

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

DT 09-044

New Hampshire Telephone Association  
Petition for an Investigation into the Regulatory Status of  
IP Enabled Voice Telecommunications Services

**OBJECTION TO MOTION FOR REHEARING OF ORDER NO. 25,274  
DENYING MOTION TO REOPEN RECORD**

NOW COME the incumbent carriers (excluding affiliates of FairPoint Communications, Inc.) of the New Hampshire Telephone Association, a New Hampshire voluntary corporation (the “RLECs”), and respectfully object to Comcast’s Motion for Rehearing of Order No. 25,274 Denying the Motion to Reopen Record and in support hereof, state as follows:

**I. INTRODUCTION**

On August 11, 2011, the Commission issued Order No. 25,262 (“Order”) in which it held that cable voice service such as that provided by Comcast constitutes conveyance of a telephone message that falls within the jurisdiction of the Commission pursuant to RSA 362:2. On September 12, 2011, Comcast filed a Motion for Rehearing and Suspension of Order No. 25,262 and Motion to Reopen Record. Notwithstanding the admonishment in Rule Puc 203.07(d) that “[a] motion shall clearly and concisely state . . . [t]he specific relief or ruling requested,” the Commission accepted this multi-faceted pleading, the RLECs responded in kind, and the Commission issued an Order denying the various requested relief. To preserve its rights to appeal, Comcast seeks rehearing of the Commission’s denial of the request to reopen the record, to the extent that the original Motion to Reopen Record was considered an initial request.

Comcast argues that the Commission failed to conform to the standards provided in its

rules, which provide that “[t]he commission shall, on its own motion or at the request of a party, authorize filing of exhibits after the close of a hearing if the commission finds that late submission of additional evidence will enhance its ability to resolve the matter in dispute,”<sup>1</sup> and that “[i]n determining whether to admit the late filed exhibit into the record, the commission shall consider: (1) The probative value of the exhibit; and (2) Whether the opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing shall adequately protect the parties' right of cross examination pursuant to RSA 541-A:33, IV.”<sup>2</sup>

To prevail on a motion for rehearing, a moving party must demonstrate that an administrative agency's order is unlawful or unreasonable.<sup>3</sup> However, as explained in the following Objection, Order 25,274 was in conformance with the applicable law. As such, the Motion should be denied.

## **II. THE COMMISSION'S ORDER IS CORRECT AND IN CONFORMANCE WITH APPLICABLE LAW.**

In its Motion for Rehearing, Comcast claims that the Commission ignored the standards of Rule Puc 203.03(b) and decided the Motion to Reopen on unlawful grounds. Specifically, Comcast characterizes the Commission decision as based on findings that the proffered evidence is untimely, prospective in nature, and duplicative of arguments that have already been rejected. Comcast asserts that such considerations are not in conformance with the rules and therefore invalid. However, as the RLECs demonstrated in their Objection to the Motion to Reopen, there is ample support for its decision in Commission precedent and state law. Regarding the lateness

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<sup>1</sup> Rule Puc 203.30(a).

<sup>2</sup> Rule Puc 203.30(c).

<sup>3</sup> See RSA 541:3 and RSA 541:4.

<sup>4</sup> Hollis Telephone, Inc., *et al.*, Order No. 25,088 at 14 (Apr. 2, 2010) (citing *Dumais v. State*, 118 N.H. 309, 312 (1978)) (emphasis supplied).

<sup>5</sup> Rule Puc 203.30(c).

<sup>6</sup> See *id.* See also *Appeal of Gas Service, Inc.*, 121 N.H. 797 (1981) (based on motion for rehearing before it, the Public Utilities Commission could properly have found that no good cause was shown by the motion since gas company failed to explain why the “new evidence” it

of the evidence, the Commission has held that “good cause for rehearing may be shown by producing new evidence *that was unavailable* prior to the issuance of the underlying decision,”<sup>4</sup> but the Commission will not rely on such facts when the proffering party does not provide an explanation as to why the information was not available during the course of the proceeding.<sup>5</sup> As to the evidence of Comcast’s intentions, this by definition cannot be the record of any proceeding related to the *current* nature of its service offering. Finally, the Commission is well within its authority to reject evidence that it finds to merely be argument in support of a contention it has already rejected.

Furthermore, although the Commission may not have recited the standards of Rule Puc 203.30 verbatim, its Order is in conformance with this standard. The Commission’s analysis went to the overarching question of whether the “late submission of additional evidence will enhance its ability to resolve the matter in dispute.” As to the probative nature of the proffered evidence under Rule Puc 203.30(c), the Commission found that it was either prospective, unpersuasive, or merely additional argument rather than evidence. Having decided this prong of the Rule Puc 203.30(c) standard, there was no need to proceed to the second prong regarding the opportunity for rebuttal. The Commission’s analysis was thorough and lawful.

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<sup>4</sup> Hollis Telephone, Inc., *et al.*, Order No. 25,088 at 14 (Apr. 2, 2010) (citing *Dumais v. State*, 118 N.H. 309, 312 (1978)) (emphasis supplied).

<sup>5</sup> *See id.* *See also* Appeal of Gas Service, Inc., 121 N.H. 797 (1981) (based on motion for rehearing before it, the Public Utilities Commission could properly have found that no good cause was shown by the motion since gas company failed to explain why the “new evidence” it wished to present at a rehearing could not have been presented at the original hearing.)

### III. CONCLUSION

Comcast has failed to establish that the Commission's Order is unlawful or unreasonable, that any evidence was overlooked or misconstrued, or that there is any new and relevant evidence that was unavailable during the course of the proceeding. Consequently, the RLECs respectfully request that the Commission DENY the request to reopen the record in this docket.

Respectfully submitted,

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  
WILTON TELEPHONE COMPANY, INC.

By Their Attorneys,

DEVINE, MILLIMET & BRANCH,  
PROFESSIONAL ASSOCIATION

\* Dated: November 4, 2011

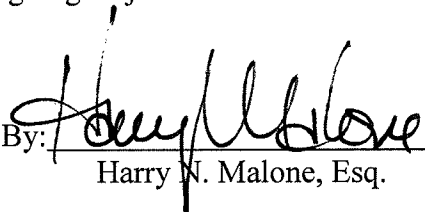
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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Objection was forwarded this day to the parties by electronic mail.

Dated: November 4, 2011

By: \_\_\_\_\_  
Harry N. Malone, Esq.