

SUPREME JUDICIAL COURT OF MAINE

Enhanced Communications of Northern New England, Inc. v. Public Utilities Commission

2017 ME 178 (2017) · No. PUC-16-398 · Decided August 15, 2017

SUMMARY

The Maine Supreme Judicial Court affirmed the Public Utilities Commission’s partial denial of Enhanced Communications’ petition for a certificate of public convenience and necessity to operate as a competitive local exchange carrier in areas served by its affiliated incumbent carrier. The court held that the governing regulation required Enhanced to establish that the additional utility served the public convenience and necessity, and that the Commission lawfully considered number-resource conservation and potential anticompetitive concerns.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Humphrey, J.; Saufley, C.J.; Mead, J.; Gorman, J.; Jabar, J.; Hjelm, J.
JURISDICTION	Maine
DECIDED	August 15, 2017
DOCKET	PUC-16-398
DISPOSITION	affirmed
PROCEDURAL POSTURE	Enhanced appealed a Public Utilities Commission order that granted in part and denied in part its petition for a certificate of public convenience and necessity to operate as a competitive local exchange carrier.
STANDARD OF REVIEW	The court reviews Commission decisions deferentially and determines whether the agency's conclusions are unreasonable, unjust, or unlawful in light of the record. It generally does not second-guess the agency on matters within its expertise. Interpretation of an agency's own rules, regulations, or procedures receives considerable deference, but the court first determines de novo whether the provision is ambiguous; if unambiguous, it applies the plain language. When an agency concludes that a party with the burden of proof failed to meet that burden, reversal is warranted only if the record compels a contrary conclusion to the exclusion of any other inference.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Enhanced Communications of Northern New England, Inc. v. Public Utilities Commission, Time Warner Cable Information Systems, LLC, Office of the Public Advocate

TOPICS

agency adjudication

judicial review of agency action

administrative law

statutory interpretation

federalism

PRACTICE AREAS

administrative law

telecommunications regulation

public utilities regulation

appellate procedure

QUESTIONS PRESENTED

1. Whether the Commission's regulation required approval of a certificate of public convenience and necessity once the applicant satisfied the three enumerated financial, technical, and compliance criteria.
2. Whether the Commission could consider the public interest and deny Enhanced's petition despite Enhanced's satisfaction of the three enumerated regulatory criteria.
3. Whether the Commission's consideration of number-resource conservation and potential anticompetitive effects unlawfully intruded on federal regulatory authority or violated the federal Telecommunications Act.
4. Whether the Commission's decision was unsupported by substantial evidence or applied an impermissibly vague public-interest standard.

HOLDINGS

1. The three enumerated criteria are necessary threshold or predicate considerations, but they are not sufficient by themselves to require issuance of a certificate. The Commission must also determine that public convenience and necessity require an additional utility.
2. The Commission lawfully denied Enhanced's petition because the record did not compel a conclusion that granting authority in FairPoint-affiliated service territories was in the public interest.
3. The Commission did not unlawfully encroach on federal authority over telephone-number resources by considering Enhanced's motivation to obtain sequential numbers as part of its public-interest determination.
4. The Commission did not violate the Telecommunications Act by considering Enhanced's unique affiliation with FairPoint and denying the petition where the additional CLEC would provide no new service and the public benefit was not established.

KEY QUOTATIONS

“The three criteria set forth in section 4(A) are threshold or predicate considerations that are necessary, but not, standing alone, sufficient to grant a petition.” (¶ 11)

“We conclude that an applicant must demonstrate that the public convenience and necessity require an additional utility and thus that the Commission did not err in considering the public interest.” (¶ 12)

“Although federal law promotes active competition in telecommunications markets, the entry of an additional CLEC into the same market as its affiliated ILEC is not necessarily in the public interest.” (¶ 18)

“A petitioner has the burden of proof to establish that granting the CPCN is in the public convenience and necessity, i.e., has some benefit to the public and not merely its own business interest.” (¶ 20)

FACTUAL BACKGROUND

Enhanced, a Delaware corporation and wholly owned subsidiary of FairPoint Communications, sought a certificate authorizing it to operate as a competitive local exchange carrier in Maine, including territories where affiliated FairPoint entities operated as incumbent local exchange carriers. Enhanced satisfied the Commission's financial, technical, and compliance-related criteria, but represented that its principal purpose was to obtain blocks of sequential telephone numbers and that it would not provide new or additional services. The Commission concluded that granting authority in FairPoint's existing territories would not serve the public convenience and necessity and could raise numbering-resource and anticompetitive concerns.

PROCEDURAL HISTORY

Enhanced petitioned the Public Utilities Commission for authority to operate as a competitive local exchange carrier throughout Maine. The Commission granted the petition except in service territories where FairPoint or an affiliate or subsidiary already operated as an incumbent local exchange carrier. Enhanced's petition for reconsideration was denied by operation of law, and it timely appealed. The Supreme Judicial Court of Maine affirmed the Commission's order.

DISPOSITION

affirmed

CASES CITED

- Verizon New Eng., Inc. v. Pub. Utils. Comm'n, 2005 ME 64, ¶ 2, 875 A.2d 118
- Pine Tree Tel. & Tel. Co. v. Pub. Utils. Comm'n, 634 A.2d 1302, 1304 (Me. 1993)
- Forest Ecology Network v. Land Use Regulation Comm'n, 2012 ME 36, ¶ 28, 39 A.3d 74
- Cent. Me. Power Co. v. Pub. Utils. Comm'n, 2014 ME 56, ¶¶ 18-19, 90 A.3d 451
- Arsenault v. Sec'y of State, 2006 ME 111, ¶ 11, 905 A.2d 285
- Zachs v. Dep't of Pub. Utils., 547 N.E.2d 28, 32 (Mass. 1989)
- In re Chapman, 151 Me. 68, 71, 116 A.2d 130, 132 (1955)
- Kelley v. Me. Pub. Emps. Ret. Sys., 2009 ME 27, ¶ 16, 967 A.2d 676
- Sprint Corp. v. FCC, 331 F.3d 952, 955, 960 (D.C. Cir. 2003)

- Appeal of Bretton Woods Tel. Co., 56 A.3d 1266, 1275 (N.H. 2012)
- Office of the Pub. Advocate v. Pub. Utils. Comm'n, 2015 ME 113, ¶ 15, 122 A.3d 959
- Pine Tree Tel. & Tel. Co. v. Pub. Utils. Comm'n, 631 A.2d 57, 61 (Me. 1993)
- Level 3 Commc'ns of Va. v. State Corp. Comm'n, 604 S.E.2d 71, 75 (Va. 2004)
- In re Stanley, 133 Me. 91, 93, 174 A. 93, 94-95 (1934)

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