

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

**DT 12-308**

**COMCAST PHONE OF NEW HAMPSHIRE, LLC AND COMCAST IP PHONE II, LLC**  
**Application of Laws of 2012, Chapter 177 (Senate Bill 48) to VoIP and IP-Enabled Services**

**BRIEF OF COMCAST PHONE OF NEW HAMPSHIRE, LLC AND COMCAST IP**  
**PHONE II, LLC**

NOW COME Comcast Phone of New Hampshire, LLC and Comcast IP Phone, II, LLC (collectively “Comcast”) and, pursuant to the New Hampshire Public Utility Commission’s (the “Commission”) October, 24 2012 Order of Notice in the above-captioned docket, submit the following brief on the questions posed by the Commission in that Order.

**Introduction**

In DT 09-044, the Commission considered whether the interconnected, fixed Voice over Internet Protocol (“VoIP”) services provided by Comcast and Time Warner Cable should be considered “public utility” services within the meaning of RSA 362:2. The Commission initiated the proceeding because rural local exchange carriers (“RLECs”) had expressed concern about “competitors offering similar services on an unregulated basis.” *See* Order of Notice in DT 09-044, May 6, 2009, at 1. Under the law in effect when DT 09-044 commenced, the designation of a service as being provided by a “public utility” carried with it a host of regulatory requirements.

Subsequent events, however, have mooted the purpose of the DT 09-044 proceeding by changing the substantive law on which the proceeding had been based. In the recently-enacted Senate Bill 48 (“SB 48”), the New Hampshire Legislature emphatically rejected the proposition

that VoIP services should be subject to public utility regulation as telephone services in New Hampshire. In so doing, the Legislature has effectively removed any regulatory requirements for fixed VoIP services that would flow from a “public utility” designation. In their place, the Legislature has carved out a narrow set of laws and regulations to which VoIP providers, such as Comcast, may be subject – but critically, those laws and regulations do *not* turn on whether or not the service in question is provided by a “public utility.” Instead, they turn on independent, individualized statutory criteria not addressed in DT 09-044.

In light of the fact that SB 48 enunciates the proper regulatory treatment of VoIP services, the appropriate course for the Commission is to vacate as moot the three substantive orders resulting from the DT 09-044 proceeding: Order Nos. 25,262; 25,274; and 25,288 (collectively the “Orders”). SB 48 has fundamentally changed the substantive law in a manner that renders the DT 09-044 proceeding legally meaningless, requiring vacatur of the Orders not only as a matter of law, but also as a matter of prudence and judicial economy. The Orders went beyond merely addressing the regulatory requirements governing fixed VoIP services under state law – they also resulted in far-reaching and novel conclusions on *federal law* questions in order to avoid federal preemption of their state-law conclusion that Comcast’s service should be regulated as a “public utility” service under state law. Now that the state-law determination has been mooted by SB 48, the Commission’s holdings regarding questions of federal law are superfluous, *i.e.*, they no longer have any bearing on the Commission’s authority or on the regulations to be applied to VoIP service. Yet, as potential precedent in other proceedings, the Commission’s holdings regarding questions of federal law necessitate that Comcast pursue its appellate remedies at the New Hampshire Supreme Court, which has stayed Comcast’s pending appeal while the Commission considers this remand. Therefore, unless the Commission vacates

the Orders in DT 09-044 as moot, appellate litigation wasteful for all parties will need to continue, even though such litigation should be unnecessary now that the Legislature has definitively articulated the regulatory requirements for VoIP providers in New Hampshire. Comcast therefore urges the Commission, for the reasons stated more fully below, to vacate its orders in DT 09-044.

