

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 08-162

Comcast Phone of New Hampshire

Petition for Arbitration of Rates, Terms and Conditions of Interconnection
with Kearsarge Telephone Company, Merrimack County Telephone
and Wilton Telephone Company

**Answer of Kearsarge Telephone Company, Merrimack County
Telephone Company and Wilton Telephone Company, Inc.**

NOW COME Kearsarge Telephone Company (“KTC”), Merrimack County Telephone Company (“MCT”) and Wilton Telephone Company, Inc. (“WTC”) (collectively, the “TDS Companies”), and hereby submit the following Answer in response to the Petition for Arbitration the (“Petition”) filed by Comcast Phone of New Hampshire, LLC (“Comcast Phone”):

I. INTRODUCTION & BACKGROUND INFORMATION

1. KTC is a New Hampshire corporation with a place of business at 242 Main Street, New London, New Hampshire and provides telecommunications service, including exchange service and exchange access service within the following exchanges: Andover, Boscawen, Chichester, Meriden, New London and Salisbury.

2. MCT is a New Hampshire corporation with a place of business at 11 Kearsarge Avenue, Contoocook, New Hampshire and provides telecommunications service, including exchange service and exchange access service within the following exchanges: Antrim, Bradford, Contoocook, Henniker, Hillsborough, Melvin Village, Sutton and Warner.

3. WTC is a New Hampshire corporation with a place of business at 109 Main Street, Wilton, New Hampshire and provides telecommunications service, including exchange service and exchange access service within the Wilton exchange.

4. Each of the TDS Companies is a "rural telephone company" as defined within the Communications Act of 1934, as amended (the "Act"). Specifically, each of the TDS Companies meet the standards set forth within Section 153(a)(37) of the Act and is entitled to the exemptions provided by Section 251(f) of the Act. *See* 47 U.S.C. § 153(a)(37) and § 251(f). Each of the TDS Companies is also a public utility operating pursuant to the jurisdiction of the New Hampshire Public Utilities Commission (the "Commission") and is authorized to serve as an incumbent local exchange carrier ("ILEC") in New Hampshire as that term is defined in 47 U.S.C. § 251(h), 47 C.F.R. § 51.5, and New Hampshire Administrative Rule Puc 402.23.

5. The names, addresses and contact information for the TDS Companies' representatives related to this Docket are as follows:

Joel P. Dohmeier
Director - State Government Affairs
TDS Telecommunications Corporation
525 Junction Road, Suite 7000
Madison, WI 53717
(608) 664-4168
joel.dohmeier@tdstelecom.com

Michael C. Reed
Manager - State Government Affairs
TDS Telecommunications Corporation
24 Depot Square, Unit 2
Northfield, VT 05663-6721
(802) 485-9724
mike.reed@tdstelecom.com

Peter R. Healy, Esq.
Corporate and Regulatory Counsel
TDS Telecommunications Corporation
525 Junction Road, Suite 7000
Madison, WI 53717
(608) 664-4117
peter.healy@tdstelecom.com

Debra A. Martone
Manager - State Government Affairs
MCT, Inc.
11 Kearsarge Avenue
PO Box 337
Contoocook, NH 03229-0337
(603) 746-9208
debra.martone@tdstelecom.com

Linda Lowrance
Manager-Carrier Relations
TDS Telecommunications Corporation
10025 Investment Drive, Suite 200
Knoxville, TN 37932
(865) 671-4758
linda.lowrance@tdstelecom.com

Frederick J. Coolbroth, Esq.
Devine, Millimet & Branch, P.A.
43 N. Main Street
Concord, NH 03301
(603) 226-1000
fcoolbroth@devinemillimet.com

Patrick C. McHugh, Esq.
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03101
(603) 695-8572
pmchugh@devinemillimet.com

6. This answer sets forth the TDS Companies' response to the issues raised by Comcast Phone in its Petition. In general, as to all factual matters in this Docket, Comcast bears the burden of proof. *See* Puc 203.25 (noting that the "...party seeking relief through a *petition*, application, motion or complaint shall bear the burden of

proving the truth of any factual proposition by a preponderance of the evidence) (emphasis added).

