

Bill as Introduced

SB 425-FN - AS INTRODUCED

2010 SESSION

10-2813
06/01

SENATE BILL **425-FN**

AN ACT relative to telephone utilities exemptions to the right-to-know law.

SPONSORS: Sen. Cilley, Dist 6; Sen. Letourneau, Dist 19; Sen. DeVries, Dist 18;
Sen. Fuller Clark, Dist 24; Rep. Cali-Pitts, Rock 16; Rep. Remick, Coos 2;
Rep. P. Preston, Graf 8; Rep. Keans, Straf 1

COMMITTEE: Judiciary

ANALYSIS

This bill repeals a provision exempting certain information provided by a telephone utility to the public utilities commission from the right-to-know law and requires the public utilities commission to post non-confidential information on its website.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~in brackets and struckthrough.~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to telephone utilities exemptions to the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Information Posted on Website. Amend RSA 363 by inserting after section 25
2 the following new section:

3 363:25-a Information Posted on Website. The public utilities commission shall post on its
4 website all non-confidential information filed with the commission or provided to its staff whether or
5 not such information is part of an adjudicatory proceeding. The public utilities commission shall
6 require that a redacted public version of all confidential materials be filed with the commission in
7 order to comply with this section.

8 2 Repeal. RSA 378:43, relative to information not subject to the right-to-know law, is repealed.

9 3 Effective Date. This act shall take effect 60 days after its passage.

LBAO
10-2813
01/13/10

SB 425-FN - FISCAL NOTE

AN ACT relative to telephone utilities exemptions to the right-to-know law.

FISCAL IMPACT:

The Public Utilities Commission states this bill will increase state restricted expenditures and state restricted revenue by \$70,727 in FY 2011, \$70,756 in FY 2012, \$74,453 in FY 2013 and \$78,246 in FY 2014. The Commission also states this bill may increase state, county and local expenditures in FY 2011 and each year thereafter. There is no fiscal impact on county and local revenue.

METHODOLOGY:

The Public Utilities Commission states this bill repeals RSA 378:43 that grants regulated telephone companies an automatic presumption that a document is exempt from public disclosure and adds RSA 363:25-a to require the Commission to post to its website all information provided to the Commission or its staff. The Commission states the repeal of RSA 378:43 will have no fiscal impact as any additional work will be absorbed with existing resources. The requirement to post documents on its website will require the addition of one tech support II position (labor grade 21) to gather, categorize, scan, label, upload and manage the Commission's website. The Commission assumes it will not require an additional position until FY 2011. The position costs are as follows:

	FY 2011	FY 2012	FY 2013	FY 2014
Salary (LG 21)	\$37,850	\$39,390	\$41,087	\$42,744
Benefits	21,727	23,371	25,171	27,103
Current Expenses	2,550	2,614	2,679	2,745
Equipment	3,350	0	0	0
Office Space	5,250	5,381	5,516	5,654
Total	\$70,727	\$70,756	\$74,453	\$78,246

LBAO
10-2813
01/13/10

The Commission states it is funded by assessments on regulated entities. Annual assessments are levied on each utility based on the proportion of its respective revenues to the total of all utility revenues. The Commission states the addition of one employee would increase the Commission's annual budget by less than one percent or less than one half cent for each \$100 of utility bills a customer pays. The Commission has no information on the utility bills paid by state, county or local governments to estimate the potential increase in expenditures for those entities.

This bill does not contain authorization or appropriation for a position.

SB 425-FN - AS AMENDED BY THE SENATE

03/03/10 0793s

2010 SESSION

10-2813
06/01

SENATE BILL **425-FN**

AN ACT relative to exemptions to the right-to-know law.

SPONSORS: Sen. Cilley, Dist 6; Sen. Letourneau, Dist 19; Sen. DeVries, Dist 18;
Sen. Fuller Clark, Dist 24; Rep. Cali-Pitts, Rock 16; Rep. Remick, Coos 2;
Rep. P. Preston, Graf 8; Rep. Keans, Straf 1

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill repeals a provision exempting certain information provided by a telephone utility to the public utilities commission from the right-to-know law and permits information that is exempt from public disclosure in an adjudicative proceeding to be considered in a nonpublic session.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to exemptions to the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 New Subparagraph; Nonpublic Session. Amend RSA 91-A:3, II by inserting after
2 subparagraph (i) the following new subparagraph:
3 (j) Consideration of confidential, commercial, or financial information that is exempt
4 from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or
5 RSA 541-A.
6 2 New Paragraph; Public Utilities; Proceedings Before the Commission; Rulemaking. Amend
7 RSA 365:8 by inserting after paragraph XIII the following new paragraph:
8 XIV. Standards and procedures for public utilities to request protection of routine filings
9 that contain confidential commercial or financial information.
10 3 Repeal. RSA 378:43, relative to information not subject to the right-to-know law, is repealed.
11 4 Effective Date.
12 I. Section 3 of this act shall take effect 180 days after its passage.
13 II. The remainder of this act shall take effect upon its passage.

LBAO
10-2813
01/13/10

SB 425-FN - FISCAL NOTE

AN ACT relative to telephone utilities exemptions to the right-to-know law.

FISCAL IMPACT:

The Public Utilities Commission states this bill will increase state restricted expenditures and state restricted revenue by \$70,727 in FY 2011, \$70,756 in FY 2012, \$74,453 in FY 2013 and \$78,246 in FY 2014. The Commission also states this bill may increase state, county and local expenditures in FY 2011 and each year thereafter. There is no fiscal impact on county and local revenue.

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10-2813
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This bill does not contain authorization or appropriation for a position.

CHAPTER 206
SB 425-FN - FINAL VERSION

03/03/10 0793s

2010 SESSION

10-2813
06/01

SENATE BILL ***425-FN***

AN ACT relative to exemptions to the right-to-know law.

SPONSORS: Sen. Cilley, Dist 6; Sen. Letourneau, Dist 19; Sen. DeVries, Dist 18;
Sen. Fuller Clark, Dist 24; Rep. Cali-Pitts, Rock 16; Rep. Remick, Coos 2;
Rep. P. Preston, Graf 8; Rep. Keans, Straf 1

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill repeals a provision exempting certain information provided by a telephone utility to the public utilities commission from the right-to-know law and permits information that is exempt from public disclosure in an adjudicative proceeding to be considered in a nonpublic session.

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CHAPTER 206
SB 425-FN - FINAL VERSION

03/03/10 0793s

10-2813
06/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to exemptions to the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 206:1 New Subparagraph; Nonpublic Session. Amend RSA 91-A:3, II by inserting after
2 subparagraph (i) the following new subparagraph:

3 (j) Consideration of confidential, commercial, or financial information that is exempt
4 from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or
5 RSA 541-A.

6 206:2 New Paragraph; Public Utilities; Proceedings Before the Commission; Rulemaking.
7 Amend RSA 365:8 by inserting after paragraph XIII the following new paragraph:

8 XIV. Standards and procedures for public utilities to request protection of routine filings
9 that contain confidential commercial or financial information.

10 206:3 Repeal. RSA 378:43, relative to information not subject to the right-to-know law, is
11 repealed.

12 206:4 Effective Date.

13 I. Section 3 of this act shall take effect 180 days after its passage.

14 II. The remainder of this act shall take effect upon its passage.

15

16 Approved: June 22, 2010

17 Effective Date: I. Section 3 shall take effect December 19, 2010.

18 II. Remainder shall take effect June 22, 2010.

Amendments

Sen. Cilley, Dist. 6
February 8, 2010
2010-0548s
06/05

Amendment to SB 425-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to exemptions to the right-to-know law.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 New Subparagraph; Nonpublic Session. Amend RSA 91-A:3, II by inserting after
8 subparagraph (i) the following new subparagraph:

9 (j) Consideration of confidential, commercial, or financial information that is exempt
10 from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or
11 RSA 541-A.

12 2 New Paragraph; Public Utilities; Proceedings Before the Commission; Rulemaking. Amend
13 RSA 365:8 by inserting after paragraph XIII the following new paragraph:

14 XIV. Standards and procedures for public utilities to request protection of routine filings
15 that contain confidential commercial or financial information.

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18 I. Section 3 of this act shall take effect 180 days after its passage.

19 II. The remainder of this act shall take effect upon its passage.



2010-0548s

AMENDED ANALYSIS

This bill repeals a provision exempting certain information provided by a telephone utility to the public utilities commission from the right-to-know law and permits information that is exempt from public disclosure in an adjudicative proceeding to be considered in a nonpublic session.

Amendment to SB 425-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to exemptions to the right-to-know law.

4

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12 2 New Paragraph; Public Utilities; Proceedings Before the Commission; Rulemaking. Amend
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14 XIV. Standards and procedures for public utilities' to request protection of routine filings
15 that contain confidential commercial or financial information.

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AMENDED ANALYSIS

This bill repeals a provision exempting certain information provided by a telephone utility to the public utilities commission from the right-to-know law and permits information that is exempt from public disclosure in an adjudicative proceeding to be considered in a nonpublic session.

Committee Minutes

**SENATE CALENDAR NOTICE
JUDICIARY**

- ✓ Senator Deborah Reynolds Chairman
- ✓ Senator Bette Lasky V Chairman
- ✓ Senator Matthew Houde
- ✓ Senator Sheila Roberge
- ✓ Senator Robert Letourneau

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: January 21, 2010

HEARINGS

Tuesday

1/26/2010

JUDICIARY

SH 103

2:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

- ✓ 2:00 PM SB425-FN relative to telephone utilities exemptions to the right-to-know law.
- 2:15 PM SB398-FN relative to prohibited sales of alcoholic beverages.
- 2:30 PM SB395-FN relative to motor vehicle records.
- 2:45 PM SB437 relative to the authority of district court justices to issue emergency orders in any district court.

Sponsors:

- ✓ **SB425-FN**
Sen. Jacalyn Cilley Sen. Robert Letourneau Sen. Betsi DeVries Sen. Martha Fuller Clark
Rep. Jacqueline Cali-Pitts Rep. William Remick Rep. Philip Preston Rep. Sandra Keans
- SB398-FN**
Sen. Martha Fuller Clark Rep. John Hunt
- SB395-FN**
Sen. Molly Kelly
- SB437**
Sen. Deborah Reynolds Sen. Bette Lasky Sen. Matthew Houde Sen. Sheila Roberge
Rep. David Cote

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on **SB 425-FN** – *AN ACT relative to telephone utilities exemptions to the right-to-know law.*

HEARING DATE: January 26, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds, Lasky, Roberge, Letourneau and Houde

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Senator Cilley with Senators Letourneau, DeVries and Fuller Clark with Representatives Cali-Pitts, Remick, P. Preston and Keans

What the bill does: This bill repeals a provision exempting certain information provided by a telephone utility to the Public Utilities Commission from the right-to-know law and requires the Public Utilities Commission to post non-confidential information on its website.

Who supports the bill: Senator Cilley; Attorney Meredith Hatfield, Office of the Consumer Advocate; Chairman Tom Getz, Public Utilities Commission (with amendment); Senator DeVries

Who opposes the bill: Jeremy Katz representing SEGTEL; Kevin Shay representing Fairpoint Communications.

Summary of testimony received:

- Senator Cilley introduced the legislation and handed out a packet extracted from the general court's web site as well as amendment #2010-0257s.
- She explained that the bill repeals RSA 378-43 and inserts a new sub-paragraph. The rationale is that there is no language authorizing the PUC when they are having a hearing to be able to "clear the room" in order to discuss confidential information.
- She noted that she was shocked this past fall to find out that the telecom companies have an exemption that no other companies have.
- She testified that there is a recognition within 91-A that there is a need for certain entities to keep some private information

confidential. She explained that there is obviously a very highly competitive environment within the telecommunications arena whereby they need to keep certain information confidential.

- Senator Letourneau asked about the fiscal note and whether new employees will be needed and whether the proposed amendment changes anything. Senator Cilley responded that she does not believe the amendment changes anything.
- Senator Houde inquired as to whether it would be the Commission to make the determination as to what information stays confidential. Senator Cilley responded "yes."
- Attorney Hatfield testified in support of the bill and the proposed amendment. She provided written testimony and stated that the Office of Consumer Advocate is in support of the proposed amendment which repeals the special exemption for telephone utilities from 91-A and makes it explicit that the PUC can maintain the confidential status of certain information. She said that the legislation will provide needed information to the PUC but still protect proprietary information.
- Attorney Hatfield acknowledged that the PUC has made great progress in posting dockets on their web site and is also working on an e-filing system.
- She said that RSA 378:43 has been over-used by the telecommunications utilities. They have taken boiler-plate language and put it at the beginning of all documents and expect all of the information to be confidential.
- She declined to comment on specifics because of a pending legal case involving the *Union Leader* and Fairpoint Communications.
- Chairman Getz testified in support of the legislation with the proposed amendment.
- While there had been an effort back in 1999 to change the statute which was opposed by the PUC, they are in support of this proposal and said their current practice is that all documents are public information unless they exempt them.
- He said that the procedures at the PUC are adequate to substantially protect proprietary information. He said that the issue here is really more of one of procedure and dealing with the administrative burdens.
- He said that they do not disagree that the telecommunications industry has become incredibly more competitive over the years. He spoke of the great number of annual reports filed in 2008 with the PUC. He said that some of this information deserves to be confidential and that they should be able to protect it through a change in their rules.
- He explained that within an adjudicatory proceeding where one-of-a-kind documents are produced, they can make determinations on a case-by-case basis.
- He also said that redacted documents are commonly introduced whereby sensitive information is blacked out and only the PUC

members see the un-redacted documents. He said that again, this could be handled through rules and felt that the Commission has the authority needed to make these changes.

- He told of the common-sense practice that has been on-going for years and that is when some confidential information needs to be discussed, he just asks folks to please step outside of the room – and this has not been a problem. He said that it would be very helpful to put it into law that only the parties may stay.
- The last issue he spoke about was regarding posted information on the PUC website and that the original draft of the legislation was unworkable. He said that he very much appreciated Ms. Hatfield's acknowledgment in these areas.
- Senator Letourneau, in speaking to the process he has described, said that it sounds extremely labor-intensive. Chairman Getz responded that he does not feel that it will be.
- Senator Letourneau asked about the annual reports that are put out by most of the public companies. Chairman Getz responded that that information is not the same as the annual reports filed with the PUC and that their feeling is that they can handle this with current practice.
- Jeremy Katz testified in opposition and said that this is a radical departure from what is happening right now.
- He noted that he has heard no allegation of harm that has occurred under the current practices.
- He explained that with some utilities, such as water utilities, they have specific customer bases as there is only one utility serving a particular population – however with the telecommunications industry, they all share the same customers.
- He acknowledged that the PUC is totally entitled to know, regulate and understand their industries.
- He noted that at the federal level, their information is treated very much the same way that New Hampshire treats it.
- He explained that they have mandatory quarterly filings for certification, similar to what they have here.
- He said that the smallness of a company can even be used against them in this competitive environment.
- He closed by saying that this is the equivalent of opening up DRA files to right-to-know requests which would allow the public to read other individuals' tax returns.
- Kevin Shay, Vice President of Government Affairs for FairPoint Communications appeared in opposition. He explained that all special contracts and tariffs are filed with the PUC.
- He said that they respectfully oppose this legislation because the telecommunications industry is highly competitive. He said that if his competition can see what he's selling something for, then he could be undercut every single time. He said that this puts him at a tremendous disadvantage.

- He said that every single time he wants to file something for a business customer, he would have to request a hearing and then wait to be heard. If denied confidentiality, he would have to go back to the customer and divulge this. He said that they are losing customers at an alarming rate.
- Senator Letourneau asked for written information which Mr. Shay agreed to get together.

Fiscal Impact: See fiscal note.

Future Action: The Committee took the bill under advisement.

sfd

[file: SB 425-FN]

Date: January 29, 2010

Date: January 26, 2010
Time: 2:00 p.m.
Room: State House Room 103

LYB

The Senate Committee on Judiciary held a hearing on the following:

SB 425-FN relative to telephone utilities exemptions to the right-to-know law.

Members of Committee present:

Senator Reynolds
Senator Lasky
Senator Houde
Senator Roberge
Senator Letourneau

The Chair, Senator Deborah R. Reynolds, opened the hearing on SB 425-FN and invited the prime sponsor, Senator Cilley, to introduce the legislation.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair and honorable members of the Committee. For the record, my name is Jackie Cilley and I have the pleasure of serving District 6, including the wonderful communities of Rochester, Somersworth, Barrington, Madbury and Nottingham.

As you know, before you, you have SB 425, relative to telephone utilities exemptions for the right-to-know law and that original bill had a couple of sections in it, including information that would be posted to a website. I have offered an amendment to that bill and would like to speak to the amendment with the indulgence of the Committee.

Please see Amendment 0257, attached hereto and referred to as Attachment #1.

Senator Deborah R. Reynolds, D. 2: Go right ahead, Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Okay. On that amendment, the section dealing with the website information has been extracted because there was concern on the part of the Public Utilities Commission about the definition of that, you know, the types of information that would be posted, the complications that could arise, because they could arise. So, that has now

JWB

been removed from this bill and this bill deals solely with the issue of right-to-know.

