telephone Co., Inc.*, 164 N.H. 379 (2012). In *Bretton Woods*, the Court affirmed the PUC's holding that federal law preempted a requirement that there be a prior adjudication (*i.e.* notice and hearing) before the Commission decides whether to grant a competitive carrier's application to operate within the territory of an RTC. Comcast believes that, consistent with the *Bretton Woods* decision, the more appropriate approach for applications to operate in an RTC's territory is for the Commission to grant the application unless it is denied for the reasons stated in 404.03. Once authorization is granted, the RTC would have the opportunity to request that the applicant meet the ETC requirements, and the Commission could consider that issue in a separate adjudicative proceeding. It is Comcast's position, consistent with the Supreme Court's holding in *Bretton Woods*, that interposing an adjudication process in advance of the initial authorization is contrary to the holding in *Bretton Woods*; and that if the Commission is to act upon an RTC's petition that a competitive provider be required to meet ETC requirements, such adjudication should be separate from the approval to provide service in a given territory. Although *Bretton Woods* contemplated

that the Commission may address this issue via rulemaking, a proposed rule that adds an adjudicatory burden to the approval process is contrary to the decision itself.

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JAN 17 2014

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ATTORNEYS AT LAW

January 14, 2014

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Representative Rick Ladd
PO Box 67
Haverhill, NH 03765-0067

Re: Final Proposal # 2013-51; Puc 400 - Public Utilities Commission Rules for Telephone Utilities

Dear Representative Ladd:

The New Hampshire Telephone Association¹ has concerns about the statutory authority of some of the rules in the subject Final Proposal. We have voiced those concerns to the Commission at the public hearing, in written comments, and in the technical sessions. Over the course of the rulemaking process, the Commission has made some revisions to the rules, however, there are a number of areas that NHTA still believes need to be addressed in order to comply with the statute. Enclosed is a document that will explain these concerns in detail.

Very truly yours,



Harry N. Malone
Attorney for NHTA

HNМ:tmp
Enclosure

¹ NHTA is comprised of 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, Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE, Union Telephone Co. and Wilton Telephone Company, Inc. Please note that FairPoint Communications abstains from the comment regarding proposed rule Puc 404.02. FairPoint's territory is already open to competitive entry, and so it takes no position on this issue

from Teresa Rosenberger of Devine

1-13-14

JAN 13 2014

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INTRODUCTION AND SUMMARY

Last year, Title 34 of the New Hampshire Revised Statutes was substantially revised by 2012 N.H. Laws Chap. 177 ("SB 48"). SB 48 was intended to overhaul a regulatory scheme that was a relic of an era when local exchange telephone service was considered a "natural monopoly," and replace it with a scheme that recognizes that robust competition for local telecommunications services abounds in New Hampshire and that all telephone service providers should be free to compete on a level playing field. To that end, the legislature enacted SB 48, which largely deregulated end user telephone services by creating a class of carriers labeled "Excepted Local Exchange Carriers" ("ELECs") which would be exempt from most of the public utility statutes that relate to end user services, while at the same time ensuring that no current end user would be completely without access to basic telephone service. Shortly afterwards, the legislature enacted 2013 N.H. Laws Chap. 279 ("HB 542") which clarified certain aspects of SB 48.

By so altering the regulatory landscape in New Hampshire, SB 48 has made it necessary to rewrite most of the rules by which the Commission regulates telephone service. NHTA believes that the Commission's Final Proposed Rules are reflective of the intent of SB 48 in many respects, although there is still room for refinement. In particular, as described further in these comments, some of the proposed rules are no longer within the Commission's statutory purview and do not confer the authority that is presumed. For example, the proposed rules still reflect a conviction that the Commission has a continuing role in basic network operations of all telephone companies. Furthermore, the Commission has improperly imposed customer service rules that misinterpret the distinction between discontinuing operations entirely and disconnecting service to a single customer.