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In response to the Commission's inquiries in its October 24, 2012 Order of Notice, Comcast submits the following:

**Question 1: Whether cable voice service under review in DT 09-044 falls within the statutory definition of "VoIP service" or "IP-enabled service in RSA 362:7,I.(d) and (e).**

Comcast's interconnected VoIP Service ("CDV"),<sup>1</sup> which had been the subject of DT 09-044, is "VoIP service" under RSA 362:7,I.(d), and not an "IP-enabled service." The new definition for a "VoIP service" reads as follows:

- (d) "Voice over Internet Protocol ("VoIP") service" means any service that:
- (1) Enables real-time, 2-way voice communications that originate from or terminate in the user's location in Internet Protocol or any successor protocol;
  - (2) Requires a broadband connection from the user's location; and
  - (3) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

RSA 362:7,I.(d).

CDV meets each of these criteria, as established during the evidentiary phase of DT 09-044. It enables two-way, voice calling.<sup>2</sup> It is initiated at the CDV user's location in Internet

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<sup>1</sup> At the time briefing was complete before the Commission in DT 09-044, Comcast's residential interconnected VoIP service was known as "Comcast Digital Voice." Since then, that service has been rebranded "XFINITY Voice" to better reflect the cross-platform nature of the service. For consistency with the briefing in DT 09-044, however, Comcast will continue to refer to its VoIP services collectively as "CDV."

Protocol.<sup>3</sup> It requires a broadband connection in the form of a last-mile connection provided by Comcast's locally franchised cable television operating affiliates.<sup>4</sup> And it permits users to both make and receive calls from the PSTN.<sup>5</sup> CDV's satisfaction of these criteria is clear from the record in DT 09-044 and should not be in dispute.

CDV's status as a "VoIP service" dictates that it cannot be an "IP-enabled service" under the statute. Although CDV is "IP-enabled" in the vernacular sense of the term, in that the service is enabled by Internet Protocol, the statute on its face states that "no service included within the definition of 'Voice over Internet Protocol service' shall be included within" the statutory "IP-enabled service . . . category." RSA 362:7,I(e). Therefore, CDV cannot be an "IP-enabled service" under the statute, even if the definition would otherwise apply.<sup>6</sup>

**Question 2: Whether, in light of the enactment of SB 48, any changes are required to be made or should be made to any of the findings and rulings in Order Nos. 25,262, 25,274 or 25,288, including the question of whether SB 48 affects the definition of "public utility" in RSA 362:2 and whether and to what extent regulatory treatment of Comcast and Time Warner as CLECs in respect to their cable voice services is still appropriate.**

Regulatory treatment of Comcast's fixed VoIP service is now confined by SB 48 to the specific, enumerated statutes therein. Therefore, the Orders should be vacated as moot. SB 48 resolves the question the docket was initiated to answer. As a matter of prudence, the

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<sup>2</sup> See Prefiled Direct Testimony of David K. Kowolenko and Beth Choroser on Behalf of Comcast Phone of New Hampshire, LLC and Its Affiliates, dated October 9, 2009, in Proceeding No. 09-44 ("*Kowolenko & Choroser Direct Testimony*") at 8.

<sup>3</sup> *Kowolenko & Choroser Direct Testimony* at 17-18.

<sup>4</sup> *Kowolenko & Choroser Direct Testimony* at 8.

<sup>5</sup> *Kowolenko & Choroser Direct Testimony* at 19-20, 23-24.

<sup>6</sup> Comcast notes that the CDV service also contains numerous enhanced functionalities accessed through the user's television, Internet connection, or handheld device. Because these functions do not involve simultaneous two-way voice communication, they appear to be "IP-enabled service" under RSA 362:7,I(e). Nonetheless, this distinction does not appear to be of any significance for purposes of the questions posed in this docket.

Commission ought not leave standing Orders that have been superseded by subsequent legislative changes and which would necessitate further, unnecessary litigation.

**Continued Regulatory Treatment of Comcast's Fixed VoIP Services:** SB 48 specifically enumerates the scope of the Commission's regulatory authority over VoIP services in the narrow set of exceptions (the "savings clause") to its regulatory prohibition, which otherwise covers any regulation by the Commission. RSA 362:7,II.

