



## Argument

The TDS Companies' primary assertion of qualification to intervene is that they "have a substantial and direct interest in the outcome of the proceedings" because "Comcast Phone seeks to provide some form of competitive telecommunications service in the service territory of three of the TDS Companies, and (undoubtedly) will seek some form of interconnection with the TDS Companies' telecommunications facilities."<sup>4</sup> As the PUC has explained, "merely being interested in such a proceeding is not the same as having a legal interest of some nature that may be affected by the proceeding."<sup>5</sup> To qualify as an intervenor, a petitioner must demonstrate "a legal nexus to the outcome of [the prospective] decision."<sup>6</sup> The TDS Companies fail to demonstrate such a nexus.

The Commission's *Order Nisi* granted Comcast Phone's application for authority to provide local telecommunications services as a competitive local exchange carrier ("CLEC") in the territories of Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company.<sup>7</sup> In doing so, the Commission applied the provisions of Puc Part 431 of the New Hampshire Code of Administrative Rules requiring a CLEC to register with the PUC before providing local exchange services.<sup>8</sup> The Commission granted the petition upon a finding that Comcast Phone had "satisfied the requirements of Puc 431.01(c) and RSA 374:22."<sup>9</sup>

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<sup>4</sup> TDS Companies Petition at ¶ 2.

<sup>5</sup> *North Atlantic Energy Corporation, the United Illuminating Company, New England Power Company, New Hampshire Electric Cooperative, Inc. and Canal Electric Company Proceeding to Approve the Sale of Seabrook Station Interests*, DE 02-075; Order No. 24,007, Order Denying Rehearing (July 8, 2002).

<sup>6</sup> *Id.*

<sup>7</sup> Comcast Phone of New Hampshire, LLC Request for Authority to provide Local Telecommunications Services, DT 08-013; Order No. 24,843, Order Nisi Granting Application, at 3 (Apr. 4, 2008) ("*Order Nisi*").

<sup>8</sup> *Order Nisi* at 2.

<sup>9</sup> *Order Nisi* at 3.

The TDS Companies assert as an interest in this proceeding that “Comcast Phone seeks to provide some form of competitive telecommunications service in the service territory of three of the TDS companies.”<sup>10</sup> But nothing in Puc 431 requires the Commission to take into account whether the CLEC seeking registration will compete with incumbent local exchange carriers (“ILECs”), and certainly the regulatory framework for registration of CLECs assumes that they will do so. While the TDS Companies naturally are interested – in the sense of curiosity or concern – in the registration of a potential competitor in their service areas, there is no legal interest at stake for the TDS Companies. That CLECs should be allowed to provide competitive telecommunications services in competition to ILECs has long been settled by Congress, the Federal Communications Commission (“FCC”), the New Hampshire Legislature, and the Commission.

The grounds for denial of a CLEC registration under Puc Part 431 are set out in Puc 431.02.<sup>11</sup> The TDS Companies do not allege that Puc 431.02 is at issue, nor do their factual allegations support a claim that the Comcast Phone registration should be denied on any of the enumerated grounds. Thus, there is no legal nexus between the various issues the TDS Companies seek to raise and the narrow issues that are before the PUC on a CLEC registration pursuant to Puc 431.

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<sup>10</sup> TDS Companies Petition at 1-2.

<sup>11</sup> Section 431.02 requires the PUC to reject an application for CLEC registration when the CLEC 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 material 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 a competitive carrier in other state(s) that the commission determines that it is not in the public good to allow registration.”

Instead of grounds relevant to the standard for certification, the TDS Companies and seek to resolve in advance issues for which there are existing mechanisms that can provide resolution without delaying entry. The TDS Companies assert an interest on the basis that Comcast Phone “(undoubtedly) will seek some form of interconnection with the TDS Companies’ telecommunications facilities.” While this may be another area of curiosity for the TDS Companies, no legal interest related to interconnection between Comcast Phone and the TDS Companies is relevant to this proceeding. The mechanisms for addressing interconnection rights and obligations of CLECs and ILECs are well-established under 47 U.S.C. §§ 251 and 252, FCC regulations at 47 C.F.R. §§ 51.301-05, and numerous FCC orders and New Hampshire Commission arbitration decisions implementing these provisions. Since the *Order Nisi* was issued, the TDS Companies voluntarily agreed to enter into negotiations with Comcast Phone toward an agreement for interconnection services.<sup>12</sup> This obviates certain issues and, in the event the parties are unable to agree on the terms of interconnection, they can present disputes to the Commission in an arbitration proceeding just like the many other interconnection disputes the Commission has resolved after certification of CLECs.

