

**BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

In the matter of:

Petition of Comcast Phone of New Hampshire, LLC)
d/b/a Comcast Digital Phone for Arbitration of)
Rates, Terms and Conditions of Interconnection with)
Kearsarge Telephone Company d/b/a TDS Telecom,)
Merrimack County Telephone Company d/b/a TDS) DOCKET NO. 08-162
Telecom and Wilton Telephone Company, Inc. d/b/a)
TDS Telecom Pursuant to the Communications Act)
of 1934, as Amended)

TESTIMONY OF
DOUGLAS DUNCAN MEREDITH
ON BEHALF OF
KEARSARGE TELEPHONE COMPANY D/B/A TDS TELECOM
MERRIMACK COUNTY TELEPHONE COMPANY D/B/A TDS TELECOM, AND
WILTON TELEPHONE COMPANY, INC. D/B/A TDS TELECOM

1 **I. Introduction**

2 **Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT
3 AND POSITION.**

4 A: My full name is Douglas Duncan Meredith. I am employed by John
5 Staurulakis, Inc. ("JSI") as Director – Economics and Policy. JSI is a
6 telecommunications consulting firm headquartered in Greenbelt, Maryland.
7 My office is located at 547 Oakview Lane, Bountiful, Utah 84010. JSI has
8 provided telecommunications consulting services to rural local exchange
9 carriers since 1963.

10 **Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND
11 EDUCATIONAL BACKGROUND.**

12 A: As the Director of Economics and Policy at JSI, I assist clients with the
13 development of policy pertaining to economics, pricing and regulatory
14 affairs. I have been employed by JSI since 1995. Prior to my work at JSI, I
15 was an independent research economist in the District of Columbia and a
16 graduate student at the University of Maryland – College Park.

17
18 In my employment at JSI, I have participated in numerous proceedings for
19 rural and non-rural telephone companies. These activities include, but are not
20 limited to, the creation of forward-looking economic cost studies, the
21 development of policy related to the application of federal safeguards for
22 rural local exchange carriers, the determination of Eligible
23 Telecommunications Carriers pursuant to the Communications Act of 1934,
24 as amended ("Act"), and the sustainability and application of universal
25 service policy for telecommunications carriers.

26
27 In addition to assisting telecommunications carrier clients, I have served as
28 the economic advisor for the Telecommunications Regulatory Board of

1 Puerto Rico since 1997. In this capacity, I provide economic and policy
2 advice to the Board Commissioners on all telecommunications issues that
3 have either a financial or economic impact. I have participated in numerous
4 Arbitration panels established by the Board to arbitrate interconnection issues
5 under Section 252(b) of the Telecommunications Act of 1996 (the “Act”).
6

7 I am participating or have participated in numerous national incumbent local
8 exchange carrier and telecommunications groups, including those headed by
9 NTCA, OPASTCO, USTA, and the Rural Policy Research Institute. My
10 participation in these groups focuses on the development of policy
11 recommendations for advancing universal service and telecommunications
12 capabilities in rural communities and other policy matters.

13
14 I have testified or filed pre-filed regulatory testimony in various states
15 including New Hampshire, Vermont, Maine, New York, Michigan,
16 Wisconsin, North Dakota, South Dakota, South Carolina, Texas, Kentucky,
17 Utah, and Tennessee. I have also participated in regulatory proceedings in
18 many other states that did not require formal testimony, including Florida,
19 Louisiana, Mississippi, North Carolina, Puerto Rico and Virginia. In
20 addition to participation in state regulatory proceedings, I have participated in
21 federal regulatory proceedings through filing of formal comments in various
22 proceedings and submission of economic reports in an enforcement
23 proceeding.
24

25 I have a Bachelor of Arts degree in economics from the University of Utah,
26 and a Masters degree in economics from the University of Maryland –
27 College Park. While attending the University of Maryland – College Park, I
28 was also a Ph.D. candidate in Economics. This means that I completed all
29 coursework, comprehensive and field examinations for a Doctorate of
30 Economics without completing my dissertation.

1 **Q: ON WHOSE BEHALF ARE YOU TESTIFYING?**

2 A: I am testifying in this consolidated docket on behalf of Kearsarge Telephone
3 Company d/b/a TDS Telecom, Merrimack County Telephone Company d/b/a
4 TDS Telecom, and Wilton Telephone Company d/b/a TDS Telecom (“Rural
5 Telephone Companies” or “RTCs”).

