

# Senate Energy and Natural Resources Committee

## *Griffin Roberge 271-2878*

**SB 120**, relative to the authority of the public utilities commission to regulate telecommunications service providers.

**Hearing Date:** March 7, 2017.

**Time Opened:** 9:15 a.m.

**Time Closed:** 10:01 a.m.

**Members of the Committee Present:** Senators Avar, Bradley, Innis, Fuller Clark and Feltes.

**Members of the Committee Absent:** None.

**Bill Analysis:** This bill permits the public utilities commission to regulate certain incumbent local exchange carriers.

**Sponsors:**  
Sen. Soucy

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**Who supports the bill:** Alan Linder (NH Legal Assistance).

**Who opposes the bill:** Dan McGuire (NH Liberty Alliance), Susan Geiger (Consolidated Communications Holdings), Chris Rand (Granite State Communications), Scott Brooks (NHTA), Ellen Scarponi (Fairpoint), Will Anderson (Concord).

**Who is neutral on the bill:** Anne Ross (PUC).

### **Summary of testimony presented in support:**

*Senator Donna Soucy*  
*Senate District 18*

- SB 120 and SB 122 came about before FairPoint Communications began to be acquired by Consolidated Communications Holdings. These bills were proposed when the acquisition was first proposed, back when there was no information available.
- Information about FairPoint was acquired when they acquired another company. Information regarding the transactions was to come out as the docket progressed. Senator Soucy hoped her bills would be unnecessary as time went on.
- Four months after the proposal, there is little information available about this transaction.
- FairPoint infrastructure is vital – NH depends on it to be connected. This transaction will affect all in the state. There are certain things unique to the company.
- SB 120 and SB 122 were not intended to be an obstacle in the midst of the proceedings. The current level of regulation is so low that companies entering into this transaction have been able to withhold many details to the public and company employees.
- Senator Soucy introduced her amendment to SB 120, 2017-0718s, which changes a section

- regarding emergency management.
- SB 122, which inserts a public good standard, also has an amendment (2017-0716s) that alters the effective date.
- The lack of information should be of great concern. Employees attempted to intervene, but the company stepped in and said their employees cannot intervene.
- Senator Soucy asks for the committee's support for the sake of greater transparency.
- Senator Innis asked if SB 120 deals with the acquisition.
  - Senator Soucy said it does, in part. The telecommunications industry has gone from regulation to deregulation. SB 120 would be a return to a balanced level of regulation. The amendment ensures that there are specific public needs that need to be provided at an adequate level.
- Senator Innis asked if there is any reason to distrust the acquiring firm.
  - Senator Soucy did not want to cast dispersions, but can only speak to the previous acquisition that did not go well. Senator Soucy hoped for greater transparency in this acquisition.
- Senator Avard asked about the problems that arose after the first acquisition.
  - Senator Soucy said public safety issues arose. Stark, NH had its fire service without service for a total of eight weeks. There is a concern about the number of jobs – this company has scaled back over the years and operates in a market that is constantly changing. Those with landlines and the elderly need to be protected in this transaction.

*Alan Linder*

*New Hampshire Legal Assistance*

- Provided written testimony.
- SB 120 is a public safety bill.
- SB 120 gives PUC the tools to protect the public.
- SB 120 will prevent degradation and deterioration of the telephone network.
- SB 120 protects residential and business customers.
- SB 120 maintains the integrity of landline telephone service.
- SB 120 is necessary to correct a prior legislative omission.
- SB 120 can mitigate some of the adverse consequences of bankruptcy or financial instability of an incumbent local exchange carrier.
- SB 120 will help ensure the continuation of basic telephone service in NH.

## **Summary of testimony presented in opposition:**

*Dan McGuire*

*NH Liberty Alliance*

- Provided written testimony.
- President Clinton deregulated the telecommunications industry 21 years ago.
- Deregulation exceeded expectations – there was an explosion in the telecommunications business.
- Arguments for this bill today were the same arguments used against Clinton's signed bill.
- The free market works well in this industry. It would be much better to let this industry continue as is. Do not infringe on it.

*Susan Geiger*

*Orr & Reno, representing Consolidated Communications Holdings (CCH)*

- During the 2012-2013 sessions, the NH Legislature modified the regulatory landscape for telecommunications providers.
- Because the industry is intensely competitive, the Legislature removed regulations that applied to monopoly telephone companies. The new regulatory regime is working quite well – the number of complaints have declined.
- SB 120 would modify the regulatory regime by imposing service requirements on companies like FairPoint.

- SB 120 is unworkable. Some communities can have other providers other than FairPoint. It would require those services to switch over to FairPoint.
- ILECs are already required to provide basic service under RSA 374:22P.
- The current competitive environment is working and strikes an appropriate balance. ILECs should not be re-regulated.
- Senator Avard asked if CCH would back off from acquiring FairPoint if SB 120 were passed.
  - Ms. Geiger could not say. She said it would impose a level of regulation not in place now.
- Senator Avard asked if SB 120 would drive up the cost of service.
  - Ms. Geiger said that SB 120 could potentially do that. New obligations on companies lead to price increases that customers may have to pay. She made note that Fairpoint is subject to rate caps.
- Senator Feltes asked if FairPoint, as a carrier of last resort, would have to provide basic service. He said usable quality without unreasonable interruption is a generic safeguard.
  - Ms. Geiger said that can be interpreted to be an existing requirement in current statute. In addition, FairPoint is currently under an obligation where they cannot cease service in an area without PUC approval.

