


STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: January 4, 2021

AT (OFFICE): NHPUC

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

SUBJECT: Docket No. DT 20-210
Consolidated Communications of Northern New England Company, LLC
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 29, 2020, Consolidated Communications of Northern New England Company, LLC (Consolidated) filed a letter with the Commission noting that Consolidated Communications Holdings, Inc. has been awarded funding in New Hampshire from the Rural Digital Opportunity Fund (RDOF) and will be taking steps to offer broadband communications and Voice over Internet Protocol (VoIP) services to unserved areas located outside of Consolidated's current franchise territories in the state. According to Consolidated's filing, these areas are not currently served by any incumbent local exchange carrier. Consolidated is seeking confirmation that the Commission lacks jurisdiction to designate Consolidated as an eligible telecommunications carrier (ETC) for areas where it is not an incumbent provider, does not provide utility telephone service, and intends to provide only broadband and VoIP services.

Consolidated asserts that, as a provider of only VoIP services, it is not a public utility subject to the Commission's regulatory jurisdiction, pursuant to RSA 362:7, II. In particular, Consolidated 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

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

Accordingly, Consolidated requested that the Commission issue a secretarial letter confirming that Consolidated's designation as an ETC, in the specific unserved areas it identified in its filing, is not subject to the Commission's jurisdiction under New Hampshire law.

Commission Staff (Staff) notes that, pursuant to RSA 362:7, II, providers of VoIP service or Internet Protocol-enabled (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

Staff has reviewed the map included with Consolidated's filing and has confirmed its assertion that the areas identified, which are located in Chatham and Errol, New Hampshire, are not currently assigned to any incumbent telephone utility.

As such, although Consolidated is a public utility in those areas of the state where it is an incumbent utility provider of voice services, Staff believes that the Commission lacks statutory authority to approve an ETC designation request with respect to a provider of only VoIP services or IP-enabled services in areas of the state where no incumbent provider exists.

Based on the foregoing facts and analysis, Staff recommends that the Commission issue a secretarial letter confirming that it lacks authority under New Hampshire law to designate Consolidated as an ETC in the specified unserved areas of the state.

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."

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

DT 20-210 SERVICE LIST

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