SB 48's prohibition against "direct[]" regulation of "market entry, market exit, transfer of control, rates, terms, or conditions" VoIP services speaks for itself and bars the Commission's CLEC regulations upon VoIP providers unless excepted by the savings clause. And New Hampshire Supreme Court case law confirms that the further prohibition on any regulation that "*has the effect* of regulating the market entry, market exit, transfer of control, rates, terms, or conditions" (emphasis added) must be even more broadly construed. In *In re Union Telephone Co.*, 160 N.H. 309 (2010), the Court construed the similarly-worded 47 U.S.C. § 253(a), which provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 160 N.H. at 320 (quoting 47 U.S.C. §235(a)). The Court held that "[t]o determine whether a state law has the effect of prohibiting the provision of telecommunications services, courts and the Federal Communications Commission (FCC) consider whether the law 'materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.'" *Id.* at 321 (citation omitted). RSA 362:7,II. is even broader than 47 U.S.C. § 253(a) in that the federal statute preempts any law that has the effect of "prohibiting" telecommunications services,

whereas RSA 362:7,II. precludes any law that even has the effect of “regulating ... market entry, market exit, transfer of control, rates, terms or conditions.”

Although SB 48 did not formally exclude VoIP service providers from the definition of public utility contained in RSA 362:2, SB 48’s regulatory prohibition is far broader than a limitation of the public utility definition would have been. RSA 362:7 now precludes *any* regulation of VoIP providers not enumerated in the savings clause, direct or indirect, regardless of whether such regulation is dependent on the designation of the VoIP provider as a “public utility.” As the Legislative History states, the purpose of SB 48 was to ensure that “Voice over Internet Protocol services and IP enabled services are not subject to regulation as telecommunications services in New Hampshire.” House Calendar, Vol. 34, No. 37 (May 11, 2012), Page 2046-2047.

The fact that the savings clause in RSA 362:7,III. enumerates specific regulatory provisions further confirms that the Legislature intended those provisions in the savings clause to be the only ones still applicable to VoIP services and providers. Having specified the exact circumstances under which regulation of VoIP providers is permissible, the Legislature could not possibly have intended that the Commission create *additional* exceptions to the enumerated list in RSA 362:7,III., or impose traditional public utility telecommunications regulation upon VoIP providers.

This does not mean that the Commission is entirely without jurisdiction over VoIP providers: it still retains the ability to enforce the provisions in SB 48’s savings clause, insofar as those provisions are enforced by the Commission and not the Attorney General. However, as discussed in the following subpart, the limited, enumerated exceptions in the savings clause do not, as a rule, depend on whether or not a VoIP service is a “public utility” under RSA 362:2.

*See infra*, at 7-9. In summary, the Commission is generally prohibited from regulating VoIP providers and services unless such authority is specifically spelled out by SB 48.

**Statutory Jurisdiction of the Commission:** An outgrowth of SB 48's elimination of the regulatory significance of whether fixed VoIP services are telephone services under RSA 362:2 is that it has retroactively deprived the Commission of jurisdiction over DT 09-044. This lack of statutory jurisdiction counsels in favor of vacating the Commission's past Orders in that docket.

Under RSA 365:5, the statute upon which the Commission's jurisdiction was based, the Commission may open an inquiry "in a manner to be determined by it as to any rate charged or proposed or as to any act or thing having been done, or having been omitted or proposed by any public utility; and the commission shall make such inquiry in regard to any rate charged or proposed or to any act or thing having been done or having been omitted or proposed by any such utility in violation of any provision of law or order of the commission." *Id.* The words "having been done" and "having been omitted or proposed" – which are in the past tense – require that the Commission point to an act, omission, or proposal by Comcast that has already occurred for which "public utility" status would be relevant. Abstract curiosity as to whether a service is a "public utility" service, absent such an act, omission, or proposal, does not create jurisdiction.

