

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Comcast Phone of New Hampshire, LLC Request Request for Authority to Provide Local Telecommunications Services)))))	DT 08-013
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CERTIFICATE OF SERVICE

I, Cameron F. Kerry, hereby certify that I have this 26th day of June, 2008, served the foregoing document by email, on all parties of record:

1. Initial Brief of Comcast Phone of New Hampshire, LLC.



Cameron F. Kerry

**STATE OF NEW HAMPSHIRE
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**INITIAL BRIEF OF
COMCAST PHONE OF NEW HAMPSHIRE, LLC**

Since 1998, when its predecessor MediaOne Telecommunications of New Hampshire, Inc. was certified as a Competitive Local Exchange Carrier (“CLEC”) by the New Hampshire Public Utilities Commission (“PUC” or “Commission”),¹ Comcast Phone of New Hampshire, LLC (“Comcast Phone”)² has been a catalyst in bringing the benefits of competitive residential telephone service to New Hampshire residents. The Commission’s certification of Comcast Phone as a CLEC has enabled the company to provide many thousands of New Hampshire consumers a choice in feature-rich facilities-based telephone service in areas of the state where Verizon and now FairPoint³ have been the incumbent provider. Over the last five years, Comcast has invested more than \$110 million in improvement and expansion of the company’s fiber network in New Hampshire.

¹ *MediaOne Telecommunications of New Hampshire, Inc. Petition for Authority to Provide Local Telecommunications Services*, DE 98-208, Order Nisi Granting Authorization Order No. 23, 088 (Dec. 15, 1998). In contrast to the present Application, which was filed on December 11, 2007 and is still pending, the MediaOne Telecommunications application was filed on December 2, 1998 and granted 13 days later.

² Comcast Phone is a subsidiary of Comcast Phone, LLC, and its ultimate parent is Comcast Corporation.

³ Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE.

In 2005, another Comcast subsidiary, Comcast IP Phone II, LLC (“Comcast IP”) introduced Comcast Digital Voice (“CDV”) service, an interconnected voice over Internet protocol (“VoIP”) service, to serve New Hampshire residential customers. CDV uses Comcast’s advanced broadband network to provide customers with a number of enhanced features (like access to voicemail over the Internet and the ability to manage features through the Internet) without sacrificing any of the basic voice features or the call clarity customers expect. Following the introduction of CDV, Comcast Phone subsequently discontinued the legacy circuit-switched residential service (inherited from its predecessor AT&T Broadband and provided over a third party’s network) and worked with its residential customers to either migrate their service to CDV or choose another provider.⁴ In the areas of New Hampshire it already serves as a CLEC, Comcast Phone continues to offer business services⁵ and also provides Comcast IP with two-way interconnection with the public switched telephone network (“PSTN”) for the exchange of voice traffic, access to and administration of numbering resources, local numbering portability, operator services, 911 emergency calling services, and directory listing and directory assistance services.⁶

⁴ See *Comments Invited on Application of Comcast Phone of Massachusetts, Inc., Comcast Phone of New Hampshire, LLC, Comcast Phone of Ohio, LLC, and Comcast Phone of Pennsylvania, LLC to Discontinue Domestic Telecommunications Services*, WC Docket No. 08-45, Public Notice, 23 FCC Rcd. 5247 (2008); *Comments Invited on Application of Comcast Phone of Massachusetts, Inc. and Comcast Phone of New Hampshire, LLC*, WC Docket No. 08-52, Public Notice, 23 FCC Rcd. 6428 (2008).

⁵ The business services Comcast Phone offers are described in the company’s current rate schedule, a copy of which was filed with the Commission in this docket as an attachment to the Supplement to CLEC-10 Application. On May 29, 2008, pursuant to the agreed procedural schedule approved by the June 11, 2008 Secretarial Letter, Comcast Phone submitted a supplement to its CLEC-10 Application providing additional descriptions of the telecommunications services the company intends to provide in the TDS Companies’ service territories. *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Comcast Phone of New Hampshire, LLC Supplement to CLEC-10 Application (May 29, 2008) (“Comcast Phone Supplement”).