So, what the bill would do as amended is to repeal in its entirety RSA 378:43, which is a special exemption for telecom companies. It would also add into 91-A a new subparagraph of non-public sessions by inserting the subparagraph, consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or 541-A. The rationale for that is that currently there is no language that actually authorizes the Public Utilities Commission, when they are having a hearing, to clear the room so that folks who are, you know, so that they can discuss confidential information. So, that's the purpose of that inserted language.

But, what I would like to do is to speak to the rationale for removing this special exemption for telecom companies. I was, as I did some investigation over the course of the latter part of the summer and fall, was shocked that telephone companies had an exemption that no other public utilities had in our state. As we all know, and I think the Legislature has had an outstanding record of supporting the public's right to know, you know, for as many varied topics as possible when it comes to our branches of government and our regulated, you know, community. Recognizing, and 91-A does indeed recognize the need for certain entities to keep private various types of information, especially competitive information. So, if PSNH goes before the Public Utilities Commission, they can exercise their right, they can ask to have certain documents or certain information kept private, confidential. The Public Utilities Commission reviews that and makes a determination as to whether that is prudent.

I would like to, and I can submit this if you'd like, but I would like to read something because, in looking at the history of how RSA 378:43 came into being, I was surprised, in 1999, to find that the Public Utilities Commission came in in staunch opposition to that and their rationale, I think, speaks loudly and clearly as to why this statute should be repealed. In his testimony, and this is by Gary Epler, who I believe was the attorney for the Public Utilities Commission at the time, says "The key distinction (with what has now become RSA 378:4, of the bill that they were considering)... The key distinction...and the reason why the PUC is opposed to this is that there's a reverse of the verdict. Under the Commission's rules, a party that's seeking a protective treatment is the party on whom the burden is to allege and to show they have a right to obtain the protective treatment." Under the Senate bill that was then under consideration, "the burden is reversed...the company simply makes a declaration ahead of time, and then it is the burden on the Commission or on any other party or person has to try to see and overturn

SMB

that. We think that is particularly easier and I can personally testify in terms of my experience in other states, that this..." (now a statute) ... "That this proposed bill is not the procedure that other states are involved"...in. So, and I can submit that in its entirety if you would like, but I think that issue of who the burden falls to is critically important to your decision on this repeal.

I think that you may hear that, you know, that there are those who are opposed, that feel that telecom companies face competitive pressures that other companies don't. I would argue that in our, you know, sort of partially regulated environment, many of our utilities face plenty of competition. If this becomes any additional work on the PUC, it will be because, up until now, and as you heard in Gary Epler's testimony, it pretty much, this RSA has protected virtually all information. Come in with a packet of information and say this is confidential, we want this confidential, and it simply gets set aside.

So, you know, I would be happy to field questions, but that's my purpose in bringing forward this bill. I think it is an important bill and I do hope that you will give it, you know, full consideration on a motion of ought to pass.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Senator Cilley. Questions? Senator Letourneau?

Senator Robert J. Letourneau, D. 19: Thank you, Senator Cilley, for taking the question. I note in the back in the fiscal note, it talks about adding some employers, employees. Is that still valid with your amendment?

Senator Jacalyn L. Cilley, D. 6: I do not believe so. I think that was if there was additional work to do to be put onto the website. If, I will say this, if there is any need for additional time or effort to make the determination as to whether it is a valid request to keep something confidential, then I feel that those are funds well spent. There should be, I will reiterate, there should be no special treatment of one type of regulated utilities over another.

Senator Robert J. Letourneau, D. 19: Thank you.

Senator Deborah R. Reynolds, D. 2: Any further questions? Senator Houde?

Senator Matthew Houde, D. 5: Thank you, Madam Chair. Just a clarification question. Would it be the Commission making the determination about whether or not the request for information remains confidential?

RMB

Senator Jacalyn L. Cilley, D. 6: That's correct. And, as it is in all. In other words, I think the first thing that it does is that it forces the utility to make prudent requests that something be kept confidential. So, the Public Utilities Commission staff can look at that and say that's a reasonable request and certainly in conformance with how we treat all other utilities. As opposed to coming in with, as I said, just a blanket set of documents saying we consider this all confidential and either the Commission or the Consumer Advocate or other interested stakeholders would have to challenge that and say we don't believe that, you know. So, as you heard in Gary Epler's testimony, it really places the burden on everybody else other than the utility itself.

Senator Matthew Houde, D. 5: Thank you.

Senator Deborah R. Reynolds, D. 2: Any further questions? Thank you very much, Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Would you like the hearing report from the bill that created 378?

Please see packet of materials submitted by Senator Cilley and identified as "Bill as Introduced", attached hereto and referred to as Attachment #2.

Senator Deborah R. Reynolds, D. 2: Yes, Senator, I think that would be most helpful.

Senator Jacalyn L. Cilley, D. 6: Great.

Senator Deborah R. Reynolds, D. 2: If you could leave that with Susan or Gail, that would be perfect. Thank you. Thank you very much.

The next person I have signed in in favor of the bill who I think wants to speak is Meredith Hatfield and I would ask you to come forward and, with your permission, will note that you are speaking in favor of the bill.

Attorney Meredith Hatfield: Thank you. Good afternoon, Madam Chair, members of the Committee. My name is Meredith Hatfield and I'm here today on behalf of the Office of the Consumer Advocate, which represents the interest of residential customers and regulates utilities at the Public Utilities Commission. As the Chair noted, we are here in favor of the bill and we have worked with Senator Cilley on this legislation and I'm really here today actually in support of the amendment, which reflects some work we did to try

to address some valid concerns that the PUC raised about the original legislation.

I will start with the easiest issues and that is related, I just have it in my testimony letter on page 4, related to information available on the PUC website. Senator Letourneau, to answer your question, I believe that the fiscal note on the original bill was related specifically to that requirement to post additional information. So, it is my view that, with this amendment, it is not required. The PUC is here and they can speak about that more. As I say in our letter, the PUC has made great strides, especially in 2009, toward posting things on their website and if you go and look, you can see that all of their dockets for 2008 and 2009 and now 2010, as well as major dockets from prior years, are all posted on the website now, which is wonderful. It is easier for parties and it is also easier for the public to try to keep track. The PUC, and they can speak to this more than I can, but they are also working on an e-filing system, which would be another great step for people being able to have a paperless practice at the PUC for the most part. So, I do support removing that from the bill. We think the PUC is making great strides and has a commitment to continue to do that.

The major part of the bill, as Senator Cilley said, is really to repeal that section that she was discussing. I start talking about that on page one of our testimony. As she pointed out, there is no similar special exemption for any other regulated utility and that is because the right-to-know law, while it clearly states that, to the greatest possible extent, public access to the actions discussing the records of all public bodies in our government should be public, it does allow for protection of certain confidential information, including and I cite it on page two of the letter, RSA 91-A:5 which does allow an agency such as the PUC to protect things because they contain commercial or financial information. This is something that happens routinely. All of the other utilities, such as electric and water companies, make filings very often that include this type of information and requires the Commission, as Senator Cilley said, to conduct an analysis under 91-A to try to determine does that information warrant public disclosure or should it be protected.

This law, 378:43, we feel really has been overused by telecomm utilities and it really does give them a special status. The OCA can make several examples just recently in the past couple of years where telecomm utilities take kind of boilerplate language citing 378:43 and just put it at the beginning of a document. They file it and their position seems to be that the entire document is confidential and none of it should be publicly disclosed. When we have raised issues with this with companies like Fairpoint, oftentimes they will step back from that position, realize that they don't really have a basis under 91-A and there are a few examples that I would be

RMB

happy to provide you if there are any questions. Fairpoint then provided publicly and the PUC was able to post the information on the website. As Senator Cilley said, under the current statute, that really shifts the burden. It requires our office, other parties of the PUC or the PUC staff itself, to undertake that review rather than having the utility come in and show why something should be shielded from public disclosure.

There is currently a case involving this statute. I don't want to go into a lot of details because Commissioner Getz is here, so it would not be appropriate to discuss the merits of that case, but I just did want to point out to you that there is currently a right-to-know request pending before the Commission under this statute where the *Union Leader* has made a request for a document that Fairpoint field citing this language, and for the whole document has been protected from public disclosure.

As Senator Cilley said, I think telecomm utilities, as they did in the underlying bill, they will contend that they are in a special class because they do face more competition. But, in our view, if you look at the intent of the right-to-know law, it really is that we should all be erring on the side of providing the public with the basis for government action. So, we think that the right-to-know law rights within that law has protections for confidential information.

The other piece of the bill is the amendment of 91-A that, as Senator Cilley said, specifically makes clear a common belief that most people are very cooperative about that if the PUC appointed discussion of that information in a hearing that people were not allowed to have that information leave the room. I think that is a common practice. People generally are very cooperative about it, but the PUC has suggested that they get authority under 91-A to be able to clear the room when confidential information is discussed in a hearing.

That concludes my testimony and I would be happy to take any questions that you have.

Please see Attorney Hatfield's prepared testimony, attached hereto and referred to as Attachment #3.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Meredith Hatfield. Are there questions for Meredith of the Committee? Seeing none, thank you very much for your testimony today.

Attorney Hatfield: Thank you.

Senator Deborah R. Reynolds, D. 2: I would like to call on PUC Chair Tom Getz. Chairman Getz, I gather you would like to testify. I didn't have you noted as speaking, but I will note that you are speaking.

Chairman Tom Getz: Thank you, Madam Chair.

Senator Deborah R. Reynolds, D. 2: Thank you and welcome to the Senate Judiciary Committee, Chairman Getz.

Chairman Getz: Good afternoon. Good afternoon, Senators. My name is Tom Getz. I am the Chairman of the Public Utilities Commission and I'm here this afternoon to support SB 425 sponsored by Senator Cilley and consistent with the amendments that she has proposed today.

As Senator Cilley explained, the Commission opposed this statute back in 1999 when it was first introduced. I want to be brief, but I want to repeat a little bit of what I think Miss Hatfield has spoken to already and Senator Cilley somewhat as well.

But, RSA 378:43 as it currently exists, reverses the presumption of the right-to-know law under RSA 91-A. The general rule under 91-A is documents are public unless exempted by an agency action. Under the statute that we're talking about repealing today, a document is confidential if a utility represents that it is and it takes agency action to make such a document public. The way that would play out poses a significant procedural burden to the Commission taking such action, making a document public. Consistent with the Commission's original testimony on this eleven years ago, I believe the statute is overly broad and unnecessarily so and it encourages utilities to be overly protective and I think reinforces a common organizational tendency to treat information as confidential.

I would like to point out that beliefs as well, I don't think there is any real dispute to this, that under RSA 91-A and under the Commission's rules, PUC 204.05 which lays out what is required in a motion for protection order that the substantive protections at the Commission are adequate and really the types of information for confidential and financial information merits the same protection under either approach. The focus is the procedures that are involved and the legislative approach to what should be public. I think the issue, as I said, is one more of procedure and I think in 1999, my recollection is that the utilities pointed to administrative burdens that would weigh on them in the context of competitive information and the change in the industry.

RMB

I think it is actually more, the repeal of this statute would create more of an administrative burden on the Commission than it would on the utilities. I say this for a couple of reasons. One is, in making a filing, pointing out the representations under the current statute that is required of a telephone utility representing something is confidential, I don't think it is appreciably different from the type of motion they would file saying that something should be protected. So, I think the difference is not, under current statute, there is no official action required and while utilities, other utilities, as was mentioned, we are required to have that motion in the first instance and that is something that commonly occurs and is just part of the landscape of how we deal with financial competitive information that comes before the Commission.

Now, while I said administrative burden will increase somewhat for the PUC, I think we can address those issues. I don't dispute that the telecomm industry has become increasingly more competitive over the years, but I think it might be helpful to think about the cases in which we have confidential information come to us. We get annual reports from competitive local exchange carriers and in 2008 we got about seventy of those and more than half there was a representation that the information was confidential. If the statute is repealed, I think we might want to take some categorical approach to that issue because I think it is fair to say that some of that information deserves confidential treatment. So, it is numbers of minutes or lines or something of that nature that should be protected, then that may be something we could address through a rule rather than have to issue seventy separate orders every year to deal with something that should be legitimately protected.

I think another subset of that area, in 2009, Fairpoint submitted forty-four special contracts. When a special contract is submitted to us for approval, a couple of pieces of information in there, some information that is Fairpoint's that may be legitimately protected and there is some information of customers of theirs that may be legitimately protected and there is a privacy interest at stake. But, I think we can take a categorical approach to those types of things where the same type of information and cases that come up often and come up annually, I think there is a way to protect information without substantially increasing the administrative burden on the utilities or on us.

Then, that leaves the kind of, I think, generally cases. When there is an adjudicative proceeding and there is documents that are one of a kind that come up in the context of a proceeding, should that document be afforded protection? Well, in those cases, I think it is a one of a kind case; they deserve a case by case review and a determination of whether they should be

protected. Now, even when they are protected, of course, normally all the parties who have been granted intervention do see those documents. Now, there are cases where, certainly when competitors in a case or subset of people intervening may not see some particular information, but generally the OCA sees all the information and other parties.

So, that is just what goes to the public in those cases, which brings up kind of a parallel issue here with respect to the issue of redacting information. It is a common practice, one that is not required by rule, but that a utility, a party who has a confidential document would submit a redacted version that would be publicly available that blacks out, redacts the confidential information and then there is also the version that all confidential information and only the Commission or parties to the proceeding or whoever would have the right to see it. I think there is, and I think Ms. Hatfield made this point in her letter. If not, I know that there are some other times that it would probably be a good idea to have that be something in a rule that is required because that type thing is, when you have a redacted copy, at least the public who is not part of the proceedings has an idea what is going on in that document rather than the whole thing be unnecessarily protected without really good reason for the whole thing being protected. We want to make sure that the exemption is as tailored as it needs to be and not unnecessarily broad.

So, I think that covers most of that first issue. I do think we have the authority to require redaction, but I think promulgating a rule may be the better approach.

I also want to thank Senator Cilley for her amendments and talk to those briefly. Let me first address the amendment relating to RSA 91-A. This is an issue that our Commission raised in 2007. It was addressed at the Right-to-Know Law Commission. There were a couple of bills that were in progress that year – one was HB 1626; I forget the other bill. There were a number of issues going on with the right-to-know law. We had raised the issue. It is one that is not crystal clear in the law. It is one that has never been challenged, but we want to take the opportunity, if possible, to get it clarified because it appears that it just fell through the cracks in 2007.

As I think was addressed previously, information that is legitimately confidential that then we need to talk about during a proceeding, I think common sense would say, well, if it is legitimately confidential, shouldn't only persons who have access to the information be able to hear about it and shouldn't be able to discuss it in a hearing that is only open to people who are parties to that proceeding. I think that is a common sense view. That's what the practice has been for years and when it comes up in a proceeding, typically I just ask people if they are not subject to a confidentiality

agreement or not a party or don't have a right by law to be in this discussion of this confidential information, if you could please step out of the room while we discuss the confidential piece on the record and everyone to date has been very cooperative.

But, it would be, I think it would be helpful to put it in law that it is clear that when we are dealing with truly confidential information, that only parties to a proceeding be in during that part of the proceeding and we take great pains to make sure that, we don't say, okay, everybody leave the room from 9:00 to 12:00 because we may talk about confidential information for five minutes. We try to limit the conversation about those issues and we try to make sure that everybody asks the questions at the same time so people aren't running out the door and coming back in, running out the door and coming back in. So, I appreciate Senator Cilley asking for that amendment.

The last issue is with respect to what is posted on our website. The way it was written, I think it would have just been unworkable to list every piece of paper that came in the door, every e-mail that anybody ever got would arguably have to be posted on the website. I know that wasn't the intent. I just wanted to say that I appreciate Meredith Hatfield's noting the progress that we think we have made with our website over the years and I think that it is not necessary to have that original piece and it does, with that piece being amended, Senator Letourneau, there is no fiscal impact to this bill.

So, with that, I would be happy to answer any questions if I can.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Chairman Getz. Any questions? Senator Letourneau?

Senator Robert J. Letourneau, D. 19: Just to go to that for a moment. The process that you described sounds pretty labor intensive for the looking over of whatever documents are coming in. Are you sure there is not going to be any requirements for additional staff?

Chairman Getz: I'm confident that there won't be. If we can, the key being if we can figure out some way to deal with the categorical issues like annual reports and repetitive type filings, I think we can do that. But, when you are in a proceeding, I think we are going to be looking at those issues anyways and I think making that judgment in the first instance about whether something should be protected or not I think is something that we can handle without adding personnel.

Senator Deborah R. Reynolds, D. 2: Follow up?

Senator Robert J. Letourneau, D. 19: Just a follow up. Most of these companies are public companies and put out an annual report. Is a lot of this information in these annual reports or is it not?

Chairman Getz: Well, the reports that come, the annual reports that we get from local exchange carriers is just really not substantial. It is not the type of annual report that they issue for the purposes of their investors or like a prospectus. This is specific information that we require from our rules. Now, the information from a local exchange carrier like TDS or Fairpoint is more than what we would see from the small competitive exchange carriers. But, again, I think it is something that we can handle with our current compliment.

Senator Robert J. Letourneau, D. 19: Thank you.

Senator Deborah R. Reynolds, D. 2: Any other questions? Thank you very much for coming today.

Chairman Getz: My pleasure.

Senator Deborah R. Reynolds, D. 2: The last person I have signed in in opposition to the bill is Jeremy Katz. Mr. Katz, did you want to testify? I don't have you speaking, but you're welcome to come and testify.