At the time the Commission opened the docket, this criterion was satisfied: Comcast IP Phone, II, LLC's provision of VoIP service in New Hampshire raised the question of whether that entity was operating as a public utility without prior permission and approval under RSA 374:22,I. This fairly provided the Commission with jurisdiction to inquire into whether Comcast IP Phone, II, LLC was such a public utility. But that is no longer the case after SB 48; the law (subject to narrow exceptions discussed below) expressly prohibits the Commission from

regulating or acting in a manner that has the effect of regulating “market entry,” “terms” or “conditions” of any VoIP service or “any provider of VoIP service.” RSA 362:7,II. Thus, the original basis for the Commission’s jurisdiction no longer exists.

Comcast is also unaware of any alternative basis for the Commission’s jurisdiction under RSA 365:5. Although SB 48’s savings clause continues some forms of regulation for VoIP services, the few regulations that may still apply do not create any dispute as to whether Comcast is a “public utility” that has done, omitted, or proposed anything “in violation of any provision of law or order of the commission.” RSA 365:5. At the outset, many of the savings clause regulations are laws of general applicability that do not even fall within the Commission’s purview, such as criminal statutes and laws governing the assessment of taxes. Others, although administered by the Commission, apply based on criteria that are completely independent of whether the service provider is a public utility, and therefore cannot create such jurisdiction either. *See, e.g.*, RSAs 371:17-24 (requiring *all* corporations and individuals to secure Commission approval before installing facilities over/under public water and land); *see also* RSA 374:28-a (banning “slamming” practices, applicable to VoIP providers and public utilities alike). Others may apply to public utilities, but have no application to Comcast’s service, or to fixed VoIP carriers in general. *See, e.g.*, RSA 374:30, II (concerning leases by *incumbent* local exchange carriers). Others apply to cable providers *already*, thus making it irrelevant whether or not the cable provider is also separately providing VoIP service over the same facilities. *See, e.g.*, RSA 374:48-56 (“dig safe” regulations). This leaves, at most, a vanishingly small set of regulations that might apply to fixed VoIP providers if they are public utilities – but Comcast’s certificated CLEC affiliate is subject to and complies with those regulations in any event (making it irrelevant whether they also cover the VoIP entity), and there has been no allegation,



much less any showing, of Comcast's (or any other fixed VoIP provider's) noncompliance with any of them meriting an inquiry by the Commission.<sup>7</sup> Absent some nonspeculative showing that Comcast has proposed or engaged in any activity that raises a question as to its compliance with the regulations for fixed VoIP services as modified by SB 48, there is no basis for the Commission's jurisdiction over DT 09-044 – and absent such jurisdiction, it should vacate its past Orders.<sup>8</sup>

**Prudential Considerations.** Finally, even if the Commission believes that it still retains jurisdiction under RSA 365:5 to conduct a proceeding to examine whether VoIP constitutes a “public utility” service, prudential considerations counsel against allowing the Orders in DT 09-044 to remain in place.

The Orders were issued under a regulatory scheme that, as noted above, has been substantially modified by SB 48. Thus, because the Orders do not reflect the current state of the law, they serve no useful purpose and could create confusion. Under RSA 365:5, the Commission has some discretionary authority concerning the inquiries it opens. Although the statute requires that the “commission *shall* make such inquiry in regard to any rate charged or proposed or to any act or thing having been done or having been omitted or proposed by any such utility in violation of any provision of law or order of the commission,” it provides that the Commission merely “*may* investigate or make inquiry in a manner to be determined by it as to

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<sup>7</sup> See, e.g., RSA 374:2-a (requiring public utilities, if requested by landowners, to cut vegetation instead of using herbicide while clearing rights-of-way).

