

# Senate Energy and Natural Resources Committee

## *Griffin Roberge 271-2878*

**SB 122**, relative to public utility leases.

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

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

**Time Closed:** 10:44 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 requires an incumbent local exchange carrier to have the approval of the public utilities commission for certain transfers or leases.

**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), Scott Brooks (NHTA), Chris Rand (Granite State Communications), Ellen Scarponi (FairPoint Communications), Will Anderson (Concord).

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

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

*Senator Dan Feltes*

*Senate District 15*

- Introducing SB 122 for Senator Donna Soucy.
- SB 122 adds a public good standard for the PUC when it reviews an application for a telecommunications company to acquire another.
- The amendment, 2017-0716s, changes the effective date of SB 122.
- The PUC has always had a public interest standard for other industries. It makes sense to apply that to the telecommunications industry.

*Alan Linder*

*NH Legal Assistance*

- NH Legal Assistance supports the inclusion of a public interest standard to RSA 374. The PUC needs to have the authority to inquire into whether the proposed transaction is in the public interest.
- When deregulation laws were passed, the statutes were directed at acquisitions of telecommunications companies. Public interest standard was not included. PUC is only

currently allowed to look at whether the acquiring entity has the financial, technical, and managerial capacity to take over an incumbent local exchange carrier.

- SB 122 restores the ability of the commission to see whether the transaction is in the public interest. In previous acquisitions in other states, PUCs always had a public interest standard.

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

*Scott Brooks*

*President, NH Telephone Association*

- For decades, the ILECs were regulated by the PUC. Every action was scrutinized by the PUC, eroding the potential to be profitable and operate for customers. Competition could remain ahead of NH-based businesses.
- In 2012, SB 48 was passed that deregulated the industry and allowed these businesses to become profitable. ILECs could more easily compete with other businesses.
- This led to the growth of businesses and better service to customers.
- SB 122 would not be good for companies looking to expand into NH's rural areas and providing better broadband access.
- SB 122 would impede the progress made by NH's telecommunications industry.
- Senator Feltes said that Mr. Brooks argued SB 122 would not be in the interests of its customers. He asked if that is what SB 122 does since it creates a public good standard.
  - Mr. Brooks said competition has already created an environment where businesses seek to satisfy their customers.
- Senator Avarad said if one carrier would get an advantage over another if SB 122 was passed.
  - Mr. Brooks could not answer that definitively. Any regulation would not be a good options for NH customers as it impedes the operation of a telecommunication company.
- Senator Avarad asked if there are unforeseen forces that could give competitors an advantage with SB 122.
  - Mr. Brooks that would be a strong possibility.

*Ellen Scarponi*

*Director of Government Relations & Economic Development, FairPoint*

- Provided written testimony.
- 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.
- The Legislature carefully considered each and every element of what remained loosely regulated. It was not total deregulation.
  - The PUC staff wanted to make sure that an acquiring company could actually run a telephone company and live up to the obligations of being the ILEC.
  - They were very clear that the best criteria for examining an acquiring company is in their technical, managerial, and financial capacities to run the network.
  - These criteria are defined, quantifiable, and measurable.
- SB 122 adds regulations that are not necessary and would un-level the playing field that was carefully crafted in 2012. Regulatory burdens would directly impact, and lessen, the dollars that ILECs would have available to invest in the expansion and upgrades of their networks.
- Senator Feltes said Senator Soucy raised concerns about limiting workers' standing in the current PUC docket, as well as the PUC who said the OCA is not involved. He asked what the

problem would be in allowing the OCA into the proceedings.

- Ms. Scarponi said having the OCA involved would burden one type of carrier, the ILEC. Consumers are represented already. They can reach out.
- Senator Feltes wanted to be clear on FairPoint's position: they do not want the OCA involved.
  - Ms. Scarponi said when deregulation was being crafted, there was no push to have OCA involved.
- Senator Avar asked if NH Legal Assistance was in agreement to SB 48 when crafted.
  - Ms. Scarponi said they were in agreement. They were well represented and included the rate caps for basic service and the inclusion of "soft disconnected," so that if someone could not pay for their service, they could still call 911 in an emergency.
- Senator Avar asked if there was testimony on that.
  - Ms. Scarponi said there was in legislative history.