6 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A: My purpose in providing this testimony to the New Hampshire Public
8 Utilities Commission (“Commission” or “PUC”) is to respond to the Petition
9 for Arbitration and the pre-filed direct testimony of Beth Choroser filed on
10 behalf of Comcast Phone of New Hampshire, LLC d/b/a Comcast Digital
11 Phone (“Comcast Phone”).¹ I offer my professional opinion that due to the
12 circumstances surrounding the status of Comcast Phone and the services it
13 offers, Comcast Phone is not eligible for interconnection with the RTCs
14 under Section 251 of the Act nor is it eligible to petition for arbitration under
15 Section 252 of the Act.

16 **Q: PLEASE SUMMARIZE YOUR TESTIMONY.**

17 A: The single issue in this Arbitration is whether Comcast Phone is entitled to a
18 Section 251/252 interconnection agreement with the RTCs. I will
19 demonstrate that at present Comcast Phone is not so entitled. I provide
20 testimony demonstrating that Comcast Phone does not qualify as a
21 telecommunications carrier, as defined by the Act, in the service territories of
22 the RTCs. It is therefore not entitled to request arbitration pursuant to
23 Section 252 of the Act. Furthermore, I provide testimony revealing that

¹ *In the matter of Petition of Comcast Phone of New Hampshire, LLC d/b/a Comcast Digital Phone for Arbitration of Rates, Terms and Conditions of Interconnection with Kearsarge Telephone Company d/b/a TDS Telecom, Merrimack County Telephone Company d/b/a TDS Telecom and Wilton Telephone Company, Inc. d/b/a TDS Telecom Pursuant to the Communications Act of 1934, as Amended. Docket No. DT 08-162, Petition for Arbitration of Comcast Phone of New Hampshire, LLC, (Dec. 12, 2008) (“Petition”), Direct Testimony of Beth Choroser, (undated) (“Choroser Direct”).*

1 Comcast Phone is not seeking interconnection for telecommunications
2 services and accordingly is not eligible to interconnect according to the
3 provisions of Section 251 of the Act. It is therefore consistent with federal
4 policy and in the public interest of New Hampshire to dismiss Comcast
5 Phone's request for arbitration.

6 **II. Comcast Phone's Request for Interconnection**

7 **Q: PLEASE DESCRIBE COMCAST PHONE'S REQUEST FOR**
8 **INTERCONNECTION.**

9 A: Comcast Phone seeks to interconnect with the RTCs to enable another
10 Comcast Corporation cable based subsidiary to provide a voice-over-the-
11 Internet-protocol ("VoIP") service over Comcast's existing cable facilities.
12 Comcast Phone asserts that it intends to offer Business Local Service,
13 Schools and Libraries Network Service, access service and Local
14 Interconnection Service ("LIS") in the areas served by the RTCs and
15 consequently is eligible for an interconnection agreement with the RTCs.
16 Comcast Phone's request for interconnection and proposed interconnection
17 agreement with the RTCs focuses on its LIS service. Comcast Phone's
18 proposed interconnection with the RTCs would permit an interconnected
19 VoIP provider, affiliated with Comcast Phone, to offer service in the RTC's
20 service territories. Consequently, this arbitration highlights important issues
21 related to how VoIP services are treated in New Hampshire and whether
22 private carriers that provide transport service for VoIP retail service are
23 entitled to interconnect with the RTCs.

24 **III. Comcast Phone Is Not a Common Carrier in the**
25 **RTCs' Service Territories**

26 **Q: IS COMCAST PHONE'S REQUEST FOR INTERCONNECTION**
27 **APPROPRIATE?**

1 A: No. Comcast Phone is not eligible to seek Section 252 arbitration for Section
2 251 interconnection.

3 **Q: PLEASE EXPLAIN WHY COMCAST PHONE'S IS NOT ELIGIBLE**
4 **FOR SECTION 251 INTERCONNECTION.**

5 A: First, Comcast Phone is ineligible because it is not a common carrier in the
6 RTCs service territories. Only telecommunications carriers offering
7 telecommunications services as common carriers have the right to obtain
8 interconnection under Section 251 of the Act.

9 **Q: INASMUCH AS COMCAST PHONE PRIMARILY RELIES ON ITS**
10 **LOCAL INTERCONNECTION SERVICE ("LIS") FOR THE**
11 **PRESENT INTERCONNECTION REQUEST, DOES THAT SERVICE**
12 **QUALIFY COMCAST PHONE AS A COMMON CARRIER?**

13 A: No. Comcast Phone is not a common carrier for purposes of its LIS Service
14 because it does not hold itself out to serve the public in general on a non-
15 discriminatory basis pursuant to generally available rates, terms and
16 conditions. Despite having a published document entitled "Local
17 Interconnection Service Guide,"² there are several important aspects of this
18 service offering that are characteristic of a private, individualized service
19 offering, not a common carrier offering.

