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December 18, 2020

Paul J. Phillips, Esq.
Primmer, Piper, Eggleston & Cramer PC
900 Elm Street
P.O. Box 3600
Manchester, NH 03105-3600

Re: DT 20-194, New Hampshire Electric Cooperative, Inc.
Designation as an Eligible Telecommunications Carrier

Dear Mr. Phillips:

On December 7, 2020, New Hampshire Electric Cooperative Inc. (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) under state law. According to NHEC, it plans to use a fiber-fed network to offer broadband services that would be Internet Protocol enabled (IP-enabled) and may include voice services provided as Voice over Internet Protocol (VoIP). NHEC asserted 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.

NHEC noted that, although state commissions such as the 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 to grant the ETC designation. *See* 47 U.S.C. § 214(e)(6). Accordingly, NHEC requested that the Commission issue a secretarial letter confirming that the Commission lacks authority under New Hampshire law to designate NHEC as an ETC.

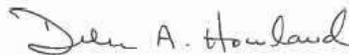
Commission Staff (Staff) filed a memorandum dated December 9, 2020, in which it analyzed NHEC's request and the relevant jurisdictional issues and recommended that the Commission issue a secretarial letter confirming that NHEC's designation as an ETC is not subject to the Commission's jurisdiction under New Hampshire law. Staff noted that, pursuant to RSA 362:7, II, providers of VoIP services or IP-enabled services 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. Staff observed that such providers are subject to Commission assessment under RSA 363-A:2, I (d).

Staff maintained that NHEC's request is similar to an earlier request for ETC designation by RCC Minnesota, Inc. and RCC Atlantic, Inc., in which case the Commission issued an order addressing the policy reasons regarding state designation of ETCs, and found that such a 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 at 13-15 (December 5, 2003). According to Staff, the Commission also lacks statutory authority to approve an ETC designation request with respect to a provider of VoIP services or IP-enabled services.

Based on Staff's analysis and recommendation, as summarized above, the Commission has determined that it lacks authority under New Hampshire law to designate NHEC as an ETC.

Sincerely,



Debra A. Howland
Executive Director

cc: Service List (Electronically)
Docket File

Service List - Docket Related

Docket#: 20-194

Printed: 12/18/2020

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