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TELECOMMUNICATIONS E-BRIEF

State Commission Finds that Cable Voice Service is within its Jurisdiction

On August 11, 2011, the New Hampshire Public Utilities Commission (“NHPUC”) issued an [order](#) finding that cable voice service (a form of “fixed” VoIP service as opposed to “nomadic” VoIP service) offered by Comcast and Time Warner “constitutes conveyance of a telephone message that falls within the jurisdiction of this Commission . . .” Additionally, the NHPUC found that its consideration of the intrastate regulatory classification and treatment of cable voice services were not expressly or implicitly preempted by federal law and thus *not* subject to the Federal Communications Commission (“FCC”) treatment of nomadic VoIP traffic in the FCC’s Vonage order. Further, the NHPUC found that the regulation of cable voice service and the two companies as competitive local exchange carriers “*does not* involve discriminatory or burdensome economic regulation” that would inhibit the development of a competitive market or conflict with federal law (emphasis added).

The basis of the NHPUC order was the lack of differences between the services provided by traditional telephone companies and cable voice service. The NHPUC found a variety of arguments unconvincing such as “cable voice service differs from POTS from a network perspective as well as from a user perspective, because it provides the capability to transform the protocol in which calls are transmitted and includes enhanced communications features that augment and complement basic calling features.” The NHPUC indicated that “[t]he conversion from analog signals to digitized IP packets is a distinction without a difference and does not alter the practical reality that the fundamental service offered to the public remains telephone service.” For example, the NHPUC found that consumers of the voice

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service provided by the cable companies would not describe their service as an information service on a network that is used to “orally instant message” another customer.

Ultimately, the NHPUC found that cable voice service constituted the conveyance of telephone messages and under New Hampshire law was subject to the jurisdiction of the state commission.

This decision is important because it demonstrates the willingness of a state commission to bring clarity to the proper regulatory frameworks that should apply to functionally equivalent intrastate services when similar interstate issues remain unaddressed at the FCC. Additionally, it shows that state commissions also have the willingness to address the regulatory classification of services in light of changes in underlying technology. While this decision is applicable to New Hampshire, it provides a framework as to how one state commission determined its analysis should proceed, a framework that may be useful in other jurisdictions should similar issues arise.

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