

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 08-013

Comcast Phone of New Hampshire, LLC
Request for Authority to Provide Local Telecommunications Services

**Objection by New Hampshire Telephone Association to
Order *Nisi* Granting Application and
Request for Hearing**

The New Hampshire Telephone Association, a New Hampshire voluntary corporation comprised of incumbent local exchange carriers ("NHTA") providing service within New Hampshire, hereby objects to the granting of the relief requested by Comcast Phone of New Hampshire, LLC ("Comcast Phone") in its form CLEC-10 filing, as set forth in order no. 24,843 (the "Order") issued by the Public Utilities Commission (the "Commission") on April 4, 2008, in this docket, and requests a hearing before the Commission on the issues outlined below. In support of its objection and the request for a hearing, NHTA states as follows:

1. NHTA is an association of rural incumbent local exchange carriers operating in New Hampshire. NHTA's members include Merrimack County Telephone Company, Granite State Telephone, Inc., Kearsarge Telephone Company, Inc., Wilton Telephone Company, Inc., Hollis Telephone Company, Dunbarton Telephone Company, Inc., Northland Telephone Company of Maine, Inc., Bretton Woods Telephone Company, Inc., and Dixville Telephone Company.
2. Each of NHTA's members, including the TDS Companies, are a "rural telephone company" as defined within the Communications Act of 1934, as amended (the "Act").

Specifically, each of the TDS Companies and the other members of NHTA meet the standards set forth within Section 153(a)(37) of the Act and are entitled to the exemptions provided by Section 251(f) of the Act. *See* 47 U.S.C. § 153(a)(37) and § 251(f).

3. On or about December 12, 2007, Comcast Phone of New Hampshire, LLC (“Comcast Phone”) filed a Form CLEC-10, CLEC Application for Registration, seeking authority to provide certain telecommunications services as a competitive local exchange carrier (a “CLEC”) within the exchange areas served by Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, Inc. (collectively, the “TDS Companies”).¹

4. The Order, among other things, “directs all persons interested to file written comments or a request for a hearing on or before April 21, 2008”. Given that Comcast Phone’s application “...marks the first time [the Commission] must consider granting a CLEC authorization to operate in a service territory other than the former Verizon territory...”, NHTA has a substantial interest in the outcome of this docket and this Commission’s regulatory approach to Comcast Phone. On behalf of NHTA, the undersigned counsel submit that the issues raised in this pleading warrant further Commission review and a hearing.

5. The form CLEC-10 filed by Comcast Phone identified the three primary telecommunications services to be provided as “access”, “exchange access” and “interexchange service”. In a letter to the Commission dated January 28, 2008, counsel to Comcast Phone stated that the form CLEC-10 sought authorization for Comcast Phone “to provide competitive local

¹ Hollis Telephone Company, Inc. (“HTC”) is an affiliate of the TDS Companies and a member of NHTA. For purposes of this pleading, the reference to the defined term “TDS Companies” includes only the three named entities as noted in paragraph 1. The exclusion of HTC from the definition of “TDS Companies” should not be construed to minimize HTC’s interest in this docket or the resolution of the issues raised in this pleading.

exchange service”. Comcast’s form CLEC-10 does not identify the service described as “access” and “local exchange service” is not listed as a service to be provided in the form CLEC-10. The Commission should investigate and determine what services might be offered as “access” and whether Comcast Phone intends to provide “local exchange service”.

6. Attached to the form CLEC-10 is a rate schedule, issued April 30, 2007, and effective May 1, 2007 (and as amended and supplemented by Comcast Phone, the “Rate Schedule”), containing rates for residential local service and business local service. In the introductory paragraph to the Rate Schedule, on page 1 thereof, Comcast Phone states that the “...Local Exchange service applies to the furnishing of Comcast Digital Phone service by [Comcast Phone] for the use of end users placing and/or receiving local telephone calls within a local calling area, or in placing intrastate calls within the State of New Hampshire.” Yet Section 4.1 of the Rate Schedule appears to indicate that “Basic Exchange Service” is not available to customers attempting to subscribe therefore after October of 2001. Hence, it does not appear as though residential customers within the service area covered by the TDS Companies would be eligible to subscribe to Comcast’s “local exchange service”. If correct, Comcast Phone’s form CLEC-10 fails to disclose the services to be offered and is deficient. This factor further supports the granting of the relief requested herein.