<sup>8</sup> Nor does the possibility of assessing fees on fixed VoIP providers supply jurisdiction, as some rural carriers argued before the New Hampshire Supreme Court. Comcast's regulated affiliate Comcast Phone of New Hampshire, LLC, which provides telecommunications services in New Hampshire (and whose status as a regulated public utility has never been in question) has always paid those assessments based on Comcast's VoIP revenues in the state, even before the Commission decided in DT 09-044 that Comcast IP Phone II, LLC, Comcast's retail VoIP provider affiliate, was also a public utility subject to the Commission's regulatory authority.

any rate charged or proposed or as to any act or thing having been done, or having been omitted or proposed by any public utility.” RSA 365:5 (emphasis added). Thus, when a utility has committed a “violation of any provision of law or order of the commission,” *id.*, it is mandatory for the Commission to open an inquiry, but it is otherwise discretionary. *Cf. Hull v. Grafton County*, 160 N.H. 818, 826 (2010) (“As it is a general rule of statutory construction that the word ‘may’ is permissive in nature, we review the trial court's decision under our unsustainable exercise of discretion standard”). Due to SB 48, if the Commission has any continued jurisdiction in DT 09-044, it would be discretionary at most. If the Commission believes it retains such discretionary jurisdiction, it should exercise it only to vacate its past Orders.

As explained above, there is no continued significance to a “public utility” designation for a fixed VoIP service, much less any meaningful or substantial significance, thus counseling against an inquiry to resolve that question. *See supra*, at 7-9. In addition, leaving in effect the Commission’s Orders in DT 09-044 saddles the Commission with controversial and now-unnecessary holdings about federal law that Comcast is compelled to continue to appeal to the New Hampshire Supreme Court. These holdings regarding questions of federal law, which the Commission adopted in order to prevent its state-law holdings from being preempted, involve far-reaching and novel questions that have not yet been decided by the FCC concerning the classification of VoIP services under the federal Communications Act. *See Order No. 25,262 at 49-59, Order 25,274 at 9-10.* These holdings no longer have any significance to the Commission’s authority. Yet they compel Comcast to continue appealing the Commission’s orders.<sup>9</sup>

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<sup>9</sup> This is because other parties may argue that the Commission’s analysis has a collateral estoppel effect on Comcast in out-of-state proceedings in which the same issues of federal law arise. *See In re Kalar*, 162 N.H. 314, 320-21 (2011) (“[C]ollateral estoppel may preclude the relitigation of

It would be an imprudent waste of time and resources for the Commission to leave in effect orders whose sole effect is now to force continued litigation. The New Hampshire Supreme Court – which has retained jurisdiction over this matter – would have to expend resources adjudicating the appeal, and the New Hampshire Office of the Attorney General would have to expend resources defending it. Moreover, if the New Hampshire Supreme Court – and not the Commission – were ultimately to vacate the Commission’s Orders, the Commission might be ordered to conduct additional proceedings. Given that the Commission lacks any continuing authority over VoIP providers’ terms and conditions of service (the foundation upon which the original petition in the docket had been based) and the scope of permissible regulation of VoIP services is now legislatively settled, such additional proceedings are unnecessary.

**Effect of Pole Attachment Proceeding:** Several rural carriers argued before the New Hampshire Supreme Court that the Commission should retain its “public utility” classification of VoIP services in DT 09-044 because the classification may have relevance to the Commission’s separate inquiry pertaining to pole attachment rates, DT 12-084. These arguments do not counsel in favor of retaining the DT 09-044 Orders, rather, they further counsel in favor of vacating them.