The Commission presumes to draw its authority for these disputed rules from Chapter 365 and Chapter 374 of RSA Title 34 (Public Utilities), bolstered by reference to certain federal statutes. However, these laws have been amended by SB 48 and HB 542 to establish that, with certain express exceptions, they *do not apply to ELECs*. Specifically, RSA 365:1-a provides that:

Except for complaints about RSA 371:17 through RSA 371:24 [Rights in Public Eaters and Land], RSA 374:2-a [Herbicide Use], RSA 374:22-p, I(b) [Basic Service], RSA 374:28-a [Slamming], RSA 374:34-a [Pole Attachments], RSA 374:48 through RSA 374:56 [Dig Safe], RSA 374:59 [Number Conservation], and RSA 378:44 through RSA 378:48 [Cramming], the provisions of this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user. Such end users may, however, make complaints to the commission regarding basic service, as defined by RSA 374:22-p, I(b) by excepted local exchange carriers:

Similarly, RSA 374:1-a provides that:

Except as provided otherwise in this chapter, and except for RSA 374:2-a [Herbicide Use], RSA 374:28-a [Slamming], RSA 374:34-a [Pole Attachments], RSA 374:48 through RSA 374:56, and RSA 374:59 [Dig Safe], the provisions of

this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user.

As a result, the Commission has proposed certain rules that, taken together, eviscerate much of the deregulatory effect of SB 48 and HB 542. These rules are discussed in further detail below.

Puc 405.05 Number Portability Notice *authority?*

Under the Federal Communications Commission's "local number portability" rules, end users can switch telephone service providers and keep their existing phone number so long as they remain in the same geographic area. Under these rules, end users work through their new provider, who in turn coordinates with the old provider to transfer the number from one network to another.

In proposed rule Puc 405.05, the Commission proposes to impose a 10 day notice for the termination of any local exchange service and requires telephone companies to advise customers on how to retain their telephone number and port their telephone numbers to a new telephone company:

Puc 405.05 Number Portability Notice. Before terminating any customer's telephone service for any reason other than customer request, ELECs and HLECs shall provide 10 days' notice to the customer. This notice shall include a description of the process by which the customer may transfer the telephone number to another provider.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, I (Obligations imposed by the federal Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1-a (Savings clause for telephone number conservation)
- RSA 374:59 (Number conservation and area code implementation)
- 47 U.S.C. § 251(b)(2) (Duty to provide number portability)

DISCUSSION: This rule pertains to end users and end user services under Chapter 365 and Chapter 374, over which the Commission has no authority except as to non-ELECs. Therefore, as to ELECs, the Commission may not impose a notice period for terminating service nor may it require an ELEC to guide customers through the process of porting their numbers. Otherwise, the Commission is intruding into the customer relationship and compelling the telephone company to instruct its customers on how to evade one of the consequences of their failure to pay, thus undermining one of the incentives customers have to fulfill their legitimate payment obligations.

Furthermore, the Communications Act confers no authority to the Commission in this regard. The number portability statute, 47 USC § 252(b)(2), as implemented by the FCC, 47 CFR §§ 52.1 – 52.111, imposes no affirmative duty on carriers to aid individual customers (as opposed to other carriers) in implementing the number porting process. Moreover, the FCC has made it clear that customers have no rights to port a number for service that has been terminated, and

there is no process in place by which a customer may execute a number port on their own; only LECs can do this. The only initiative customers may take on their own is to switch providers *before* their service is terminated and request a number port.¹

No independent authority is conferred on the Commission by RSA 374:59, IV either. This statute provides that:

The commission should adopt measures, to the maximum extent allowable by federal law and availability of technology, to provide for local number portability by all suppliers of local exchange service. (emphasis supplied).

Furthermore, number porting has no long-term effect on number conservation. To the extent that a disconnected number is not ported to another service provider, it goes back into the original carrier's number pool and becomes available for reassignment shortly thereafter. There is no net loss of numbering resources as a result.

RECOMMENDATION: There is no law that provides for as broad an implementation of the number portability rules as are represented in proposed rule Puc 405.05. Proposed rule Puc 405.05 should be deleted in its entirety.

¹ See FCC Number Porting Guide, attached.

Puc 406.02 Emergency Operations

Proposed rule Puc 406.02 contains rules for network construction:

Puc 413.03 Emergency Operations: ELECs and ILECs shall make reasonable provisions to meet emergencies resulting from any of the following:

- (a) Failures of commercial power service;
- (b) Sudden and prolonged increases in traffic;
- (c) Illness, strike, or labor unrest of employees;
- (d) Failure of a supplier to deliver materials or supplies;
- (e) Civil unrest;
- (f) Cyber attacks; or
- (g) Any other significant disasters, including, but not limited to, fire, storms, floods, or other "acts of God" causing loss of communication to a large population or area of the state to the extent that the magnitude or duration is foreseeable.