*Scott Brooks*

*President, NH Telephone Association*

- The companies that NHTA represents, under SB 120, would have the sole rights to provide service facilities to emergency services and enhance 911 services for NH.
- Currently, there are some localities that have opted to use other providers, such as competitive local exchange carriers. Some of those communities would be Bedford, Manchester, Dover, Portsmouth, Rochester, and Keene.
- The state of NH has opted to use an out of state provider for its 911 service.
- It may be good to mandate to provide more services, but competition is working. There have been great investments in telecommunications infrastructure that have helped NH citizens.

*Ellen Scarponi*

*NH Director of Government Relations & Economic Development, Fairpoint*

- Opposed to SB 120 and the amendment.
- Today, in most telephone service areas there are, in addition to the traditional incumbent landline carrier: three or more wireless companies, at least one cable company, and various competing landline companies.
- The NH Legislature modernized the regulation of the telecommunications industry in 2012 with SB 48 by deregulating retail telecommunications.
  - This created a level playing field while preserving the carrier of last resort, basic service, access to 911, and wholesale interconnection obligations.
- Deregulation is working.
  - A number of towns have chosen providers other than the ILEC for their public safety communications needs.
- It is unclear what SB 120 is aiming to accomplish.
  - The intent seems to be that all of these emergency services would revert back to the ILEC and that contracts that towns and the state have made with other providers needs to be broken.
  - ILECs already have the obligation under current law and PUC rules to provide basic service. There is no need to restate it.
- Senator Feltes referenced the claim made by Senator Soucy that FairPoint blocked a petition from their employees. He asked if it was true.
  - Ms. Scarponi said that is not true. CCH and FairPoint offered comments about employees intervening.
  - The process is moving swiftly and CCH is technically, financially, and managerially able to acquire FairPoint.
- Senator Feltes asked for the number of basic service customers and low-income customers.

- Ms. Scarponi said there were 1,200 basic service customers and 943 low-income customers.
- Senator Feltes noted the removal of the Consumer Advocate in participating in PUC dockets. He asked if Ms. Scarponi had a position in the Consumer Advocate taking a part in the docket.
  - SB 48 in 2012 created a level playing field and ensured that those who most needed lifeline and basic service customers had service and had recourse.
  - There is no other provider that has any input from the Consumer Advocate's office.
  - To make it a level playing field, there are options there for customers to seek recourse.

## **Neutral Information Presented:**

*Anne Ross & Amanda Noonan*

*General Counsel, PUC*

*Director, Consumer Services and External Affairs Division, PUC*

- Stated PUC's neutrality: This bill is a policy call and will defer to the legislature.
- Offered information on the current regulatory arrangement:
  - The term incumbent local exchange carrier (ILEC) has its roots in the 1996 federal telecommunications act.
  - Fairpoint is the local ILEC for the state. Every carrier that operates in NH needs some aspect of the FairPoint system to connect to another carrier. There are federal obligations for FairPoint to connect with all carriers.
  - The ILEC's quality of service and its ability to reliably provide that service has a reach in every landline and wireless connection in the state.
- Senator Feltes asked what kind of complaints are coming in to the consumer division at PUC.
  - Ms. Noonan said it is a mix of issues. Those issues have not changed since legislation was passed in 2012 deregulating the industry. Billing, service quality, reliability, internet access, outages, lifeline services.
- Senator Fuller Clark asked for an elaboration on how PUC responds to those complaints. Does PUC forward them to FairPoint and have any opportunity to follow-up?
  - Ms. Noonan said there is an escalation process in place to deal with state commissions for FairPoint. If a customer is dissatisfied with a response from FairPoint, PUC can do little because it is not a regulated service. They will work with customer service reps, but the ability to tell them what to do is not within their authority.
- Senator Feltes asked how many low-income lifeline customers FairPoint has.
  - Ms. Noonan said there was a computer glitch when she tried to look for that information.
- Senator Feltes asked about the uniqueness of the carrier of last resort and how that is different from other competitors.
  - Ms. Ross said the ILEC has the carrier of last resort obligation, which is similar to what utilities have in their regulated franchised areas. Anyone residing in a franchise area is entitled to service. Residents do have to pay for it and can be disconnected if they fail to make payments. That is unlike a competitor who can pick and choose their customers that fit their business plan. There is some protection in the statute that deregulated PUC's control over the services. Basic service is capped.
- Senator Feltes asked how many FairPoint customers are basic service customers.
  - Ms. Noonan said they have data at the PUC which is two years old and would be happy to provide it to the committee.
- Senator Feltes how many service quality complaints the PUC receives from FairPoint customers.
  - Ms. Noonan again referenced the computer glitch and was unable to get that information.
- Senator Innis said federal regulations apply to FairPoint. He wondered if SB 120 reiterates requirements or adds them.
  - Ms. Ross said SB 120 would add requirements. The area of telecommunications has

always had a high level of federal oversight. It does not address unique state concerns. It falls to the states to manage those.

- Senator Bradley asked what complaints were like before deregulation was made in NH.
  - Ms. Noonan said complaints have dipped largely due to a greater transition to wireless.

**Future Action:** Pending.

GJR

Date Hearing Report completed: March 7, 2017