7. As this Commission well knows, interconnection rights under section 251 of the Communications Act of 1934, as amended (the “Act”), 47 USC 151 et. seq., only are available to providers of telecommunications services. In this Answer, the TDS Companies assert that Comcast Phone has not presented sufficient evidence for the Commission to make a legally supportable finding that (i) Comcast Phone meets the definition of a telecommunications carrier as defined within Section 3(44) of the Act (*see* 47 USC 153(44)); or (ii) Comcast Phone is a “provider of telecommunications services” in the state of New Hampshire as defined with Sections 3(43) and 3(46) of the Act (*see* 47 USC 153(43) and (46)).

8. Section I of Comcast Phone’s Petition, paragraphs numbered 3 through 6, sets forth in a general manner the applicable legal standards to be applied in interconnection arbitration proceedings between telecommunication carriers. As Comcast Phone has not demonstrated that it qualifies as a telecommunications carrier or that it provides telecommunications services, the arbitration provisions within Section 252 of the Act do not apply to the instant proceeding and the Commission is not bound by the time frames set forth therein.

9. Throughout the remainder of this Answer, the TDS Companies respond to various legal and factual assertions submitted in Comcast’s Petition. In the second section of this Answer, the TDS Companies respond to the assertions contained within Sections IV through VI of the Petition, as contained within pages 6-7 thereof. Thereafter, in Sections III through VI of this Answer, the TDS Companies respond to Comcast’s

arguments set forth within Section VII of the Petition, as contained within pages 7-20 thereof.

II. STATUS OF NEGOTIATIONS

10. Comcast Phone indeed submitted a letter to a representative of the TDS Companies on or about April 21, 2008, concerning a request for interconnection pursuant to Sections 251(a) and (b) of the Act. *See* Petition, Exhibit A. The TDS Companies and Comcast Phone agreed to November 17, 2008, and December 12, 2008, being the 135th and 160th day (respectively) for purposes of the time frames set forth within the Act. *See* Petition, Exhibit B. Section 3.1 of the draft Interconnection Agreement contains the disputed language at issue. *See* Petition, para. 16, p. 7, and Exhibit C thereto, p. 14.

11. The parties' negotiation impasse resulted from Comcast Phone's lack of information concerning its services and the mechanisms by which the service is to be provided. It is not the TDS Companies' duty or obligation to demonstrate that Comcast Phone is providing a telecommunications service or qualifies as a telecommunications carrier under the Act and the applicable rules of the Federal Communications Commission (the "FCC"). Indeed, it appears Comcast Phone ceased the provision of local exchange and exchange access telecommunications services on or about May 15, 2008. *See* FCC Public Notice DA 08-871, April 14, 2008, at p.2 (attached hereto as Exhibit A). Specifically, the FCC noted that:

Comcast indicates that it currently provides interstate and intrastate telecommunications services throughout Massachusetts and New Hampshire (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 these Service Areas.

* * * * *

In Comcast's application and notice to its customers, Comcast indicates that it anticipates discontinuing service on or after May 15, 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 to the affected customers in Massachusetts and New Hampshire on or after **May 15, 2008**.

See FCC Public Notice DA 08-871, April 14, 2008, at ps. 1-2.