*Unclear how
this is deter-
mined and what
happens if so
determined.*

As support for its authority to impose this rule, the Commission cites:

- RSA 365:8, I (Savings clause related to Communications Act)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XI (Standards and procedures for conduct of investigations)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:1 (Safe and adequate service)
- RSA 374:3 (Extent of Commission power)
- RSA 374:4 (Duty to keep informed)
- RSA 374:34-a (Equipment in public right of way and lands)
- 47 U.S.C. § 251(a) (General duty of telecommunications carriers)

DISCUSSION: This proposed rule derives from the Commission's perceived authority to oversee network operations. However, Title 34, as amended by SB 48, provides the Commission with no jurisdiction over how end user services of ELECs are provided. There is no authority in the cited statutes or any other state or federal statute that confers on the Commission the authority to establish or enforce this provision as it pertains to ELECs. With the exception of

RSA 374:34-a, the cited statutes involve vague and generalized grants of Commission authority, all of which are preempted by the general exception for end user services. Furthermore, RSA 374:34-a, the only statute with substantial provisions related to network operations, invokes *none* of the aspects of this rule. RSA 374:34-a provides in pertinent part that the Commission retains authority over "emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment . . . located within *public rights-of-way* and on, over, or under state lands and water bodies." However, the Commission has written its rule so broadly that it covers all of an ELEC's operations and essentially nullifies much of SB 48.

For example, in the interest of remedying "prolonged increases in traffic," the Commission can dictate how many switches a telephone company maintains in its network, the number and capacity of circuits connecting those switches, the capabilities of its network operations center, and it can investigate and mandate network grooming procedures. In the interest of remedying "power failures," the Commission can dictate the number, placement and capacity of backup power generators. In the interest of remedying supplier failures, it can dictate inventory levels of equipment and supplies. In the interest of protecting from "civil unrest" and undefined "cyberattacks," the Commission can dictate security procedures throughout all levels of the company. In short, this one rule provides the Commission with plenary authority to oversee virtually all aspects of an ELEC's operations.

This is not what the legislature intended with SB 48. Furthermore, this rule is also unnecessary in light of emergency preparedness rules established by the FCC. The rules at 47 CFR § 12.4 ensure that 911 service remains available during and after disasters. The rules require incumbent wireline service providers like the NHTA members to certify annually that they have implemented industry "best practices" for auditing 911 circuits for backup and redundancy, maintaining central office backup power, and maintaining reliable and resilient networking monitoring systems. The rules also requires 911 service providers to inform public safety answering points (PSAPs) of network outages that affect them, and to provide additional information within two hours about "the nature of the outage, its best-known cause, the geographic scope of the outage, and the estimated time for repairs."

The FCC rule is narrowly tailored to achieve the purpose of maintaining emergency operations. The Commission rule, on the other hand, is limitless in its breadth and not within the Commission's statutory authority.

RECOMMENDATION: Proposed rule Puc 406.02 should be revised to be non-applicable to ELECs.

Puc 410.03 Basic Service

Proposed Rule 410.03 is a new rule that describes obligations regarding the offering of basic service in its territory:

Puc 410.03 Basic Service.

different from SB 48

- (a) An ILEC shall offer basic service throughout its service territory.
- (b) An ILEC shall not require a customer to purchase or subscribe to any other service, feature or product, whether separate from or in combination with basic service, or on an unbundled or bundled basis with basic service, in order to obtain basic service offered by the ILEC.
- (c) An ILEC shall not require an existing or prospective basic service customer to waive, release or otherwise relinquish any rights or remedies under the Puc 400 rules or the statutes implemented by these rules, including, but not limited to, the right to submit a complaint to the commission pursuant to Puc 410.05.
- (d) An ILEC shall not impose exit fees on a customer who cancels basic service.
- (e) An ILEC-ELEC shall change its rates for basic service only through the following process:
 - (1) After August 10, 2020, the ILEC-ELEC may increase its rates to any level without commission review or approval;
 - (2) Without commission review or approval, the ILEC-ELEC shall limit increases to its rates for basic service subject to the following cap in each twelve-month period beginning August 10, 2012 or the effective date of an existing alternative plan of regulation approved by the commission, pursuant to RSA 374:22-p, VIII(b);
 - a. For customers who are enrolled in the Lifeline Telephone Assistance program, the cap is 5%;
 - b. For all other customers, the cap is 10%.
 - (3) The ILEC-ELEC shall seek commission approval for additional rate increases in the event of changes in federal, state, or local government taxes, mandates, rules, regulation, or statutes.