Kevin Shea: Madam Chair, Kevin Shea with Fairpoint. I didn't have an opportunity to sign up before it was whisked away.

Senator Deborah R. Reynolds, D. 2: Okay. So, there are two more speakers? Okay. Welcome Jeremy Katz.

Mr. Katz: Thank you. I'm Jeremy Katz. I'm the Chief Executive Officer of SegTel. We're a competitive local exchange carrier in New Hampshire. I'm having a hard time arguing that I'm in a special class. I practiced it with my wife last night and I was told to just go back and do the dishes. But, I want to try to explain the present exemption we depend on. Fairpoint a peer and competitor of ours depend on.

There is a radical departure from the policies that SegTel has substantially existed in its entire corporate life under the PUC regulation that is being proposed. Listening to the testimony, one thing that I didn't hear was really any allegation of harm that the pursuit of justice and efficient regulation has been impeded over the last ten years as a result of this exemption. I don't think there has been. I think that the system has worked pretty well as it is and has tended to not be abused and to the extent that a lot of competitors

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believe their information is confidential is because we really believe our information is confidential.

Treatment distinct of other utilities is with good reason. The utility such as water utility or electric utility generally have exclusive franchise areas. The likelihood of somebody coming into town and running new water lines to compete with the water utility is very low. The likelihood of national grid going into PSNH territory and running new distribution lines is just about nil; however, in telecommunications, where we all interconnect and use others lines and other facilities, and there are some high value basically customer targets that we all know of.

Knowing what the competitor is up to, the financial state of your competitor, what technology they might be using, the names of their customers, network configurations, type of contracts they have. These are all the things that we don't dispute at all that the Public Utilities Commission has complete entitlement to know, regulate and understand, but that information in the hands of our competitors can be used against us and our competitors' information in our hands can be used against them.

In looking at the exemption and what I heard was that other states really don't treat this as a blanket exemption issue, but in looking at what is done on the federal level, the federal government treats this issue very much like New Hampshire presently does and if we look at the Freedom of Information Act as a guide for how to interpret the right-to-know legislation and then see how the FCC deals with it, I apologize that I only have one copy.

I brought a copy of a quarterly filing, the mandatory quarterly filing from the FCC. There is simply a blanket certification on the filing itself that states "I certify that the data contained herein is privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure..." so on and so forth, pursuant to rules. I actually have a copy of the federal rules as well if you wanted to see. That is very similar to what we presently have in New Hampshire where you simply certify that the information is confidential.

I can't imagine that my peers would falsely swear that confidential information wasn't confidential. There is a good faith reason to believe that it is and the protection is requested in the good faith. Furthermore, a lot of competitors in the telecom sphere at the PUC are not the incumbents; they are not the prior monopolies. They have no entitlement to make profit. They are not rate of return regulated and they are small providers where even the smallness of the provider can be used against them. Revenue reporting data,

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line count data, all of these things in the hands of a competitor, can be used in a manner to promote one's business interest and harm another's.

Additionally, as Chairman Getz stated, it is routine that the stakeholders and interveners in a docket actually are able to see information that is confidential that is relevant to the docket. So, for instance, when there is a dispute between regulated parties, it is very rare that the parties themselves are unable to actually see the data. So, again, in the interest of justice, you are able to promote your interest and it is more of a protection from the public rather than a protection from those who might need to see it.

I guess, just to come up with an analogy, what this looks like, is such a big change to a regulated utility. If I just come up with how it feels to me, it is really the equivalent of opening up the Department of Revenue Administration to right-to-know requests. Let's see what our competitors and neighbors are doing and the best way to do that is to take a look at their tax returns. Some of this stuff it is fine that we submit it, but there is a reasonable expectation that it is not going to be distributed and, if you don't have that expectation, all of a sudden you're no longer comfortable handing it out and whether that manifests as attempting to find another way around disclosing or deciding not to do this in the state or in some other way is negative. So, that's really all I have to say.

Please see FCC Form 499-Q Telecommunications Reporting Worksheet attached hereto and referred to as Attachment #4.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Mr. Katz. Are there any questions of Jeremy Katz? Seeing none, thank you very much for your testimony. I know we had a gentleman back there from Fairpoint and I'm sorry. I apologize. I did not get your name.

Kevin Shea: Kevin Shea.

Senator Deborah R. Reynolds, D. 2: Kevin, you're going to be our last speaker and I would ask you very politely if you could keep it somewhat brief because we are about a half an hour behind.

Mr. Shea: I will try to do that.

Senator Deborah R. Reynolds, D. 2: So, if you could state your full name for the record.

Mr. Shea: Yes. My name is Kevin Shea and I am the Vice President of Regulatory Affairs and Government Affairs with Fairpoint Communications.

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My primary responsibility is really dealing with the special contracts and tariffs and all that are filed with the Public Utilities Commission.

I guess I will start by saying I agree with a lot of Chairman Getz's comments, but I guess I will have to respectfully oppose the bill. One of the concerns that we have at Fairpoint is that the telecommunications industry is highly competitive and starting to provide information such as my costs for providing business, which lots of those pieces are already out there because competitive local exchange carriers use my network to provide services to their customers.

So, if I am divulging, on every special contract, and Chairman Getz cited that I filed forty-four of those last year, that would competitively disadvantage my company because all they have to do is look at what I was selling it to XYZ Company and they could go in and undercut my price every time. I'm put at a competitive disadvantage by having to file these contracts and other pieces of information and that's why we explicitly request confidential treatment of these. So, if all of this information is then out there for anybody to look at, I can be undercut every time. I'm losing customers to begin with because of the competitive nature of the state and, as one of the few companies that actually has to file these contracts with the PUC, I once again am at a tremendous disadvantage by doing that.

One of the other issues that I see being brought into play here is every time I wanted to file something with confidential information, and I understand Chairman Getz wants to talk about putting some rules in place, but if this is removed today, I have to then, every special contract that a customer is trying to establish with my business, and these are business customers, these are not residential customers, these are business customers, I would have to request a hearing under the PUC rules. I would have to wait for that hearing to be scheduled and then I would have to be heard. If it is then not deemed as confidential, I would then have to go back to my customer and ask them if they wanted their information divulged to the public. I would say nine times out of ten that customer is going to walk away from my business and go to somebody else, a competitor that doesn't have to divulge this information, does not have to file these types of contracts with the Public Utilities Commission. So, it really puts us in a position that we have to think about what we divulge, what we sell to our customers.

I am running under a tariffed rate and the tariffed rates that we are finding are not competitive. People are undercutting us on a day-to-day basis and we are losing customers at an alarming rate.

So, I guess in order to keep this short, I will open myself up to questions.

Senator Deborah R. Reynolds, D. 2: Well, thank you very much, Mr. Shea and I'm sorry we're a little behind. But, we do appreciate your being here. Are there any questions? Senator Letourneau, you look like you have a question.

Senator Robert J. Letourneau, D. 19: I do. Do you have some information you would like to provide to the Committee?

Mr. Shea: Well, from what perspective?

Senator Robert J. Letourneau, D. 19: Written testimony.

Mr. Shea: I do not today. This is something that I could probably provide you late today or early tomorrow to the Committee.

Senator Deborah R. Reynolds, D. 2: That's fine.

Senator Robert J. Letourneau, D. 19: That would be great.

Mr. Shea: We will pull something together. I was actually not planning on testifying until I was brought more into the fold early this morning. So, I think we can get our documents together and get it to the Committee.

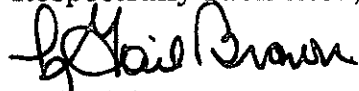
Senator Deborah R. Reynolds, D. 2: Thank you. Any other questions? Seeing none, thank you very much for your testimony.

Mr. Shea: Thank you.

Senator Deborah R. Reynolds, D. 2: I do not have anyone else signed in in favor or opposition to the bill and I'm going to close the hearing on SB 425.

Hearing concluded at 2:45 p.m.

Respectfully submitted,



L. Gail Brown
Senate Secretarial Supervisor
2/4/10

4 Attachments



Sen. Cilley, Dist. 6
January 22, 2010
2010-0257s
06/03

Amendment to SB 425-FN

1 Amend the bill by replacing it with the following:

2

3 AN ACT relative to exemptions to the right-to-know law.

4

5 Amend the bill by replacing section 1 with the following:

6

7 1 New Subparagraph; Nonpublic Session. Amend RSA 91-A:3, II by inserting after
8 subparagraph (i) the following new subparagraph:

9 (j) Consideration of confidential, commercial, or financial information that is exempt
10 from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or
11 RSA 541-A.



2010-0257s

AMENDED ANALYSIS

This bill repeals a provision exempting certain information provided by a telephone utility to the public utilities commission from the right-to-know law and permits information that is exempt from public disclosure in an adjudicative proceeding to be considered in a nonpublic session.

Attachment #2

Senator Pulley

Bill as Introduced

SB 141 - AS INTRODUCED

1999 SESSION

99-0263

03/02

SENATE BILL **141**

AN ACT relative to information not subject to the right-to-know law.

SPONSORS: Sen. Fraser, Dist 4; Sen. J. King, Dist 18; Rep. Thomas, Belk 3; Rep. Pitts, Rock 35

COMMITTEE: Judiciary

ANALYSIS

This bill makes information or records provided by a telephone utility in support of a filing with the public utilities commission or placed in the record during a telephone utility proceeding confidential and not subject to the right-to-know law if they meet certain requirements.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT relative to information not subject to the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subdivision; Information Not Subject to Right-to-Know Law. Amend RSA 378 by
2 inserting after section 42 the following new subdivision:

3 Information Not Subject to Right-to-Know Law

4 378:43 Information Not Subject to Right-to-Know Law.

5 I.(a) Any information or records that a telephone utility provides to the public utilities
6 commission or its staff as part or in support of a filing with the commission or in response to a
7 request that the information or records be provided to the commission or its staff shall be maintained
8 confidentially and shall not be considered public records for purposes of RSA 91-A, if the information
9 or records satisfy the requirements of paragraph II.

10 (b) Any information or records that public utilities commission staff or a party places
11 into the record during a telephone utility proceeding shall be maintained confidentially and shall not
12 be considered public records for purposes of RSA 91-A, if the information or records satisfy the
13 requirements of paragraph II.

14 II. In order to obtain confidential treatment under paragraph I, the telephone utility shall
15 represent to the public utilities commission that the information or records are not general public
16 knowledge or published elsewhere; that measures have been taken by the telephone utility to
17 prevent dissemination of the information or records in the ordinary course of business; and that the
18 information or records:

19 (a) Pertain to the provision of competitive services; or

20 (b) Set forth trade secrets that required significant effort and cost to produce, or other
21 confidential, research, development, financial, or commercial information, including customer,
22 geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting,
23 revenue, earnings, or technology information not reflected in tariffs of general application.

24 III. If the public utilities commission subsequently determines on its own motion or on request
25 of another party, after notice and an opportunity for hearing, that the telephone utility's representation
26 is incorrect and the information or records do not satisfy the requirements of paragraph II, the
27 information or records shall be subject to disclosure under RSA 91-A. Before permitting public
28 disclosure, the commission shall afford the telephone utility 30 days from issuance of its written
29 decision to request reconsideration. The material shall be maintained confidentially pending
30 consideration of any such request and until all rights to appeal the determination have been exhausted.

31 2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: **MARCH 31, 1999**
Time: **10:45 AM**
Room: **102 LOB**

The Senate Committee on **Judiciary** held a hearing on the following:

SB141 *relative to information not subject to the
right-to-know law.*

Members of Committee:

*Senator Pignatelli
Senator Gordon
Senator Brown
Senator Cohen
Senator Fernald
Senator Squires
Senator Trombly
Senator Wheeler*

The Chair, Senator Debora Pignatelli opened the hearing, by introducing Senator Leo Fraser, prime sponsor of the bill.

Senator Leo W. Fraser, Jr., D. 4: I come to you this morning as a sponsor of SB141. A bill that will amend NH's Right to Know Law. This bill would allow telephone utilities to designate records that they submit in PUC proceedings as confidential, and not subject to the 'Right to Know' laws. The bill stipulates that certain criteria must be met in order to ...in order for telephone utilities to declare these records as confidential. The PUC would retain the right to challenge that declaration in any utility proceeding.

I sponsored this bill at the request of Bell Atlantic of NH. Bell Atlantic is concerned that the present language in the 'Right to Know' law puts their marketing plans in jeopardy, now that there is competition in their industry. And there are representatives here today who will testify today in favor of SB141, and they are prepared to elaborate to why they think this bill is necessary. I urge the committee, as a sponsor of this bill, and as a member of the House and Senate Public Communications Oversight Committee to support this legislation. We now have competition in the telecommunications industry in NH, and the introduction of competition forces us to look at the way we regulate these enterprises.

Mr. Chairman, that's my direct testimony. Some of the things that ... some of the criteria, if you will, that would govern the telephone company could use ... requested the information be not subject to the right to know, would be the information relative ... not subject to the right to know ... the utility would repre-

sent to the PUC that the informational records are not general public knowledge or published elsewhere. And secondly, measures that have been taken by the telephone utility to prevent dissemination of this information or records from the ordinary course of their business. And if the information or records pertain to the provision of competitive services, or trade secrets that require significant effort and the cost to produce.

Mr. Chairman, that's what this bill is all about, it's a ... very ...the bill is very narrow in scope. My sense is, and I think you'll probably hear from those proponents of the bill, that this is something that's already done by both the PUC and the telecommunications industry, but that this would put it into the law. And, I'd be glad to try and answer any questions, but there are other people here who are probably technically far more well informed than myself.

Senator Rick A. Trombly, D. 7: Thank you, Senator Fraser. Senator Fernald do you have any questions? Thank you, Senator Fraser.

Senator Leo W. Fraser, Jr., D. 4: Thank you Mr. Chair.

Senator Rick A. Trombly, D. 7: Joanna, did you wish to speak?

Joanna [intern assigned to Senator John King, D. 18]: [Senator John Kings' statement ...] **SEE ATTACHMENT "A"**

Senator Rick A. Trombly, D. 7: Thank you. And that statement is on behalf of Senator John King?

Joanna: Yes. Did you need a copy Senator Trombly?

Senator Rick A. Trombly, D. 7: Why don't you give it to the Clerk ... The Chair recognizes Bonnie White and Victor Delvecchio. Do you wish to testify jointly.

Bonnie White: No, Mr. Delvecchio will testify. Thank you, Senator.

Senator Rick A. Trombly, D. 7: Okay. Could I ask you a favor, Mr. Delvecchio? It's a burning question ... this is unusual to ask a question before you testify, but it's driving me crazy ... since Senator Fraser testified. But, I want to be able to concentrate on what you're saying. On line 14 in the bill, do you have the bill?

Victor Delvecchio: Yes, I do.

Senator Rick A. Trombly, D. 7: Would you address in your comments, at some point, hopefully ... whether or not, paragraph II., is conjunctive or disjunctive ...in other words, do all the conditions of paragraph II have to apply, or just one of them ... in order for the bill to ...to take effect? And if you could do that just during your testimony, I would appreciate that. But, that is a question that I do have.

Victor Delvecchio: May I ask one question ... my version is not numbered, you gave a specific line?

Senator Rick A. Trombly, D. 7: Item line 14 ... it says ..."In order to obtain confidential treatment ..." Line 14 begins roman numeral 'II' ... basically it sets forth the criteria under which the bill would be applicable. And it sets forth ... I think there are two or three general and then one is subject to A and B. And I just was wondering if the intent was ... all those criteria be met.

If you want to ... I tell you what you do ... if you want to go ahead with your prepared testimony, then go back and review ...

Victor Delvecchio: Why don't I address that right now ...? The first portion of II, is the requirement, and it's conjunctive. That is the telephone utility must represent to the Commission that the information or records are not general public knowledge, or published elsewhere, that measures have been taken to prevent dissemination, and that the information ... and then we get to the disjunctive portion. It either pertains to the provision of better services, or it's one of a litany of items that have been identified based on our experience, and the commission's own rules, which seek to identify the kinds of information that would fall within the exemption to the 'right to know' law.

Senator Rick A. Trombly, D. 7: Thank you for addressing that outright.

Victor Delvecchio: My name, Senators, is Victor Delvecchio, and I'm the general counsel of NE Telephone and Telegraph Company, which does business in NH as Bell Atlantic NH. I have ... and I'm responsible in my role as GC, in NH for regulatory matters. I have had the privilege of providing services and representing the company before the PUC for the past ... approximately 10 years. During the course of my ten years, I've been involved in numerous proceedings before the Commission, and I am familiar with the 'right to know' law, RSA 91-A, and the submission of confidential information to the commission in accordance with that statute.

I'm here today in support of SB141. The current process for submission of confidential information needs to be streamlined. The manner in which information is provided to the Commission is cumbersome, it's time consuming, and it's inefficient. It causes delays in the filings of new services, and in providing information to other parties during the course of discovery, and contested parties, as well as providing information in non-contested proceedings. And, it requires redundant activity on the part of the utilities that must, on the one hand file motions with the Commission, and at the request of other parties, to attempt to expedite the process on their own pending commission action on those motions, to undertake detailed protective agreements, which are executed at the same time, but are somewhat independent of, the motion which is submitted to the Commission.