7. Furthermore, attached hereto as Exhibit 1 is Public Notice DA 08-760 released by the Federal Communications Commission (the “FCC”) on March 28, 2008 (the “Public Notice”). The FCC confirmed in the Public Notice that “...Comcast states...that it now intends to discontinue its provision of certain telecommunications services, marketed to the public under the brand name ‘Comcast Digital Phone’ in the Service Areas...” of Massachusetts, New Hampshire, Ohio and Pennsylvania. See Public Notice at p. 1. The FCC noted that, absent

further FCC action, Comcast in fact may terminate its Comcast Digital Phone Service effective April 29, 2008, in the referenced Service Areas. *Id.* at p. 2.² Based upon this information, NHTA further questions the accuracy of Comcast Phone's form CLEC-10 and submits that the filing is deficient.

8. Given that the Public Notice authorizes Comcast Phone to discontinue in New Hampshire its Digital Phone Service on April 29, 2008 (absent further action by the FCC), Comcast Phone should be required to provide (among other things) an application reflective of the actual services to be offered to the residents of the State of New Hampshire, the prices for such services, the manner in which such services will be provided, the nature of any interconnection agreements to be sought, what regulatory agency (if any) will assert jurisdiction over customer complaints, and what entity (if any) will be an eligible telecommunications carrier under the Act. A hearing would allow the Commission to understand these issues and determine other regulatory compliance issues - such as (without limitation) lifeline and link-up compliance, number portability compliance, how Comcast Phone will protect customers privacy and otherwise address Customer Proprietary Network Information related issues, and quality of service measurements as may be applicable. The list is not meant to be exhaustive. For these reasons alone, NHTA's request for a hearing should be granted.

9. In the Order, the Commission noted that it granted, to the extent necessary, Comcast Phone's request for a waiver of Puc 431.01(d). NHTA respectfully submits that Comcast Phone did not meet the standard set forth within Puc 201.05 for such a waiver. No

² The date of discontinuance has been extended until May 15, 2008, by Comcast Phone. As noted in Public Notice DA 08-871, approximately 2,200 customers in New Hampshire and Massachusetts did not receive the necessary service discontinuance notices. *See* Federal Communications Commission Public Notice, DA 08-871, dated April 14, 2008, WC Docket No. 08-052.

record evidence exists to support the contention that the waiver meets the public interest. *See* PUC 201.05(a)(1). There is no record evidence to support a finding that Comcast Phone's submissions meet the requirements of Puc 201.05(a)(2).

10. Moreover, in prefiled direct testimony filed before the Vermont Public Service Board in Docket No. 7316, on April 17, 2008, Comcast Phone of Vermont, LLC ("Comcast Vermont"), has described an entirely different structure for the provision of an internet-based service. Assuming that Comcast Phone intends to deploy the same service in New Hampshire as deployed by Comcast Vermont, the Comcast Phone application does not disclose what service will be provided by Comcast Phone, what affiliate will provide the internet protocol-based service, and what common carrier service, if any, Comcast Phone intends to provide. A copy of the prefiled direct testimony of Mr. David Kowolenko³ filed on behalf of Comcast Vermont in Public Service Docket No. 7316, Investigation into Regulation of VoIP Services, is attached hereto as Exhibit 2 for the Commission's consideration.

11. For example, Mr. Kowolenko explains that Comcast Vermont is the entity that enters into interconnection agreements with telecommunications providers for the exchange of traffic, and otherwise holds certain other rights and obligations. This entity appears to have a "partner" and a sole customer, an affiliated entity known as Comcast IP Phone II, LLC d/b/a Comcast Digital Voice ("Comcast IP"). Apparently, in Vermont, it is Comcast IP which provides services to residents of the State of Vermont. *See* Prefiled Direct Testimony of Mr. David Kowolenko, at 6:8 - 7:5, 9:1-21 (Exhibit 2). This Commission, NHTA, the TDS Companies and all other interested parties have the right to know whether the model of service

³ Mr. Kowolenko is the officer of Comcast Phone who verified the accuracy of the form CLEC-10 in the present docket.

being provided by Comcast Vermont in fact is the model destined for New Hampshire and what regulatory structure is applicable to Comcast Phone.

12. Proceedings have been initiated in the State of Vermont to address the proper regulatory scheme applicable to VoIP providers. Attached hereto as Exhibit 3 is the order from the Vermont Public Service Board opening a generic investigation to address three broad concepts related to the provisioning of VoIP services: (i) whether Vermont law applies to VoIP services; (ii) the extent to which federal law preempts Vermont law with regard to VoIP services; and (iii) to the extent federal law does not preempt Vermont law, the degree of regulation that should apply to VoIP providers in comparison to the regulatory requirements applicable to other telephone carriers in Vermont. *See* Order Opening Investigation and Notice of Prehearing Conference, dated May 16, 2007, p. 1 (Exhibit 3) (the “Vermont Proceedings”).