12. The TDS Companies made Comcast Phone aware of concerns with respect to its qualifications as a telecommunications carrier. A member of TDS Telecom raised several questions in correspondence dated June 18, 2008, to a member of Comcast. See Letter from Ms. Linda Lowrance to Mr. Robert Munoz, June 18, 2008 (attached hereto as Exhibit B). Comcast Phone acknowledged the issue in correspondence dated June 24, 2008, from Mr. Robert Munoz, Director of Regulatory Compliance. See Letter from Mr. Munoz to Ms. Linda Lowrance, June 24, 2008 (attached hereto as Exhibit C). Mr. Munoz' letter was not responsive to the issues and simply asserted in relevant part that Comcast Phone "...is...entitled to the rights of a telecommunications carrier." In support thereof, Comcast Phone cited to the FCC's decision in *In re 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*, 22 FCC Rcd 3513 rel'd March 1, 2007 (hereinafter referred to as the "*TWC Order*" and Time Warner Cable referred to as "Time Warner"). Therefore, the implication from Comcast Phone's Petition that the TDS Companies "raised unspecified 'concerns' about Comcast Phone's telecommunications carrier status..." for the first time on October 13, 2008, is not factually correct. Cf. Letter from Ms. Lowrance to Mr. Munoz (Exhibit B) to Petition, para. 14, p. 6.

13. As more has been made known about the Comcast Phone proposal, it has become clear that the concerns of the TDS Companies are well founded. To the extent that Comcast Phone's affiliates and parent entity previously provided a telecommunications service throughout the country, it appears its affiliates ceased providing such service. The FCC received multiple requests from Comcast Phone's affiliates to cease providing such services per: Section 63.71 Application of Comcast Phone of Washington, LLC, WC Docket No. 02242 (filed October 9, 2007) ("*Washington 63.71*"); Section 63.71 Application of Comcast Phone of Illinois, LLC, WC Docket No. 08-41 (filed March 6, 2008) (Illinois); Section 63.71 Application of Comcast Phone of Massachusetts, Inc., *et al*, WC Docket Nos. 08-45 and 08-52 (filed February 20, 2008 and April 3, 2008, respectively) (Massachusetts, New Hampshire, Ohio and Pennsylvania); Section 63.71 Application of Comcast Phone of Virginia, Inc., WC Docket No. 08-42 (filed February 20, 2008) (Virginia); Section 63.71 Application of Comcast Phone of California, LLC, WC Docket No. 08-35 (filed February 16, 2008) (California); Section 63.71 Application of Comcast Phone of Maryland, LLC, WC Docket No. 07-276 (filed November 19, 2007) (Maryland); Section 63.71 Application of Comcast Phone of Minnesota, LLC, WC Docket No. 07-277 (filed November 20, 2007) (Minnesota); Section 63.71 Application of Comcast Phone of Oregon, LLC, WC Docket No. 07-228 (filed September 28, 2007) (Oregon); Section 63.71 Application of Comcast Phone of Colorado, LLC, WC Docket No. 07-231 (filed October 1, 2007) (Colorado); Section 63.71 Application of Comcast Phone of Connecticut, LLC, WC Docket No. 07-200 (filed August 6, 2007) (Connecticut); Section 63.71 Application of Comcast Phone of Georgia, LLC, WC Docket No. 07-187 (filed August 8, 2007) (Georgia); Section 63.71

Application of Comcast Phone of Florida, LLC, WC Docket No. 07-189 (filed August 20, 2007) (Florida); Section 63.71 Application of Comcast Phone of Utah, LLC, WC Docket No. 07-185 (filed August 20, 2007) (Utah); Section 63.71 Application of Comcast Phone of Michigan, WC Docket No. 07-177 (filed August 2, 2007) (Michigan).

III. REPLY TO COMCAST PHONE'S WAIVER ARGUMENT

14. Comcast Phone argues that the TDS Companies have “expressly waived” their rights to claim or assert that Comcast Phone does not qualify as a telecommunications carrier under the Act. *See* Petition, para. 20, p. 8. Moreover, Comcast Phone argues that, because affiliates of the TDS Companies entered into interconnection agreements with certain of Comcast Phone’s affiliates, the TDS Companies have acknowledged Comcast Phone to be a telecommunications carrier under the Act. *See id.*, para. 21. Yet in so arguing, Comcast Phone ignores its own statements submitted with its Petition.

