

**STATE OF NEW HAMPSHIRE**

## Inter-Department Communication

**DATE:** February 24, 2014**AT (OFFICE):** NHPUC

**FROM:** Michael Ladam, Assistant Director of Telecommunications

**SUBJECT:** DT 14-036, CANNE Request for Partial Waiver of N.H. Code of Administrative Rules Puc 433.06, 434.02, 434.03, 434.04 and 449.04 with Respect to CLECs, and Puc 454.02, 454.03, 454.04 and 469.04 with Respect to CTPs

**TO:** Commissioners  
Debra Howland, Executive Director

**Background**

On Jan. 27, 2014, the CLEC Association of Northern New England (CANNE) filed a request with the Commission asking for waivers of certain reporting requirements currently applicable to Competitive Local Exchange Carriers (CLECs) and Competitive Toll Providers (CTPs) under the Puc 400 rules.

As CANNE noted, the Commission is in the process of revising the rules applicable to utility providers of telephone service. CANNE described its waiver requests as based on a) the elimination of the relevant reporting requirement in the proposed rules revision; b) reporting requirements that are burdensome; c) changes in state law under which the Commission no longer regulates the area covered by the rules; d) lack of need by the Commission for the information required to be reported under the rules, and/or e) changes that have made the information required to be reported under the rules no longer relevant. CANNE did not specify which of these reasons apply to which requested waivers.

**Waiver Applicability**

Although CANNE represents CLECs and CTPs, state law now uses a different categorical nomenclature for telephone utilities. The category of "Excepted Local Exchange Carrier" (ELEC) includes most companies previously considered CLECs or CTPs, but also includes most Incumbent Local Exchange Carriers (ILECs). Since RSA 362:8 now prohibits the Commission, with certain specified exceptions, from imposing or enforcing any obligation on one ELEC that is not also imposed or enforced on others, Staff recommends that the Commission take the opportunity to provide guidance on the situations under which any waiver applies for CANNE members and other ELECs. Staff proposes such guidance below.

### Quality of Service Filings

1. Puc 411.06(a), Puc 415.01(b)(4): Obligation of an ILEC to file an annual Quality of Service Report.
2. Puc 411.06(b), Puc 415.01(b)(5): Obligation of an ILEC to file an annual Quality of Service Report Card.
3. Puc 431.16(a)<sup>1</sup>, Puc 434.03(b)(4): Obligation of a CLEC to file an annual Quality of Service Report.
4. Puc 431.16(b)<sup>2</sup>, Puc 434.03(b)(5): Obligation of a CLEC to file an annual Quality of Service Report Card.

Note that CANNE requested waivers only with respect to CLECs (items 3 and 4 above). However, the prohibition against imposing obligations on some ELECs and not others compels Staff to consider the applicability of such waivers to other classes of telephone utilities.

**Staff recommends that Puc 411.06(a), Puc 415.01(b)(4), Puc 411.06(b), Puc 415.01(b)(5), Puc 431.16(a), Puc 434.03(b)(4), Puc 431.16(b), and Puc 434.03(b)(5) be waived with respect to all telephone utilities.** In the cases of CLECs and of ILECs operating as ELECs, recent changes to state law appear to eliminate Commission authority to require such filings. Since the purpose of these reports was to provide consumers with a comparison of service quality among all providers, in Staff's assessment, it does not serve any useful purpose to require such filings of only ILECs not operating as ELECs.

### Financial Filings

1. Puc 449.04(g): Obligation of a CLEC to include a Balance Sheet and Income Statements in its annual report.
2. Puc 469.04(e): Obligation of a CTP to include a Balance Sheet and Income Statements in its annual report.

CANNE requested waivers of the requirements to include a Balance Sheet and Income Statement in the CLEC and CTP annual report filing. Staff agrees that the Commission no longer has authority to require filing of this financial information by CLECs and CTPs.

**Staff recommends that Puc 449.04(g) and Puc 469.04(g) be waived for all CLECs, CTPs, and ILECs operating as ELECs.**

3. Puc 434.02: Obligation of a CLEC to file a complete rate schedule biennially.
4. Puc 454.02: Obligation of a CTP to file complete rate schedule biennially.

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<sup>1</sup> Incorrectly numbered in CANNE's request as Puc 433.06.

<sup>2</sup> Incorrectly numbered in CANNE's request as Puc 433.07.

CANNE requested waivers of the requirements that CLECs and CTPs file complete rate schedules every two years. Staff agrees that the Commission has no authority to require rate schedule filings with respect to retail services. However, CLECs and CTPs may also offer wholesale services. Recent changes in state law did not affect Commission authority with respect to wholesale services. Since wholesale services such as access charges are imposed unilaterally, and calling telephone companies must generally pay them, there is value in Commission oversight of these wholesale services and charges.