(f) Any ILEC proposing to change its basic service coverage area shall comply with the following provisions:

(1) An ILEC which seeks to change geographic boundaries or other policies that would change the number of end users with whom a basic service customer can connect using a local call, shall petition the commission for review and approval of the change.

(2) Such petition may include a proposed rate adjustment to reflect the change in coverage.

(3) In deciding whether to approve the proposal, the commission shall consider whether the ILEC has demonstrated that the proposed change:

a. Results in service comparable to or superior to the basic service offered on August 10, 2012; and

b. Does not effectively increase the price of basic service by more than the rate cap pursuant to (d) above.

(g) An ILEC that is unable to provide basic service to a current or prospective customer upon application therefor shall comply with the following provisions

(1) An ILEC shall keep a record as to each instance in which it is not able to supply basic service to prospective customers within 10 days following the customer's application for service.

(2) The record required by (f)(1) above shall be provided to the commission on request.

(3) The record shall include:

a. The name, address, and telephone number of each applicant who was not provided service within 10 days;

b. The date of application for service;

c. The class of service applied for; and

d. The reason the ILEC was unable to provide service within 10 days of the customer's application.

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, IV (Savings clause for obligations under RSA 374-22-p and RSA 374:30, II)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:22-p (Affordable telephone service)

DISCUSSION: To begin with, it should be emphasized that basic service is an end user service which, as it concerns ELECs, the Commission has no oversight other than 1) discontinuing basic service throughout the service territory and 2) rate increases above the statutory cap. However, some of the Commission's proposed Basic Service rules expand this authority so much as to essentially preserve most of its current authority over telephone company operations.

Proposed subsection (a) requires that "[a]n ILEC shall offer basic service throughout its service territory," *i.e.* that an ILEC has an *affirmative* obligation to provide service throughout its territory, even where service is not currently provided. However, this rule does not conform to the language in SB 48, which provides that ILECs "may not discontinue residential basic service . . . in any portion of their franchise area unless the commission determines that the public good will not be adversely affected by such withdrawal of service." In other words, SB 48 differs in that it imposes a *prohibitive* obligation: an ILEC may not discontinue service where it *currently* offers service. SB 48 says nothing about compelling ILECs (and only ILECs) to expand into any unserved area. The Commission's proposed rule would unfairly force an ILEC to lose money by providing service to remote areas for which no economic case can be made for expansion. This is not what the legislature contemplated when it moved to deregulate end user service and create a level competitive playing field.

NHTA has concerns about subsection (b) as well, which provides that "[a]n ILEC shall not require a customer to purchase or subscribe to any other service, feature or product, whether separate from or in combination with basic service, or on an unbundled or bundled basis with basic service, in order to obtain basic service offered by the ILEC." The apparent intent is that basic service is to be available on a standalone basis, but the effect is too broad. For example, as written, this rule would prevent ILECs from continuing to charge for special construction charges when service must be built out to a residence that is far from the road. In any event, there is no way that this rule can be salvaged as it applies to ELECs, because it imposes a contractual requirement on an end user service that has no support in the statutes that the Commission has cited or in any other law. The Commission has no authority other than 1) approving the discontinuance of basic service throughout the service territory and 2) approving rate increases above the statutory cap.

RECOMMENDATION: Subsection (a) of the rule should be revised to conform to the language of the statute. Subsection (b) should be revised to be inapplicable to ELECs.

Puc 410.04 ILEC Discontinuations of Basic Service

Proposed rule Puc 410.04 perpetuates the current rules regarding disconnection of service to an individual customer:

Puc 410.04 ILEC Discontinuations of Basic Service.

