



January 28, 2008

Debra A. Howland  
Executive Director & Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301

**Re: Comcast Phone of New Hampshire, LLC Request for Approval of Form CLEC-10**

Dear Ms. Howland:

Comcast Phone of New Hampshire, LLC ("Comcast Phone") requests the New Hampshire Public Utilities Commission ("the Commission") for approval of its Form CLEC-10, filed on December 12, 2007, and an issuance of a CLEC authorization number as provided in PUC 431.01(d). This issuance will authorize Comcast Phone to provide competitive local exchange service within the service territory of Kearsarge Telephone Company, Merrimack County Telephone Company, Wilton Telephone Company and Hollis Telephone Company (collectively "TDS Telecom Companies"). To the extent that the reference in PUC 431.01(d) to "the territory of non-exempt ILECs" implies a limit on issuance of an authorization in this requested service area, Comcast Phone asks the Commission to waive such limit.

Comcast Phone is a competitive local exchange carrier currently authorized to provide intrastate telecommunications services within the State of New Hampshire in exchanges served by Verizon. Comcast Phone seeks to expand this service area to include Rate Centers served by the TDS Telecom Companies in Andover, Antrim, Bennington, Boscawen, Chichester, Deering, Henniker, Hillsboro, Hopkinton, Loudon, New London, Salisbury, Wilmot, and Wilton.

Authorization should be issued because Comcast Phone's application satisfies the requirements of Form CLEC-10 and such entry will serve the public good by expanding local exchange competition. Moreover, it is consistent with the position taken by the TDS Telecom Companies in the proposed Settlement in Docket 07-027, now under consideration by the Commission. In the proposed Settlement, the TDS Telecom Companies have waived the rural telephone company exemption and they do not object to Comcast Phone's entry into the TDS Telecom Companies' territory.

1. Any Exemption from Local Competition Is Not At Issue.

PUC 431.01(d) provides that the Commission "shall issue a CLEC authorization number which authorizes the applicant to provide competitive local exchange service in the territory of non-exempt ILECs." It is doubtful, however, whether the language limiting registration to "non-

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exempt ILECs” is intended to preclude in its entirety the issuance of authorization to provide competitive service in the territory of arguably exempt ILECs, particularly since the rules are silent on any avenue for the registration of competitive providers in the exempt ILEC territories. Such a complete prohibition would frustrate competitive entry in New Hampshire. But the Commission need not reach that issue, because the TDS Telecom Companies can be treated as a non-exempt ILEC for purposes of Comcast Phone’s application.

First, Comcast Phone is authorized to state that the TDS Companies take no position on this request. In this light, there is no assertion before the Commission that any exemption applies.

Moreover, in the matter of *Petition of Kearsarge Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc. and Merrimack County Telephone Company Petition for Alternative Form of Regulation*, DT 07-027 (“the TDS Alt Reg Petition”), the TDS Telecom Companies along with other parties filed a proposed settlement agreement for approval by the Commission. The proposed settlement pending before the Commission states, among other things, that (a) the TDS Telecom Companies will not oppose Commission certification or registration of any company seeking to do business as a competitive local exchange carrier in the service territories of the TDS Telecom Companies, and (b) the TDS Telecom Companies agreed to waive the rural telephone company exemption under Section 251(f)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“the Telecommunications Act”).<sup>1</sup> Treatment of the TDS Telecom Companies as non-exempt for purposes of PUC 431.01(d) is consistent with these terms of the proposed settlement.

Since Comcast Phone’s Form CLEC 10 complies with the requirements of PUC 431.01(c), and there is no basis for denial of registration under PUC 431.02, Comcast Phone’s application for registration to provide competitive local exchange service in the TDS Telecom Companies’ territories should be approved under PUC 431.01(d).

## 2. Competitive Entry Into TDS Telecom Companies’ Service Territory Serves the Public Good.

For the reasons stated above, the Commission can authorize Comcast Phone’s expansion of its service territory without addressing whether the TDS Telecom Companies are an exempt ILEC. But even if the TDS Telecom Companies are eligible for exemption under RSA 374:22-f – something that has not been established<sup>2</sup> – the Commission should find pursuant to RSA

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<sup>1</sup> *Settlement Agreement Among the Joint Petitioners and the Other Signatories Hereto*, DT 07-027, ¶¶ 1, 2.1 (filed Nov. 30, 2007).