13. The Vermont Proceedings provide some information with respect to how Comcast Phone may act in New Hampshire if the Comcast Vermont model is applied in this jurisdiction. It has been alleged in the Vermont Proceedings that Comcast Vermont violated certain tariff provisions and failed to disclose certain information with respect to its operations and affiliations. Apparently, Comcast Vermont claimed to maintain its status as a “cable company” even though it sought (and gained approval) to operate as a provider of telecommunications services. Based upon the classification as a “cable company”, Comcast Vermont refused to pay pole attachment rates applicable to telephone companies. *See* Memorandum of Law in Support of Motion to Intervene, filed by City of Burlington Electric Light Department, dated March 19, 2008, at pp. 2-3, attached hereto as Exhibit 4.

14. Similar issues should be examined in New Hampshire, obviously based upon New Hampshire law, in the event Comcast Phone truly plans to operate in New Hampshire based

upon the same model as Comcast Vermont. This Commission, and all interested parties, need to know whether Comcast Phone plans to operate as a telecommunications provider or a cable company. This Commission, and all interested parties, need to know how Comcast Phone plans to provide services and what services it plans to offer. Parties should not be in the position of learning Comcast Phone's true intent and its true operating model after it begins operations in the TDS Companies' service territory. At the present time, it is not clear what model Comcast Phone plans to utilize for the provision of service in the TDS Companies' service territory. Therefore, NHTA can not yet ascertain the need for a separate docket to investigate such issues. NHTA, however, reserves its rights to request that such an investigation be undertaken in a separate docket by the Commission.

15. Additional issues arise worthy of this Commission's review. In the State of Maine, for instance, proceedings have been ongoing at the Maine Public Utilities Commission (the "MPUC") concerning a CLEC's request to interconnect with several Maine-based rural incumbent local exchange carriers (the "ILECs") in Docket 2007-611. Recently, a Maine Hearings Examiner determined that rural ILECs are exempt from the obligation to negotiate an interconnection agreement with CLECs pursuant to Section 251(f) of the Act. Essentially, the Hearings Examiner found that rural ILECs are not exempt from obligations arising under Sections 251(a) and 251(b) under the Act, but that such ILECs do not owe a duty to negotiate agreements with CLECs to fulfill the requirements of these sections of the Act absent the lifting of any existing rural exemption. *See* Examiners Report, April 2, 2008, Maine Public Utilities Commission Docket 2007-611 at pp. 22-23 (attached here to as Exhibit 5).

16. As with the above-referenced MPUC proceedings, whether the TDS Companies must negotiate interconnection agreements with Comcast Phone may become an issue in this

proceeding or a future proceeding. Until and unless this Commission terminates the TDS Companies' rural exemptions, NHTA submits that the TDS Companies owe no duty to CLECs to negotiate agreements with CLECs for service that may be required pursuant to Sections 251(a) and 251(b) of the Act.⁴ These issues are of central importance to all rural ILECs in New Hampshire. In that regard, NHTA supports the filing made by the TDS Companies (including HTC) in this docket on Wednesday, April 16, 2008.

WHEREFORE, NHTA requests that this Commission commence an adjudicative proceeding and any other necessary investigation in order to consider all issues raised by the Comcast Phone registration request as set forth herein.

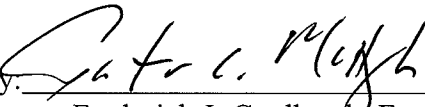
Respectfully submitted,

NEW HAMPSHIRE TELEPHONE
ASSOCIATION

By Its Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: April 21, 2008

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⁴ NHTA acknowledges that this issue may become moot in this specific docket in the event the Commission approves of the settlement agreement among various parties to Docket DT 07-027 (the "AFOR Docket"). Furthermore, NHTA understands that in the event the Commission issues an order approving the settlement agreement in the AFOR Docket, then TDS fully intends to comply with the provisions requiring it to waive its rural exemption and not oppose CLEC certification requests.

CERTIFICATE OF SERVICE

I hereby certify that a PDF copy of the foregoing objection was forwarded this day to the parties by electronic mail.

Dated: April 21, 2008

By: 
Patrick C. McHugh, Esq.