15. First, the existence of unrelated interconnection agreements did not preclude Comcast Phone from preserving all of the parties’ rights in terms of negotiating an agreement in the State of New Hampshire. Comcast Phone’s first exhibit to the Petition clearly preserves each of Comcast Phone and the TDS Companies’ rights with respect to all legal issues. In submitting the request for negotiations, Ms. Beth Choroser wrote on April 21, 2008 that:

Since at this time I believe we have reached substantive agreement on the terms for the Vermont agreement currently being negotiated, we propose to use that agreement as the starting point for negotiating the New Hampshire Agreement [*sic*]; **provided, however, neither Party shall be considered to waive any rights it may have in negotiating or arbitrating terms of the Agreement in the State of New Hampshire.**

See Petition, Exhibit A thereto (emphasis added).

16. Although not submitted to the Commission with its Petition, Comcast Phone made similar statements in connection with negotiations for interconnection in the State of Michigan. On April 17, 2008, Ms. Choroser issued a similar letter and requested to negotiate interconnection between Comcast Phone of Michigan, LLC, and Communication Corporation of Michigan. *See* Letter from Ms. Choroser to Ms. Linda Lowrance, April 17, 2008 (attached hereto as Exhibit D). Ms. Choroser's April 17 correspondence contains the identical language - excluding only the substitution of the word "Michigan" for the phrase "New Hampshire" - preserving all of the parties rights in Michigan as contained in the New Hampshire correspondence dated April 21. *See id.* at p. 2.

17. Second, with respect to the existence of interconnection agreements in states other than New Hampshire, the TDS Companies submit that the Vermont agreement was finalized in the Spring of 2008 before it was known that Comcast Phone had filed with the Commission and the FCC, notices of discontinuance of services in the state of New Hampshire. Similarly, other interconnection agreements between affiliates of the TDS Companies and Comcast Phone's affiliates for the states of Indiana and Tennessee (*see* Petition, para. 21, p.8 and *see* Prefiled Direct Testimony of Ms. Choroser, at 104-5) were completed in 2006, well before Comcast Phone had filed with the Commission and the FCC, notices of discontinuance of services in the state of New Hampshire. Thus, the existence of these interconnection agreements is of no relevance to the instant proceedings.

18. Third, as documented in Mr. Munoz' correspondence, Comcast Phone apparently knew as early as June 2008 that the TDS Companies made inquiries to Comcast Phone concerning its provision of some type of telecommunications services and sought factual information to support Comcast Phone's statements that it qualified as a telecommunications carrier under the Act. There would be no reason for Mr. Munoz to cite the FCC's decision in the Time Warner proceedings absent such knowledge.

19. As a final matter, Comcast Phone says that it has interconnection agreements with another ILEC in the State of New Hampshire. *See* Petition, para. 21, p. 8; *see also* Prefiled Direct Testimony of Ms. Beth Choroser (undated) at 7.4-8. However, the Commission's order cited in support of this argument dates back to 1998 and the interconnection agreement dates back to 2003 – both of which clearly precede Comcast Phone's discontinuance of its Digital Phone Service in the State of New Hampshire. *See* Prefiled Direct Testimony of Ms. Choroser, at 7.4-8, ftns. 2 and 3. These facts therefore do not support Comcast Phone's assertions.

20. In summary, there is no course of conduct nor other theory of estoppel applicable to the instant proceeding which bars the TDS Companies from questioning Comcast Phone's status as a telecommunications carrier or whether Comcast Phone provides telecommunications services as defined under the Act.¹

¹ Moreover, FCC rules require that ILECs negotiate terms of an interconnection agreement even before Comcast Phone (or any prospective carrier) obtains state certification. *See* 47 C.F.R. § 51.301(c)(4). Thus, the fact that federal law requires a negotiation does not support Comcast Phone's assertion that it provides telecommunications services.

