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VIA ELECTRONIC MAIL

December 7, 2020

Ms. Debra Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

**Re: New Hampshire Electric Cooperative, Inc.
-- Designation as an Eligible Telecommunications Carrier**

Dear Ms. Howland:

New Hampshire Electric Cooperative, Inc. (“NHEC”) is taking steps to offer broadband communications services to members in NHEC’s service territory in New Hampshire. As part of these efforts, NHEC or an affiliate will need designation as a federal Eligible Telecommunications Carrier (“ETC”). This letter seeks confirmation that the New Hampshire Public Utilities Commission (“NHPUC”) lacks jurisdiction to designate NHEC as an ETC.

NHEC plans to offer broadband services over a fiber-fed network. Any services that are included in NHEC’s expected service offerings would be Internet Protocol (“IP”) enabled and any voice services would be in the form of Voice over Internet Protocol (“VoIP”).

Under the federal Telecommunications Act, state commissions like the NHPUC are the primary authorities for designating ETCs. 47 U.S.C. § 214(e)(2). However, where a provider’s services are not subject to state jurisdiction, federal law authorizes the Federal Communications Commission (“FCC”) to grant the ETC designation. 47 U.S.C. § 214(e)(6).

Under New Hampshire law, the NHPUC shall not:

...enact, adopt, or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law that regulates or has the effect of regulating the market entry, market exit, transfer of control, rates, terms, or conditions of any VoIP service or IP enabled service or any provider of VoIP service or IP-enabled service. VoIP services and IP-enabled services are not public utility services and a

provider of VoIP service or IP-enabled service is not a public utility under RSA 362:2, or an excepted local exchange carrier under RSA 362:7, I(c) and shall not be regulated as a public utility in any manner other than as set forth in [RSA 362:7, III].

RSA 362:7, II. None of the exceptions set forth in RSA 362:7, III would allow the NHPUC to consider an ETC designation request with respect to VoIP services or IP-enabled services.

Accordingly, the NHPUC appears to lack jurisdiction under New Hampshire law to grant an ETC designation to NHEC. If so, then the appropriate course is for NHEC to request the ETC designation from the FCC.

The FCC has previously determined that a carrier seeking ETC designation from the FCC may demonstrate that the FCC has jurisdiction “*by submitting an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.*” *In the Matter of Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order (DA 19-773, FCC Wireline Competition Bureau, Aug. 13, 2019), at 2 (internal quotations marks and citation omitted).

NHEC respectfully asks that the Commission issue a Secretarial Letter confirming that NHEC’s designation as an ETC is not subject to NHPUC jurisdiction under New Hampshire law.

A hardcopy of this letter will not follow, in accordance with your letter of March 17, 2020, waiving the NHPUC’s paper filing requirements.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Paul J. Phillips". The signature is written in a cursive, flowing style.

Paul J. Phillips

cc: Steven Camerino, President & CEO, New Hampshire Electric Cooperative, Inc.
Mark W. Dean, Esq.
Kath Mullholand, Director, Regulatory Innovation and Strategy
David K. Wiesner, Esq., Director, Legal Division