In the same vein is the TDS Companies’ assertion of an interest “to the extent that any issues studied involve or relate to the access services provided by the TDS Companies.”<sup>13</sup> There is no reason for the PUC to decide issues relating to access services in this proceeding. Such issues can be resolved in the context of the interconnection negotiations or subsequent intercarrier billing.

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<sup>12</sup> Letter from Linda Lowrance, Manager-Carrier Relations, TDS Telecom to Beth Choroser, Comcast Phone (Apr. 29, 2008).

<sup>13</sup> TDS Companies Petition ¶ 4.

Any interest in the rural exemption is likewise premature. The PUC specifically noted that its *Order Nisi* was “not intended to affect TDS’s right to assert the ‘rural exemption’” under federal interconnection law.<sup>14</sup> Section 251(f) of the Telecommunications Act specifically provides for this Commission to determine upon petition that an interconnection request received by the rural carrier “is not unduly economically burdensome, is technically feasible, and is consistent with [the federal universal service statute]” in order to trigger interconnection obligations.<sup>15</sup> No such waiver request has been made. Until one is, there is no basis to resolve this rural exemption.

As Comcast Phone explained in its Opposition to the Motion to Suspend, the issues TDS raised in its Motion are purely speculative and “overreach[ ] any entry, tariff, or service regulation under New Hampshire law or regulations.”<sup>16</sup> The “imaginative array of issues” raised by the TDS Companies in their Motion to Suspend are, in any case, all related to the type and extent of services Comcast Phone intends to provide. None of the issues raised, even should they be considered by the PUC in this proceeding,<sup>17</sup> have any potential to affect the “rights, duties, privileges, immunities or other substantial interests” of the TDS Companies. Consequently, they serve as no basis for intervention.

The asserted interest of the TDS Companies in “monitoring this Docket to ensure that the TDS Companies’ interests are accurately depicted and represented during the course of the investigation” does not warrant intervention under the circumstances of this

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<sup>14</sup> *Order Nisi* at 3.

<sup>15</sup> 47 U.S.C. § 251(f).

<sup>16</sup> Objection to Motion to Suspend at 5.

proceeding. Nothing in the Comcast Phone CLEC-10 registration refers to the TDS Companies other than simply identifying service territories, which are not a matter of dispute. Nothing in the issues presented under Puc 431 requires any findings with regard to the TDS Companies or any adjudication of their interests. The TDS Companies do not need to be a party to the proceeding to monitor it and PUC regulations allow non-parties to have “an opportunity at a hearing or prehearing conference to state their position.”<sup>18</sup>

Even more remote is the TDS Companies’ assertion that they are entitled to intervene based on the impact on “ratepayers who live within the TSA [sic] Companies’ service territory and all other parties to this docket.”<sup>19</sup> The TDS Companies do not by any stretch represent ratepayers or other parties to this docket, so the extent (if any) of impact of PUC rulings on those parties serves as no basis for intervention by the TDS Companies.

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<sup>17</sup> As Comcast Phone explained in its Objection to the Motion to Suspend, the issues raised by TDS Telecom are irrelevant to this proceeding and need not be considered by the PUC.

<sup>18</sup> Puc 203.18.

<sup>19</sup> TDS Companies Petition ¶ 3. The TDS Companies in turn ask to incorporate by reference its Objection to the Motion to Suspend, filed in this docket on Apr. 28, 2008.

## Conclusion

The TDS Companies have not established the “facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” required to warrant intervention as a party to this proceeding. Accordingly, the TDS Companies’ Petition to Intervene should be denied.

Respectfully Submitted,



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