⁶ This Local Interconnection Services offering, while not being relied upon in this proceeding, is available as a wholesale service in New Hampshire through Comcast’s Service Guide posted on its website.

In the Application that is the subject of this proceeding, Comcast Phone seeks to bring the benefits of voice competition to additional areas of the state by providing these same services to areas served by subsidiaries of TDS Telecom – Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company (the “TDS Companies”).⁷ The services that Comcast Phone proposes to provide in these territories are telecommunications services that qualify as telephone utility service to the public within the meaning of RSA 362:2, and Comcast Phone has met all of the requirements for certification as a CLEC. Competition is no less in the public interest in the TDS Companies’ territories than it is in the rest of the state. The Commission therefore should reaffirm the decision it made in its Order *Nisi* to grant Comcast Phone’s Application.⁸

PROCEDURAL BACKGROUND

On December 11, 2007, Comcast Phone submitted a CLEC-10 Application, with all required supporting information, proposing to provide telecommunications services as a CLEC in territories of the TDS Companies.⁹ In its Order *Nisi* approving this Application, the Commission recognized that Comcast Phone’s CLEC-10 Application satisfied applicable regulatory requirements.¹⁰ Nonetheless, in response to petitions from

⁷ Only the Kearsarge and Merrimack companies are interveners in this proceeding. Wilton Telephone Company has not intervened. It is party to the settlement approved in *Kearsarge Telephone Co., Wilton Telephone Co., Hollis Telephone Co. And Merrimack County Telephone Co. Petitions for Approval of Alternative Form of Regulation*, DT 07-027, Order No. 24,852, Order Regarding Joint Settlement Agreement (April 23, 2008), and therefore has agreed not to oppose any application for CLEC certification within its service area.

⁸ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Order No. 24,843, Order *Nisi* Granting Application (N. H. Pub. Util. Comm’n, Apr. 4, 2008) (“*Order Nisi?*”).

⁹ As set forth in Footnote 5, as part of this proceeding Comcast also supplemented its CLEC-10 Application on May 29, 2008.

¹⁰ *Order Nisi* at 3 (“Comcast has satisfied the requirements of Puc 431.01 . . .”).

both the TDS Companies and the New Hampshire Telephone Association (“NHTA”),¹¹ the Commission suspended its Order Nisi and commenced an adjudicative proceeding.¹²

At the prehearing conference held on May 21, 2008, after listening to arguments on the grounds for intervention and the issues for hearing, Chairman Getz issued the Commission’s ruling on scope of issues. Chairman Getz declared that the issues to be decided in this proceeding should be limited to the question whether “Comcast qualif[ies] in the first instance and should it be approved, its registration as a CLEC?”¹³ Other issues “about what might happen or might not happen in the future”¹⁴ are outside the scope of the proceeding. These include (1) “enforcement issues that [don’t] go to the issue of whether [Comcast Phone] should be approved in the first instance,”¹⁵ and (2) “jurisdictional issues about other types of operations Comcast may or may not have with respect to Internet services . . . would not be part and parcel to this CLEC application.”¹⁶

The Commission, through Chairman Getz, also proposed that parties conduct a technical session to discuss the issues and see if they could arrive at “a set of stipulated facts” that could abbreviate the proceeding.¹⁷ The parties did so, agreeing to a schedule

¹¹ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Motion by TDS Companies for Suspension of Order No. 24,843 Pending Resolution of Docket No. 24, 843 or, Alternatively, for a Hearing, ¶ 10 (Apr. 16, 2008) (“TDS Companies Petition”); *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Objection by New Hampshire Telephone Association to Order Nisi Granting Application and Request for Hearing, ¶ 6 (Apr. 21, 2008) (“NHTA Petition”).

¹² *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Order No. 24,854, Order Suspending Order Nisi and Scheduling a Prehearing Conference (N. H. Pub. Util. Comm’n, May 2, 2008).

