



# NEW HAMPSHIRE LEGAL ASSISTANCE

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November 9, 2012

## *Via Hand Delivery and Electronic Mail*

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Debra Howland  
Executive Director and Secretary  
NH Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301

Concord Office  
117 North State Street  
Concord, NH 03301  
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**RE: DT 09-044, DT 12-308; Letter Concerning the Scope of DT 12-308**

Dear Secretary Howland:

Manchester Office  
1361 Elm Street  
Suite 307  
Manchester, NH 03101  
603-668-2900  
1-800-562-3174  
Fax: 603-622-5576

We just recently became aware of the New Hampshire Supreme Court's October 12, 2012 decision in Appeal of Comcast Phone of New Hampshire, LLC & a., Case No. 2011-0762, which followed an appeal from the New Hampshire Public Utilities Commission (Commission) decisions in DT 09-044. In response to the New Hampshire Supreme Court's recent decision, the Commission opened a new docket, DT 12-308, issuing an Order of Notice setting forth several questions regarding the implication of Senate Bill 48 on Commission regulation. See Order of Notice, DT 12-308, pp. 2-3.

Portsmouth Office  
154 High Street  
Portsmouth, NH 03801  
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We write to respectfully caution the Commission on the scope of the issues it addresses in this matter. The New Hampshire Supreme Court decided:

Berlin Office  
1131 Main Street  
Berlin, NH 03570  
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The case is remanded to the Public Utilities Commission for the limited purpose of allowing it to reconsider Order No. 25,262 and Order No. 25, 274, and any related orders in docket no. DT 09-044, in light of Laws 2012, chapter 177.

Administration  
117 North State Street  
Concord, NH 03301  
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Appeal of Comcast Phone of New Hampshire, LLC & a., Case No. 2011-0762, October 12, 2012 Order. The scope of DT 09-044 was previously articulated by the Commission as follows:

TTY: 1-800-735-2964

This docket considers whether cable voice service in general, and Comcast Digital Voice and Time Warner's Digital Phone and Business Class Phone, in particular, constitute conveyance of a telephone message under RSA 362:2, whether providers of such services are public

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utilities, and the extent to which federal law preempts  
New Hampshire law with regard to such services.

Order No. 25,262, p. 2.

We believe the scope of the matter before the Commission should be limited to an evaluation of the impact of Senate Bill 48 on Comcast Digital Voice and Time Warner's Digital Phone and Business Class Phone. We do not believe this evaluation needs to include a broad evaluation of the cable industry in general.

We certainly do not believe the scope of the matter before the Commission should extend in any way to an evaluation of the impact of Senate Bill 48 on Incumbent Local Exchange Carriers (ILECs) existing at the time of Senate Bill 48's effective date.

We respectfully suggest that these broader issues are better addressed in rulemaking, including, but not limited to, in DRM 12-036.

Thank you for considering this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Feltes', with a stylized flourish extending to the left.

Dan Feltes  
Staff Attorney

Cc:  
DT 09-044 & DT 12-308 Service Lists  
Alan Linder, Esq.