20 **Q: BEFORE I ASK YOU ABOUT THE SPECIFICS OF COMCAST**
21 **PHONE'S LOCAL INTERCONNECTION SERVICE, PLEASE**
22 **DESCRIBE WHAT IT MEANS TO BE OFFERING A SERVICE ON A**
23 **COMMON CARRIER BASIS?**

24 A: My general understanding is that a telecommunications carrier is offering its
25 telecommunications services on a common carrier basis when it "hold[s]

² See Choroser Direct, page 9, footnote 7. This guide also may be found on the world wide web at:
http://www.comcast.com/medialibrary/1/1/about/phonetermsofservice/pdf/interconnection/local_interconnection_service.pdf ("LIS Guide")

1 oneself out indiscriminately” to the public.³ Thus, “a carrier will not be a
2 common carrier where its practice is to make individualized decisions, in
3 particular cases, whether and on what terms to deal.”⁴

4 **Q: CAN COMCAST PHONE “SELF-CERTIFY” THAT IT IS A
5 COMMON CARRIER?**

6 A: No. Comcast Phone asserts in its Petition that it may self-certify as a
7 common carrier and avoid meaningful review by this Commission.⁵ It cites
8 the *Bright House*⁶ case to support its conclusion. In addition, Ms. Choroser
9 cites *Bright House* as part of her discussion of Comcast Phone’s Local
10 Interconnection Service.⁷ In my opinion, Comcast Phone errs in its attempt
11 to apply *Bright House* as controlling precedent in this proceeding.

12
13 In *Bright House*, the FCC determined that “based on the specific record of
14 [that] case” Comcast-affiliated competitive carriers “provide
15 ‘telecommunications services’ . . . *within the meaning of section 222(b) of the*
16 *Act.*”⁸ The FCC emphasized that “[its] holding is limited to the particular
17 facts and the particular statutory provisions at issue” in that case, namely
18 section 222(b) of the Act.⁹ The FCC went on to state that its decision does
19 not necessitate a finding that Comcast is a telecommunications carrier “for

³ See, e.g., *National Association of Regulatory Utility Commissioners v. FCC*, as amended, 525 F2d 630 (Jan. 28, 1976) (“NARUC I”); see also *Southwestern Bell Telephone Company v. Federal Communications Commission*, 19 F.3d 1475 at ¶ 12 (Apr. 5, 1994) (“Southwestern Bell Decision”).

⁴ See NARUC I.

⁵ See Petition, p. 13.

⁶ *Bright House Networks, LLC v. Verizon California, Inc.*, Memorandum Opinion and Order, 23 FCC 10704 (2008) (“Bright House”).

⁷ See Choroser Direct, p. 12.

⁸ *Id.* at ¶¶ 39 & 41 (emphasis added).

⁹ *Id.* at ¶ 41.

1 the purpose of all other provisions of the Act.”¹⁰ Furthermore, the FCC has
2 left to the states to determine whether a carrier is a common carrier providing
3 a telecommunications service where that carrier seeks section 251
4 interconnection rights for the purpose of providing a wholesale
5 interconnection service.¹¹ Therefore, in accordance with the FCC’s decision
6 in the *Time Warner Declaratory Ruling*, it is this Commission, and not
7 Comcast Phone, that determines the eligibility of Comcast Phone as a
8 common carrier for purpose of section 251 interconnection.¹²

9 **Q: WHY SHOULD THE COMMISSION FIND THAT COMCAST
10 PHONE IS NOT OFFERING ITS LIS ON A COMMON CARRIER
11 BASIS?**

12 A: There are several reasons supporting the conclusion that Comcast Phone’s
13 LIS is not being offered on a common carrier basis. Comcast Phone’s LIS
14 Guide is without specific provisions that would actually govern the terms and
15 conditions of service. According to the LIS Guide, LIS is a highly restricted
16 service offering. First, LIS is only available via *bona fide* customer
17 requests.¹³ The conditions that qualify a *bona fide* request are not described in
18 the LIS Guide. Comcast Phone also limits its offering to those areas where it
19 unilaterally determines that it is economically feasible to provide the service
20 – this unilateral limitation is in addition to the requirement that suitable

¹⁰ *Id.*

¹¹ See *Time Warner Cable Request for 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*, Memorandum Opinion and Order, WC Docket N. 06-55, ¶ 14 (March 1, 2007) (“Time Warner Declaratory Ruling”). The FCC also stated, “we do not find it appropriate to revisit any state commission’s evidentiary assessment of whether an entity demonstrated that it held itself out to the public sufficiently to be deemed a common carrier under well-established law.” *Id.* at ¶ 17 In the *Time Warner Declaratory Ruling*, the FCC made clear that “the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services.” *Id.* at ¶ 12.