¹³ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Prehearing Conference Transcript, at 33 (May 21, 2008).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 34.

for Comcast Phone to supplement its CLEC-10 Application and a further technical session. Comcast Phone's May 29, 2008 Supplement explains how Comcast uses the terms "local exchange service," "exchange service," "exchange access," and "interexchange service," and also describes three specific services that Comcast intends to provide within the service areas of the TDS Companies: (1) a single line business service (Business Local Service) as currently offered in the FairPoint service area; (2) a high-speed T1 voice and data service to primary and secondary schools, municipal libraries, and other "e-rate" eligible institutions (Schools and Libraries Network Service); and (3) interconnection between a customer's IP-based broadband facilities and the PSTN, as it currently provides to Comcast IP in FairPoint's service area (Local Interconnection Service).

The parties conducted a further technical session on June 12, 2008, and were able to arrive at a set of stipulated facts:

1. Comcast Phone is relying on Business Local Service and Schools and Libraries Network Service as retail telecommunications services for CLEC certification in New Hampshire.
2. Business Local Service is a resale ILEC business service.
3. Comcast Phone states that it plans to offer Schools and Libraries Network Service, an integrated T1 service, which is planned to include a circuit switched voice service.
4. Comcast Phone has discontinued its circuit switched Residential Local Service marketed as Comcast Digital Phone Service.
5. Local Interconnection Service is a wholesale service offered by Comcast Phone.
6. Comcast Phone is not relying on Local Interconnection Service for CLEC certification in New Hampshire.¹⁸

¹⁸ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Stipulated Facts (June 12, 2008).

In this light, as Chairman Getz suggested, this proceeding presents “a very simple and narrow issue. Is there some service that Comcast Phone . . . is going to provide that is a common carrier service?”¹⁹ By virtue of the parties’ stipulation, this simple and narrow issue is whether either the Business Local Service or the Schools and Libraries Network Service qualifies as common carrier service.

ARGUMENT

I. Comcast Phone is a Telecommunications Common Carrier that Meets All Commission Requirements for CLEC Certification.

Business Local Service, Comcast’s current offering, and Schools and Libraries Network Service, which Comcast plans to offer shortly in a formal rate schedule (and which is described in Comcast’s Supplemental filing), are common carrier telecommunications and telephone utility services as defined in New Hampshire law.²⁰ Comcast Phone is undertaking to provide these retail services to the public without discrimination.²¹ In addition, the Business Local Service, Comcast Phone’s current

¹⁹ Prehearing Conference Transcript at 39.

²⁰ Pursuant to the Stipulation, Comcast Phone does not rely on its wholesale Local Interconnection Service (LIS) for purposes of this proceeding. It reserves the right to assert LIS also qualifies the company for certification as a CLEC. The Federal Communications Commission (“FCC”) declared that “common carrier services include services offered to other carriers, such as exchange access service, which is offered on a common carrier basis, but is offered primarily to other carriers.” *Time Warner Cable Request for a Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd. 3513, ¶ 12 (2007). In the same order, the FCC elaborated that “the rights of telecommunications carriers under sections 251 (a) and (b) apply regardless of whether the telecommunications services are wholesale or retail, and a state decision to the contrary is inconsistent with the Act and Commission precedent.” *Id.* ¶ 14. Moreover, because under RSA 362:2 a utility service is a service “ultimately sold to the public,” it need not be offered directly to retail end-users. Wholesale carriers provide service “ultimately sold to the public” by providing service to carriers who offer service to end-users. RSA 362:2. *See also Bright House Networks, LLC v. Verizon California, Inc.*, File No. EB-08-MD-002, Memorandum Opinion and Order, FCC 08-159, ¶¶ 30-33 (rel. June 23, 2008) (holding that provision of local number portability service “is a wholesale input that is a necessary component of a retail telecommunications service” and is therefore a telecommunications service for purposes of 47 U.S.C. § 222(b)).

²¹ *See* RSA 362:2.

common carrier offering in the its existing telecommunications service area, as well as the Schools and Libraries Network T1 service are like other services that have previously been a basis for CLEC certification in New Hampshire. Finally, no grounds have been raised on which to deny Comcast Phone’s Application pursuant to Puc 431.02.