In addition to the filing of motions, and the undertaking of these protective agreements, the company must, and at least does, provide copies of all our motions to the relevant product managers within the company across the Bell

Atlantic footprint, for the purpose of verification. We don't simply file these motions, we ... have someone within our company ... in essence, a test to the accuracy of the information in the motion. And that goes one step, frankly, beyond what the Commission requires, because we want to the extent we can, to answer any question the Commission might have as to our belief that this information surely is confidential. So, we require a manager, a non-lawyer, to actually sign on the dotted line which says by the pains and penalties of perjury, that this information is accurate, because we don't want any additional delay in the process.

Additionally, we have to go through it page by page, each of the relevant pieces of material for the purpose of exacting information that we believe is proprietary. The Commission on the other hand, must review each and every motion we file, review all pages, and issue a written order, which it does. Because of the inherent inefficiency in that process, Commission approvals on motions for proprietary treatment are now regularly occur after Commission approval of the underlying new service or special contract filing. In other words, they'll issue an order approving the filing, which they do, to their credit on an expedited basis, because that is the most important issue. But, the actual motion on protection on the day that we submit it, occurs often after that they've issued a substantive motion. And that, obviously, is because it takes some time for them individually, to address each and every motion that's filed, as is currently required under it's interpretation of the law.

To give you an idea of how frequently such motions must be filed, and how often the Commission approves these, in 1997, we filed at least 25 motions. In 1998, the number was in the vicinity of 15, in 1999, to date, as of the end of March, we filed nine ... so, the number is somewhere in the vicinity of 25-30, and that's likely to grow as competition is likely to increase.

The current language in 91-A, Section 5, exempts, among other things, confidential commercial or financial information. The information subject to SB141 falls, we believe, squarely within the scope of the existing exemption. But, provides a meaningful process for securing that exemption in an expedited and efficient manner.

When RSA 91-A was first adopted, I believe in the 60's, telephone services were provided, for the most part, by exclusive franchise utilities. That, however, has changed dramatically in the last five to ten years. In 1996, for example, the Commission applied one plus dialing within state long distance service. That was the first state ... NH was the first state in NE to do so. Today, we've lost a significant portion of our toll and access lines to competition. In large part, as a result of early introduction of one plus in state dialing. And, there are somewhere between 150-175 toll competitors in NH alone. In 1997, the Commission required Bell Atlantic NH to interrupt its long term special contracts in care of payment plans permitting their users an opportunity ... a limited opportunity ... to abandon those contracts for a period of time, and to go with competitive local exchange providers at tremendously reduced termination liability charges. This 'fresh look' opportunity, as it's known, was specifically designed to encourage local exchange competition.

In 1998, the Commission required Bell Atlantic to make available its inground unused inventory of fiber optic cables. This went, we believe, beyond the FCC requirement, again designed to jump start competition in NH. In 1998, the Commission required BA [*referring to Bell Atlantic from here forward*] to assign its long term contracts to end users ... with end users ... to resell to those who resell BA service without triggering any termination liability. Again, this went beyond what the FCC currently required. Again, to encourage competition.

Information submitted to the Commission, therefore is increasingly pertaining to the changing competitive market that the Commission, that this Legislation, by Congress, by the FCC, that we encourage. Now, what types of information ...commercially sensitive information are we talking about? Marketing plans. Revenue projections on a product specific basis. Usage demand characteristics. Usage demand forecasts. Geographic product roll out information. Vendor specific cost and data, where the vendors specifically say, "...thou shalt not disclose this to our competitors." And customer specific pricing and commercially sensitive information, which is often referred to as a CPNI [Customer Pricing Network Information]. Proprietary information, I should say. These go to where customers intend to deploy technology, and I'm talking about our end users, when they intend to do so, how much of the services they intend to consume in different parts of the state. How much they're paying for those services, all of which our customers want us to protect, so that their competitors don't gather this competitive intelligence unfairly, to their disadvantage, solely because they're purchasing from a provider, BA NH, which is more heavily regulated than other providers.

BA NH's competitors often are not subject to the same degree of disclosure. In essence, we believe is tying one of our hands behind our back, not because the statutes differ, but because the regulation of those providers is different.

For example, our Centrex [sp?] products compete head on with PBX's vendors, the sellers of switches, private switches. Those PBX vendors are completely unregulated, they are not subject to the Commission's jurisdiction or authority. Other competitors that we have that are subject to regulation, are now a part of cost data, which we are, so they never face the issue of how they go about protecting the underlying cost data. And, for other competitors, the PUC tariff regulation is applied only minimally, if at all, to their services in contrast to BA. The result, in our view, is viable process parody, which we believe SB141 would alleviate.

Lastly, what does the bill provide? It only applies to certain information of the type that I've identified above, and that are listed in Section 2. Secondly, it makes unnecessary filing of these dozens of motions per year. Thirdly, it obviates the Commission's need to issue written decisions in each instance. Fourth, it permits the Commission, or interested parties, an opportunity to challenge our designation of proprietary treatment on a case by case, as needed exception basis. As opposed to requiring, in every instance, even when there's absolutely no controversy, that we undertake this process. And, lastly, it brings NH more in line with other states in the north east. And those that I'm

somewhat familiar with are Massachusetts, Rhode Island, Vermont, and NY. They have processes similar to what SB141 would promote. And, in doing so, in our view, it makes it easier to do business in NH, and makes it a more efficient place for us to operate.

In summary, BANH respectfully requests the support of the Committee in adopting SB141, and now, I'd be glad to answer any questions.

Senator Rick A. Trombly, D. 7: Questions for Mr. Delvecchio? Senator Fernald?

Senator Mark Fernald, D. 11: This statute would apply to telephone utilities ... could it, should it apply to electric utilities as well? For the same reason?

Victor Delvecchio: I can't claim to be an expert in electric utility operations, which is in part, why I would not venture a response to that. I understand that electric utilities also, is under competitive changes, I don't know that they're quite ready to be here in NH ... but it is changing and will be shortly. So, I would defer to those who would be more knowledgeable in the electric side, that's not what my practice has been ... it's been in the telecommunications. I think BANH supported this, because we wanted to make it as narrow as we could ... not because we perceive to exclude other utilities, but because we were more comfortable in terms of our knowledge in what's happening specifically in the telecommunications industry.

Senator Rick A. Trombly, D. 7: Any other questions? I see none. Thank you Mr. Delvecchio. The last speaker signed up is Gary Epler?

Gary Epler: Thank you and good morning Mr. Chairman, Senators. My name is Gary Epler, I'm general counsel for the PUC. I'd like to give just a little background of myself before testifying.

I've practiced PU Law for approximately 15 years, 10 years in the AG's office in the State of New Mexico, two years on behalf of the State of NY, and three years as the managing attorney advocating for the State of New Jersey. I'm found in all the "New" states.

Senator Rick A. Trombly, D. 7: New Brunswick is just up the road, you know!

Gary Epler: I'm here to testify on behalf of the Commission. The Commission's position on this bill's recommendation is not to pass it. We're not in favor of this ... and let me start out by saying that we don't feel that this is a disagreement over the underlying substance of what the bill is trying to address. We absolutely agree that there is a right and a need to protect certain types of information. That there is a category for confidential commercial and trade information that the legislature recognizes in the right to know law, and that the Commission has a long history of recognizing and protecting.

What we see is that ... the Commission views the right to know law as the legislature's declaration of the need to protect the democratic process, by making public the decisions and considerations on which govern our national states. The right to know law recognizes that you need to make public, most of the information, as much as possible on which the state makes determinations. The way this issue comes to bear with respect to the Commission is under the Commission's rules and regulations, PU have to file fairly extensive and detailed financial information with us. Once that information is filed with the Commission, then it's the question of whether or not the information is a public document. The Commission has adopted a process ... it has rules, by how that information and those questions are handled. Accompanied ... when it files information, for example ... a company is requesting a tariff change, it has to file some sense of what it considers sensitive information. It accompanies that file with a motion to the Commission. By receipt of that motion, the Commission determines that information is automatically confidential and protected, with a separate filing happening, and a separate procedure within the office for handling that information.

Then, there's a process within the Commission whereby that information is viewed and a determination is made as to whether or not, in fact, that information deserves the confidential treatment, and as a result of that, the Commission comes up with an order ... either granting the company the protection of what they want, or denying the company the protection ... or some middle ground.

At the end of that process, the material is still handled confidentially, at no point in this process is it exposed to public review. And there's an opportunity for the company to either ask for ... or for whichever party is seeking the protection ... to ask for a re-hearing by the Commission, or to seek appeal to the courts. And I want to emphasize, that during this whole process, the material itself, is treated confidentially. There is no danger of exposure, in all ... as far as I'm aware, there has not been certainly, a deliberate disclosure, and I don't believe there's been any accidental disclosure of information.

What I have here, is just so you could see ... I have made copies of the Commission's Rules ... so you can see that there is a procedure in place here. [**SEE ATTACHMENT #1, "New Hampshire Code of Administrative Rules"**] Now, this is a copy of the Commission's rules, and if you look on the first page, down towards the bottom ... there's PUC 204.05, it says Public Records. That initial section going onto the next page talks generally about what are considered public records. Then there's a reference within that to confidentiality, and then, how confidential treatment section starts on the following page, about 2/3 of the way down, labeled Confidential Treatment. And that goes through the process of what you have to do to obtain confidential treatment from the Commission. And I would note, I think, to a large degree, this process and the standard that it invokes, is very similar to what is in the proposed SB141.

The distinction, the key distinction ... and the reason why we are opposed to this, is that there's a reverse of the verdict. Under the Commission's rules, a party that's seeking a protective treatment, is the party on whom the burden is,

to allege and to show that they have a right to obtain that protective treatment. Under the SB, the burden is reversed ... the company simply makes the declaration ahead of time, and then it is the burden on the Commission or on any other party or person has to try to seek and overturn that. We think that is particularly easier, and I can personally testify in terms of my experience in other states, that this SB ... this proposed bill, is not the procedure that other states involved do. That certainly the majority ... if not all states ... have a procedure similar to that currently in place before the Commission. Where the burden is on the party seeking the protective treatment. That's the case within the federal rules of evidence, the federal rules of procedure in court, in fact, we just came from a hearing yesterday in Providence, RI ... the PSC attached litigation' ... we had a hearing on a motion to compel by the commission, trying to seek some information from PSNH, and it was before a Magistrate, and the Magistrate recognized immediately, that the burden was on the party seeking a protective order. Even though it was on a motion to seek that information, the Magistrate asked that the company defend why it wouldn't disclose that information. So, certainly, that is the state of the law, and that's the state of these procedures before most of the Commissions.

We have looked at our dockets, I've ... my assistants have reviewed what has happened over the last year, and in 1998, the Commission issued 30 orders relative to motions for protective treatment, and are broken down as follows: there were 4 for gas utilities, all granted; 7 for electric utilities, 6 were granted, one was denied; 19 for telecommunications utilities, of those, 16 were granted, one was denied, and two were granted in part.

I think the fact that the majority of these were granted, shows that most parties understand what the procedure is, what the burden is, what the standard is. The fact that some were not, shows that we need this process. That there are situations, where a company ... or a party ... is seeking to protect material that doesn't deserve confidential treatment. And again, there is a check on the Commission's process, because they use the PO2 reports.

Yet, there was some concern that was expressed ... as to whether the process is cumbersome or time consuming or inefficient, and along with that there was ... it was pointed out that sometimes the Commission will actually act on the underlying requests of the company, and not act on the motion for protective treatment of the material. From the Commission's perspective, that actually shows that the process is working, because we do not delay the relief that a company is asking for. If they're asking for expedited treatment on a tariff, or on a new service, we actually do react to that, or we try to comply with their request for expedited treatment, and get out an order on that issue, and do not let the protective treatment question hold up that process. And so, yes, that does happen, but we're actually proud of that because we think that it shows that we don't let it gum up the process, and that we take careful consideration of these confidentiality issues.

The process does require a filing by the Commission, but I think that if you were to look at most of the motions that we get, they're fairly routine, the type of thing that you can more or less have as a macro in your word processor, I

mean, there are certain allegations that you have to make, and as long as you can testify and support that, and make an allegation that you have evidence to support that ... that's what the filing requires. Most of ... for example, most of the filings that we've gotten most recently from "Vel" on this subject, they're approximately the same number of pages, and they say approximately the same thing ... the same things. There is a requirement that they go page by page and specify what material they claim is confidential, and we think that is appropriate because the right to know law presumes that material should be disclosed. But, if you're making the claim that it's confidential, you've got to show why ... why that's the case. And you should go page by page, line by line, and actually determine which numbers deserve the treatment.

I'm going on here, and I apologize ... please interrupt me at any point if there is a question that was raised by the Senator about the other utilities, again, we think it's inappropriate to just single out telephone utilities. Not even all telecommunications companies, but telephone utilities. And ... the question is, why wouldn't this apply to other utilities ... we think it should not, as it is appropriate to keep the process in place.

If the question is ... what type of information should be confidential or not confidential, then my suggestion would be to look at the 'right to know' law, and to look at the exemptions that the legislature has declared under the 'right to know' law. Perhaps they're making it a necessity to further clarify what the exemptions are. Right now, the exemption ... I don't have the ...

Senator Rick A. Trombly, D. 7: That's okay, I don't think that the content of the ... it's not an attempt to change what the statements would be ... I think it's just the procedure that seems to change.

Gary Epler: With that ... I think I can wrap it up. Thank you very much.

Senator Rick A. Trombly, D. 7: Thank you ... Senator Fernald, question?

Senator Mark Fernald, D. 11: The PUC's regulations allow confidentiality, it's permitted under RSA 91-A:5, IV, and ... I guess my question is, that statute doesn't speak to confidentiality in business records, which is ...really, I think what we're getting at here. And, I realize you're doing it ... giving confidentiality to business records, but it doesn't seem to resemble this. What you're doing is precisely following what the statute says.

Gary Epler: We have interpreted the provision, and I think it's A:5, IV, where it speaks to commercial and financial information to include business records within that language. So, we have made that determination ... I believe, also, that the ... and I think that's in line with some of the SC decisions. SC decisions interpreting the 'right to know' law. I would have to check to give you an exact citation as to how to do that, or ... in viewing those cases, that application. There is recognition of ...that business records have some protection. If you can show that there is material ... it basically meets the requirements here, that it's "trade secret" type information, or that ... or if it would put you at a competitive disadvantage if it was released ...

Senator Mark Fernald, D. 11: Are you concerned that ... the telephone utilities are going to make statements that this is confidential and it's not? That they're going to be trying to lock up too much information?

Gary Epler: That is a possibility ... the concern is twofold. I think that's a possibility, I would tend to think that would not usually happen. Although, we do have an instance last year where a ... where there was a filing requesting confidential treatment, and it turned out that the material was already publicly available, in their securities and exchange commissions files. So, there is a concern about that. The other concern is more that you're shifting the burden, and you're making it more difficult for information to be called public. And, the burden is quite a significant one.

Right now, we can handle this process through basically ... on paper proceedings. There's a filing by the company, the Commission looks at it, the Commission can issue a decision. There's no need to hold a hearing on it. Although, the company could request a hearing, and the Commission may want to have a hearing if it needs more information. But, you can basically have a paper hearing. Under this process that's in SB141, we would need to hold a hearing, if the Commission felt that this information really deserved to be public. And I think it would reduce the burden on the Commission, because in discussing this with Commissioners, they would still feel obligated whenever these filings were made, even if there was the allegation by the company appropriate to what's in the SB, that this material is ... is confidential, we would feel the necessity of reviewing all of this. And if there would be only a minimal filing of this, we would then have to basically start a process to get more information from the companies, and possibly have a hearing each time we wanted to really check on this, in determining ... is it appropriate that this material be confidential.

Senator Mark Fernald, D. 11: I'm not sure I understand the difference. As it is now, they submit the information, and they submit a motion for confidentiality ... if we enact this statute, they submit the information and they give you a statement, saying, this is confidential. So, in each case, it seems like you've got the same amount of paper there.

It's just as you said ... then, you look at the paperwork, under the statute, which has been called confidential by the company, and you then review it and say, we don't think this is confidential. And then you have to call a hearing if you want to make a formal proceeding out of it. So, you're going to get the same paperwork from the company?

Gary Epler: Yes, you don't necessarily ... wouldn't necessarily get the same paperwork, because at least here we have, under our process, we have a requirement that they submit some evidence showing that this is commercially sensitive information. Some evidence that it meet the burden under this ... under the proposed process, I don't believe that is a requirement, I think it just requires representation, and it's not clear what that representation means. I'm reading the line ... down, 15.

Senator Rick A. Trombly, D. 7: When I read that, I read it as them simply certifying to you what they already need to show. A lot of them do that, perhaps in the cover letter to you, I suppose ... like a pleading and supporting affidavit. Do you have any further questions?

Senator Mark Fernald, D. 11: I was just trying to understand how the paperwork ... what I said was, that you would have to call the hearing simply to find out more information as to whether or not this should be confidential, and it seemed to me that in either proceeding, to get all the information, in one case you get a statement that is confidential, and the other situation, you get a motion that is confidential ... otherwise, I didn't see a difference. And, you're saying there is a difference. I don't understand the difference.

Gary Epler: Okay, if I said that we would have a hearing just to get that information ... then I'm sorry ... that's incorrect, we wouldn't need to do that. If they made a filing, then we could contact the company, either informally, or through a formal written request, and ask them to provide us the information.

