

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: September 3, 2019

AT (OFFICE): NHPUC

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

SUBJECT: Docket DT 19-137, Clear Rate Communications
Petition for Waiver of Expenses Assessed Pursuant to Chapter 363-A
Staff Report and Recommendation

TO: Commissioners
Debra A. Howland, Executive Director

CC: David K. Wiesner, Director, Legal Division

On August 21, 2019, Clear Rate Communications (Clear Rate) timely filed a Request for Waiver of Expenses Assessed Pursuant to Chapter 363-A of the New Hampshire Revised Statutes Annotated (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 voice over internet protocol (VoIP) services. Clear Rate also claims that the minimum assessment amount is excessive with respect to the revenue the company generates in New Hampshire, calculating that minimum 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, according to Staff's records, but has not voluntarily registered 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).

It is also 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."

RSA 362:7, which contains the provisions on which Clear Rate's arguments rely, was enacted in 2012. The second half of paragraph II, clarifying that VoIP services are not public utility services, was added in 2013. The Commission, however, in

determining the assessment of such providers, relies on RSA 363-A:2, I(d), which expressly provides for the assessment of VoIP providers and was enacted in 2014. The legislature was aware that VoIP services are unregulated services, and that providers of those services are not public utilities, when it determined that such providers nonetheless should be subject to Commission assessment based on 33% of their gross revenue, with a \$1,000 minimum assessment amount.

Clear Rate also claims that the minimum assessment is excessive and burdensome for VoIP providers whose revenue is *de minimus*. Clear Rate states that the assessment, particularly when considered as a percentage of its revenue generated from the state, rises to the level of a barrier to competitive market entry.

The minimum assessment amount to be charged by the Commission is specified in RSA 363-A:2, VI, which allows the Commission to determine a fair and equitable minimum assessment, provided that the minimum amount assessed to the telecommunications providers described in RSA 363-A:2, I (c) and (d) (e.g., local exchange carriers and VoIP service providers) is not less than \$1,000. Further, RSA 363-A:5, which provides for exemptions from assessment for most entities earning less than \$10,000 in gross revenue in New Hampshire, contains an explicit exception for VoIP providers.

Although Staff is sympathetic to Clear Rate's arguments, Staff believes the law is explicit and unambiguous. The minimum assessment amount is determined by statute, and is applied to all VoIP providers equally and in a non-discriminatory manner. The Commission has no authority to waive state law provisions as requested by Clear Rate.

For the reasons described above, Staff recommends that Clear Rate's petition be denied.

LINKED

9/3/19 JK

View Service Lists

⏠ (../Regulatory/regulatory.htm)

🔍 (../ServiceLists/ViewServiceList.aspx)

A A A

Service List - Docket Related

Docket# : 19-137

Printed: 9/3/2019

Email Addresses

ExecutiveDirector@puc.nh.gov
kathryn.mullholand@puc.nh.gov
amanda.noonan@puc.nh.gov
ocalitigation@oca.nh.gov
jortwine@clearrate.com
david.wiesner@puc.nh.gov

Without Email Addresses

All

ExecutiveDirector@puc.nh.gov

Kath Mullholand
 New Hampshire Public Utilities Commission

kathryn.mullholand@puc.nh.gov

Amanda Noonan
 NH Public Utilities Commission
 21 South Fruit St Ste 10
 Concord NH 03301
amanda.noonan@puc.nh.gov

OCA Litigation
OCA Litigation
21 South Fruit St Ste 18
Concord NH 03301
ocalitigation@oca.nh.gov

Jeffery Ortwine
Clear Rate Communications, Inc.
2600 W. Big Beaver Rd.
Troy MI 48084
jortwine@clearrate.com

David K Wiesner
New Hampshire Public Utilities Commission
21 South Fruit St Ste 10
Concord NH 03301
david.wiesner@puc.nh.gov