¹² *See id.*

¹³ LIS Guide, Sections 1(B) and (C).

1 facilities must exist and where facilities are technologically available.¹⁴ The
2 guide also shows draconian financial provisions that effectively serve as a
3 poison pill for any unaffiliated third party retail VoIP provider. The term of
4 the service is three years and any termination of the agreement requires the
5 retail VoIP provider to pay 100 percent of all monthly recurring rates for the
6 remaining months left in the contract.¹⁵ This poses two problems. First,
7 Comcast Phone can discontinue service by giving a 24 hour written notice for
8 nonpayment of any amounts billed.¹⁶ This unilateral provision does not
9 account for possible disputed amounts billed incorrectly by Comcast Phone.¹⁷
10 Furthermore, charges are developed on a case-by-case basis and can be
11 revised on one month's notice.¹⁸ Thus, Comcast Phone has the sole
12 discretion to set the rates for LIS, modify these rates on a one-month advance
13 notice and charge these higher rates, even if a termination occurs, for the
14 remaining months of the term. It is apparent that Comcast Corporation's
15 retail VoIP subsidiary is the only VoIP provider that would not be severely
16 disadvantaged from the termination provision – in this event the LIS
17 termination penalty would be paid by one Comcast Corporation entity –
18 namely Comcast IP Phone II, LLC ("Comcast IP") - to another Comcast
19 Corporation entity, namely Comcast Phone.¹⁹ Therefore, it is apparent that

¹⁴ *Id.*, Section 3(C).

¹⁵ *Id.*, Sections 5(A) and (B).

¹⁶ *Id.*, Section 5(C)(1).

¹⁷ Note that the proposed interconnection agreement in this case has several measures for dispute resolution and notifications prior to termination of the agreement or termination of traffic exchange. In fact, a Comcast Phone affiliate has taken the position in arbitration proceedings before the Vermont Public Service Board, in Docket No. 7469, Petition of Vermont Telephone Company, Inc. and Comcast Phone of Vermont, LLC d/b/a Comcast Digital Phone for arbitration of an interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996 and Applicable State Laws, that a carrier should not have any unilateral rights to block traffic or terminate the agreement.

¹⁸ LIS Guide, Sections 11(A) and (B).

¹⁹ The Comcast affiliate that intends to utilize Comcast Phone's LIS service is Comcast IP Phone II, LLC. This retail affiliate is identified by Mr. David J. Kowolenko, in New Hampshire Public Utilities Commission Docket No. DT-08-013, Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services, page 3 line 17 – page 4 line 2 ("Kowolenko Direct").

1 the LIS service will likely be used only to serve Comcast IP's retail service
2 and not be used by any competing retail VoIP service provider.

3

4 Although a single basic rate element is listed in the guide for a Local
5 Interconnection Port, the actual local interconnection recurring and non-
6 recurring charges are determined on an individual case basis under
7 individualized considerations.²⁰ Comcast Phone also develops a charge for
8 "All Other Bandwidths" on an individual case basis.²¹ Thus, Comcast Phone
9 is able to make individualized decisions with respect to the rates charged for
10 its LIS.

11

12 It appears that Comcast Phone's LIS Guide is a fig leaf covering designed to
13 reply to the obvious conclusion that Comcast Phone's wholesale offering is
14 intended to be private carriage for Comcast IP's retail VoIP offerings.
15 Comcast Phone is able to make individualized decisions with respect to its
16 wholesale service agreements, and dictate on which terms it wishes to deal.
17 Furthermore, these wholesale agreements are not filed with any state or
18 federal authority so "there is no specific regulatory compulsion to serve all
19 indifferently."²²

20 **Q: IF COMCAST PHONE IS PROVIDING ANOTHER SERVICE ON A
21 COMMON CARRIER BASIS IN ANOTHER AREA OF NEW
22 HAMPSHIRE, DOES THAT SUGGEST OR IMPLY THAT IT IS A
23 COMMON CARRIER IN THE RTCS' SERVICE TERRITORIES?**

²⁰ LIS Guide, p. 12. A notation to the Local Interconnection Service monthly recurring charge indicates that the monthly rate will be based in part on "customer-determined factors."