The difference is ... what I was eluding to, is looking at lines 14 and 15, of the proposed bill, where it says "...utility shall represent to the PUC ...", compare that to looking at what I handed out, the third page, at the top of the page, there is a small (c), it says ... "The petitioner shall provide evidence that the information is:" ... that's the distinction. When they call their motion, it is accompanied with some evidence. And, usually what that consists of is a signed affidavit, by somebody in the company saying ...yes, I testify that this is the type of information that we keep confidential, that we ... such and such, maintains confidentiality, and that we had expected so much time on gathering information ... and so on.

Senator Mark Fernald, D. 11: Now, how is a signed affidavit of all those facts different than a representation from the utility that all of those facts apply? I guess I just don't see a substantive difference.

Gary Epler: The difference is that one is a sworn statement by the utility. There is ... there is a question as to what process the company would go through to make the representation ... so, my question ... with all due respect, my question then would be ... if there isn't a difference, then I don't see how this helps the administrative burden on our companies? If they essentially have to file the same thing with the Commission here, and we get the same ten pages of representation or ten pages of a motion, but I'm not sure how the burden on companies are changed. I think that the burden on the Commission to have to hold a hearing to overturn such a determination has increased.

Senator Mark Fernald, D. 11: I'm actually going to ... after we're done questioning you, I'll ask the Chairman if I can ask Mr. Delvecchio another question or two, because ... that's a good question. I'm holding it in reserve.

Senator Rick A. Trombly, D. 7: Thank you very much, and welcome to NH.

Mr. Delvecchio, do you want to come on back ... for some more questions? Did you hear Senator Fernald's question about the distinction between the filing now, and what you would have to anticipate having to file if this passes?

Victor Delvecchio: Sure ... I mean, I heard a few things that Mr. Epler said which I think require some clarification. On one hand, he noted that these are pretty routine motions that are filed. We get a template, although we have to configure to spend some time to make sure it fits the specific facts of the particular requests, and I have a copy of the motion that was most recently filed ... it's about eight or nine pages. I have to submit ... I send that voluntarily for the Commission ... doesn't require it. There's nothing in their rules that says get this verified, testament to ... I did that. On my own. And at first, they said, why are you doing that? And I'm saying because I didn't want any more delay on this issue. When I make a representation, I want to make sure that somebody in my company ... a manager ... is going to stand by it.

In terms of the process, itself ... what I'm proposing, what we're proposing ... is on an as needed basis ... there's no need for the Commission to issue an order on every single case. In fact, you heard that in a vast majority of these motions are accepted. And frankly, in the few instances where they're not, or more correctly, where they are "tweaked" where some piece of it ... if the Commissioner said, we'd like you disclose that, that's not because the utility has failed to do something, it's because the Commission in those cases, decided they were going to change their standard a little bit. They're going to narrow the requirement for you to disclose something that they didn't require before, and in my experience over the last five years, that's been the case, that something we've filed has been ... they've said, well we'd like you make this piece ... or that piece. It's not that we didn't understand what the standard was, it's that they decided to change the standard.

Now, I'm not saying they can't do that, I'm just saying ... let's make the process more user friendly. If they have a specific instance where they decide ... well, as a matter of policy, we prefer to make something available. They can do that on an "as needed" basis, and on an exception basis. The suggestion that in NE, or in NY, the process is similar to what we have here in NH, that's not correct. You make a representation in Vermont that something should be treated under seal, that's it. And if a party or the boards as well, we think something should be a little different here. Then we have to respond to it, it doesn't necessarily require a hearing. My ten years here ... I've never had a hearing on an issue from protective treatment. It does require discussion back and forth, and a willingness to cooperate. And, we're not unwilling to cooperate, we're just saying ... please make it a little bit easier for us and other utilities in the telecommunications industry to obtain approval ... or to obtain a protection of stuff ... which generally there's no dispute about.

Senator Mark Fernald, D. 11: Do you feel that the definition of confidential information in RSA 91-A, IV is inadequate to protect you ... or, is this really a co-efficient procedure rather than inadequate steps?

Victor Delvecchio: I think this is primarily a matter of procedure. I think it's secondarily a matter of providing more "meat" on the skeleton. The three words that we always rely on are, confidential, commercial or financial information ... in that expression you see all of the representation. And then the Commission has to decide on its own ... what does it mean to be commercial ... or be financial and confidential. But, what this SB141 does, it says ... look, are there any disputes as to this kind of information is falling from the scope of that? If there is, fine ... let's dig it out. But, I don't think there is ... as to the kind of specificity that will identify it. So, it provides an added benefit, in my view. The primary thrust of this is process. No question about it. But, the secondary benefit, is we try to give further meaning to a term like confidential which is seldom coined.

Senator Rick A. Trombly, D. 7: Thank you very much. Anyone who has not signed up that wishes to testify. Dom Danbrosso?

Dom Danbrosso: For the record ... Dom Danbrosso representing the NH Telephone Association, which is comprised of 13 independent telephone companies in NH, and we are here in support of SB141. I'd like to be recorded in support ...

Senator Rick A. Trombly, D. 7: Anyone else? If not, I will declare this hearing closed. Thank you for your interest.

HEARING ON SB141 WAS CLOSED AT 11:30 A.M.

*Respectfully submitted,
Laurel Gallant-Hanlon, Senate Judiciary Committee Secretary*

(a) The staff or any party shall serve upon any other party or the staff, data requests, which may consist of a written interrogatory or request for production of documents, as necessary to evaluate a petition, application or testimony.

(b) Data requests shall identify with specificity the information or materials sought.

(c) Responses to data requests shall:

(1) Be made within 10 days of the date of receipt or in accordance with a procedural schedule established by the commission;

(2) Be made in writing under oath by the party upon whom served, or by an officer or agent who shall furnish all information available to the party; and

(3) Be served upon every party and those staff designated for discovery filings on the commission's official service list pursuant to Puc 202.07(b).

(d) Objections to data requests shall:

(1) Be served in writing on the propounder of the requests within 4 days following receipt of the request; and

(2) Clearly state the grounds on which it is based.

(e) Failure to object to a data request or requests for documents within 4 days of its receipt without good cause shall be deemed a waiver of the right to object such as a witness's unavailability to review the request during the 4 day period.

(f) Motions to compel responses to data requests shall specify the basis of the motion.

(g) The commission shall employ other forms of discovery including, but not limited to, technical sessions and depositions as needed to enable the parties and staff to evaluate the issues presented.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97

Puc 204.05 Public Records.

(a) All documents submitted to the commission or staff shall become matters of public record, subject to RSA 91-A, as of the day and time of submission to the commission or staff, with the following exceptions:

(1) Accident reports under RSA 374:40;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Documents submitted to the commission or staff accompanied by motions for confidentiality pursuant to Puc 204.06(b);
- (3) Documents subject to a protective order of the commission issued pursuant to Puc 204.06(a); and
- (4) Documents exempt from disclosure pursuant to any provision of law.

(b) Documents submitted to the commission or staff accompanied by a motion for confidentiality shall not be disclosed to the public and shall be maintained as provided in Puc 204.06(d) until the commission makes a ruling as described in (c) below.

(c) After documents have been submitted to the commission or staff accompanied by a motion for confidentiality, the commission shall make a ruling providing as follows:

- (1) If the commission grants the motion for confidentiality, the information shall be treated according to Puc 204.06(d) and the conditions set by the commission's order; or
- (2) If the commission denies the motion for confidentiality or modifies a prior order of confidentiality so that information previously held confidential shall no longer be treated according to Puc 204.04(c), the information shall not be disclosed until all rights to request rehearing and to appeal have been exhausted or waived.

(d) Members of the public may examine and copy the public record in accordance with Puc 104.01.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97

Puc 204.06 Confidential Treatment.

(a) The commission shall grant confidentiality upon its finding that the documents sought to be made confidential are within the exemptions permitted by RSA 91-A:5,IV or other provisions of law based upon the information submitted pursuant to Puc 204.06(b) and (c).

(b) The petitioner shall provide the commission with a motion for confidentiality which contains the following:

- (1) The documents, specific portions of documents, or types of information for which confidentiality is sought;
- (2) Reference to the statutory or common law support for confidentiality;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) Facts describing the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public; and

(4) Evidence as required by (c) below.

✓ (c) The petitioner shall provide evidence that the information is:

per signed affidavit

(1) Either the petitioner's information which, if made public, would likely create a competitive disadvantage for the petitioner, including but not limited to:

a. Trade secrets which required significant effort and cost to produce and would take significant effort and cost by others to develop independently; or

b. Other confidential, research, development, financial, or commercial information, such as fuel supply contract prices and terms, and details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application;

(2) The petitioner's customer's information is financially or commercially sensitive to the customer or which, if released, would likely constitute an invasion of privacy for the customer; and

(3) The information is not general public knowledge or published elsewhere and measures have been taken by the petitioner and, in the case of (2) above, the petitioner's customer, to prevent dissemination of the information in the ordinary course of business.

(d) Information which has been determined by the commission to be confidential under Puc 204.06(a) shall be treated as follows:

(1) The information shall not be disclosed to the public in a manner inconsistent with the confidentiality order of the commission;

(2) An original and 8 copies of the information shall be provided for use by the commission and staff; and

(3) The copies shall be stamped confidential and held within the commission offices in secure locations.

(e) If the staff or any party desires to place some or all of the information which has been determined to be confidential under Puc 204.06(a) into the record during a commission proceeding, whether by exhibit, pleadings, testimony, direct or cross-examination, oral argument, or brief, then such party or staff shall notify all parties and the commission in advance that such confidential information is proposed to be introduced and request that it be placed by the commission in a sealed record.

(f) If any of the information which has been determined to be confidential under Puc 204.06(a)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

is thereafter released or made public by the party who sought its protection, any protection under Puc 204.06(a) shall cease with respect to the released information but shall remain in full force and effect as to the information not so released or made public.

(g) If any of the information which has been determined to be confidential under Puc 204.08(a) is thereafter released or made public by unauthorized disclosure by anyone other than the party who sought its protection, the protection under Puc 204.08(c) shall remain in full force and effect, binding all parties and the commission.

(h) When all rights to appeal final orders of the commission in a proceeding have been exhausted, the commission may offer to the party supplying the protected material the option of:

(1) Retrieving the protected material; or

(2) If the material is no longer confidential, allowing the protected material to become part of the public record.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97

PART Puc 205 - RESERVED

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

PART Puc 206 ALTERNATIVE REGULATION

Puc 206.01 Definitions.

(a) "Alternative form of regulation" means a method of utility rate regulation pursuant to RSA 374:3-a other than methods which are based upon cost of service, rate base and rate of return.

(b) "Utility" means "public utility" as defined in RSA 362:2.

Source. #6444, eff 1-28-97

Puc 206.02 Utility May Petition. A utility may file with the commission a petition for an alternative form of regulation.

Source. #6444, eff 1-28-97

Puc 206.03 Commission Shall Initiate.

Attachment #2

Bell Atlantic
185 Franklin Street, Room 1403, Boston, MA 02110
Tel (617) 743-2323
Fax (617) 737-0648

Victor D. Del Vecchio
General Counsel - New Hampshire

January 7, 1999

Thomas B. Getz
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
Eight Old Suncook Road
Concord, NH 03301

Re: **Special Contract Between Bell Atlantic
and Vitts Network Incorporated**

Dear Director Getz:

Enclosed for filing in the above-referenced matter, please find an original and eight copies of Bell Atlantic's Verified Motion for Protective Order. Please note that Bell Atlantic has requested Staff's and Office of the Consumer Advocate's concurrence. Staff and the Consumer Advocate take no position.

Please acknowledge receipt of this letter and its enclosure by signing or stamping and dating the receipt copy of this letter.

Thank you for your attention to this matter.

Very truly yours,

Victor D. Del Vecchio

Enclosure

vittsnetwork

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

Bell Atlantic/Virts Network Incorporated
Special Contract

VERIFIED MOTION FOR PROTECTIVE ORDER

Pursuant to Puc 203.04, New England Telephone and Telegraph Company, d/b/a Bell Atlantic-New Hampshire (Bell Atlantic or the Company), by its attorney, hereby moves that certain of the supporting materials (the Confidential Information) filed in the above-referenced matter be accorded proprietary treatment. Specifically, Bell Atlantic requests that the New Hampshire Public Utilities Commission (Commission or PUC) enter an order that precludes the Confidential Information from being publicly disclosed without Company consent, pursuant to RSA 91-A and Puc 204.05 and .06, unless and until otherwise ordered after notice and opportunity to be heard provided to all interested parties.

As grounds for its motion, Bell Atlantic states as follows:

I. APPLICABLE STANDARDS

A. RSA 91-A

Petitions for confidential treatment by the Commission are governed by RSA 91-A, Re New England Telephone Co., DR 95-069, Order No. 21,731 dated July 10, 1995 (Re NET), or other provision of law. See, e.g., Puc 204.06(a). RSA 91-A:5(TV) exempts from disclosure, among other things, records pertaining to "confidential, commercial or financial" information. The PUC has

observed that the Commission's focus in addressing requests for confidential treatment is on the "public interest in an effectively functioning competitive marketplace as well as a telecommunications customer's right to privacy." Re NET, Order No. 21,731 at 9.

B. Commission Confidentiality Rules and Decisions

In accordance with its interpretation of RSA 91-A:5(IV), the PUC has "established standards as to when and under what circumstances information is considered deserving of confidential treatment." Re NET, Order No. 21,731 at 10. Those standards form the basis of, and are currently reflected in, PUC 204.05 and .06.

In determining whether information submitted pursuant to its rules, presently codified at Puc 204.06(b) and (c), warrants a grant of confidential treatment, the Commission has ruled that it will apply a balancing of interests test that measures "the benefits of disclosure against the benefits of non-disclosure." Re NET, Order No. 21,731 at 13. See Puc 204.06(b)(3) ("[f]acts describing the benefits of non-disclosure to the petitioner, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public").

In balancing the public's right to know against the "public interest in an effectively functioning competitive marketplace as well as a telecommunications customer's right to privacy," Re NET, Order No. 21,731 at 9, the PUC requires evidence that demonstrates that:

- (1) Either the petitioner's information which, if made public, would likely create a competitive disadvantage for the petitioner, including but not limited to:
 - (a) Trade secrets which required significant effort and cost to produce and would take significant effort and cost by others to develop independently; or
 - (b) Other confidential, research, development, financial, or commercial information, such as fuel supply contract prices and terms, and details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application;

- (2) The petitioner's customer's information is financially or commercially sensitive to the customer or which, if released, would likely constitute an invasion of privacy for the customer; and
- (3) The information is not general public knowledge or published elsewhere and measures have been taken by the petitioner and, in the case of (2) above, the petitioner's customer, to prevent dissemination of the information in the ordinary course of business.

Under Puc 204.06(a) of its rules, the Commission shall grant confidentiality upon finding that the documents sought to be made confidential are exempt under law "based upon the information submitted pursuant to Puc 204.06(b) and (c)."

C. Customer Proprietary Network Information

The Federal Communications Commission (FCC) adopted rules governing access to customer proprietary network information (CPNI) that require prior authorization by customers.

CPNI consists of:

information about a telephone customer's use of the telephone network, such as the number of lines ordered, service location, type and class of services purchased, usage levels, and calling patterns Telephone customers have proprietary and privacy interests in their CPNI.

Re NET, Order No. 21,731 at 21.

In adopting the CPNI rules, the FCC "balanced the competing interests of competitive equity, customer privacy, and the need for efficiency in the development of mass market enhanced services." Id. at 21. "Similarly," the PUC has held, "we will not make public the type of information which falls within the realm of CPNI." Id.

In the Telecommunications Act of 1996, Congress incorporated CPNI protection in Section 222 of the Communications Act of 1934, 47 U.S.C. §222. Section 222(f) defines "customer proprietary network information" in relevant part as:

(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

II. RELEVANT FACTS

A. Introduction

The Confidential Information contains customer-specific, competitively sensitive data which fall within the exemptions permitted by RSA 91-A:5(IV). In general, the Confidential Information includes information not reflected in tariffs of general application such as: network size, routing and configuration data; information regarding specific service features, pricing and incremental costs; and contract terms such as special rates and billing details. The Company has submitted redacted copies of the special contract and supporting materials which, when compared to the also-provided full texts, identify the relevant pages, paragraphs or segments containing the Confidential Information subject to this motion.

B. Specific Details

The Confidential Information submitted for Commission review is set forth in Appendix B, paragraph 1.2. The Confidential Information identifies the number of circuits the customer is purchasing, which is customer-specific and relates to the customer's proprietary network design.

C. The Balancing Test: Competition and Privacy

Disclosure of the Confidential Information would unfairly advantage competitive alternatives to the services the customer provides. In addition, Bell Atlantic seeks to protect the customer-specific features identified in the special contract filing based on the Company's general policy of protecting customer information, consistent with the FCC's and PUC's policies protecting CPNI.

As previously agreed to with Staff, the Company has incorporated contract language recognizing that certain portions of the contract will be made public. The Company agreed to seek Votts Network's consent to public disclosure of customer-specific pricing information that otherwise falls within the scope of confidential information previously afforded protective treatment by the Commission. The Company agreed to do so for the purpose of balancing the interests of requesting telecommunications carriers, if any, that may desire to resell the telecommunications services Bell Atlantic offers at retail to subscribers who are not telecommunications carriers, within the meaning of 47 U.S.C. §251(c)(4).