IV. COMCAST HAS NOT DEMONSTRATED THAT IT QUALIFIES AS A TELECOMMUNICATIONS CARRIER UNDER THE ACT

21. Comcast Phone relies heavily on the FCC's decisions in the Time Warner proceedings and *In re Bright House Networks, LLC et al. v Verizon California, Inc.*, 23 FCC Rcd 10704 (rel'd June 23, 2008) (hereinafter referred to as "*Bright House*") in support of its claim that it qualifies as a telecommunications carrier. See Petition, paras. 26-29, ps. 11-14. According to Comcast Phone, the "...FCC has definitively ruled that [CLECs] like Comcast Phone that provide wholesale service to interconnected VoIP service providers are 'entitled to interconnect and exchange traffic with [ILECs]'" See *id.* at para. 26, p. 12. The Commission should not accept these arguments.

22. Comcast Phone has not demonstrated that the facts in this Docket are the same as those in the Time Warner proceedings; and, Comcast Phone ignores certain limiting language in the *TWC Order*. In the Time Warner proceedings, the wholesale providers of telecommunications services to Time Warner were MCI Worldcom ("MCI") and Sprint Communications Company ("Sprint"). MCI and Sprint provided to Time Warner transport for the origination and termination of traffic on the public switched network ("PSTN") through their interconnection agreements with ILECs. It was not a disputed issue in the Time Warner proceedings whether Sprint and MCI were (or were not) CLECs entitled in their own right to Section 251 interconnection. The question presented was whether these entities could use their section 251 rights, not only in their own right, but also to provide a wholesale service to an entity that was not a telecommunications carrier.

23. Here, there is serious doubt about Comcast Phone's status as a CLEC and provider of telecommunications service in its own right, separate and distinct from the

LIS that it provides to its affiliates. Indeed, the *TWC Order* was explicit that Section 251 interconnection is available only to those telecommunications carriers who “seek interconnection in their own right”:

In making this clarification, we emphasize that the rights of telecommunications carriers to Section 251 interconnection are limited to those carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis. We do not address or express any opinion on any state Commission’s evidentiary assessment of the facts before it in an arbitration or other proceeding regarding whether a carrier offers a telecommunications service. [*TWC*, ¶ 14.]

* * * * *

Finally, we emphasize that our ruling today is limited to telecommunications carriers that provide wholesale telecommunications service **and that seek interconnection in their own right for the purpose of transmitting traffic to or from another service provider**. To address concerns from commenters about which parties are eligible to assert these rights, we make clear that the scope of our declaratory ruling is limited to wholesale carriers that are acting as telecommunications carriers for purposes of their interconnection request, [*TWC*, ¶ 16 (emphasis added)]

24. Also, the FCC concluded in the *TWC Order* that a telecommunications carrier must use its section 251 interconnection rights to actually provide a telecommunications service. *TWC Order* at ¶ 14 and fn 39. The FCC quoted 47 CFR 51.100(b):

For example, under the Commission’s existing rules, “[a] telecommunications carrier that has interconnected or gained access under section [] 251(a) . . . of the Act, may offer information services through the same arrangements, *so long as it is offering telecommunications services through the same arrangement as well.*” [*TWC Order*, fn. 39 (emphasis original).]

Therefore, the *TWC Order* is not factually analogous to the present proceedings.

Contrary to the claims of Comcast Phone, that decision is not dispositive.

25. Comcast Phone requests the Commission to adopt the reasoning of the *Bright House* decision and states that the facts of the two (2) cases are similar. *See* Petition, para. 27, p. 12-13. The TDS Companies respectfully disagree.

