

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

**Comcast Phone of New Hampshire, LLC Request
for Authority to provide Local Telecommunications
Services**

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DT 08-13

**OBJECTION OF
COMCAST PHONE OF NEW HAMPSHIRE, LLC
TO PETITION TO INTERVENE OF
NEW HAMPSHIRE TELEPHONE ASSOCIATION**

Comcast Phone of New Hampshire, LLC (“Comcast Phone”) opposes the Petition to Intervene filed on May 15, 2008 by the New Hampshire Telephone Association (“NHTA”). Rules of the New Hampshire Public Utilities Corporation,¹ applying provisions of state law,² provide that a petition for intervention be granted only where “[t]he petition states facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.”³ The petition filed by the NHTA fails to make the required demonstration and so must be denied.

Further, if the PUC grants the petition for intervention filed separately by the TDS Companies,⁴ no purpose would be served by also granting NHTA intervention, as NHTA has no interest in the proceeding beyond those asserted by its members the TDS Companies and shares the same counsel as the TDS Companies. Accordingly, as

¹ Puc 203.17.

² RSA 541-A:32.

³ RSA 542-A:32(I)(b).

⁴ In a separate filing, Comcast Phone opposes the TDS Companies’ Petition for Intervention.

demonstrated by their objections to the Commission's *Order Nisi* and their petitions to intervene, NHTA's participation would be duplicative.

Argument

I. The NHTA Presents No Legal Nexus Between Its Asserted Interests And The Issues Before the Commission in This Proceeding.

The Commission's *Order Nisi* granted Comcast Phone's application for authority to provide local telecommunications services as a competitive local exchange carrier ("CLEC") in the territories of Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company.⁵ In doing so, the Commission applied the provisions of Puc Part 431 of the New Hampshire Code of Administrative Rules requiring a CLEC to register with the PUC before providing local exchange services.⁶ The Commission granted the petition upon a finding that Comcast Phone had "satisfied the requirements of Puc 431.01(c) and RSA 374:22."⁷

The grounds for denial of a CLEC registration under Puc Part 431 are set out in Puc 431.02.⁸ NHTA does not allege that Puc 431.02 is at issue, nor do its factual allegations support a claim that the Comcast Phone registration should be denied on any of these grounds. Thus, there is no legal nexus between the various issues NHTA seeks

⁵ Comcast Phone of New Hampshire, LLC Request for Authority to provide Local Telecommunications Services, DT 08-013; Order No. 24,843, Order Nisi Granting Application, at 3 (N.H. Pub. Util. Comm'n, Apr. 4, 2008) ("*Order Nisi*").

⁶ *Order Nisi* at 2.

⁷ *Order Nisi* at 3.

⁸ Section 431.02 requires the PUC to reject an application for CLEC registration when the CLEC or its officers: "(1) Have committed an act that would constitute good cause to find a violation of authorization pursuant to Puc 431.19; (2) Have, within the 10 years immediately prior to registration, had any civil, criminal or regulatory sanctions or penalties imposed against them pursuant to any state or federal consumer protection law or regulation; (3) Knowingly made a material false statement of fact in the application; (4) Demonstrated on its application such flagrant or repeated violations of the requirements to operate as a utility or a competitive carrier in other state(s) that the commission determines that it is not in the public good to allow registration."

to raise and the narrow issues that are before the PUC on a CLEC registration pursuant to Puc Part 431.

NHTA asserts that “[t]he Commission’s responses or rulings related to the issues raised within NHTA’s Objection [to the *Order Nisi*] directly and substantially impact NHTA’s members, and all other parties to this Docket.” This fails in several ways to establish grounds for intervention by NHTA. As an initial matter, NHTA does not represent other parties to this docket, so the extent (if any) of impact of PUC rulings on those parties cannot serve as a basis for intervention by the NHTA. Similarly, any impact PUC decisions in this matter may have on NHTA member companies, while arguably at least partial grounds for intervention by those companies, does not constitute an impact on NHTA’s “rights, duties, privileges, immunities or other substantial interests.”

With regard to any impact on the NHTA directly, as Comcast Phone explained in its Reply to NHTA’s Objection, the issues raised in its Objection are purely speculative and “far exceeds any entry, tariff, or service regulation applicable to CLECs under New Hampshire law or regulations.”⁹ The “array of issues” raised by NHTA Companies in its Objection are, in any case, all related to the type and extent of services Comcast Phone intends to provide. None of the issues raised, even should they be considered by the PUC in this proceeding,¹⁰ have any potential to affect the “rights, duties, privileges, immunities or other substantial interests” of the NHTA or its members. Consequently, they serve as no basis for intervention.

⁹ Reply to Objection at 2.

¹⁰ As Comcast Phone explained in its Reply to NHTA’s Objection, the issues raised by NHTA are irrelevant to this proceeding and need not be considered by the PUC.

In the same vein is NHTA's assertion of an interest "to the extent that any issues studied involve or relate to the access services provided by NHTA member companies."¹¹ There is no reason for the PUC to decide any issues relating to access services in this proceeding. Such issues can be resolved in the context of interconnection negotiations or subsequent intercarrier billing.

As the PUC has explained, "merely being interested in such a proceeding is not the same as having a legal interest of some nature that may be affected by the proceeding."¹² To qualify as an intervenor, a petitioner must demonstrate "a legal nexus to the outcome of [the prospective Commission] decision."¹³ The NHTA fails to demonstrate such a nexus. While NHTA naturally are interested – in the sense of curiosity – in the registration of Comcast Phone as a CLEC in the service area of several of its member companies, there is no legal interest at stake for the NHTA. That CLECs should be allowed to provide competitive telecommunications services in competition to ILECs has long been settled by Congress, the Federal Communications Commission ("FCC"), the New Hampshire Legislature, and the Commission.