(a) An ILEC shall not discontinue basic service to a customer without commission authorization unless:

- (1) The ILEC has notified the customer that basic service will be discontinued unless prompt payment is received;
- (1) Fourteen days have passed since the notice was given; and
- (3) The customer's balance includes at least two months of basic service charges.

(b) If an ILEC has received notification within the past 60 days from a licensed physician or mental health professional that a medical emergency exists at the location, or would result from the service discontinuation, the ILEC shall not discontinue service to the customer without commission authorization unless the customer has failed to enter into or comply with an arrangement for repayment of the outstanding balance.

(c) Nothing in (a) or (b) above shall prevent an ILEC from discontinuing basic service to a customer without commission authorization or notice to the customer when:

- (1) A customer or resident in the customer's household has undertaken an action or a situation has been created with respect to the customer's utility service which results in conditions dangerous to the health, safety, property or utility service of the customer or others and disconnection will lessen or eliminate the risk or danger;
- (2) The customer has clearly abandoned the premises;
- (3) The customer refuses to provide access to his premises for a necessary inspection of utility property; or
- (4) A customer or resident in the customer's household has participated in or created the following:
 - a. Fraudulent use or procurement of the utility service; or
 - b. Tampering with the connections or other equipment of the utility.

confused "disconnect" with "discontinue"

not in SB 48

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, IV (Savings clause for obligations under RSA 374-22-p and RSA 374:30, II)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:22-p (Affordable telephone service)

DISCUSSION: This rule contains excerpts of the current service disconnection rules found in Puc 412.15 and 412.17, transcribed essentially verbatim except that the word “disconnection” has been replaced with the word “discontinuance.” With this switch, the Commission has inappropriately conflated the terms “discontinuance” and “disconnection” with the effect of bringing the Commission’s current end user service disconnection rules within the ambit of SB 48’s provision that ILECs “may not discontinue residential basic service, regardless of technology used, in any portion of their franchise area unless the commission determines that the public good will not be adversely affected by such withdrawal of service.”

This represents an abrupt shift in the Commission’s use of the pertinent language. In the current rules, the Commission distinguishes between “discontinuance” and “disconnection.” “Discontinuance” refers to cessation of operations² *entirely*, as distinguished from “disconnection,” which means “a technological function which occurs when a customer is physically or effectively separated or shut off from a utility service,”³ *i.e.* termination of an individual customer’s service. Principles of statutory interpretation explain that guidance can be found in the way a statute, *i.e.* Title 34, was traditionally construed following enactment.⁴ The respective usage described above, as reflected in the current rules, is standard usage in the industry⁵ and is the usage that was contemplated in the drafting of SB 48 regarding discontinuance of basic service and in discussions with the Commission Staff. There is no support in the statutes, current rules or past Commission practice for now conflating the two terms. Thus, the basic service *discontinuation* prohibition in SB 48 cannot be construed to authorize any service end user *disconnection* rules.

Consequently, this proposed rule is invalid at least as to ELECs. Commission jurisdiction over ELEC basic service is limited to only two aspects of that service: 1) discontinuing basic service *throughout the service territory* and 2) rate increases above the statutory cap. The Commission

² See *e.g.* rule Puc 431:14, “Discontinuance of Operations” (a CLEC must “notify the commission of its intent to cease operations;” “An ILEC providing wholesale services to a CLEC may petition the commission to initiate an involuntary discontinuance of operations against the CLEC.”)

³ Rule Puc 1202.08.

⁴ Singer and Singer, *Sutherland Statutes and Statutory Construction* § 49:1 (7th ed.).

⁵ In pertinent part, the Federal Communications Commission defines service discontinuation as “the closure by a carrier of a telephone exchange,” “the reduction in hours of service by a carrier at a telephone exchange,” or “the dismantling or removal from service of any trunk line by a carrier which has the effect of impairing the adequacy or quality of service rendered to any community or part of a community.” 47 CFR § 63.60(b).

has no jurisdiction under this statute to establish or enforce any service disconnection procedures as they apply to individual customers.

RECOMMENDATION: This rule should be revised to make it inapplicable to ELECs.

