

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: December 9, 2020

AT (OFFICE): NHPUC

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

SUBJECT: Docket No. DT 20-194
New Hampshire Electric Cooperative
Request for Designation as an Eligible Telecommunications Carrier
Staff Recommendation

TO: Commissioners
Debra A. Howland, Executive Director

CC: David K. Wiesner, Legal Division Director

On December 7, 2020, New Hampshire Electric Cooperative (NHEC) filed a letter with the Commission noting that NHEC is taking steps to offer broadband communications services to NHEC members in its New Hampshire service territory and seeking confirmation that the Commission lacks jurisdiction to designate NHEC as an eligible telecommunications carrier (ETC).

NHEC reports that it plans to offer broadband services over a fiber-fed network. These services would be Internet Protocol enabled (IP-enabled) and may include voice services provided as Voice over Internet Protocol (VoIP). NHEC asserts that, as a provider of only VoIP and IP-enabled services, it is not a public utility subject to the Commission's regulatory jurisdiction, pursuant to RSA 362:7, II. In particular, NHEC notes that, under that statute, the Commission may 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.

While state commissions such as this Commission are the primary authorities for designating ETCs under 47 U.S.C. § 214(e)(2), in cases where a provider's services are not subject to state jurisdiction, federal law authorizes the Federal Communications Commission (FCC) to grant the ETC designation. See 47 U.S.C. § 214(e)(6).¹ Accordingly, NHEC requested that the Commission issue a secretarial letter confirming

¹ Section 214(e)(6) provides that, "[i]n the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the [FCC] shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an [ETC] for a service area designated by the [FCC] consistent with applicable Federal and State law."

that NHEC's designation as an ETC is not subject to the Commission's jurisdiction under New Hampshire law.

Staff notes that, pursuant to RSA 362:7, II, providers of VoIP service or IP-enabled service are not public utilities and the services they provide are not public utility services. VoIP and IP-enabled service providers are subject only to the limited regulation specifically listed in RSA 362:7, III which does not address market entry.² As such, the Commission lacks statutory authority to approve an ETC designation request with respect to a provider of VoIP services or IP-enabled services. Staff believes this request is similar to an earlier request for ETC designation by RCC of Minnesota, Inc. In that case, the Commission issued an order addressing the policy reasons regarding state designation of ETCs, and found that such designation is purely a question of law and could not be granted because it would be functionally the same as regulation of market entry by a cellular carrier. *See* Order No. 24,245 (December 5, 2003).

Based on the foregoing analysis, Staff recommends that the Commission issue a secretarial letter affirming that NHEC's designation as an ETC is not subject to the Commission's jurisdiction under New Hampshire law.

DT 20-194 SERVICE LIST

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² Such providers are also subject to Commission assessment under RSA 363-A:2, I (d).