Votts has consented to the requested disclosure of pricing information and, accordingly, the redacted copies do not protect from disclosure the relevant rates and charges reflected in Appendix B.

D. The Benefits of Nondisclosure Outweigh the Benefits of Disclosure

Bell Atlantic submits that the benefits of nondisclosure, and associated evidence of harm to Bell Atlantic, its customer and the general body of ratepayers, outweigh the benefit of public disclosure in this instance.

First, the market for the service subject to the special contract is competitive. Votts can elect an alternative solution for its telecommunications needs from other than Bell Atlantic. The Commission has expressly noted, however, that if a service is competitive "then a customer will be permitted by market forces to negotiate a special contract and permitted by RSA 91-A to confidentiality." Re NET, Order No. 21,731 at 16, n. 4. Disclosure of the competitively sensitive information will undermine Bell Atlantic's ability to compete effectively with other providers of alternate services and facilities, who are not subject to public scrutiny because not regulated or regulated only minimally.

Second, the Company regularly seeks to prevent dissemination of such Confidential Information, which is not made available to or known by the general public, in the ordinary course of its business. If Bell Atlantic "were not a regulated entity, these documents would not be available for public inspection." Re NET, Order No. 21,731 at 19. "Given the increasingly competitive telecommunications world we do not believe that RSA 91-A should be used to access what is essentially private, commercial information." Id.

The information for which Bell Atlantic is requesting protective treatment is compiled from internal databases that are not publicly available, is not shared with any non-Bell Atlantic employees for their personal use, and is not considered public information. Any dissemination of this information to non-Bell Atlantic employees, such as advertising agencies or other

contracted service providers, is labeled as proprietary. Furthermore, any non-Bell Atlantic employees who are working for Bell Atlantic and may have access to this information are under a non-disclosure agreement.

Bell Atlantic employees that have access to the market segment data are similarly subject to non-disclosure requirements. For example, employees who use this information during the course of product management responsibilities are not permitted to publish the relevant data for general public use or release them for publication by others to the general public. Moreover, when these data are transferred internally they are transferred over a protected network and are marked proprietary.

Third, customers enter into special contract negotiations with Bell Atlantic with the reasonable expectation that CPNI and other customer information supplied to Bell Atlantic will be treated confidentially. If such information does not remain confidential upon filing with the Commission, Votts may be reluctant to enter into future special contracts with Bell Atlantic, choosing unregulated or minimally regulated providers based on factors unrelated to the price, quality and value of Bell Atlantic service.

Fourth, non-disclosure of the customer-specific information protects the privacy and competitive interests of Votts, by protecting "telecommunications contract information which could indicate the customer's financial status, plans for growth, telecommunications strategies, etc." Re NET, Order No. 21,731 at 18. Disclosure of such information "could harm customers by revealing sensitive financial and/or security information." Id. at 20. In addition, the redacted customer-specific data fall within the scope of CPNI which the Commission has determined should not be made public. Id. at 21.

In that regard, the Company understands that the relevant customer-specific data are considered financially or commercially sensitive to the instant customer and that the customer would consider disclosure of such data to be an invasion of privacy. The Company further understands that Votts undertakes measures to prevent dissemination of the relevant customer information in the ordinary course of its business. See Puc 204.06(c)(2) and (3).

Fifth, disclosure of the Confidential Information would unfairly provide customers seeking special contracts with "an enhanced bargaining position in their quests for lower prices." Re NET, Order No. 21,731 at 19. Yet, the PUC observed that the New Hampshire Supreme Court has "held that it is not the intent of RSA 91-A to disadvantage parties in their bargaining positions by permitting access to government-held financial, security or trade information to which there is a general expectation of privacy." Id. at 19.

Sixth, "non-disclosure protects basic exchange rates from experiencing upward pressure" as a result of discounts to customers "who gain an unfair bargaining position through access to information which would otherwise be unavailable if [Bell Atlantic] were an unregulated private enterprise." Re NET, Order No. 21,731 at 18. Disclosure of such information makes it more difficult for Bell Atlantic to maintain contribution for basic exchange service.

III. CONCLUSION

For the reasons stated above, the benefits of nondisclosure outweigh the benefit of public disclosure in this instance. Supporting materials under similar circumstances have previously been accorded proprietary treatment.

Bell Atlantic has requested Staff's and Office of the Consumer Advocate's (OCA) concurrence. The Staff and OCA take no position.

In accordance with Puc 204.05(b), the Company also requests that the Commission, Staff and OCA accord interim proprietary treatment to the Confidential Information pending the Commission's resolution of the Company's motion.

WHEREFORE, Bell Atlantic respectfully requests that the Commission enter an appropriate protective order in this matter, and grant such other relief as is just and appropriate.

Respectfully submitted,

BELL ATLANTIC-NEW HAMPSHIRE

By its attorney,

Victor D. Del Vecchio, Esquire
185 Franklin Street, Rm. 1403
Boston, Massachusetts 02110-1585
(617) 743-2323

Dated: January 7, 1999

VERIFICATION

I, John M. Morningstar, being duly sworn, hereby state and depose as follows:

I am employed by Bell Atlantic as Staff Director and, as a result of my responsibilities with the Company, am familiar with the facts submitted in support of Bell Atlantic's motion. The facts are true and accurate to the best of my knowledge, information or belief.

Signed under the pains and penalties of perjury, this 7th day of January 1999.

By _____

vitsnetwork

10:40 am (10:44 am)

SB141

3/31/99

Sen Fraser: prime & intro
[for Bell Atlantic]
regulation of communications
enterprises — PUC

Joanna for Sen J. King: co-sponsor
@ request of Bell Atlantic also!

Victor Bellocchio: II — is conjunctive
w/ disjunctive section

Sen Counsel NE Tel + Tel Co [10 yrs]
Supports SB141

"... inherent inefficiency in our process..."
[lengthy detailed testimony]
unnecessary redundant filings

Fernald: electric utility
as well?

DeVecchio: purpose

Gary Epler: PUC Gen Council

[resume details]

NOT IN SUPPORT

OPPOSE SB141

SEE ATTACH. #1

* Discussion of attachment #1 Layout
(refer to audio →)

included
were } gas utilities
 " electric "

tel. tel utilities

** TAPE CHANGED 11¹⁵ am

feels that Telephone utilities
are being singled out as
target — be specific as
to types of information
subject to confidentiality.

Fernald: Q = referred to
statute

EPLER — FERWALD

exchange — purpose

continued exchange →

referred to "trade secret" type
of info w/ potential of
putting corp @ disadvantage
to federal —

FURTHER EXCHANGE ...

[pontificating re: statute
specifies —]

"discretionary
confidential judgment"

DelVecchio: (re: Fernald's Q :)

SAMPLE OF

"Motion for Protective Order"

[see Attachment #2]

Fernald: Q → confidential
reference in 91-A.

Don Daubrosso: — support ^{SP} 1/4/1

1/30
an

Speakers

Hearing Minutes

SB 141 - AS INTRODUCED

1999 SESSION

99-0263
03/02

SENATE BILL *141*

AN ACT relative to information not subject to the right-to-know law.

SPONSORS: Sen. Fraser, Dist 4; Sen. J. King, Dist 18; Rep. Thomas, Belk 3; Rep. Pitts, Rock 35

COMMITTEE: Judiciary

ANALYSIS

This bill makes information or records provided by a telephone utility in support of a filing with the public utilities commission or placed in the record during a telephone utility proceeding confidential and not subject to the right-to-know law if they meet certain requirements.

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears ~~(in brackets and struck through)~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT relative to information not subject to the right-to-know law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subdivision; Information Not Subject to Right-to-Know Law. Amend RSA 378 by
2 inserting after section 42 the following new subdivision:

3 Information Not Subject to Right-to-Know Law

4 378:43 Information Not Subject to Right-to-Know Law.

5 I.(a) Any information or records that a telephone utility provides to the public utilities
6 commission or its staff as part or in support of a filing with the commission or in response to a
7 request that the information or records be provided to the commission or its staff shall be maintained
8 confidentially and shall not be considered public records for purposes of RSA 91-A, if the information
9 or records satisfy the requirements of paragraph II.

10 (b) Any information or records that public utilities commission staff or a party places
11 into the record during a telephone utility proceeding shall be maintained confidentially and shall not
12 be considered public records for purposes of RSA 91-A, if the information or records satisfy the
13 requirements of paragraph II.

14 II. In order to obtain confidential treatment under paragraph I, the telephone utility shall
15 represent to the public utilities commission that the information or records are not general public
16 knowledge or published elsewhere; that measures have been taken by the telephone utility to
17 prevent dissemination of the information or records in the ordinary course of business; and that the
18 information or records:

19 (a) Pertain to the provision of competitive services; or

20 (b) Set forth trade secrets that required significant effort and cost to produce, or other
21 confidential, research, development, financial, or commercial information, including customer,
22 geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting,
23 revenue, earnings, or technology information not reflected in tariffs of general application.

24 III. If the public utilities commission subsequently determines on its own motion or on request
25 of another party, after notice and an opportunity for hearing, that the telephone utility's representation
26 is incorrect and the information or records do not satisfy the requirements of paragraph II, the
27 information or records shall be subject to disclosure under RSA 91-A. Before permitting public
28 disclosure, the commission shall afford the telephone utility 30 days from issuance of its written
29 decision to request reconsideration. The material shall be maintained confidentially pending
30 consideration of any such request and until all rights to appeal the determination have been exhausted.

31 2 Effective Date. This act shall take effect 60 days after its passage.

applicability

conjunction or disjunction?
Trombly

Testimony

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) The staff or any party shall serve upon any other party or the staff, data requests, which may consist of a written interrogatory or request for production of documents, as necessary to evaluate a petition, application or testimony.

(b) Data requests shall identify with specificity the information or materials sought.

(c) Responses to data requests shall:

(1) Be made within 10 days of the date of receipt or in accordance with a procedural schedule established by the commission;

(2) Be made in writing under oath by the party upon whom served, or by an officer or agent who shall furnish all information available to the party; and

(3) Be served upon every party and those staff designated for discovery filings on the commission's official service list pursuant to Puc 202.07(b).

(d) Objections to data requests shall:

(1) Be served in writing on the propounder of the requests within 4 days following receipt of the request; and

(2) Clearly state the grounds on which it is based.

(e) Failure to object to a data request or requests for documents within 4 days of its receipt without good cause shall be deemed a waiver of the right to object such as a witness's unavailability to review the request during the 4 day period.

(f) Motions to compel responses to data requests shall specify the basis of the motion.

(g) The commission shall employ other forms of discovery including, but not limited to, technical sessions and depositions as needed to enable the parties and staff to evaluate the issues presented.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97

Puc 204.05 Public Records.

(a) All documents submitted to the commission or staff shall become matters of public record, subject to RSA 91-A, as of the day and time of submission to the commission or staff, with the following exceptions:

(1) Accident reports under RSA 374:40;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Documents submitted to the commission or staff accompanied by motions for confidentiality pursuant to Puc 204.06(b);
- (3) Documents subject to a protective order of the commission issued pursuant to Puc 204.06(a); and
- (4) Documents exempt from disclosure pursuant to any provision of law.

(b) Documents submitted to the commission or staff accompanied by a motion for confidentiality shall not be disclosed to the public and shall be maintained as provided in Puc 204.06(d) until the commission makes a ruling as described in (c) below.

(c) After documents have been submitted to the commission or staff accompanied by a motion for confidentiality, the commission shall make a ruling providing as follows:

- (1) If the commission grants the motion for confidentiality, the information shall be treated according to Puc 204.06(d) and the conditions set by the commission's order; or
- (2) If the commission denies the motion for confidentiality or modifies a prior order of confidentiality so that information previously held confidential shall no longer be treated according to Puc 204.04(c), the information shall not be disclosed until all rights to request rehearing and to appeal have been exhausted or waived.

(d) Members of the public may examine and copy the public record in accordance with Puc 104.01.

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

New. #6559, eff 8-19-97

Puc 204.06 Confidential Treatment.

(a) The commission shall grant confidentiality upon its finding that the documents sought to be made confidential are within the exemptions permitted by RSA 91-A:5,IV or other provisions of law based upon the information submitted pursuant to Puc 204.06(b) and (c).

(b) The petitioner shall provide the commission with a motion for confidentiality which contains the following:

- (1) The documents, specific portions of documents, or types of information for which confidentiality is sought;
- (2) Reference to the statutory or common law support for confidentiality;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) Facts describing the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public; an

(4) Evidence as required by (c) below.

(c) The petitioner shall provide evidence that the information is:

(1) Either the petitioner's information which, if made public, would likely create a competitive disadvantage for the petitioner, including but not limited to:

a. Trade secrets which required significant effort and cost to produce and would take significant effort and cost by others to develop independently; or

b. Other confidential, research, development, financial, or commercial information, such as fuel supply contract prices and terms, and details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application;

(2) The petitioner's customer's information is financially or commercially sensitive to the customer or which, if released, would likely constitute an invasion of privacy for the customer; and

(3) The information is not general public knowledge or published elsewhere and measures have been taken by the petitioner and, in the case of (2) above, the petitioner's customer, to prevent dissemination of the information in the ordinary course of business.

(d) Information which has been determined by the commission to be confidential under Puc 204.06(a) shall be treated as follows:

(1) The information shall not be disclosed to the public in a manner inconsistent with the confidentiality order of the commission;

(2) An original and 8 copies of the information shall be provided for use by the commission and staff; and

(3) The copies shall be stamped confidential and held within the commission offices in secure locations.

(e) If the staff or any party desires to place some or all of the information which has been determined to be confidential under Puc 204.06(a) into the record during a commission proceeding, whether by exhibit, pleadings, testimony, direct or cross-examination, oral argument, or brief, then such party or staff shall notify all parties and the commission in advance that such confidential information is proposed to be introduced and request that it be placed by the commission in a sealed record.

(f) If any of the information which has been determined to be confidential under Puc 204.06(a)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

is thereafter released or made public by the party who sought its protection, any protection under Puc 204.06(a) shall cease with respect to the released information but shall remain in full force and effect as to the information not so released or made public.

(g) If any of the information which has been determined to be confidential under Puc 204.08(a) is thereafter released or made public by unauthorized disclosure by anyone other than the party who sought its protection, the protection under Puc 204.08(c) shall remain in full force and effect, binding all parties and the commission.

(h) When all rights to appeal final orders of the commission in a proceeding have been exhausted, the commission may offer to the party supplying the protected material the option of:

- (1) Retrieving the protected material; or
- (2) If the material is no longer confidential, allowing the protected material to become part of the public record.

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New. #6559, eff 8-19-97

PART Puc 205 - RESERVED

Source. #2011, eff 5-4-82; ss by #2912, eff 11-26-84; ss by #4998, eff 11-26-90; ss by #6365, INTERIM, eff 11-18-96, EXPIRED: 3-18-97

PART Puc 206 ALTERNATIVE REGULATION

Puc 206.01 Definitions.

(a) "Alternative form of regulation" means a method of utility rate regulation pursuant to RSA 374:3-a other than methods which are based upon cost of service, rate base and rate of return.

(b) "Utility" means "public utility" as defined in RSA 362:2.

Source. #6444, eff 1-28-97

Puc 206.02 Utility May Petition. A utility may file with the commission a petition for an alternative form of regulation.

Source. #6444, eff 1-28-97

Puc 206.03 Commission Shall Initiate.

Bell Atlantic
185 Franklin Street, Room 1403, Boston, MA 02110
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Fax (617) 737-0648

Victor D. Del Vecchio
General Counsel - New Hampshire

January 7, 1999

Thomas B. Getz
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
Eight Old Suncook Road
Concord, NH 03301

**Re: Special Contract Between Bell Atlantic
and Vitts Network Incorporated**

Dear Director Getz:

Enclosed for filing in the above-referenced matter, please find an original and eight copies of Bell Atlantic's Verified Motion for Protective Order. Please note that Bell Atlantic has requested Staff's and Office of the Consumer Advocate's concurrence. Staff and the Consumer Advocate take no position.

Please acknowledge receipt of this letter and its enclosure by signing or stamping and dating the receipt copy of this letter.

Thank you for your attention to this matter.

Very truly yours,

Victor D. Del Vecchio

Enclosure

vittsnetwork

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

Bell Atlantic/Vitts Network Incorporated
Special Contract

VERIFIED MOTION FOR PROTECTIVE ORDER

Pursuant to Puc 203.04, New England Telephone and Telegraph Company, d/b/a Bell Atlantic-New Hampshire (Bell Atlantic or the Company), by its attorney, hereby moves that certain of the supporting materials (the Confidential Information) filed in the above-referenced matter be accorded proprietary treatment. Specifically, Bell Atlantic requests that the New Hampshire Public Utilities Commission (Commission or PUC) enter an order that precludes the Confidential Information from being publicly disclosed without Company consent, pursuant to RSA 91-A and Puc 204.05 and .06, unless and until otherwise ordered after notice and opportunity to be heard provided to all interested parties.