<sup>2</sup> RSA 374:22-f applies to ILECS with fewer than 25,000 access lines. Whether the TDS Telecom Companies have fewer than this number depends whether each TDS subsidiary is counted singly or all their access lines are aggregated, a question in dispute in connection with the TDS Alt Reg Petition for purposes of RSA 374:3-b, which uses the same 25,000-line benchmark. See *Initial Brief of SegTEL*, DT 07-027, pp. 3-6 (June 8, 2007); *Secretarial*

374:22-f that granting Comcast Phone access to the TDS Telecom Companies' service territories is "consistent with the public good" under RSA 374:22-e and 374:22-g.

The Commission has been primarily concerned with "the fostering of a competitive market for the provision of advanced telecommunications services within New Hampshire" in accordance with the responsibility assigned to it by both the New Hampshire Legislature and federal statute. *Order No. 23,660, Vtts Networks, Investigation Into Cessation of Network Operations*, DT 01-013, Order Denying Motion for Waiver, p.5 (March 3, 2001). The Commission in turn recognizes that the federal statute seeks to "utilize the discipline of the marketplace to stimulate technological innovation, efficiency, and improvements in service quality and reliability." *Order No. 23,738, Bell Atlantic Petition for Approval of Statement of Generally Available Terms Pursuant to the Telecommunications Act of 1996*, DE 97-171, Order Granting in Part and Denying in Part, p. 2 (July 6, 2001). Thus, "one of the principal goals of the telephone provisions of the Act is to open the local exchange and exchange access markets to competition." *Id.*

By allowing Comcast Phone to expand its existing service territory into the TDS Telecom Companies' territories, the Commission would fulfill state and federal policy goals of encouraging competition, promoting deployment of advanced services, and giving resident consumers the freedom of choice among different voice service providers. Comcast Phone has already shown its ability to provide voice service to consumers in New Hampshire, and competitive entry into the proposed service territory thus would promote the public good by facilitating efficient service and maintenance in the territory. *Order No. 24,422, Merrimack County Tel. Co., Granite State Tel. Co., Joint Petition to Modify Service Boundaries*, DT 04-191, Order Nisi Approving Boundary Modifications, p.2 (Jan. 7, 2005).

Any more restrictive interpretation RSA 374:22-e, 374:22-f, and 374:22-g not only would be inconsistent with the Commission's policy of fostering local competition, but also would put these provisions in conflict with federal law. It is fundamental to the Telecommunications Act that "[s]tates may no longer enforce laws that impede competition, and incumbent LECs are subject to a host of duties to facilitate market entry." *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 370 (1999). Section 251(f) of the Telecommunications Act establishes a scheme permitting and limiting exemption of rural ILECs from interconnection obligations. 47 U.S.C. § 251 (f). State laws that are inconsistent with the federal scheme by insulating incumbent LECs from competition are preempted. *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, 15 F.C.C.R. 15168, 15171-75 (Aug. 10, 2000).

In particular, any application of provisions of RSA 374:22-e, 374:22-f, and 374:22-g so strict that it would make competitive entry subject to the incumbent's invitation or require division of territory with the incumbent could "have the effect of prohibiting" competitive entry

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*Letter of Debra Howland*, DT 07-027, p. 2 (May 29, 2007) (noting that Staff observed the four TDS Telecom Companies served a total of approximately 33,600 access lines).

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in violation of 47 U.S.C. § 253 (a). This same issue was addressed in *Silver Star Telephone Co., Inc. Petition for Preemption and Declaratory Ruling*,<sup>3</sup> where the FCC preempted a Wyoming rural incumbent protection provision. Very similar to RSA 374:22-f, the Wyoming statute empowered certain ILECs serving 30,000 or fewer access lines in Wyoming to preclude other carriers from providing competing local exchange service in their territories until at least January 1, 2005. *Id.* at 15656-57. The FCC held that this provision is a barrier to entry prohibited under Section 253 (a) because it grants incumbent LECs unfettered discretion to prevent any entity from providing competing service in their territory.<sup>4</sup>

For all these reasons, Comcast Phone respectfully requests that the Commission issue a CLEC authorization number allowing it to provide competitive local exchange service in the TDS Telecom Companies' service territories in New Hampshire and, if necessary, waive PUC 431.01(d). Please do not hesitate to contact the undersigned with any questions.

Sincerely yours,

A handwritten signature in dark ink, reading "Cameron F. Kerry" with a stylized flourish at the end.

Cameron F. Kerry

cc: Brian A. Rankin  
Stacey L. Parker  
Frederick J. Coolbroth, Esq.  
May Y. Low, Esq.

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<sup>3</sup> FCC 97-336, 12 F.C.C.R. 15639 (Sept. 24, 1997); *aff'd*, FCC 98-205, 13 F.C.C.R. 16356 (Aug. 24, 1998)

<sup>4</sup> FCC 98-205, 13 F.C.C.R. 16356, at ¶ 3 (Aug. 24, 1998)