Puc 410.05 Complaints regarding basic service

Proposed rule Puc 410.05 purports to clarify the extent to which end users may complain about basic service.

Puc 410.05 Complaints regarding basic service. The commission shall accept and resolve complaints from ILEC customers regarding basic service.

goes beyond statute

As support for its authority to impose this rule, the Commission cites:

- RSA 362:8, IV (Savings clause for obligations under RSA 374:22-p and RSA 374:30, II)
- RSA 365:1 (Complaints against public utilities)
- RSA 365:1-a (Exceptions to application of Chapter 365)
- RSA 365:8, VII (Standards and procedures for safe and reliable utility service and service termination)
- RSA 365:8, XII (Procedures for proper administration)
- RSA 374:22-p (Affordable telephone service)

DISCUSSION: This rule is overbroad, because it refers to “complaints” in an unqualified manner. Commission jurisdiction over ELEC basic service is limited to only two aspects of that service: 1) discontinuing basic service throughout service territory 2) rate increases above the statutory cap.

It must be emphasized that RSA 374:22-p defines “basic telephone service” and in subsection VIII expressly confines the Commission’s jurisdiction to (a) discontinuance of basic service and (b) caps on basic service rate increases. Title 34, as amended by SB 48, provides the Commission with no jurisdiction over end user services of ELECs other than the two aspects of basic service described above. Thus jurisdiction is not preserved by RSA 365:8, which is qualified by RSA 365:1-a, which provides in pertinent part that “this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user.” Similarly, RSA 374:22-p is qualified by RSA 374:1-a, which provides in pertinent part the “the provisions of this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user.”

RSA 365:1-a (as amended by HB 542) does go on to provide that “[s]uch end users may make complaints to the commission regarding basic service, as defined by RSA 374:22-p, I, by excepted local exchange carriers.” However, this provision does not expand the Commission’s jurisdiction over basic service, but merely clarifies that it has the authority to accept consumer complaints over those aspects of basic service that it has express authority over.

Accordingly, the Commission has the jurisdiction to entertain Rule 200 complaints as to these two aspects delineated in subsection VIII, but not customer complaints regarding service quality, billing, payment or the like. Furthermore, it should be clarified to track the language of the statute that provides that basic service bundled or combined with any other service is “nonbasic service,” is expressly *not* basic service and is not subject to Commission jurisdiction in any form. To the point, the legislative intent was to ensure access to basic service by a carrier of last resort, not to preserve continuing Commission oversight of a set of feature common to all telephone services. This means that there is no “basic service” component in any nonbasic service to which any aspect of the Commission’s investigatory authority applies.

RECOMMENDATION: Proposed rule Puc 410.05 should be revised to clarify that the Commission’s authority to investigate and resolve complaints extends only to issues of service discontinuance in a territory and rate increases that exceed the statutory cap.



Portability: Keeping Your Telephone Number When You Change Service Provider

Background

Under the Federal Communications Commission's "local number portability" (LNP) rules, so long as you remain in the same geographic area, you can switch telephone service providers, including interconnected Voice over Internet Protocol (VoIP) providers, and keep your existing phone number. If you are moving from one geographic area to another, however, you may not be able to take your number with you. Therefore, subscribers remaining in the same geographic area can switch from a wireless, wireline, or VoIP provider to any other wireless, wireline or VoIP provider and still keep their existing phone numbers.

Initiating the Process

If you want to change companies:

- Do not terminate your service with your existing company before initiating service with the prospective new company.
- Contact the new company, which will start the process of porting your number by contacting your current company. Be prepared to provide the new company with your 10-digit phone number, customer account number, and five-digit zip code. If you had created a passcode to protect your account, you may also need to provide that passcode.
- Be aware that when terminating service with a wireless company, you may be obligated to pay any early termination fees under your existing contract. Also, when terminating service with any company, you are usually required to pay any outstanding balance owed. Review your bill or contract to determine what fees or charges apply. Once you request service from the new company, however, your old company may not refuse to port your number, even if you owe money for an outstanding balance or termination fee.

You may request service from a new company at any time.

Fees and Charges

- Companies may charge their customers fees to recover the costs that they incur in providing number portability. Fees may vary between companies, and some companies may not charge any fees.
- Companies may not refuse to port a number because a consumer has not paid for porting.
- When considering a switch, consumers should ask the new company whether it charges any number portability fees and whether those fees can be waived.