A. Comcast Phone Is Offering Its Retail Services to The Public Without Discrimination.

RSA 362:2 defines a “public utility” in relevant part as a “corporation . . . operating or managing any plant or equipment . . . for the conveyance of telephone or telegraph messages . . . ultimately sold to the public.”²² As the New Hampshire Supreme Court has explained, “a distinguishing characteristic of a public utility is service to the public without discrimination.”²³ Both the Business Local Service and the Schools and Libraries Network Service are currently, or will be shortly, offered “to the public” and “without discrimination.”

The rate schedule submitted by Comcast Phone in support of its CLEC-10 Application makes clear that the company’s Business Local Service is made available to all qualified interested parties without discrimination and is the same service that is currently offered in Comcast Phone’s rate schedule for most of New Hampshire. As a reseller of ILEC business service, Comcast Phone will be conveying telephone messages for the public no less than as a facilities-based carrier, and the Commission has, in the past, certified as CLECs a number of companies offering resale services.²⁴

²² RSA 362:2.

²³ Appeal of Paul Zimmerman, 141 N.H. 605, 609 (N.H. 1997) (internal quotes omitted).

²⁴ See, e.g., *UCN, Inc. Petition for Authority to Provide Facilities Based Competitive Local Exchange Services and to Operate as a Reseller of Telecommunications Services*, Docket No. DT 05-052, Order No. 24,456, Order Nisi Granting Authorization (N. H. Pub. Util. Comm’n, Apr. 15, 2005) (granting “an application to provide resold . . . local exchange telecommunications services”); *Acceris Communications Corp Petition for Authority to Provide Facilities Based CLEC Services and to Operate as a Re-Seller of*

Similarly, the Commission has routinely certified providers of T1 service,²⁵ such as the facilities-based Schools and Libraries Network Service, which also meets the definition of common carrier service. The offering to eligible schools and libraries on an undifferentiated basis makes this service “to the public” as required by the statute. As again explained by the New Hampshire Supreme Court, “the ‘discrimination’ that separates public utilities from private” occurs when “the service provider has a relationship with the service recipient, apart from the service provision itself, that is sufficiently discrete as to distinguish the recipient from other members of the public.”²⁶ Comcast Phone has no relationship with any of the schools or libraries that are potential customers of its service and will offer the service to all qualified schools and libraries without discrimination. It is well-established that the requirement for a common carrier to serve all people indifferently “does not mean that the particular services offered must be available to the entire public; a specialized carrier whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he holds himself out to serve indifferently all potential users.”²⁷

Comcast Phone has shown that it will provide telecommunications services to the public – its Business Local Service and its planned Schools and Libraries Network

Telecommunications Services, Docket No. DT 04-242, Order No. 24,446, Order Nisi Granting Authorization (N. H. Pub. Util. Comm’n, Mar. 24, 2005) (same).

²⁵ See, e.g., *North Atlantic Networks, LLC Petition for Authority to Provide Non-Facilities Based Local Telecommunications Services*, Docket No. DT 04-081, Order No. 24,415, Order Nisi Granting Authorization (N. H. Pub. Util. Comm’n, Dec. 29, 2004) (granting applicant “authority to provide non-switched (private line) service”); *Computer Network Technology Corporation Petition for Authority to Provide Non-Switched Private Line Local Telecommunications Services*, Docket No. DT 03-218, Order No. 24,305, Order Nisi Granting Authorization (N. H. Pub. Util. Comm’n, Apr. 2, 2004) (same).

²⁶ *Appeal of Paul Zimmerman*, 141 N.H. at 609.

²⁷ *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976).

Service. Without question, this qualifies the company as a public utility eligible for certification by the Commission as a CLEC in the TDS Companies' territory.