As grounds for its motion, Bell Atlantic states as follows:

I. APPLICABLE STANDARDS

A. RSA 91-A

Petitions for confidential treatment by the Commission are governed by RSA 91-A, Re New England Telephone Co., DR 95-069, Order No. 21,731 dated July 10, 1995 (Re NET), or other provision of law. See, e.g., Puc 204.06(a). RSA 91-A:5(IV) exempts from disclosure, among other things, records pertaining to "confidential, commercial or financial" information. The PUC has

observed that the Commission's focus in addressing requests for confidential treatment is on the "public interest in an effectively functioning competitive marketplace as well as a telecommunications customer's right to privacy." Re NET, Order No. 21,731 at 9.

B. Commission Confidentiality Rules and Decisions

In accordance with its interpretation of RSA 91-A:5(IV), the PUC has "established standards as to when and under what circumstances information is considered deserving of confidential treatment." Re NET, Order No. 21,731 at 10. Those standards form the basis of, and are currently reflected in, PUC 204.05 and .06.

In determining whether information submitted pursuant to its rules, presently codified at Puc 204.06(b) and (c), warrants a grant of confidential treatment, the Commission has ruled that it will apply a balancing of interests test that measures "the benefits of disclosure against the benefits of non-disclosure." Re NET, Order No. 21,731 at 13. See Puc 204.06(b)(3) ("[f]acts describing the benefits of non-disclosure to the petitioner, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public").

In balancing the public's right to know against the "public interest in an effectively functioning competitive marketplace as well as a telecommunications customer's right to privacy," Re NET, Order No. 21,731 at 9, the PUC requires evidence that demonstrates that:

- (1) Either the petitioner's information which, if made public, would likely create a competitive disadvantage for the petitioner, including but not limited to:
 - (a) Trade secrets which required significant effort and cost to produce and would take significant effort and cost by others to develop independently; or
 - (b) Other confidential, research, development, financial, or commercial information, such as fuel supply contract prices and terms, and details of special contracts relating to pricing and incremental cost information for competitive services not reflected in tariffs of general application;

- (2) The petitioner's customer's information is financially or commercially sensitive to the customer or which, if released, would likely constitute an invasion of privacy for the customer; and
- (3) The information is not general public knowledge or published elsewhere and measures have been taken by the petitioner and, in the case of (2) above, the petitioner's customer, to prevent dissemination of the information in the ordinary course of business.

Under Puc 204.06(a) of its rules, the Commission shall grant confidentiality upon finding that the documents sought to be made confidential are exempt under law "based upon the information submitted pursuant to Puc 204.06(b) and (c)."

C. Customer Proprietary Network Information

The Federal Communications Commission (FCC) adopted rules governing access to customer proprietary network information (CPNI) that require prior authorization by customers.

CPNI consists of:

information about a telephone customer's use of the telephone network, such as the number of lines ordered, service location, type and class of services purchased, usage levels, and calling patterns Telephone customers have proprietary and privacy interests in their CPNI.

Re NET, Order No. 21,731 at 21.

In adopting the CPNI rules, the FCC "balanced the competing interests of competitive equity, customer privacy, and the need for efficiency in the development of mass market enhanced services." Id. at 21. "Similarly," the PUC has held, "we will not make public the type of information which falls within the realm of CPNI." Id.

In the Telecommunications Act of 1996, Congress incorporated CPNI protection in Section 222 of the Communications Act of 1934, 47 U.S.C. §222. Section 222(f) defines "customer proprietary network information" in relevant part as:

(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

II. RELEVANT FACTS

A. Introduction

The Confidential Information contains customer-specific, competitively sensitive data which fall within the exemptions permitted by RSA 91-A:5(TV). In general, the Confidential Information includes information not reflected in tariffs of general application such as: network size, routing and configuration data; information regarding specific service features, pricing and incremental costs; and contract terms such as special rates and billing details. The Company has submitted redacted copies of the special contract and supporting materials which, when compared to the also-provided full texts, identify the relevant pages, paragraphs or segments containing the Confidential Information subject to this motion.

B. Specific Details

The Confidential Information submitted for Commission review is set forth in Appendix B, paragraph 1.2. The Confidential Information identifies the number of circuits the customer is purchasing, which is customer-specific and relates to the customer's proprietary network design.

C. The Balancing Test: Competition and Privacy

Disclosure of the Confidential Information would unfairly advantage competitive alternatives to the services the customer provides. In addition, Bell Atlantic seeks to protect the customer-specific features identified in the special contract filing based on the Company's general policy of protecting customer information, consistent with the FCC's and PUC's policies protecting CPNI.

As previously agreed to with Staff, the Company has incorporated contract language recognizing that certain portions of the contract will be made public. The Company agreed to seek Vits Network's consent to public disclosure of customer-specific pricing information that otherwise falls within the scope of confidential information previously afforded protective treatment by the Commission. The Company agreed to do so for the purpose of balancing the interests of requesting telecommunications carriers, if any, that may desire to resell the telecommunications services Bell Atlantic offers at retail to subscribers who are not telecommunications carriers, within the meaning of 47 U.S.C. §251(c)(4).

Vits has consented to the requested disclosure of pricing information and, accordingly, the redacted copies do not protect from disclosure the relevant rates and charges reflected in Appendix B.

D. The Benefits of Nondisclosure Outweigh the Benefits of Disclosure

Bell Atlantic submits that the benefits of nondisclosure, and associated evidence of harm to Bell Atlantic, its customer and the general body of ratepayers, outweigh the benefit of public disclosure in this instance.

First, the market for the service subject to the special contract is competitive. Votts can elect an alternative solution for its telecommunications needs from other than Bell Atlantic. The Commission has expressly noted, however, that if a service is competitive "then a customer will be permitted by market forces to negotiate a special contract and permitted by RSA 91-A to confidentiality." Re NET, Order No. 21,731 at 16, n. 4. Disclosure of the competitively sensitive information will undermine Bell Atlantic's ability to compete effectively with other providers of alternate services and facilities, who are not subject to public scrutiny because not regulated or regulated only minimally.

Second, the Company regularly seeks to prevent dissemination of such Confidential Information, which is not made available to or known by the general public, in the ordinary course of its business. If Bell Atlantic "were not a regulated entity, these documents would not be available for public inspection." Re NET, Order No. 21,731 at 19. "Given the increasingly competitive telecommunications world we do not believe that RSA 91-A should be used to access what is essentially private, commercial information." Id.

The information for which Bell Atlantic is requesting protective treatment is compiled from internal databases that are not publicly available, is not shared with any non-Bell Atlantic employees for their personal use, and is not considered public information. Any dissemination of this information to non-Bell Atlantic employees, such as advertising agencies or other

contracted service providers, is labeled as proprietary. Furthermore, any non-Bell Atlantic employees who are working for Bell Atlantic and may have access to this information are under a non-disclosure agreement.

Bell Atlantic employees that have access to the market segment data are similarly subject to non-disclosure requirements. For example, employees who use this information during the course of product management responsibilities are not permitted to publish the relevant data for general public use or release them for publication by others to the general public. Moreover, when these data are transferred internally they are transferred over a protected network and are marked proprietary.

Third, customers enter into special contract negotiations with Bell Atlantic with the reasonable expectation that CPNI and other customer information supplied to Bell Atlantic will be treated confidentially. If such information does not remain confidential upon filing with the Commission, Votts may be reluctant to enter into future special contracts with Bell Atlantic, choosing unregulated or minimally regulated providers based on factors unrelated to the price, quality and value of Bell Atlantic service.

Fourth, non-disclosure of the customer-specific information protects the privacy and competitive interests of Votts, by protecting "telecommunications contract information which could indicate the customer's financial status, plans for growth, telecommunications strategies, etc." Re NET, Order No. 21,731 at 18. Disclosure of such information "could harm customers by revealing sensitive financial and/or security information." Id. at 20. In addition, the redacted customer-specific data fall within the scope of CPNI which the Commission has determined should not be made public. Id. at 21.

In that regard, the Company understands that the relevant customer-specific data are considered financially or commercially sensitive to the instant customer and that the customer would consider disclosure of such data to be an invasion of privacy. The Company further understands that Vtts undertakes measures to prevent dissemination of the relevant customer information in the ordinary course of its business. See Puc 204.06(c)(2) and (3).

Fifth, disclosure of the Confidential Information would unfairly provide customers seeking special contracts with "an enhanced bargaining position in their quests for lower prices." Re NET, Order No. 21,731 at 19. Yet, the PUC observed that the New Hampshire Supreme Court has "held that it is not the intent of RSA 91-A to disadvantage parties in their bargaining positions by permitting access to government-held financial, security or trade information to which there is a general expectation of privacy." Id. at 19.

Sixth, "non-disclosure protects basic exchange rates from experiencing upward pressure" as a result of discounts to customers "who gain an unfair bargaining position through access to information which would otherwise be unavailable if [Bell Atlantic] were an unregulated private enterprise." Re NET, Order No. 21,731 at 18. Disclosure of such information makes it more difficult for Bell Atlantic to maintain contribution for basic exchange service.

III. CONCLUSION

For the reasons stated above, the benefits of nondisclosure outweigh the benefit of public disclosure in this instance. Supporting materials under similar circumstances have previously been accorded proprietary treatment.

Bell Atlantic has requested Staff's and Office of the Consumer Advocate's (OCA) concurrence. The Staff and OCA take no position.

In accordance with Puc 204.05(b), the Company also requests that the Commission, Staff and OCA accord interim proprietary treatment to the Confidential Information pending the Commission's resolution of the Company's motion.

WHEREFORE, Bell Atlantic respectfully requests that the Commission enter an appropriate protective order in this matter, and grant such other relief as is just and appropriate.

Respectfully submitted,

BELL ATLANTIC-NEW HAMPSHIRE

By its attorney,

Victor D. Del Vecchio, Esquire
185 Franklin Street, Rm. 1403
Boston, Massachusetts 02110-1585
(617) 743-2323

Dated: January 7, 1999

VERIFICATION

I, John M. Morningstar, being duly sworn, hereby state and depose as follows:

I am employed by Bell Atlantic as Staff Director and, as a result of my responsibilities with the Company, am familiar with the facts submitted in support of Bell Atlantic's motion. The facts are true and accurate to the best of my knowledge, information or belief.

Signed under the pains and penalties of perjury, this 7th day of January 1999.

By _____

vltisnetwork

March 31, 1999

To: The Honorable Debora Pignatelli
Chairman, Senate Judiciary Committee

From: Senator John King

Re: SB 141

I would like to add my support for the passage of SB 141, amending the Right to Know Law to allow telephone utilities confidential treatment of the competitive information they submit to the Public Utilities Commission during utility proceedings. I am the co-sponsor of the bill, which was submitted at the request of Bell Atlantic.

Right now New Hampshire's Right to Know Law requires that any documents, including business and marketing plans, that a regulated telephone utility submits to the PUC be made available to the public unless the utility files for and secures approval of an order for protective treatment. This requirement was not terribly onerous when utilities such as Bell Atlantic operated as a monopoly in New Hampshire. But, with the advent of competition, incumbent utilities find themselves routinely submitting their plans and then asking that they be given protective treatment.

What SB141 does is permit these regulated telephone utilities to declare certain information in their filings as proprietary and therefore not subject to the terms of the Right to Know Law under the guidelines set forth in Section II a-c.

At the same time it gives the PUC or any other interested party the right to challenge that designation. If that should occur, the PUC can then hold an order of protection inquiry under the procedures set forth in Section II of the proposed amendment.

This should streamline the process of filing for tariffs reducing the time the PUC staff has to spend on reviewing order of protection filings and reducing the time it takes the telephone utilities to get a tariff processed.

par·o·dy

par·o·dy (pär'ə-dē) *noun*

par·o·dies

- 1. a.** A literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule. See synonyms at **CARICATURE**. **b.** The genre of literature comprising such works.
2. Something so bad as to be equivalent to intentional mockery; a travesty: *The trial was a parody of justice.*
3. *Music.* The practice, popular in the 15th and 16th centuries, of significantly reworking an already established composition, especially the incorporation into the Mass of material borrowed from other works, such as motets or madrigals.

verb, transitive

par·o·died, par·o·dy·ing, par·o·dies

To make a parody of. See synonyms at **IMITATE**.

[Latin *parōdia*, from Greek *parōidia*: *para-*, subsidiary to. See **PARA-¹** + *ōidē*, song.]

— **pa·rod'ic** (pə-rōd'ĭk) or **pa·rod'i·cal** (-ĭ-kəl) *adjective*

— **par'o·dist** *noun*

— **par'o·dis'tic** *adjective*

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Voting Sheets

MS

Senate Judiciary Committee EXECUTIVE SESSION

SB 141

Hearing date: 4/8/99

Room: 102

Motion of: OTD

<u>Made by</u>	Pignatelli	<input type="checkbox"/>	<u>Seconded</u>	Pignatelli	<input type="checkbox"/>
<u>Senator:</u>	Gordon	<input type="checkbox"/>	<u>by Senator:</u>	Gordon	<input checked="" type="checkbox"/>
	K. Wheeler	<input type="checkbox"/>		K. Wheeler	<input type="checkbox"/>
	Squires	<input type="checkbox"/>		Squires	<input type="checkbox"/>
	Trombly	<input checked="" type="checkbox"/>		Trombly	<input type="checkbox"/>
	Brown	<input type="checkbox"/>		Brown	<input type="checkbox"/>
	Cohen	<input type="checkbox"/>		Cohen	<input type="checkbox"/>
	Fernald	<input type="checkbox"/>		Fernald	<input type="checkbox"/>

8/0
7/0

<u>Committee Member</u>	<u>Present</u>	<u>Vote</u>	<u>Reported out by</u>
Senator Debora Pignatelli, Chairman	<input type="checkbox"/>		
Senator Edward Gordon, Vice-Chair	<input type="checkbox"/>		
Senator Katherine Wells-Wheeler	<input type="checkbox"/>		
Senator James Squires	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Senator Rick Trombly	<input type="checkbox"/>		
Senator Mary Brown	<input type="checkbox"/>		
Senator Burton Cohen	<input type="checkbox"/>		
Senator Mark Fernald	<input type="checkbox"/>		<input checked="" type="checkbox"/>

*Amendments:

NOTES:

Committee Report

Date: March 31, 1999

Time: 10:45 AM

The Senate Committee on Judiciary held its hearing in Room 102, LOB, Concord, New Hampshire.

BILL NO.: SB 141

TITLE: *An act relative to information not subject to the right-to-know law.*

Members of the Committee present: *Senator Pignatelli*
 Senator Brown
 Senator Fernald
 Senator Squires
 Senator Trombly
 Senator Wheeler

Those appearing in favor:

<u>Name and Address</u>	<u>Representing</u>
See Attached.	

Those appearing in opposition:

<u>Name and Address</u>	<u>Representing</u>
See Attached.	

REPORT OF THE COMMITTEE:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Ought to Pass - 8 / 0 | <input type="checkbox"/> Interim Study |
| <input type="checkbox"/> Ought to Pass w/ Amendment | <input type="checkbox"/> Continued Hearing |
| <input type="checkbox"/> Inexpedient to Legislate | <input type="checkbox"/> Postponed Hearing |
| <input type="checkbox"/> Rereferred | |

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: **APRIL 14, 1999**

THE COMMITTEE ON **Judiciary**

to which was referred **Senate Bill 141**

AN ACT

*relative to information not subject to the
right-to-know law.*

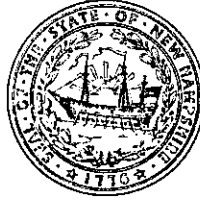
VOTE: 8 / 0

Having considered the same, report the same without amendment and recommend
that the bill: **OUGHT TO PASS.**

Senator Mark Fernald
For the Committee

CONSUMER ADVOCATE
Meredith A. Hatfield

ASSISTANT CONSUMER ADVOCATE
Kenneth E. Traum



TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

FAX No. 271-1177

Website:
www.oca.nh.gov

OFFICE OF THE CONSUMER ADVOCATE
21 S. FRUIT ST., SUITE 18
CONCORD, NEW HAMPSHIRE 03301-2429

January 26, 2010

Senator Deborah R. Reynolds, Chair
Senate Judiciary Committee
Legislative Office Building, Room 103
Concord, NH 03301

Re: SB 425, Relative to the telephone utilities exemptions to the right-to-know law and RSA 91-A as it applies to adjudicative hearings

Dear Chairman Reynolds:

I write on behalf of the Office of Consumer Advocate (OCA) in support of the proposed amendment to Senate Bill 425, which repeals the special exemption for telephone utilities from RSA 91-A, New Hampshire's "Right-to-Know" law, and makes explicit that the Public Utilities Commission (PUC) can maintain the confidential status of certain information during adjudicative hearings. We have worked with the lead sponsor, Senator Cilley, as well as with the PUC on the amendment that is before you today. We believe that this legislation makes an important change in the law that protects public access to information without denying telecommunications utilities the ability to protect confidential information filed with the PUC. We also note that, because it removes the requirement that the PUC post all non-confidential information on its website, it is our belief that the amendment removes the fiscal note associated with this bill.

As you know, the OCA is charged by statute (RSA 363:28) with representing the interests of residential ratepayers of regulated utilities primarily before the PUC, as well as the legislature, and in other state, regional and national venues as needed. More information on our Office, including the cases we are currently working on, is available at www.oca.nh.gov.