²¹ *Id.*

²² See Southwestern Bell Decision at ¶ 15 (stating "If the carrier chooses its clients on an individual basis and determines in each particular case 'whether and on what terms to serve' and there is no specific regulatory compulsion to serve all indifferently, the entity is a private carrier for that particular service and the Commission is not at liberty to subject the entity to regulation as a common carrier."). While such an entity is not subject to being regulated as a common carrier, such entity is also not entitled to rights of common carriers.

1 A: No. A carrier can be a common carrier with respect to some of its activities
2 and not with respect to others.²³ For example, if Comcast Phone were
3 offering local exchange services on a common carrier basis in other parts of
4 New Hampshire, it does not follow that Comcast Phone is offering its
5 wholesale services in the RTCs' service territories on a common carrier
6 basis.

7 Q: **IF COMCAST PHONE IS NOT A COMMON CARRIER FOR ITS
8 WHOLESALE SERVICES IN THE RTCS' SERVICE AREAS, DOES
9 IT QUALIFY FOR SECTION 251 INTERCONNECTION?**

10 A: No.

11 Q: **COMCAST PHONE REFERENCES A BUSINESS LOCAL SERVICE
12 IN ITS PETITION. DOES PROVIDING THIS SERVICE QUALIFY
13 COMCAST PHONE AS A COMMON CARRIER?**

14 A: This business local service does not qualify Comcast Phone as a common
15 carrier. It is apparent that the "resold single line business service"²⁴ is offered
16 as "window dressing" with no indication or evidence that any customer
17 actually buys the resold service. Where Comcast Phone offers this service in
18 New Hampshire today, Comcast Phone's price is well above the prices at
19 which the same service is available from FairPoint.²⁵ These considerations
20 demonstrate, in my opinion, that this disingenuous offering is not at all a
21 bona fide offering. It appears likely that this service from Comcast Phone is
22 offered as a pretense in an effort to obtain common carriage designation and

²³ See Southwestern Bell Decision at ¶ 17 (stating "it is at least logical to conclude that one can be a common carrier with regard to some activities but not others.")

²⁴ Kowolenko Direct, page 3 line 14-15.

²⁵ Compare the retail tariff of Verizon New England Inc. adopted by Northern New England Telephone Operations LLC on the world wide web at http://www.puc.state.nh.us/Regulatory/Tariffs/FairPoint_83/FairPointLST.HTM to Section 2 of Comcast Phone's New Hampshire Rate Schedule No. 1 (attached as Exhibit E to Comcast Phone's Petition).

1 is not offered with any intent to enter legitimately into the single line
2 business marketplace.

3 **Q: DOES COMCAST PHONE'S SCHOOL AND LIBRARY OFFERING**
4 **QUALIFY IT AS A COMMON CARRIER?**

5 A: No. Comcast Phone's Schools and Libraries service offering is provided to a
6 very limited select group. Specifically, one must pre-qualify for a federal
7 discount program and meet other qualifying criteria before being able to
8 receive this service. These factual considerations suggest that Comcast
9 Phone's Schools and Libraries service offering may well not qualify as a
10 common carrier service.

11 **Q: DOES COMCAST PHONE'S ALLEGED ACCESS SERVICE**
12 **OFFERING QUALIFY IT AS A COMMON CARRIER IN THE RTCS'**
13 **SERVICE TERRITORIES?**

14 A: No. Access service enables end user customers to make and receive toll calls
15 from their selected interexchange carrier (IXC). If Comcast Phone has no
16 retail end user customers due to the discontinuance of its retail local
17 exchange service offerings, it cannot be the terminating access service
18 provider. Comcast Phone merely passes interexchange traffic to the provider
19 serving the end-user customer.

20
21 Furthermore, the service described by Comcast Phone is not offered in the
22 RTCs' service territories. Instead, Comcast Phone receives the interexchange
23 carrier's traffic at the FairPoint tandem (most likely located in Manchester,
24 New Hampshire) and delivers this traffic to the Comcast VoIP service
25 provider that is likely to have its switch at its headend location outside the
26 RTC service territory.²⁶ Thus, Comcast Phone does not offer any access or

²⁶ Before the Vermont Public Service Board, in Docket No. 7316, Investigation Into Regulation of Voice Over Internet Protocol Services, a witness testifying for a Comcast Phone affiliate testified that the VoIP switch is located in Massachusetts.

1 interexchange service in the RTCs service territories that would remotely
2 qualify it as a common carrier.

3 **Q: LASTLY, DO ANCILLARY SERVICES PROVIDED IN**
4 **CONJUNCTION WITH COMCAST PHONE'S LIS QUALIFY IT AS A**
5 **COMMON CARRIER?**

6 A: No. Ancillary services offered in conjunction with Interconnected VoIP
7 service do not constitute the provision of telecommunications service because
8 the underlying service they support is claimed by Comcast Phone to not be a
9 telecommunications service.