A. Comcast Phone's Application Meets All the Requirements of Puc 431.01 and 431.02.

No party to this proceeding has shown any reason why Comcast Phone's Application should be denied on the basis of any of the grounds for denial identified in Puc 431.02.²⁸ The TDS Companies suggested at the May 21 Prehearing Conference that the Commission "should explore factually whether [Comcast Phone] intend[s] to be a reseller of TDS's telecommunications service in the TDS exchanges,"²⁹ but this question has been resolved by the Stipulation. Moreover, Puc 431.12 provides a CLEC two years to exercise its CLEC authorization. The specific configuration or business plan to offer this service, or any service, within two years of certification is a matter of "what might happen or might not happen in the future"³⁰ that is beyond the narrow question before the Commission. Comcast Phone has, through the filing of its CLEC-10 Application, met all of the procedural requirements for certification as a CLEC in TDS Companies territory. Its Application should be granted.

²⁸ Puc 431.02 provides, in relevant part, that "[t]he commission shall deny an application for registration if it determines that the applicant or its . . . officers (1) Have committed an act that would constitute good cause to find a violation of authorization pursuant to Puc 431.19; (2) Have, within the 10 years immediately prior to registration, had any civil, criminal or regulatory sanctions or penalties imposed against them pursuant to any state or federal consumer protection law or regulation; (3) Knowingly made a false statement of fact in the application; (4) Demonstrated on its application such flagrant or repeated violations of the requirements to operate as a utility or competitive carrier in other state(s) that the commission determines that it is not in the public good to allow registration."

²⁹ Prehearing Conference Transcript at p. 18.

³⁰ *Id.*

II. Because It Brings The Benefits of Competition to More New Hampshire Residents, Certification of Comcast Phone as a CLEC in TDS Companies Territory Is in the Public Interest.

The Commission has consistently viewed competition in telecommunications services as a benefit to the residents of New Hampshire and over the years has therefore approved the applications of numerous CLECs. Since competitive telephone services were first introduced in New Hampshire more than a decade ago, New Hampshire residents have benefited through lower prices, greater choice, and availability of a broader range of often innovative services. Affirming approval of Comcast Phone as a CLEC in the TDS Companies territory will help to bring these benefits of competition to a significant number of New Hampshire residents who until now have not had the opportunity to enjoy such benefits. That is precisely what the Legislature has indicated should occur by voting to repeal RSA 374:22-f and instead make certification of competitors in the territories of rural ILECs subject to the same standards as apply in the rest of the state.³¹

The New Hampshire statutes authorizing the Commission to grant authority to operate as a CLEC require that the Commission find that the CLEC certification “is consistent with the public good.”³² In its Order Nisi the Commission made just such a finding with regard to certification of Comcast Phone as a CLEC, specifically noting that the Commission had considered “the interests of competition, fairness, economic efficiency, universal service, and carrier of last resort obligations” in making its finding.³³

³¹ SB 0386, General Court 2008 Session (N.H. 2008). SB 0386 was adopted on June 4, 2008 and is currently before the Governor for signature.

³² RSA 374:22-g(I).

³³ Order Nisi at 3.

That finding was not questioned by either the TDS Companies or NHTA in their petitions.

In fact, the Commission established a simple regulatory procedure for registration of CLECs because it recognized the importance of the benefits of competition to New Hampshire residents.³⁴ The established procedure does not envision elaborate investigative proceedings or lengthy evidentiary hearings, but is based on a registration (the CLEC-10) and a quick but thorough review by the Commission. This appears to be the first instance of a hearing held on a New Hampshire CLEC application at the behest of incumbents.

In calling for a focused hearing process, the Commission has recognized that the public interest will not be served by a drawn-out inquiry that only serves to delay competitive entry into the TDS Companies territory. Comcast's CLEC certification process has already been delayed far beyond what has been normal for the Commission.³⁵ Comcast Phone therefore asks the Commission, consistent with its narrowing of the issues for hearing and request for stipulated facts, to act expeditiously in resolving the "simple and narrow" issue before it. Additional delay in bringing competition to residents of the TDS Companies' service area will not serve the public interest.

³⁴ See Puc 431.01.

³⁵ As noted above, the previous CLEC application filed by Comcast Phone's predecessor company was approved by the Commission in thirteen days. See note 1, *supra*.

CONCLUSION

For the reasons described above, the Order Nisi should be affirmed without delay to authorize Comcast Phone as a CLEC in the territory of the TDS Companies.

Respectfully Submitted,



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