II. The Interests Asserted by The NHTA Are Adequately Represented by The TDS Companies in Any Event.

The asserted interest of the NHTA in "monitoring this Docket to ensure that NHTA member companies' interests are accurately depicted and represented during the course of the investigation" does not warrant intervention under the circumstances of this proceeding. Nothing in the Comcast Phone CLEC-10 registration refers to NHTA or its

¹¹ NHTA Petition ¶ 6.

¹² *North Atlantic Energy Corporation, the United Illuminating Company, New England Power Company, New Hampshire Electric Cooperative, Inc. and Canal Electric Company Proceeding to Approve the Sale of Seabrook Station Interests*, DE 02-075; Order No. 24,007, Order Denying Rehearing (N.H. Pub. Util. Comm'n, July 8, 2002).

member companies other than simply identifying service territories, which are not a matter of dispute. Nothing in the issues presented under Puc 431 requires any findings with regard to the NHTA or its member companies or any adjudication of their interests. Neither NHTA, nor its member companies, need to be a party to the proceeding to monitor it and PUC regulations allow non-parties to have “an opportunity at a hearing or rehearing conference to state their position.”¹⁴

In addition, several of NHTA’s member companies – Kearsarge Telephone Company, Merrimack County Telephone Company, Hollis Telephone Company, Inc., and Wilton Telephone Company, Inc. (collectively the “TDS Companies”) – have also filed a petition for intervention in this proceeding and are represented by the same counsel. The Commission has in the past denied intervenor status in a situation where a party’s “generalized . . . interests” would be adequately represented by other parties to the proceeding.¹⁵ Here, the interests asserted by the NHTA are identical to those presented by the TDS Companies. Both seek to inquire into the services to be offered by Comcast Phone;¹⁶ both seek to investigate Comcast Phone’s structure and business plan.¹⁷

Indeed, NHTA and the TDS Companies even use identical language in their objections to the Commission’s Order *Nisi* and their petitions to intervene.¹⁸ Under the

¹³ *Id.*

¹⁴ Puc 203.18.

¹⁵ *North Atlantic Energy Corporation, the United Illuminating Company, New England Power Company, New Hampshire Electric Cooperative, Inc. and Canal Electric Company Proceeding to Approve the Sale of Seabrook Station Interests*, DE 02-075; Order No. 23,981, Prehearing Conference Order (N.H. Pub. Util. Comm’n, May 31, 2002).

¹⁶ Compare Motion by TDS Companies for Suspension of Order *Nisi* ¶ 10 with Objection by NHTA to Order *Nisi* ¶¶ 5-7.

¹⁷ Compare Motion by TDS Companies for Suspension of Order *Nisi* ¶ 10 with Objection by NHTA to Order *Nisi* ¶ 8.

¹⁸ Compare, e.g., TDS Companies Objection to Order *Nisi* ¶ 10 (“In testimony filed before the Vermont Public Service Board in Docket No. 7316, on April 17, 2008, Comcast Phone of Vermont, LLC (“Comcast Vermont”), has described an entirely different structure for the provision of an internet-based service. Assuming Comcast Phone intends to deploy the same service in New Hampshire as deployed by Comcast

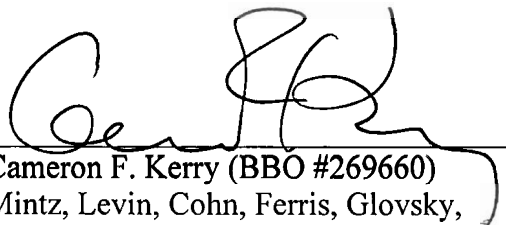
circumstances, it is quite evident that representation would be duplicative and impose an unfair burden on Comcast Phone, the Commission, and any other parties. At a minimum, if both interventions are allowed, the Commission should require that the NHTA and the TDS Companies appear jointly as a single party.

Vermont, the Comcast Phone application does not disclose what service will be provided by Comcast Phone, what affiliate will provide the internet protocol-based service, and what common carrier service, if any, Comcast Phone intends to provide.”) and TDS Companies Petition to Intervene ¶ 4 (“The TDS Companies have an interest in monitoring this Docket to ensure that the TDS Companies’ interests are accurately depicted and represented during the course of the investigation. The TDS Companies further have an interest to the extent that any issues studied involve or relate to the access services provided by the TDS Companies.”) with NHTA Motion to Suspend Order Nisi ¶ 10 (“Moreover, in prefiled direct testimony filed before the Vermont Public Service Board in Docket No. 7316, on April 17, 2008, Comcast Phone of Vermont, LLC (“Comcast Vermont”), has described an entirely different structure for the provision of an internet-based service. Assuming Comcast Phone intends to deploy the same service in New Hampshire as deployed by Comcast Vermont, the Comcast Phone application does not disclose what service will be provided by Comcast Phone, what affiliate will provide the internet protocol-based service, and what common carrier service, if any, Comcast Phone intends to provide.”) and NHTA Petition to Intervene ¶ 6 (“NHTA has an interest in monitoring this Docket to ensure that NHTA member companies’ interests are accurately depicted and represented during the course of the investigation. NHTA further has an interest to the extent that any issues studied involve or relate to the access services provided by the NHTA member companies.”).

Conclusion

The NHTA has not established the “facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” required to warrant intervention as a party to this proceeding. Accordingly, the NHTA Petition to Intervene should be denied. If granted, the NHTA should be required to appear jointly with the TDS Companies.

Respectfully Submitted,



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