10
11 The FCC has concluded that there are some services or functions, that are
12 “incidental or adjunct to common carrier transmission service,” including
13 local number portability, central office space for collocation, and certain
14 billing and collection services. These services, according to the FCC, “should
15 be treated for regulatory purposes in the same manner as the transmission
16 services underlying them . . .”²⁷ The FCC has indicated that these adjunct-
17 to-basic services are vital to the provision of telecommunications services.
18 Using this same policy directive, it follows that when the underlying retail
19 service is not a telecommunications service and not a common carrier
20 service, these adjunct-to-basic services supporting the provision of non-
21 telecommunications services should be treated similarly as non-
22 telecommunications services. Comcast IP will be offering a retail
23 interconnected VoIP service which it claims is not a telecommunications
24 service. Therefore, since the underlying retail service is not a
25 telecommunications service, Comcast Phone’s provision of ancillary services
26 incidental to this transmission of non-telecommunications traffic does not
27 constitute telecommunications service. The insertion of a wholesale provider
28 in the middle does not change the status of the underlying service. To have it

²⁷ Bright House, ¶31.

1 otherwise would provide an opportunity for non-telecommunications
2 providers to obtain the benefits afforded telecommunications carriers not
3 currently allowed under federal regulations or policy.²⁸

4 **Q: WHAT IS YOUR RECOMMENDATION CONCERNING COMCAST**
5 **PHONE'S COMMON CARRIER STATUS?**

6 A: I recommend the Commission determine that Comcast Phone is not a
7 common carrier in the RTCs' service territories. My recommendation is
8 based on the facts and circumstances surrounding Comcast Phone's services
9 described above.

10 **IV. Comcast Phone is not Offering**
11 **Telecommunications Service that would qualify**
12 **for Section 251 Interconnection with the RTCs**

13 **Q: NOW, FOR THE SAKE OF ARGUMENT, PLEASE ASSUME THAT**
14 **COMCAST PHONE IS DECLARED TO BE A COMMON CARRIER**
15 **IN THE RTCS' SERVICE TERRITORIES, WOULD COMCAST**
16 **PHONE'S REQUEST FOR INTERCONNECTION SATISFY**
17 **FEDERAL REQUIREMENTS RELATED TO INTERCONNECTED**
18 **VOIP SERVICES?**

19 A: No. Comcast Phone's LIS service enables interconnected VoIP service
20 providers to interconnect with the RTCs. Even if Comcast Phone were a
21 common carrier in the RTCs service territories, the traffic proposed to be
22 delivered by Comcast Phone to the RTCs through the Section 251
23 interconnection agreement is interconnected VoIP service traffic – which has
24 not been designated as telecommunications traffic by the FCC. The failure to
25 exchange telecommunications traffic through a Section 251 interconnection

²⁸ See generally TW Declaratory Ruling.

arrangement is not in compliance with FCC regulation 47 CFR § 51.100 and does not meet a threshold requirement for Section 251 interconnection.

Q: PLEASE DESCRIBE FCC REGULATION 47 CFR § 51.100.

A: FCC regulation 47 CFR § 51.100 establishes a telecommunications carrier's general duty pursuant to section 251 of the Act. Section 51.100(b) prescribes the type of interconnection access granted by one telecommunications carrier to another telecommunications carrier that has obtained interconnection pursuant to section 251. Specifically, it states:

(b) A telecommunication carrier that has interconnected or gained access under Sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.²⁹

Q: HOW DOES FCC REGULATION § 51.100 APPLY TO COMCAST PHONE?

A: This FCC regulation addresses the exchange of traffic between two carriers via an interconnection arrangement. The carrier obtaining the interconnection must be transmitting telecommunications traffic pursuant to sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act as an initial criterion for establishing the connection under section 51.100. Only after this initial criterion is established for telecommunications service traffic may a telecommunications carrier use the excess capacity of the same interconnection facility to exchange information service traffic.³⁰ Comcast Phone may not obtain interconnection pursuant to section 51.100 for non-

²⁹ 47 CFR § 51.00(b).

³⁰ See, e.g., *F. Cary Fitch D/B/A/ Fitch Affordable Telecom Petition For Arbitration Against SBC Texas Under § 252 of the Communications Act*, Proposal for Award, Texas PUC Docket No. 29415, p. 20 (Jun. 2005), aff'd, *F. Cary Fitch v. Public Utility Commission of Texas*, No. 07-50088 261 Fed.Appx. 788, 2008 WL 148940 (C.A.5 (Tex.)) (5th Cir. 2008) ("Fitch v. TX PUC"). The Fifth Circuit Court of Appeals described section 51.100 on appeal as being "the heart of this dispute" on the issue of the use of interconnection facilities to carry information service traffic.

