

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

Comcast Phone of New Hampshire, LLC & Comcast IP Phone II, LLC  
Application Senate Bill 48 to VoIP and IP-enabled Services

Docket No. DT 12-308

BRIEF OF THE OFFICE OF THE CONSUMER ADVOCATE

I. INTRODUCTION

On October 24, 2012 the New Hampshire Public Utilities Commission (PUC or Commission) issued an Order of Notice in the above-captioned case, directing interested parties to file written briefs on several questions related to the effect of SB 48 on Order Nos 25,262, 25,274 or 25,288 in this docket. The Office of the Consumer Advocate (OCA) files this brief in response to the question whether the legislature's passage of SB 48 requires a different analysis by the Commission regarding the definition of a public utility.

II. DISCUSSION

A. The Commission's analysis of the RSA 362:2 definition of a public utility in Order No. 25,262 is unaffected by the statutory changes of SB 48.

RSA 362:2 defines the term "public utility." It is unchanged by SB 48. It continues to state as follows:

**362:2(I) Public Utility**

The term "public utility" shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations and county corporations operating within their corporate limits, owning, operating or managing any plant or equipment or any part of the same for the *conveyance of telephone or telegraph messages* or for the manufacture or furnishing of light, heat, sewage disposal, power or water for the public, or in the

generation, transmission or sale of electricity ultimately sold to the public, or owning or operating any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations of petroleum products, rural electric cooperatives organized pursuant to RSA 301 or RSA 301-A, and any other business, except as hereinafter exempted, over which on September 1, 1951, the public utilities commission exercised jurisdiction.

RSA 362:2 (2012) (italics added)

In relevant part, the definition of a public utility includes corporations operating plant or equipment for the “*conveyance of telephone or telegraph messages.*” *Id.* The Commission summarizes its analysis of this definition in Order 25,262 (August 11, 2011) stating, “[t]he language of RSA362:2 defines a public utility by the service it renders, not by the technology it uses to provide such service,” *Id at 45.* This conclusion is unchanged by the new provisions of SB 48.

SB 48 sections 7 and 8 add definitions of present day advanced technologies to the definition of a public utility. As these technologies did not exist when RSA 362 was first enacted in 1911, SB 48 adds the definitions of: incumbent local exchange carriers (ILEC); excepted local exchange carriers (ELEC); Voice over Internet Protocol (VoIP) and IP-Enabled services. Through SB 48, the application of various regulations to the new service providers is implemented on a section by section basis. When the sections of SB 48 are considered together, the overall impact of the legislation is to clarify which regulations apply to the new technologies and which do not. When interpreting changes that apply to different pieces of a legislative scheme of regulation, the New Hampshire Supreme Court applies the following canons of statutory construction:

We interpret statutes not in isolation, but in the context of the overall statutory scheme. *Appeal of Ashland Elec. Dept.*, 141 N.H. 336, 340, 682 A.2d 710 (1996). Our analysis must start with consideration of the plain meaning of the relevant statutes, construing them, where reasonably possible, to effectuate their underlying policies. *Nashua School*

*Dist. v. State*, 140 N.H. 457, 458, 667 A.2d 1036 (1995). Insofar as reasonably possible, we will construe the various statutory provisions harmoniously.  
*Appeal of Pennichuck Water Works, Inc.* 160 N.H. 18 (N.H. 2010) at 27.

Had the legislature wished to remove telecommunications from the definition of a public utility, it could have easily done so by striking the phrase “*conveyance of telephone or telegraph messages*” from the statute. They chose not to do so. Therefore sections 7 and 8, the two new sections, must be read in harmony with the existing RSA 362:2.

In addition, SB 48 must be read in conjunction with RSA 374:22-p (III), which states “The Commission shall seek to ensure that affordable basic telephone services are available to consumers throughout all areas of the state at reasonably comparable rates.” The legislature chose to leave this provision in place. As the Commission resolves the competitive issues between corporate giants Comcast and Time Warner, the impact on residential consumers remains an important consideration under Commission jurisdiction. The Commission finding that “...Certain rules apply regarding consumer protections and responding to consumer complaints...” *Order 25,262* at 59, is consistent with the the overall legislative scheme regarding telecommunications services and is not affected by the passage of SB 48.

In interpreting complex provisions, the New Hampshire Supreme Court applies additional canons of statutory construction as follows:

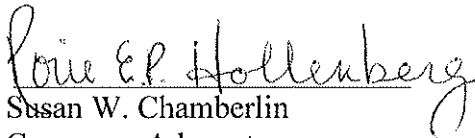
When construing the statute's meaning, we first examine its language, and where possible, ascribe the plain and ordinary meanings to words used. *Id.* If the language used is clear and unambiguous, we will not look beyond the language of the statute to discern legislative intent. *State v. Leonard*, 151 N.H. 201, 203, 855 A.2d 531 (2004). We will, however, construe all parts of the statute together to effectuate its overall purpose and to avoid an absurd or unjust result.  
*Formula Development Corporation v. Town of Chester.* 156 N.H. 177 (N.H. 2007) at 178-179. citing *Van Lunen*, 145 N.H. at 86.

By keeping the provisions of RSA 374:22-p (III) intact, the legislature expressed its overall purpose to preserve basic protections for residential customers of telecommunications services.

### III. CONCLUSION

The SB 48 changes to the regulatory landscape of telecommunications services do not affect the Commission's analysis of the RSA 362:2 definition of a public utility in Order No. 25,262. The new sections supplement, without replacing, the original statute. Importantly, the legislature did not remove RSA 374:22-p (III) which authorizes the Commission "...to ensure that affordable basic telephone services are available to consumers throughout all areas of the state at reasonably comparable rates." The interests of the residential consumer are maintained and consistent with the overall purposes of SB 48 to update the regulatory scheme to include new technologies, provide a level competitive playing field and to protect consumers of basic services with regulatory oversight.

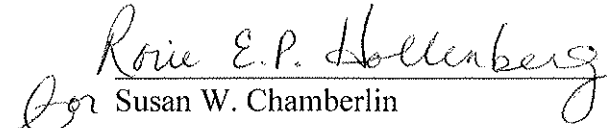
Respectfully submitted,

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### Certificate of Service

I hereby certify that a copy of this brief was provided via electronic mail to the individuals included on the Commission's service list for this docket.

11-9-12  
Date

  
*for* Susan W. Chamberlin