Repeal of RSA 378:43

This statute, enacted in 1999, provides a special exemption from the Right-to-Know law (RSA 91-A) for telecommunications utilities. There is no similar law for electric, natural gas or water utilities. Instead, other utilities, and other non-utility parties who provide confidential information to the PUC, seek protection under RSA 91-A. The Right-



to-Know law, which clearly prioritizes that to “the greatest possible public access to the actions, discussions and records of all public bodies” does include provisions for the protection of confidential information. For example, RSA 91-A:1 requires that when a privacy interest is at stake which would be invaded by disclosure of certain information, a state agency should protect it from public disclosure. This protection can result due to the existence of “confidential, commercial or financial information” as specified by RSA 91-A:5, which is the most common reason for the PUC to grant confidential treatment of utility information. The PUC does this routinely, and parties participating in PUC dockets, including the OCA, routinely enter into nondisclosure agreements and manage confidential information carefully to ensure its protection from public disclosure.

Telecommunications utilities often simply put boilerplate language invoking this statute on filings with the PUC, thereby shielding the entire document from public view. It is our understanding that under RSA 378:43 such documents are treated as confidential unless a party makes a request that the PUC undertake such a review; but the PUC can also do this on their own motion. In some cases, the OCA or another party will begin by requesting that a utility file either a redacted version for public distribution, or, if the utility resists this effort, the OCA or another party must challenge the breadth of the confidentiality claim by filing a motion with the PUC. It is our understanding that some telecommunications utilities also believe that they do not have to provide a redacted copy of the confidential document for public posting on the PUC website under RSA 378:43, further thwarting public access. There have been recent cases involving FairPoint where a request has been made for a public version of a document filed pursuant to RSA 378:43, and the utility conceded that the document is not actually entitled to protection under that statute, and could be filed publicly. In another recent case, involving TDS Telecom and Union Telephone, TDS acknowledged after questioning at a hearing that documents previously provided on a confidential basis were not, in fact, confidential. Without the OCA raising this issue in those cases, the information would have been shielded from public disclosure without any review by the PUC. This suggests that in some cases the existing law is being misused, or at a minimum is allowing telecommunications utilities to prevent public information from appropriate disclosure.

In addition, the current statute is flawed in that it creates a presumption that information is confidential if a telecommunications utility simply invokes the language in Section II of the statute that it is:

- Not general public knowledge or published elsewhere;
- That measures have been taken by the telephone utility to prevent dissemination of the information or the records in the ordinary course of business;
- That the information pertains to the provision of competitive services; or
- Sets forth trade secrets that required significant effort and cost to produce, or other confidential, research, development, financial, or commercial information, including customer, geographic, market, vendor, or product-specific data, such as pricing, usage, costing, forecasting, revenue, earnings, or technology information not reflected in tariffs of general application.

However, these are all already bases for protection under RSA 91-A, and do not warrant additional, special protection under RSA 378:43. Also, through the presumption, RSA 378:43 effectively shifts the burden of proof from the utility, to prove that the information is confidential, to the PUC and parties such as the OCA, to prove that the information is not confidential. The telecommunications utilities have also contended that the privacy balancing test applicable to RSA 91-A:5 also does not apply to materials filed under RSA 378:43. In other words, if the utility says the information is confidential, the PUC is without discretion to balance the public's interest in disclosure against the utility's privacy interest. This seems inconsistent with the PUC's responsibilities under RSA 91-A to conduct itself in as public manner as possible, and if it is accurate, requires that this bill be passed to rectify this important issue.

There is currently a Right-to-Know request pending before the PUC under this statute. On January 7, 2010, the Union Leader filed a request for a copy of a report of a FairPoint consultant related to the improvement of FairPoint's customer delivery organization, processes and systems. FairPoint filed the entirety of this report confidentially with the PUC, invoking RSA 378:43, II.¹ No redacted version of this report has been filed. To consider whether the FairPoint consultant's report should be disclosed, the PUC has scheduled a hearing on February 2, 2010. The Order of Notice issued by the PUC is available at <http://www.puc.nh.gov/Regulatory/Orders/2010orders/25063t.pdf>.

The OCA expects that the telecommunications utilities will contend that the special exemption to the Right to Know is necessary because they face more competition than non-telecommunication utilities. This argument is a red herring because there exists no difference in the level of protection afforded by RSA 91-A and RSA 378:43. The only difference between these statutes is a difference in the process; the utility files a motion for confidential treatment (under RSA 91-A) instead of a letter (under RSA 378:43).

Although the repeal of RSA 378:43 may require the PUC to review confidential filings made by telecommunications utilities, presumably the PUC is already reviewing these filings for more substantive purposes such as compliance with other statutes, rules or PUC orders, as well as for any relief requested by the utility in the filing. Therefore, any additional effort required by RSA 91-A is but an increment of the work already being dedicated to those types of documents, and is fundamentally a requirement of the state's Right-to-Know law.

For all of these reasons, the OCA strongly supports the repeal of the special exemption for telecommunications utilities. We believe that such a repeal is consistent with the public good, as well as with the telecommunications utilities' interest in maintaining the confidentiality of its financial and competitively sensitive information.

¹ The OCA received a confidential copy of this filing.

Amendment of RSA 91-A

As stated above, the PUC routinely designates information filed by utilities as confidential when that information falls within an exemption from the disclosure required by RSA 91-A. Most usually the exemption is related to “confidential, commercial or financial information” under RSA 91-A:5. The PUC often considers this confidential information in making its determinations in adjudicative proceedings. For example, when National Grid or Unutil file the results of their electric energy service solicitations for competitive bids with a request for confidential treatment, the PUC considers this information for the purpose of determining that the winning bid, as compared with the others, will result in just and reasonable rates. By designating this written bidding information as confidential, the PUC recognizes that its disclosure may result in a future competitive disadvantage to the bidder (*i.e.*, with other utilities), which in turn could result in a disadvantage to National Grid (*i.e.*, if the bidder declines to respond to future Grid solicitations) and Grid’s ratepayers (*i.e.*, through higher rates by a less robust bidding response). A difficulty faced by the PUC, which the amendment of RSA 91-A seeks to remedy, occurs when confidential information must be discussed during a PUC hearing so that the Commissioners can understand the information, ask questions about it, and hear the parties’ positions related to that information.

When confidential information is the subject of oral testimony or discussion at a PUC hearing, the PUC needs to close the hearing to those who are not authorized to receive this confidential information. Presently, such authority exists in RSA 378:43, but only in hearings related to telecommunications utilities. With the repeal of this statute, and in light of the fact that clear statutory authority for hearings related to other types of utilities (*i.e.*, water, gas, electricity) is not in RSA 91-A, despite the clear authority to protect this same information in written form, the Legislature should amend that law to expressly grant the PUC this authority.

It is our understanding that the proposed amendment to RSA 91-A would make clear that when the PUC has granted protection from public disclosure for *written* confidential information, the PUC may also restrict the access and participation of any person who is not entitled to receive that confidential written information to any portion of a hearing during which this confidential information is discussed or presented orally. This is the current practice at the Commission but needs to be codified.

Information Available on PUC Website

As stated above, the amendment offered by Senator Cilley removes the requirement that the PUC post all non-confidential information on its website. As a result, the fiscal note on this bill, and costs resulting from this bill, should be eliminated.

In 2009, the PUC made great strides toward posting all public documents filed in dockets at the Commission on its website. A relatively new feature on its website, the PUC’s “Docketbooks” can be found at <http://www.puc.nh.gov/Regulatory/docketbk.htm>. The Docketbook access has significantly improved the ability of both members of the

public and parties in dockets to access documents filed by utilities and other parties, and to stay current on cases. The Commission also posts industry information on its Division's pages, and has links to Commissions and Boards such as the Energy Efficiency and Sustainable Energy ("EESE") Board, and the North Country Transmission Commission. In addition, it is our understanding that the PUC is close to finishing a multi-year project to launch an "e-file" initiative that would allow parties to file and access all documents on its website. Finally, in our discussions with the PUC about this bill, they have offered to take requests from the OCA about additional items that would be helpful for the PUC to have their website. One such example is for the annual reports of regulated utilities to be posted on the website.

Thank you for your consideration of our testimony. We would be happy to answer any questions and assist the Committee with its consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Hatfield', with a small flourish at the end.

Meredith A. Hatfield
Consumer Advocate

Attachment #4

FCC Form 499-Q Telecommunications Reporting Worksheet

Approval by OMB 3060-0855

Quarterly Filing for Universal Service Contributors

>>> Please read instructions before completing <<<

Block 1: Contributor Identification Information. Fields include: 102 Legal name of reporting entity, 103 IRS employer identification number, 104 Name telecommunications provider is doing business as, 105 Holding company, 106 FCC Registration Number (FRN), 107 Complete mailing address of reporting entity's corporate headquarters.

Block 2: Contact Information. Fields include: 108 Person who completed this worksheet, 109 Telephone number of this person, 110 Fax number of this person, 111 Email of this person, 112 Billing address and billing contact person.

Block 3: Contributor Historical and Projected Revenue Information. Fields include: 113 Year of historical revenue information, 114 Indicate which quarterly filing this represents, 115-118 Revenue categories (Total, Interstate, International), 119-120 Projected gross-billed end-user interstate and international telecommunications revenues.

Block 4: CERTIFICATION: to be signed by an officer of the reporting entity. Includes 121 I certify that the revenue data contained herein are privileged and confidential... and 122 Signature, 123 Printed name of officer, 124 Position with reporting entity, 125 Email of officer, 126 Date, 127 This filing is: Original filing or Revised filing.

Do not mail checks with this form. Send this form to: Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W. Suite 200 Washington DC, 20036 For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Info: (888) 841-8722 or via e-mail: Form499@universalservice.org

PERSONS WILLFULLY MAKING FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

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FCC Form 499-Q April 2009

§0.458

47 CFR Ch. I (10-1-08 Edition)

- (1) Interfere with enforcement proceedings;
- (2) Deprive a person of a right to fair trial or an impartial adjudication;
- (3) Constitute an unwarranted invasion of personal privacy;
- (4) Disclose the identity of a confidential source;
- (5) Disclose investigative techniques or procedures; or
- (6) Endanger the life or physical safety of law enforcement personnel, 5 U.S.C. 552(b)(7).

[32 FR 10573, July 19, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §0.457, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§0.458 Nonpublic information.

Any person regulated by or practicing before the Commission coming into possession of written nonpublic information (including written material transmitted in electronic form) as described in §19.735-203(a) of this chapter under circumstances where it appears that its release was inadvertent or otherwise unauthorized shall be obligated to return the information to the Commission's Office of Inspector General pursuant to that section. See 47 CFR 19.735-203.

[65 FR 66185, Nov. 3, 2000]

§0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

(a) Any person submitting information or materials to the Commission may submit therewith a request that such information not be made routinely available for public inspection. (If the materials are specifically listed in §0.457, such a request is unnecessary.) A copy of the request shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. If feasible, the materials to which the request applies shall be physically separated from any materials to which the request does not apply; if this is not feasible, the portion of the materials to which the request applies shall be identified.

(b) Each such request shall contain a statement of the reasons for with-

holding the materials from inspection (see §0.457) and of the facts upon which those records are based, including:

- (1) Identification of the specific information for which confidential treatment is sought;
- (2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;
- (3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;
- (4) Explanation of the degree to which the information concerns a service that is subject to competition;
- (5) Explanation of how disclosure of the information could result in substantial competitive harm;
- (6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;
- (7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;
- (8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure; and
- (9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

(c) Casual requests which do not comply with the requirements of paragraphs (a) and (b) of this section will not be considered.

(d)(1) The Commission may defer acting on requests that materials or information submitted to the Commission be withheld from public inspection until a request for inspection has been made pursuant to §0.460 or §0.461. The information will be accorded confidential treatment, as provided for in §0.459(g) and §0.461, until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted. If a response in opposition to a confidentiality request is filed, the party requesting confidentiality may file a reply.

(2) Requests which comply with the requirements of paragraphs (a) and (b) of this section will be acted upon by the appropriate Bureau or Office Chief, who is directed to grant the request if it presents by a preponderance of the evidence a case for non-disclosure consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. If the request is granted, the ruling will be placed in the public file in lieu of the materials withheld from public inspection. A copy of the ruling shall be forwarded to the General Counsel.

(e) If the materials are submitted voluntarily (i.e., absent any direction by the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied. In that event, the materials will ordinarily be returned (e.g., an application will be returned if it cannot be considered on a confidential basis). Only in the unusual instance where the public interest so requires will the materials be made available for public inspection. However, no materials submitted with a request for confidentiality will be returned if a request for inspection is filed under §0.461. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection.

(f) If no request for confidentiality is submitted, the Commission assumes no obligation to consider the need for non-disclosure but, in the unusual instance, may determine on its own motion that the materials should be withheld from public inspection. See §0.457(g).

(g) If a request for confidentiality is denied, the person who submitted the request may, within 5 working days, file an application for review by the Commission. If the application for review is denied, the person who submitted the request will be afforded 5 working days in which to seek a judicial stay of the ruling. If these periods expire without action by the person who submitted the request, the materials will be returned to the person who submitted them or will be placed in a public file. Notice of denial and of the time for seeking review or a judicial stay will be given by telephone, with

follow-up notice in writing. The first day to be counted in computing the time periods established in this subsection is the day after the date of oral notice. Materials will be accorded confidential treatment, as provided in §0.459(g) and §0.461, until the Commission acts on any timely applications for review of an order denying a request for confidentiality, and until a court acts on any timely motion for stay of such an order denying confidential treatment.

(h) If the request is granted, the status of the materials is the same as that of materials listed in §0.457. Any person wishing to inspect them may submit a request for inspection under §0.461.

(i) Third party owners of materials submitted to the Commission by another party may participate in the proceeding resolving the confidentiality of the materials.

[40 FR 7313, Feb. 19, 1975, as amended at 49 FR 21719, May 23, 1984; 55 FR 8951, Mar. 9, 1990; 63 FR 44167, Aug. 18, 1998; 64 FR 55163, Oct. 12, 1999]

§0.460 Requests for inspection of records which are routinely available for public inspection.

(a) Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section and to the provisions of §0.466 and paragraph (1) of this section, a person who wants to inspect such records need only appear at the specified location and ask to see the records. Many such records also are available through the Commission's site on the World Wide Web, located at <http://www.fcc.gov>. Commission documents listed in §0.416 are published in the FCC Record, and many such documents or summaries thereof are also published in the FEDERAL REGISTER.

(b) A person who does not want a copy of the records must appear at the specified location during the office hours of the Commission and must inspect the records at that location. (Procedures governing requests for copies are set out in §0.465.) However, arrangements may be made in advance,

Speakers

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # SB 425-FN

Hearing date: 1/26/10

Executive session date: 2/16/10

Motion of: 0548

VOTE: 5-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Motion of: OTP/A

VOTE: 5-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Reynolds, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Letourneau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: February 17, 2010

THE COMMITTEE ON Judiciary

to which was referred Senate Bill 425-FN

AN ACT relative to telephone utilities exemptions to the right-to-know law.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0793s

Senator Deborah R. Reynolds
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of SB425

Docket Abbreviations

Bill Title: (New Title) relative to exemptions to the right-to-know law.*Official Docket of SB425:*

Date	Body	Description
01/14/2010	S	Introduced and Referred to Judiciary; SJ 2 , Pg.29
01/21/2010	S	Hearing; January 26, 2010, Room 103, State House, 2:00 p.m.; SC4
02/17/2010	S	Committee Report: Ought to Pass with Amendment 0793s, NT, 3/3/10; SC9 , Pg.13
03/03/2010	S	Committee Amendment 0793s, NT, AA, VV; SJ 8 , Pg.110
03/03/2010	S	Ought to Pass with Amendment 0793s, NT, MA, VV; OT3rdg; SJ 8 , Pg.110
03/03/2010	S	Passed by Third Reading Resolution; SJ 8 , Pg.117
03/11/2010	H	Introduced and Referred to Judiciary; HJ 25 , PG.1297
03/24/2010	H	Public Hearing: 3/30/2010 10:00 AM LOB 208
04/07/2010	H	Subcommittee Work Session: 4/15/2010 10:30 AM LOB 208
04/20/2010	H	Subcommittee Work Session: 4/22/2010 9:00 AM LOB 208
04/21/2010	H	===CANCELLED=== Work Session: 4/22/2010 9:00 AM LOB 208
04/21/2010	H	Subcommittee Work Session: 4/27/2010 9:30 AM LOB 208
04/21/2010	H	Executive Session: 4/29/2010 10:00 AM LOB 208
05/03/2010	H	Majority Committee Report: Ought to Pass for May 12 (Vote 16-2; RC); HJ 37 , PG.1744
05/03/2010	H	Minority Committee Report: Inexpedient to Legislate; HJ 37 , PG.1744
05/12/2010	H	Ought to Pass: MA DIV 236-61; HJ 41 , PG.2088-2089
05/19/2010	S	Enrolled
05/19/2010	H	Enrolled; HJ 46 , PG.2244
06/24/2010	S	Signed by the Governor on 06/22/10; Section 3 Eff. 12/19/10, Rem. Eff. 06/22/10; Chapter 0206

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
 107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB 425 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: _____

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 0793 _____ - AMENDMENT # _____
 - AMENDMENT # 0548 _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED _____ AS AMENDED BY THE HOUSE
 FINAL VERSION _____ AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

EXECUTIVE SESSION REPORT

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

7/10/10



COMMITTEE SECRETARY