The Porting Period

FCC number porting rules require "simple" ports to be processed in one business day. The deadline applies to all simple ports, including "intermodal" ports such as wireline to wireless, wireless to wireline, wireline or wireless to VoIP or any other combination. Simple ports generally do not involve more than one line or more complex adjustments to telephone switching equipment.

During Porting

If you port from a wireline phone to a wireless phone, there may be a period of "mixed service" – when you essentially have two telephones with the same number. Ask your new wireless company whether you will be able to continue using your current wireline number during the one-day transfer process. Also, if you port from a wireline phone to a wireless phone, your wireline long distance company will not move with you. Your long distance service will generally be provided by your new wireless company, but you should verify this with the new wireless company before changing service providers.

Emergency Services

In some areas, 911 operators automatically receive the phone number or location of a wireless call, but in many areas, that is not the case. Technology that will provide that information – Enhanced 911 or "E911" – is currently being implemented, but is not yet available for some wireless phones and in some parts of the country.

As noted above, during the one-day porting process from the old company to the new company, there may be a period of "mixed service" – when you may have two telephones with the same number. During this time period, your E911 service may be affected. The call should go through, but the 911 operator may not be able to call you back if the call gets disconnected. For this reason, before porting either a wireless or a wireline number, ask the new company if the one-day porting process will affect a 911 call.

Handset and Special Services

In some instances, wireless handsets of different wireless telephone companies are incompatible. If you switch wireless companies, you may need to purchase a new handset, even if you retain the same phone number. If you have concerns about purchasing a new handset, ask your new wireless company whether or not your current handset will work with that company's network.

Also, be aware that in a few areas, as consumers with ported numbers roam outside their normal wireless service areas, they may only be able to send and receive calls. Other services, such as caller ID, may not function properly.

Filing a Complaint

If you have a problem porting your phone number from one service provider to another, first try to resolve it with the service provider. If you cannot resolve the problem directly, you can file a complaint with the FCC. There is no charge for filing a complaint. You can file your complaint using an FCC online complaint form found at www.fcc.gov/complaints. You can also file your complaint with the FCC's Consumer Center by calling 1-888-CALL-FCC (1-888-225-5322) or 1-888-TELL-FCC (1-888-835-5322) for TTY; faxing 1-866-418-0232; or writing to the Federal Communications Commission at:

Federal Communications Commission
Consumer and Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th Street, S.W.
Washington, DC 20554

What to Include in Your Complaint

The best way to provide all the information the FCC needs to process your complaint is to complete fully the online complaint form. When you open the online complaint form, you will be asked a series of questions that will take you to the particular section of the form you need to complete. If you do not use the online complaint form, your complaint, at a minimum, should indicate:

- The telephone and account numbers that are the subject of your complaint;
- the names and phone numbers of any companies involved with your complaint;
- your name, address, email address and phone number where you can be reached;
- the amount of any disputed charges, whether you paid them, whether you received a refund or adjustment to your bill, the amount of any adjustment or refund you have received, an explanation if the disputed charges are related to services in addition to residence or business telephone services; and
- the details of your complaint and any additional relevant information.

For More Information

For more information on wireless number portability visit the FCC website at <http://www.fcc.gov/encyclopedia/wireless-local-number-portability-wlnp>.

For information about other communications issues, visit the FCC's Consumer website at www.fcc.gov/consumers, or contact the FCC's Consumer Center using the information provided under "File a Complaint."

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expenses and lost earnings reduced to present value and paid as one lump sum, there will be no possibility of compensation for further complications. Fourth, not only is the bill potentially harmful to the injured party, it is opposed by some of the major insurers in the state, who say they are not set up to pay wages and medical bills on a weekly basis for an undetermined time into the future. An insurance company representative testified that, at best, her company would never make a settlement offer under this bill (thus raising the possibility that four more months could be added to the existing process) or at worst, insurance companies would leave the state. In addition to more difficulty in obtaining coverage, increased medical malpractice premiums are also a risk. Fifth, a representative from the court system has also warned of the difficulty of obtaining qualified hearings officers and advisors because of conflicts with the current definitions, and of the inappropriateness of court involvement in the process. Sixth, members of the minority believe that the best way to ensure justice required by the NH Constitution for injured persons is to fully fund the court system to provide adequate judges and staffers to ensure cases are heard in a timely manner. Finally, although the attachment to the bill of two unrelated matters is allowable under our rules, the minority thinks this maneuver does not further good government.