1 telecommunications purposes.³¹ In other words, in this specific case that
2 addresses local interconnection, Comcast Phone must exchange local
3 telecommunications service traffic over the requested trunks and facilities
4 before it can use the same interconnection arrangement to exchange
5 information services traffic. In this instance, Comcast Phone is seeking to
6 exchange VoIP traffic, which Comcast Phone does not claim as
7 telecommunications traffic, over the interconnection facility.

8
9 Furthermore, a request for arbitration must be “*bona fide*”, as that term is
10 defined generally. Accordingly, the Commission should find that Comcast
11 Phone has not made a *bona fide* request for interconnection unless it makes a
12 showing that it intends to use the requested interconnection arrangement in
13 accordance with section 51.100 of the FCC’s rules for the exchange of
14 telecommunications service traffic and not simply as a pretense to justify the
15 provision of VoIP service traffic which it claims is information service
16 traffic.³² In requiring that requests be legitimate and *bona fide*, the
17 Commission ensures that sham services are not used to obtain
18 interconnection with the RTCs when the real intent of the requesting provider
19 is to enable interconnected VoIP service.

20 **Q: IS THE INTERCONNECTED VOIP TRAFFIC THAT WOULD USE
21 COMCAST PHONE’S LIS SERVICE DESIGNATED AS
22 TELECOMMUNICATIONS TRAFFIC?**

23 A: No. Comcast Phone will not be generating any local telecommunications
24 traffic from its LIS service. And Comcast Phone is not planning to offer any
25 retail residential telecommunications services within the RTC service

³¹ See *id.*

³² See *Fitch v. TX PUC*, p.21 (stating “47 CFR § 51.100(b), by allowing delivery of information service over interconnection facilities, does not change the purpose of interconnection facilities. That is, a carrier may only obtain interconnection facilities for *telecommunications purposes*. Otherwise, a carrier could obtain interconnection facilities unnecessary for telecommunications service and instead use them for information service.”)(Emphasis added).

1 territories. The only service that will generate local traffic is the LIS service
2 that is restricted to “interconnected VoIP service providers,” as that term is
3 defined by the FCC.³³ The FCC has not made a determination that
4 Interconnected VoIP service is a telecommunications or an information
5 service. Comcast Phone has not included its VoIP service in its certification
6 request and has removed residential retail service from its New Hampshire
7 tariff. There is no telecommunications traffic available for exchange at the
8 proposed interconnection arrangement.

9 **Q. HAS THE FCC ADDRESSED ITS REGULATION § 51.100 IN THE
10 CONTEXT OF PROVIDING INTERCONNECTED VOIP SERVICE?**

11 A. Yes and my recommendation complies with the FCC’s determinations. The
12 FCC has recognized that the provision of VoIP service alone does not grant a
13 carrier interconnection rights.³⁴ In discussing this matter, the FCC states “we
14 emphasize that the rights of telecommunications carriers to section 251
15 interconnection are limited to those carriers that, at a minimum, do in fact
16 provide telecommunications services to their customers, either on a
17 wholesale or retail basis.”³⁵ The FCC also provides that although the fact that
18 a telecommunications carrier is providing non-telecommunications services
19 does not dispose of its rights, the telecommunications carrier must also be
20 “offering telecommunications services through the same arrangement.”³⁶
21 Accordingly, if the interconnection arrangement is used exclusively for the
22 transmission of VoIP service traffic, which the FCC has not determined is a
23 telecommunications service, then the arrangement does not satisfy FCC

³³ Choroser Direct, page 10 lines 13-16.

³⁴ See *Time Warner Cable Request for 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*, Memorandum Opinion and Order, WC Docket N. 06-55, ¶14 & fn 39 (March 1, 2007) (“TW Declaratory Ruling”).

³⁵ *Id.* at ¶ 14.

³⁶ *Id.* at fn 39 (quoting 47 CFR § 51.100) (emphasis in original).

1 regulation §51.100 and the carrier does not have rights to section 251
2 interconnection.

3 **Q: DOES COMCAST PHONE HAVE ANY LOCAL**
4 **TELECOMMUNICATIONS TRAFFIC TO EXCHANGE WITH THE**
5 **RTCS IN THIS PROCEEDING?**

6 A: No. LIS service consists solely of VoIP traffic, resale service does not
7 generate any traffic that is exchanged between Comcast Phone and the RTCs,
8 and Schools and Libraries service is generally referred to as a point-to-point
9 service and does not generate any local Telecommunications traffic that is
10 exchanged over the Section 251 interconnection arrangement.

