

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

**Motion by TDS Companies for Suspension of
Order No. 24,843 Pending Resolution of
Docket DT 07-027 or, Alternatively, for a Hearing**

Kearsarge Telephone Company, Merrimack County Telephone Company, Hollis Telephone Company, Inc. and Wilton Telephone Company, Inc. (collectively, the “TDS Companies”) hereby move for: (i) the temporary suspension of the Public Utilities Commission (the “Commission”) order no. 24,843 (the “Order”) in this docket and (ii) extending the effective date of the granting of any relief thereunder until, at a minimum, one week following the entry of an order by the Commission approving in full the settlement agreement among the TDS Companies, the Commission Staff and the Office of Consumer Advocate (“OCA”) in Docket DT 07-027 (the “Settlement Agreement”). In the alternative, and as set forth below, the TDS Companies request a hearing pursuant to RSA 374:22-e and the Order. In support of their motion, the TDS Companies state as follows:

1. In the Order, among other things, this Commission ordered all interested parties to file comments or a written request for a hearing on or before April 21, 2008. Given that 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, the TDS Companies

have a substantial and direct interest in the outcome of the proceedings in this docket. On behalf of the TDS Companies, the undersigned counsel submit that the issues raised in this pleading warrant further Commission review and the relief requested herein.

2. On March 1, 2007, the TDS Companies made application to this Commission pursuant to RSA 374:3-b for approval of an alternative form of regulation. The March 1, 2007 filing including pre-filed testimony and exhibits comprising the entire direct case of the TDS Companies.

3. Following the opening of Docket DT 07-027 (the "AFOR Docket"), various parties engaged in extensive discovery, the filing of opposing testimony by several parties, the filing of rebuttal testimony by the TDS Companies and extensive settlement negotiations. The TDS Companies then reached a Settlement Agreement with the OCA, segTEL, Inc. and the Commission Staff on November 30, 2007.

4. Hearings were held on the Settlement Agreement in the AFOR Docket during early December 2007. As of the date hereof, no order has been issued by the Commission.

5. RSA 374:3-b and the alternative regulation plans filed by the TDS Companies filed pursuant thereto were intended to provide an alternative regulatory structure to enable small incumbent local exchange carriers to operate effectively in the new competitive environment.

6. In furtherance of the establishment of a level playing field and an effectively competitive market for all entrants, the TDS Companies agreed in the Settlement Agreement, upon the effectiveness thereof, to waive the exemption provided by 47 U.S.C. § 251(f)(1) and not oppose certification requests by competitive local exchange carriers.

7. On December 12, 2007, Comcast Phone of New Hampshire, LLC ("Comcast Phone") filed a Form CLEC-10 Registration Statement seeking authorization to engage in

business within the service territories of the TDS Companies as a competitive local exchange carrier.

8. On or about January 28, 2008, Comcast Phone filed a letter in the present docket in which its counsel stated that the TDS Companies had already waived the rural exemption and requesting approval of CLEC registration without regard to the provisions of either RSA 374:22-e, 374:22-f or 374:22-g, as well as the rural exemption under 47 U.S.C. § 251(f)(1).

9. On January 31, 2008, the TDS Companies filed a responsive letter pointing out that the waiver by the TDS Companies of their rural exemption and the operativeness of their agreement not to oppose certification was conditioned on the approval of the Settlement Agreement. As of the date hereof, the status of the Settlement Agreement remains unchanged. Furthermore, several recent developments caused the TDS Companies to seek the relief requested herein despite the letter filed by counsel on behalf of the TDS Companies on January 31, 2008.

10. In the absence of a waiver of exemptive rights and a change in the regulatory structure for the TDS Companies, there is no adequate record for the Commission to grant the relief requested by Comcast Phone. In particular, the TDS Companies point out that:

- The Order authorizes Comcast Phone to provide “access” without any identification of what that service is.
- The Comcast Phone CLEC-10 application and attachments suggest that Comcast Phone will be providing residential local exchange service, when the price list attached clearly states that the Comcast service offered as “Digital Phone Service” is not available to customers attempting to subscribe therefor after October of 2001. Upon information and belief, Comcast Phone has notified those grandfathered customers that it will be discontinuing the service as of April 29, 2008. 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 in the referenced Service Areas. *Id.* at p. 2.

- The Comcast Phone price list appears to provide for a business local exchange product; however, the TDS Companies are not aware of any intention on the part of Comcast Phone to offer that telecommunications local exchange service and question the representation made to the Commission in that regard.
- In testimony filed before the Vermont Public Service Board on April 7, 2008, in Docket No. 7316, 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.
- There is no record evidence upon which the Commission can make findings under RSA 374:22-e, *et seq.*

11. The Order does not comply with RSA 374:22-e, which provides that the Commission “shall have power to exercise the jurisdiction conferred in this section only after due notice to all interested parties and hearing.” Accordingly, if in response to the Commission’s order *nisi*, a request is made for a hearing, the Commission must hold one in order, at a minimum, to consider factors set forth within RSA 374:22-e.