*Susan Geiger*

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

- FairPoint is currently in a proceeding about being acquired by the CCH.
- SB 48 worked to deregulate the telecommunications industry because it is robustly competitive.
- SB 122 would reinsert the public interest standard in statute. The reintroduction is inappropriate because current statutory findings are already precise. It examines wholesale and retail obligations.
- Introducing a new standard would be unfair as the process is already underway. Putting a new regulation on a pending docket is not fair and possibly unconstitutional.
- SB 122 upends the level playing field. It is anti-competitive and rolls back where we are now with deregulation.
- The PUC is already asking many questions and is putting forth data requests concerning the acquisition. Both companies have been accommodating to the PUC.
- Senator Feltes asked if CCH sought to limit union involvement.
  - Ms. Geiger said both companies (CCH and FairPoint) did make a joint motion on the petition filed by the unions. It outlined where the intervention petition was deficient and where their petition was relevant, which was their collective bargaining agreement.
- Senator Feltes said Senator Soucy's concern was about a lack of participation in the docket. He asked if CCH would be amenable to having the OCA involved.
  - Ms. Geiger said the law currently prohibits it. She cannot speak to a position on the part of the CCH. That is a policy position the Legislature to be involved.

*Chris Rand*

*Vice President, Granite State Communications (GSC)*

- Provided written testimony.
- 2012's SB 48 was a welcome change for GSC. The reductions in regulations allowed the company to shift resources from regulatory compliance to updating their network.
- Before SB 48, a lot of time was committed to abiding by NHPUC regulations. Six figures a year was spent on legal counsel to help the company understand it. Since SB 48, those costs are close to zero.
- SB 122 threatens the ability of GSC to address and better serve their customers.

## **Neutral Information Presented:**

*Anne Ross & Amanda Noonan*

*General Counsel, PUC*

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

- PUC is neutral on SB 122. It is a policy call and they defer to the Legislature.
- With no public good standard, the PUC cannot consider certain issues in an acquisition: service to customers, broadband deployment. They used to bring those considerations into prior acquisitions, but no longer have that power.
- In the current acquisition docket, FairPoint did argue that their union had no standing. They

asked that the PUC limit their involvement to any affect the acquisition would have on the collective bargaining agreement. The PUC declined that request.

- The Office of the Consumer Advocate (OCA) is barred from taking part in telecommunications dockets.
- In 2012, the Legislature removed any participation of advocates for customers in PUC dockets. As a result, it is difficult for the PUC to consider any consumer issues. The PUC only examines if the business can operate as a utility.
- In a previous docket, the PUC was able to make FairPoint extend its broadband access to 95% of NH. There are many areas of the state that have broadband access due to this.
- Senator Innis asked if that power to extend broadband access still exists.
  - Ms. Ross said that power is no longer with the PUC. SB 122 would allow the PUC to consider a public interest standard.
- Senator Innis asked if SB 122 is specific to telecommunications transactions.
  - Ms. Ross said that SB 122 is limited to telecommunications transactions. SB 120 is more broad in scope and goes beyond transfer provisions.
- Senator Feltes asked if existing law precludes PUC from examining whether a purchaser can fulfill its carrier of last resort obligations.
  - Ms. Ross said the PUC can do that because the commission can examine whether the business can operate as a utility.
- Senator Feltes asked if there is a difference between “public good” and “public interest.”
  - Ms. Ross said they are similar. They allow for a broader review.
- Senator Feltes asked if that public interest standard is in place for the current FairPoint docket.
  - Ms. Ross stated it was not. The statute was amended to narrow the approval review. The PUC cannot take a broader look as the commission is governed by statutes in what it can and cannot examine.
- Senator Innis asked if there would be a degradation of service to customers if the acquisition goes through.
  - Ms. Ross could not speak to that. The PUC can only examine the business’s technical, managerial, and financial standing.
  - Once the PUC makes approval, the level of service falls to the company.
- Senator Innis asked for the difference between a basic customer and a lifeline customer.
  - Ms. Noonan said a lifeline customer is one involved in a federal assistance program where they get a discount in federal funding money. A basic customer gets the most basic service available without extra perks. There are very few of those.

## **Future Action: Pending.**

GJR, edited by Aiden O'Brien.

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