

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

Comcast Phone of New Hampshire, LLC (“Comcast Phone”) opposes the Petition to Intervene filed on May 15, 2008 by the Union Telephone Company (“Union”). 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 Union fails to make the required demonstration and so must be denied.

Argument

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

¹ Puc 203.17.

² RSA 541-A:32.

³ RSA 542-A:32(I)(b).

Telephone Company, and Wilton Telephone Company.⁴ 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.⁵ The Commission granted the petition upon a finding that Comcast Phone had “satisfied the requirements of Puc 431.01(c) and RSA 374:22.”⁶

The grounds for denial of a CLEC registration under Puc Part 431 are set out in Puc 431.02.⁷ Union does not allege that Puc 431.02 is at issue, nor do its 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 issues Union seeks to raise and the narrow issues that are before the PUC on a CLEC registration pursuant to Puc Part 431.

Union asserts that “[t]he Commission’s handling of authority of an area served by a company with less than 25,000 access lines . . . as well as areas served by carriers with the exemption provided by 47 U.S.C. § 251(f)(1)(A), are among the issues that the notice raises,”⁸ and that “Union has a substantial interest in monitoring and potentially participating in this proceeding for the purpose of addressing these issues for the decisions on these issues may impact the future operations of Union. With regard to any issues about “areas served by carriers with the exemption provided by 47 U.S.C. §

⁴ 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*”).

⁵ *Order Nisi* at 2.

⁶ *Order Nisi* at 3.

⁷ 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.”

⁸ Union Petition ¶ 3.

251(f)(1)(A),” the PUC specifically noted that its *Order Nisi* was “not intended to affect TDS’s right to assert the ‘rural exemption’” under federal interconnection law.⁹ Consequently, any interest Union may have in issues surrounding the federal “rural exemption” cannot serve as the basis for intervention in this proceeding.

Union’s remaining assertion of interest – that PUC decisions on the “handling of authority of an area served by a company with less than 25,000 access lines” possibly “may impact the future operations of Union” are far too vague and speculative to serve as the basis for the required demonstration “that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding.”

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.”¹⁰ To qualify as an intervenor, a petitioner must demonstrate “a legal nexus to the outcome of [the prospective Commission] decision.”¹¹ Union fails to make such a demonstration in its petition. While Union may be interested – in the sense of curiosity or concern – in the registration of Comcast Phone as a CLEC in the service area of the TDS Companies, Union has not demonstrated that there is any legal interest at stake for the company.

In any case, whatever general interest Union may have in the proceeding as a company with fewer than 25,000 access lines can be fully represented by the TDS Companies – similarly companies with fewer than 25,000 lines – should the TDS

⁹ *Order Nisi* at 3.

¹⁰ *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).

¹¹ *Id.*

Companies be granted intervenor status. 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.¹² To the extent Union Telephone has cognizable legal interests that are separate from those of the TDS Companies, such interests would be represented by the New Hampshire Telephone Association ("NHTA"). Union's legal interests in this proceeding, if any, are identical to those other ILECs that are NHTA members, and the Union petition to intervene presents no distinct interests.

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. 23,981, Prehearing Conference Order (N.H. Pub. Util. Comm'n, May 31, 2002).

Conclusion

Union 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 and the Union Petition to Intervene should be denied.

Respectfully Submitted,



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