12. If 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. Until such time, or in the event the Commission does not approve of the Settlement Agreement, the TDS Companies fully reserve all rights with respect to exemptions and full hearing rights with respect to applications by competing carriers.

WHEREFORE, the TDS Companies request that the Commission either (i) commence an adjudicative proceeding in order to consider all issues raised by the Comcast Phone registration

request or (ii) suspend the effectiveness of the Order and defer any grant of authority for Comcast Phone to engage in business as a competitive local exchange carrier in the territories of the TDS Companies until, at a minimum, one week following the issuance of an order of the Commission approving, without modification, the Settlement Agreement executed by the TDS Companies in Docket DT 07-027.

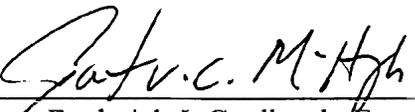
Respectfully submitted,

KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE
COMPANY
HOLLIS TELEPHONE COMPANY, INC.
WILTON TELEPHONE COMPANY, INC.

By Their Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: April 16, 2008

By: 
Frederick J. Coolbroth, Esq.
Patrick C. McHugh, Esq.
43 N. Main Street
Concord, NH 03301
(603) 226-1000
fcoolbroth@devinemillimet.com
pmchugh@devinemillimet.com

CERTIFICATE OF SERVICE

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

Dated: April 16, 2008

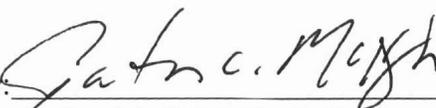
By: 
Patrick C. McHugh, Esq.

EXHIBIT 1



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 08-760
Released: March 28, 2008

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
Comp. Pol. File No. 857

Comments Due: April 14, 2008

Section 214 Application

Applicants: Comcast Phone of Massachusetts, Inc., Comcast Phone of New Hampshire, LLC, Comcast Phone of Ohio, LLC, and Comcast Phone of Pennsylvania, LLC

On February 20, 2008, Comcast Phone of Massachusetts, Inc., Comcast Phone of New Hampshire, LLC, Comcast Phone of Ohio, LLC, and Comcast Phone of Pennsylvania, LLC (collectively Comcast or Applicants), located at One Comcast Center, 50th Floor, Philadelphia, PA 19103, filed an application with the Federal Communications Commission (FCC or Commission) requesting authority, under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue the provision of certain domestic telecommunications services in Massachusetts, New Hampshire, Ohio, and Pennsylvania.

Comcast indicates that it currently provides interstate and intrastate telecommunications services throughout Massachusetts, New Hampshire, Ohio, and Pennsylvania (the Service Areas). Comcast states, however, 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. According to Comcast, the anticipated date for the proposed discontinuance is on or after April 29, 2008. Comcast explains that the proposed April 29, 2008 disconnection will be a "soft disconnect" and that end-user customers in the affected locations will continue to be able to call emergency services by dialing 911, and to call the Comcast Phone call center until May 29, 2008, or one month after the authorized disconnection date. Comcast also states that it will assist affected customers during their transition to alternative service providers, and that it will continue to provide other telecommunications services in the Service Areas. Comcast indicates that it informed all affected customers of the proposed discontinuance by letters sent via first class U.S. Mail on January 25, 2008. Finally, Comcast asserts that it is non-dominant in the local exchange, interstate, and interexchange services markets.

In accordance with section 63.71(c) of the Commission's rules, Comcast's application will be deemed to be granted automatically on the 31st day after the release date of this public notice, unless the Commission notifies Comcast that the grant will not be automatically effective. In Comcast's application and notice to its customers, Comcast indicates that it anticipates discontinuing service on or after April

29, 2008. Accordingly, pursuant to section 63.71(c) and the terms of Comcast's application and notice, absent further Commission action, Comcast may terminate its Comcast Digital Phone service in Massachusetts, New Hampshire, Ohio, and Pennsylvania on or after **April 29, 2008**. The Commission normally will authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected.

This proceeding is considered a "permit but disclose" proceeding for purposes of the Commission's ex parte rules, 47 C.F.R. §§ 1.1200-1.1216. Comments objecting to this application must be filed with the Commission on or before **April 14, 2008**. Such comments should refer to **WC Docket No. 08-45 and Comp. Pol. File No. 857**. Comments should include specific information about the impact of this proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Parties who choose to file by paper must send an original and four copies of the comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

Two copies of the comments should also be sent to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C140, Washington, D.C. 20554, Attention: Carmell Weathers. In addition, comments should be served upon the Applicant. Commenters are also requested to fax their comments to the FCC at (202) 418-1413, Attention: Carmell Weathers.

The application will be available for public inspection and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554, (202) 418-0270. A copy of the application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

For further information, contact Carmell Weathers, (202) 418-2325 (voice), carmell.weathers@fcc.gov, or Matt Warner, (202) 418-2419 (voice), matthew.warner@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau. The TTY number is (202) 418-0484. For further information on procedures regarding section 214 please visit http://www.fcc.gov/wcb/cpd/other_adjud.

– FCC –