11 **Q: DOES ACCESS TRAFFIC QUALIFY COMCAST PHONE FOR**
12 **INTERCONNECTION WITH THE RTCS UNDER FCC**
13 **REGULATION §51.100?**

14 A: No. There is no access traffic that would be exchanged through a Section
15 251 interconnection arrangement with Comcast Phone. The RTCs send all
16 toll traffic originated by their customers to IXCs and do not send this traffic
17 over the proposed Section 251 interconnection facility.

18 **Q: WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?**

19 A: My recommendation is that the Commission conclude that Comcast Phone's
20 position in this arbitration is unsupported and the request for interconnection
21 is not appropriate and not *bona fide* because Comcast Phone's request does
22 not satisfy FCC regulation §51.100.

23 **V. Citations to Other States Actions Fails to Support**
24 **Comcast Phone's Position**

25 **Q: ARE YOU FAMILIAR WITH CITATIONS TO OTHER STATES**
26 **OFFERED BY COMCAST PHONE TO SUPPORT ITS PETITION?**

1 A: Yes. Comcast Phone cites to interconnection agreements in other states as
2 support for approval of an interconnection agreement in New Hampshire. In
3 addition, Comcast Phone states that because TDS affiliates in three states
4 have interconnection agreements with Comcast Phone that the RTCs should
5 be barred from taking a contrary position now.³⁷

6 **Q: DOES THE FACT THAT COMCAST PHONE HAS**
7 **INTERCONNECTION AGREEMENTS IN OTHER STATES PROVE**
8 **THAT COMCAST PHONE IS A TELECOMMUNICATIONS**
9 **CARRIER IN THE RTCS' SERVICE TERRITORIES IN NEW**
10 **HAMPSHIRE?**

11 A: No. The facts demonstrate that Comcast Phone has changed the service it is
12 providing. Initially, Comcast Phone was offering a telecommunications
13 service to retail end users. In 2007 and 2008, Comcast Phone stopped
14 providing this telecommunications service. However, Comcast Phone
15 already had interconnection agreements with many ILECs prior to Comcast
16 Phone's termination of its regulated local retail service. Generally, these
17 interconnection agreements were not terminated when Comcast Phone
18 switched from providing retail service to providing wholesale service.

19
20 The fact that Comcast Phone has an interconnection agreement also does not
21 support Comcast Phone's claim of being recognized as a telecommunications
22 carrier in those states. If Comcast Phone's status as a telecommunications
23 carrier was not challenged there is no indication that their service actually
24 meets the criteria in that state. Comcast Phone lists several states that did
25 address a particular carrier's wholesale service³⁸ but none of these cases
26 actually address Comcast Phone's LIS. Instead, all of the cases cited involve
27 Sprint and MCI. Both these carriers had telecommunications traffic in their

³⁷ Petition, pages 8, 21.

³⁸ Petition, footnotes 39 and 41.

1 own right prior to offering wholesale service to interconnected VoIP service
2 providers. In addition, Sprint and MCI offer its wholesale service to
3 unaffiliated carriers. Sprint, in fact, serves several different cable operators'
4 VoIP service and even other CLECs. This situation is very different than
5 Comcast Phone that only serves its affiliate and does not have any
6 telecommunications traffic in its own right.

7 **Q: ARE THE AGREEMENTS BETWEEN AFFILIATES OF THE RTCS
8 AND AFFILIATES OF COMCAST PHONE IN OTHER STATES
9 BINDING IN NEW HAMPSHIRE?**

10 A: No. Those agreements or positions are only binding in the states where they
11 were executed. In addition, the circumstances of those agreements are
12 different than in New Hampshire. The Tennessee and Indiana agreements
13 date back to 2006 prior to when Comcast Phone switched from retail
14 telecommunications services to wholesale service.

15 **Q: WHAT IS YOUR RECOMMENDATION TO THE COMMISSION ON
16 USE OF RULINGS FROM OTHER STATES?**

17 A: I recommend the Commission not give weight to the decisions of other states.
18 The FCC allows each state to determine if a wholesale carrier is actually a
19 telecommunications carrier based on the specific circumstances of the
20 offering in that state. In addition, the Commission should find that positions
21 that TDS affiliates have taken in other states under different rules,
22 circumstances and time periods do not limit the RTCs position in this case.

23 **Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

24 A: Yes. In the event additional information is obtained through discovery, I
25 request the option to supplement or modify this testimony.

26
27