


STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: December 20, 2018

AT (OFFICE): NHPUC

FROM:  Kath Mullholand, Director – Regulatory Innovation and Strategy Division

SUBJECT: Docket DT 18-185, Clear Rate Communications Request for Waiver
Staff Recommendation

TO: Commissioners
Debra A. Howland, Executive Director

CC: David K. Wiesner, Staff Attorney

On December 12, 2018, Clear Rate Communications (Clear Rate) filed a Request for Waiver of Expenses Assessed Pursuant to Chapter 363 A of the New Hampshire Revised Statutes (RSA 363-A) (Request). The basis for the Request, according to Clear Rate, is that the company is exempt under RSA 362:7, II by virtue of being a provider of VoIP services. Clear Rate also claims that the minimum assessment amount is excessive with respect to the revenue the company generates from New Hampshire, calculating that amount to be approximately 45% of the gross revenue generated from services provided to New Hampshire customers. The assessment amount, in Clear Rate's view, "has the effect of a force regulating market entry which is prohibited by" RSA 362:7, II.

Clear Rate is a provider of VoIP services in Staff's records, but did not voluntarily register with the Commission as a telecommunications carrier. As an unregistered provider of VoIP services, Clear Rate is nonetheless subject to assessment under RSA 363-A:2, I(d), determined based on "33% of all providers' gross revenue received from New Hampshire retail customers for a VoIP service defined in RSA 363:7, I(d) or IP-enabled service defined in RSA 363:7, I(e) that provides the voice capabilities described in RSA 362:7, I (d)(1) and (3)," subject to a minimum assessment amount of \$1,000 pursuant to RSA 363-A:2, VI, which provides that "the minimum amount assessed to any entity to which subparagraphs I(c) or (d) applies shall not be less than \$1,000."

Under RSA 363-A:4, assessment invoices are mailed on a quarterly basis; Clear Rate's first quarterly invoice for the current fiscal year was issued on August 10, 2018. The standard for objecting to an assessment is set out in RSA 363-A:4, which establishes, in pertinent part, that "within 30 days of the assessment for the first quarterly payment, each ... assessed entity which has any objection to the amount assessed against it for the prior fiscal year shall file with the commission its objection in writing, setting out in detail the grounds on which it is claimed that said assessment is excessive, erroneous, unlawful or invalid." Clear Rate's Request was not filed by the applicable deadline, which occurred in September 2018. The Commission has previously dismissed

objections to its assessment that are not timely-filed with respect to the relevant state fiscal year. *See Northern New England Telephone Operations LLC and Enhanced Communications of Northern New England, Inc.*, Order No. 25,451 (January 7, 2013).

Based on the foregoing review and analysis, Staff recommends that Clear Rate's Request be denied.