At the outset, Comcast vigorously disputes that the regulatory classification of fixed VoIP services has any relevance to the Commission’s pole attachment proceeding. N.H. Code Admin. R. Puc 1304.06, the regulation governing pole attachment rates, on its face does not state

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findings made by an administrative board”); *Sanderson v. Balfour*, 109 N.H. 213 (1968) (holding that mutuality of parties is not a requirement for the application of collateral estoppel). Some might even argue that the Commission’s analysis could have collateral estoppel effect in New Hampshire lawsuits between Comcast and private parties. Therefore, even though SB 48 has removed the practical effect of the Commission’s orders in DT 09-044, Comcast has no choice but to continue litigating what it believes to be a flawed analysis of the Communications Act in Orders 25,262 and 25,274. At a bare minimum, the Commission should vacate the portions of Order 25,262 addressing the federal classification of Comcast’s CDV service.

that public utilities must pay different pole attachment rates than other attaching entities; indeed, the regulation never mentions the term “public utility” at all. Rather, Puc 1304.06 states that the Commission should consider six factors in “determining just and reasonable rates for the attachments of competitive local exchange carriers and cable television service providers to poles owned by incumbent local exchange carriers or electric utilities,” but should consider only five of those six factors in “determining just and reasonable rates for all other attachments under this chapter.”<sup>10</sup> The regulation most certainly does not state that a “competitive local exchange carrier” must as a matter of law pay higher or different rates than a “cable television service provider” (*i.e.* the appropriate regulatory classification that governs Comcast’s pole attachment rates). Accordingly, the Commission’s determinations concerning the regulatory status of Comcast’s VoIP affiliate and its retail fixed VoIP services are not implicated by the above-referenced pole attachment rules.

And in any event, even if the question of whether fixed VoIP services are “public utility” services *did* have any relevance to the questions in DT 12-084, that would further counsel in favor of the Commission’s vacating as moot the Orders in DT 09-044, not in favor of retaining those Orders. As a prudential matter, if the classification of Comcast’s service were somehow relevant in DT 12-084, it makes far more sense for the Commission to take up the question of the classification *in that proceeding*. Making any regulatory classification ruling in an applicable pole attachment proceeding would permit Comcast, if necessary, to appeal a *live controversy* to the New Hampshire Supreme Court. Alternatively, leaving the classification issue open in *this* proceeding would require litigating the question in a moot case and potentially later disrupting

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<sup>10</sup> The only additional factor the Commission may consider for “attachments of . . . cable television service providers” and not for “other attachments” is a set of formulas adopted by the Federal Communications Commission. N.H. Code Admin. R. Puc 1304.06(a)(5), (b).

the proceedings in DT 12-084 in the event the New Hampshire Supreme Court reaches a decision in this matter inconsistent with the Commission's holding. Thus, while Comcast believes that the question of whether fixed VoIP services are "public utility" services has nothing to do with pole attachment rates, the question, if it becomes relevant, is far better litigated in DT 12-084 than in DT 09-044.

**Question 3: What areas of state regulation of CLECs described in such orders no longer apply as a result of the enactment of SB 48?**

As Comcast has explained in the "Continued Regulatory Treatment of VoIP Services" subpart of its response to Question 2, *supra*, SB 48 confines regulation of VoIP service providers to the specific areas enumerated in the statute. Therefore, any CLEC regulations addressed in the Commission's orders in DT 09-044 that are not encompassed within the savings clause may no longer lawfully be applied to Comcast's CDV service.

Comcast has attempted to identify the Commission's CLEC regulations that implement statutory requirements enumerated in SB 48's savings clause. The areas of Commission authority the statute preserves do not appear to expand its authority over Comcast in any way, as the preserved regulations are either (1) inapplicable to Comcast, or (2) apply to Comcast in any event through its regulated CLEC affiliate Comcast Phone of New Hampshire, LLC and local cable affiliates:

- If a VoIP provider were to own and operate its own physical facilities, the underground utility damage prevention rules in Puc 800, which are incorporated into the Commission's CLEC rules, may still apply to that VoIP provider. *See* Puc 430.02(b)(4). These regulations appear to implement RSA 374:48-56, preserved by SB 48's savings clause. Similarly, Puc 437.04, addressing rights-of-way, is likewise preserved by SB 48's savings clause. In Comcast's case, there is no relevance to these regulations to its VoIP affiliate, since Comcast's regulated CLEC and/or cable affiliates, not its VoIP affiliate, manage the relevant physical facilities.
- If a carrier seeks to interconnect directly with other carriers, the Commission's interconnection regulations may apply, as such regulations implement federal rights and requirements under 47 U.S.C. section 251 or 47 U.S.C. section 252 and are preserved by

