

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

Petition under RSA 365:5 by the Rural Carriers of the
New Hampshire Telephone Association for the
Commission to Conduct an Independent Inquiry into
the Regulatory Status of IP Enabled Voice
Telecommunications Service

DT 09-044

TWC DIGITAL PHONE LLC PETITION TO INTERVENE

Pursuant to the Commission's May 6, 2009 Order of Notice in the above-referenced docket and Section 203.17 of its rules, N.H. Admin. Rules Puc 203.17, TWC Digital Phone LLC ("TWC") respectfully petitions to intervene in this proceeding. Such intervention must be granted where the petitioner's "rights, duties, immunities, or other substantial interests may be affected by the proceeding." R.S.A. 541-A:32(I)(b); *see also* Order of Notice at 2 (same). As explained below, TWC clearly satisfies this standard, and its petition should be granted without limitation.¹

DISCUSSION

The Commission commenced this proceeding in response to a petition filed by a group of rural local exchange carriers ("RLECs") requesting "an independent inquiry into the appropriate regulatory status of IP enabled voice telecommunications service in New Hampshire." RLEC Pet. at 1. Although that petition generally focused on a voice-based service offered by affiliates of Comcast Corporation (collectively, "Comcast"), the Commission has stated that this proceeding more broadly encompasses issues "related to whether fixed voice over internet

¹ In addition to filing this petition to intervene, TWC plans to attend the Prehearing Conference and the ensuing Technical Session on June 24, 2009, and will be prepared to present a preliminary statement of its position on the issues raised by this proceeding.

protocol (VoIP) in general . . . constitutes conveyance of a telephone message” within the meaning of state law, and also presents the question of “the extent to which federal law preempts New Hampshire law with regard to VoIP service.” Order of Notice at 1-2.

TWC offers VoIP services in New Hampshire that fall squarely within the scope of this proceeding. Specifically, TWC offers two facilities-based, interconnected VoIP services in New Hampshire—its residential VoIP service is branded as “Digital Phone,” and its commercial VoIP service is branded as “Business Class Phone.” Like Comcast’s services, these services are “interconnected VoIP services” as defined by the Federal Communications Commission, because they: (i) enable real-time, two-way voice communications, (ii) require use of a broadband connection, (iii) use IP-compatible customer premises equipment, and (iv) permit users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. 47 C.F.R. § 9.3. TWC offers its interconnected VoIP services using an arrangement similar to what the RLECs’ petition describes with respect to Comcast. *See* RLEC Pet. at 2 (¶¶ 6, 8). In particular, to enable its VoIP customers to exchange traffic with users on the public switched telephone network (“PSTN”), TWC obtains interconnection and other wholesale telecommunications services from a separate entity that is authorized to do business in New Hampshire as a public utility.

Thus, any decisions by the Commission in this docket regarding the regulatory classification and treatment of facilities-based VoIP services under state law, including the extent to which state requirements are preempted, will directly and substantially impact TWC’s operations in New Hampshire to the same extent that they would impact Comcast. For example, any classification decision regarding Comcast’s retail VoIP services would presumably apply to TWC’s Digital Phone and Business Class Phone services. Moreover, the RLECs’ petition

explicitly calls into question the right of an interconnected VoIP provider to purchase wholesale telecommunication services as a means of interconnecting with the PSTN, even though that issue need not be implicated by the classification question that is the stated focus of this proceeding. The Commission's disposition of such issues unquestionably would "affect" TWC's "rights, duties, immunities, or other substantial interests." R.S.A. 541-A:32(I)(b); *see also, e.g., Freedom Ring Communications, LLC*, Order No. 24,913, Docket No. 06-067 (N.H. Pub. Utils. Comm'n Oct. 31, 2008) (granting petitions to intervene where petitioners "set forth arguments supporting their stake in the outcome" of a case); *Comcast Phone of New Hampshire, LLC*, Order No. 24,887, Docket No. 08-013 (N.H. Pub. Utils. Comm'n Aug. 18, 2008) (granting petitions to intervene on the ground that "the parties had demonstrated that their rights, duties, privileges, immunities or other interests would be affected by this proceeding"). In fact, under these circumstances, the Commission has no discretion to deny TWC's petition to intervene. *Cf. Application of Granite Reliable Power, LLC, for a Certificate of Site and Facility for the Granite Reliable Power Windpark in Coos County, N.H.*, Order Granting Petitions to Intervene and Revising Procedural Schedule, Docket No. 2008-04, at 2 (N.H. Pub. Utils. Comm'n Oct. 14, 2008) (stating, in connection with the same intervention standard as applied in another context, that "intervention is mandatory in those cases where the party can establish that it has a right, duty, privilege, immunity, or other substantial interest that may be affected by the determination of the issues in the proceeding").

Granting TWC intervenor status would not impair "the interests of justice [or] the orderly and prompt conduct of the proceedings." R.S.A. 541-A:32(I)(b). As a major provider of interconnected VoIP services nationwide, TWC has a valuable perspective to bring to this proceeding and extensive experience with the issues under consideration, and its participation

could only assist the Commission in reaching a final resolution that is consistent with both federal and state law. In addition, TWC does not intend to raise issues beyond those identified in the RLECs' petition and the Commission's order, and it will adhere to the same procedural requirements (including filing deadlines) that apply to other parties. Finally, excluding TWC from this proceeding would disserve the interests of justice: Because of the profound impact the Commission's decisions could have on TWC's business in New Hampshire, as discussed above, TWC is entitled to have the Commission consider its views.

If the Commission were to conclude that TWC's rights, duties, and other substantial interests somehow would not be affected by the outcome of this proceeding, TWC's petition still should be granted on the ground that its intervention would be in "the interest of justice and the orderly and prompt conduct of the proceedings." R.S.A. 541-A:32(II). The foregoing discussion makes clear that permissive intervention is warranted at a bare minimum.

CONCLUSION

For these reasons, the Commission should grant TWC's petition to intervene in this proceeding, without limitation.

Respectfully submitted,

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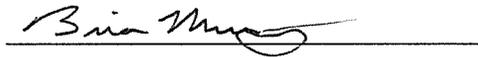
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Dated: June 18, 2009

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Certificate of Service

I hereby certify that a copy of the foregoing Petition to Intervene has on this 18th day of June, 2009 been sent by electronic mail to persons listed on the Service List.

A handwritten signature in cursive script, appearing to read "Brian Murray", is written above a solid horizontal line.

Brian W. Murray