MUNICIPAL AND COUNTY GOVERNMENT

SB 231, relative to municipal liens. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Philip L Munck for Municipal and County Government: This bill limits the amount of money that a municipal utility can bill for mutually agreed upon work performed on a customer's property to \$250 without a written contract. The bill arises out of a situation where a customer agreed to have a utility work on a water service for about \$2,000 and subsequently was billed approximately \$20,000. The language is similar to provisions imposed by the Public Utilities Commission on investor owned utilities for these situations. **Vote 16-0.**

SB 243, relative to the management of trust funds and capital reserve funds. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Franklin W Sterling for Municipal and County Government: This bill was submitted with language that would add investment advisors to the list of institutions that maybe hired by the trustees of the trust funds to assist in the management of funds under their control and direction; the manner in which the advisors are remunerated for their services is unchanged from existing statute. This bill also adds a new section to RSA 34 that would put capital reserve funds under the same management rules as trust funds. The option to hire investment or management advisors for either trust funds or for capital reserve funds is a decision made at the local level and is not mandated by this legislation. **Vote 15-2.**

PUBLIC WORKS AND HIGHWAYS

SB 324-FN, relative to the use of funds generated by the Hampton Beach parking facilities. **OUGHT TO PASS WITH AMENDMENT.**

Rep. John A Graham for Public Works and Highways: The committee amendment replaces the entire bill, while preserving the original intent to provide additional revenues to the state park fund. As amended, \$200,000 a year will be transferred from the Hampton Beach meter fund to the Hampton Beach capital improvement fund. This is a reduction from the current formula, and will allow additional funds to be placed in the state park fund for use not only at Hampton Beach, but also at other state parks. The second major change to the bill made by the committee is to have 50 percent of the bond approved in the last Capital Budget for rehabilitation of the seawall in Hampton be paid for from the parking meter fund as required by RSA 216:6. Currently 100 percent of the bond would be paid for out of general funds. The committee was unanimous in support of this bill as amended. **Vote 15-0.**

SCIENCE, TECHNOLOGY AND ENERGY

SB 48, relative to state regulation of telephone service providers and clarifying the authority of the public utilities commission to regulate pole attachments. **OUGHT TO PASS.**

Rep. Frank R Holden for Science, Technology and Energy: This bill modernizes the regulation of telecommunications services in four important ways. One, it offers local exchange carriers relief from monopoly era retail regulation, freeing them to compete more effectively. Two, it confirms that Voice over Internet Protocol services and IP enabled services are not subject to regulation as telecommunications services in New Hampshire. Three, it preserves Incumbent local exchange carrier obligations to serve as the carrier of last resort and ensures that all residents have an affordable Basic Service option for phone service. Four, it preserves incumbent local exchange carrier obligations to provide wholesale services to competitors further encouraging competition among providers. Today's communications landscape offers consumers more choice of providers and services than at any other time in history. Modernization of monopoly era regulations will further encourage investment and innovation in New Hampshire's communications infrastructure. The committee believes that this legislation finds the right balance between continued Public Utilities Commission oversight and modernization of regulation to allow consumers and the state of New Hampshire to benefit from a highly competitive communications environment. **Vote 17-0.**

SB 215, establishing a study committee on updating and improving the procedures and criteria for review of projects by the site evaluation committee. **INEXPEDIENT TO LEGISLATE.**

Rep. Frank R Holden for Science, Technology and Energy: The site evaluation committee makes decisions about the selection of sites for energy facilities, including the routing of high voltage transmission lines and energy transmission pipelines. In making these decisions it balances the state's need for new energy facilities with environmental considerations. The site evaluation committee is able to strike that balance and the changes and additional oversight that would result from this bill are not needed. **Vote 16-1.**

SB 218-FN, relative to electric renewable portfolio standards. **OUGHT TO PASS WITH AMENDMENT.**