**Staff recommends that 434.02 and Puc 454.02 be waived for all CLECs, CTPs, and ILECs operating as ELECs with respect to retail services only.**

#### **Facilities Filings**

1. Puc 449.04(c)(1): Obligation of a CLEC to report the number of miles of copper and fiber sheath it owns.
2. Puc 449.04(c)(2): Obligation of a CLEC to report the number and location of switches it owns.
3. Puc 449.04(c)(3): Obligation of a CLEC to report the location of interconnection points by exchange.
4. Puc 469.04(c)(3): Obligation of a CTP to report the number and location of switches it owns.

In Staff's assessment, the Commission continues to have authority to require reporting of this information by CLECs and CTPs. However, the collection and reporting of such information may be burdensome, and Staff does not believe that, with respect to the current CLEC and CTP industry segments, the limited value of maintaining this information justifies imposing these burdens on the providers. (The situation may be different for ILECs operating as ELECs, since under the federal Communications Act, these companies may have wholesale obligations and may be receiving universal service funding based on their facilities. Under RSA 362:8, I, ELECs may be treated differently as required under the federal Communications Act. We do not need to address that question here and decline to do so.)

**Staff recommends that 449.04(c)(1)-(3) be waived for all CLECs. Staff recommends that Puc 469.04(c)(3) be waived for all CTPs.**

#### **Services Filings and Filings Related to Telephone Number Consumption**

1. Puc 449.04(d)(4): Obligation of a CLEC to report whether it offers Internet service.
2. Puc 469.04(d)(4): Obligation of a CTP to report whether it offers Internet service.
3. Puc 449.04(f)(1): Obligation of a CLEC to report each service offered by exchange.

Staff agrees that the Commission no longer has authority to require filing of this information by CLECs, CTPs, or ILECs operating as ELECs.

**Staff recommends that Puc 449.04(d)(4), Puc 469.04(d)(4), and Puc 449.04(f)(1) be waived for all CLECs, CTPs, and ILECs operating as ELECs.**

4. Puc 449.04(c)(4): Obligation of a CLEC to report the number of voice lines it has in service.
5. Puc 449.04(d)(1): Obligation of a CLEC to report the exchanges it has stopped serving.
6. Puc 449.04(e): Obligation of a CLEC to report whether it continues to meet the standards for obtaining telephone numbers in a particular exchange.
7. Puc 449.04(f)(2): Obligation of a CLEC to report the number of residential and business lines for each service offered, by exchange.
8. Puc 469.04(c)(1): Obligation of a CTP to report the number of presubscribed access lines.
9. Puc 469.04(c)(2): Obligation of a CTP to report the number of intrastate minutes charged.
10. Puc 469.04(d)(1): Obligation of a CTP to report those exchanges where it no longer offers services as a CTP.
11. Puc 449.04(d)(3): Obligation of a CLEC to report whether it takes customer deposits.
12. Puc 469.04(d)(3): Obligation of a CTP to report whether it takes customer deposits.

In development of the proposed Puc 400 rules revisions, Staff concluded that the Commission can fulfill its responsibilities without requiring utilities to file the information in items 4 through 12 above.

**Staff recommends that Puc 449.04(c)(4), Puc 449.04(d)(1), 449.04(e), Puc 449.04(f)(2), Puc 469.04(c)(1), Puc 469.04(c)(2), Puc 469.04(d)(1), Puc 449.04(d)(3), and Puc 469.04(d)(3) be waived for all telephone utilities.**

### **Operational Status**

1. Puc 449.04(d)(2): Obligation of a CLEC to report whether it has ceased operating in New Hampshire.
2. Puc 469.04(d)(2): Obligation of a CTP to report whether it has ceased operating in New Hampshire.

The authority for these two rules is unclear, since a company that has ceased providing utility services in the state may no longer be subject to these rules. Staff agrees that mandating that a registered telephone utility inform the Commission that it has ceased operations in the state may not be within the scope of the Commission's authority. However, Staff notes that when a CLEC or CTP fails to report that it has ceased operations, the result will be extra work and expense for both the company and the

Commission, as the Commission prompts the company to make filings and reports that are apparently due. In light of this practical concern, Staff expects that CLECs and CTPs will continue to notify the Commission when ceasing operations in the state, but will no longer be subject to any legal penalty if they fail to do so.

**Staff recommends that Puc 449.04(d)(2) or Puc 469.04(d)(2) be waived for all CLECs and CTPs.**

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 14-036-1      Printed: February 25, 2014

**FILING INSTRUCTIONS:**

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND  
EXECUTIVE DIRECTOR  
NHPUC  
21 S. FRUIT ST, SUITE 10  
CONCORD NH 03301-2429

- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.