SB 48's savings clause. See Puc Part 440. Again, in Comcast's case, interconnection is handled by Comcast's CLEC affiliate, so these regulations have no significance for Comcast's VoIP service provider.

- If a provider manages its own numbering resources, then the Commission's number portability and retention marketing regulations in Puc 432.01(a)(7), and Puc 437.06(c), (d), (g), (h), and (i) may still apply, as RSA 374:59 is preserved by the savings clause. However, again, this is a function that Comcast's regulated CLEC affiliate Comcast Phone of New Hampshire, LLC, manages, so there is no significance of these regulations to Comcast's VoIP service provider.
- Puc 432.02, and 432.03, addressing Telecommunications Relay Service fees and E911 Surcharges, also fall within the savings clause's exception for "telecommunications relay service fees" and "nondiscriminatory 911 fees." Comcast's regulated CLEC already handles the Relay Fee, and the assessment of E911 fees fall under the purview of the Department of Safety.
- Puc 432.08, which prohibits slamming, remains applicable as implementing RSA 374:28-a. However, again, this requirement has no significance for Comcast's service, as CDV customers do not utilize third-party long-distance carriers, and, to the extent the regulation applies as part of the initial number porting process, it again would be relevant only to Comcast's regulated CLEC and not its VoIP provider.

**Question 4: Whether, in light of the nature and purpose of DT 09-044, SB 48 renders the Commission's previous findings and rulings legally insignificant and practically meaningless for the State of New Hampshire or Comcast, Time Warner or other providers of VoIP service or IP enabled service.**

For the reasons explained above, SB 48 has made the question of whether Comcast is a "public utility" and CDV service is a telephone service academic, and has mooted the question posed by the DT 09-044 proceeding. Therefore, in the words of the Commission's inquiry, the statute "renders the Commission's previous findings and rulings legally insignificant and practically meaningless." October 24, 2012 Order at 3. SB 48 spells out, through its limited, enumerated exceptions, the conditions under which the Commission may exercise jurisdiction over CDV and other VoIP services and providers.

**Question 5: Whether SB 48 eliminated the significance of the Commission's determination that fixed IP-enabled cable voice service is a "public utility" service under state law by removing any regulatory obligations that depend on that determination.**

As explained above, SB 48 confines the regulations applicable to VoIP services to the enumerated exceptions in RSA 362:7,III. To Comcast's knowledge, there is no realistic possibility that the Commission's ability to exercise jurisdiction under these enumerated exceptions depends on CDV's designation as a "public utility" service. Those enumerated exceptions either do not apply to Comcast's service to begin with, apply to cable providers in general irrespective of whether or not those cable providers are also offering VoIP services (such that a "public utility" designation for a fixed VoIP service carries no additional legal effect), and/or turn on independent, regulation-specific criteria rather than an entity's "public utility" status, leaving at most a vanishingly small set of regulations with which Comcast's CLEC applies in any event, and concerning which there is no dispute. *See supra*, at 7-9. Even if there were any circumstances in which a "public utility" designation might theoretically carry any continued regulatory consequences for a fixed VoIP provider, such a situation would be purely speculative at this juncture and Comcast is not aware of any realistic possibility that such a situation could arise.

**Conclusion**

For the reasons stated above, Comcast believes that the appropriate course is for the Commission to vacate as moot the orders in DT 09-044 and close the docket.

November 9, 2012

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing brief has on this 9th day of November, 2012  
been sent by electronic mail to persons listed on the Service List.

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