

Bond Case Briefs

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PUBLIC UTILITIES - MAINE

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

Supreme Judicial Court of Maine - August 15, 2017 - A.3d - 2017 WL 3481674 - 2017 ME 178

Telephone company, which was a wholly-owned subsidiary of a larger incumbent local exchange carrier (ILEC) communications company, appealed order of Public Utilities Commission (PUC) granting in part and denying in part telephone company's petition for a certificate of public convenience and necessity (CPCN) to furnish telecommunications service as a competitive local exchange carrier (CLEC).

The Supreme Judicial Court of Maine held that:

- PUC was permitted to consider public interest when it denied telephone company's petition in part;
- A utility applying to PUC to provide service must demonstrate that the public convenience and necessity require an additional utility; and
- In an issue of first impression, telephone company failed to meet burden of proof to show that granting petition was in the public convenience and necessity.

Public Utilities Commission (PUC) was permitted to consider public interest when it denied in part petition by telephone company, which was a wholly-owned subsidiary of a larger incumbent local exchange carrier (ILEC) communications company that provided service in certain parts of the state, for a certificate of public convenience and necessity (CPCN) to furnish telecommunications service as a competitive local exchange carrier (CLEC), although PUC regulation did not list public interest as a factor to consider. Phrase "public convenience and necessity," contained in statutory provision governing approval by PUC for a utility to provide service, was synonymous with "public interest," and meeting requirements of regulation was not sufficient to require PUC to grant petition.

Telephone company, which was subsidiary of larger incumbent local exchange carrier (ILEC) communications company that already provided service in certain parts of state and which petitioned for a certificate of public convenience and necessity (CPCN) to furnish telecommunications service as competitive local exchange carrier (CLEC), failed to meet burden of proof to show that granting petition was in the public convenience and necessity, although telephone company met listed factors in Public Utilities Commission (PUC) regulation. PUC was permitted to consider public interest in deciding petition, federal regulatory power was not encroached upon, telephone company would not have provided any new or additional service, and purpose of petition was to acquire sequential number blocks.