26. The FCC's rulings in *Bright House* do not apply to this Docket because the FCC ruled that they do not. The FCC's decision is clear as to its limited applicability:

Here, section 222(b) has a different purpose – privacy protection . . . and we believe that this purpose argues for a broad reading of the provision. As a result, our decision holding the Competitive Carriers to be ‘telecommunications carriers’ for purposes of section 222(b) **does not mean that they are necessarily ‘telecommunications carriers’ for purposes of all other provisions of the Act.** We leave those determinations for another day. [*Bright House*, ¶ 41. (emphasis added)]

27. In addition to the FCC's limitation of its rulings in *Bright House*, as quoted above, there were also different facts upon which the FCC made its ruling. First, the FCC noted that Comcast Phone and Bright House had both obtained certificates of public convenience and necessity from the states in which they operated. Second, the FCC noted that Comcast Phone and Bright House had Section 251 interconnection agreements with Verizon. The FCC said that “[t]hese facts, in combination, establish a prima facie case that the Comcast and Bright House Competitive Carriers are indeed telecommunications carriers for purposes of Section 222(b).” *See Bright House*, ¶ 39.

28. In the instant matter, Comcast Phone has discontinued exchange service to residential and business customers in New Hampshire. Furthermore, Bright House and Comcast Phone had existing Section 251 agreements with Verizon; and, there was no evidence presented of changed circumstances showing that Bright House and Comcast Phone were no longer telecommunications carriers for purposes of Section 222(b). Here,

the TDS Companies refused, because of changed circumstances related to the discontinuance of services in the State of New Hampshire and the lack of information from Comcast Phone concerning the provision of its services, to finalize a Section 251 interconnection agreement until it is determined that Comcast Phone is a telecommunications carrier. Therefore, the facts presented in this Docket related to the issue of Comcast Phone's status as a telecommunications carrier under the Act are far different from the facts in *Bright House*. The TDS Companies submit that Comcast Phone has not demonstrated by a preponderance of the evidence that it qualifies as a telecommunications carrier under the Act.

Although New Hampshire law does not govern the question of whether Comcast Phone is a common carrier under the Act, the New Hampshire Supreme Court has addressed the issue of "service to the public" in determining status as a common carrier or public utility under New Hampshire law. In *Appeal of Zimmerman*, 141 N.H. 605 (1997), the Court held that:

"An enterprise is necessarily private if the service provider has a relationship with the service recipient, apart from the service provision itself, that is sufficiently discrete as to distinguish the recipient from other members of the relevant public; this is the "discrimination" that separates public utilities from private."

Zimmerman, at 609. Clearly, Comcast Phone has such a relationship with the only probable customer for its LIS service, Comcast IP. Furthermore, the *Zimmerman* decision also points out the distinction between a public utility that undertakes to provide service "at reasonable rates to all who apply therefor" and service that is "purely voluntary and at prices fixed in each case by special contract." *Zimmerman*, at 608. The individually tailored Comcast services fall into the latter category.

V. **COMCAST PHONE HAS NOT DEMONSTRATED THAT ITS LOCAL INTERCONNECTION SERVICE (“LIS”) QUALIFIES AS A TELECOMMUNICATIONS SERVICE UNDER THE ACT**

30. In deciding whether Comcast Phone provides a telecommunications service, it must be remembered that under 47 CFR, §51.100(b) Comcast Phone may not obtain interconnection exclusively for traffic that is not telecommunications.² It must exchange telecommunications service traffic over the facilities that are the subject of a Section 251 interconnection arrangement, if it also wishes to use that arrangement to exchange information services traffic. If this Commission determines that Comcast Phone will use the requested interconnection arrangements exclusively for the transmission of VoIP service traffic, which Comcast Phone claims is not a telecommunications service, then Comcast Phone is not meeting the requirements of Section 51.100(b) and this Commission should find that Comcast Phone does not have rights to Section 251 interconnection.

31. Only if Comcast Phone meets the following two conditions would it qualify as a telecommunications carrier offering a telecommunications service in a wholesale setting: (1) Comcast Phone must meet the FCC’s rule governing access to interconnection facilities codified at 47 CFR 51.100(b) and (2) Comcast Phone must provide its wholesale service on a common carrier basis. If Comcast Phone is not meeting these standards, Comcast Phone is not a telecommunications carrier providing a telecommunications service and the TDS Companies are not required to negotiate interconnection terms pursuant to Section 251 of the Act.

² The FCC held in the *TWC Order* that: “[w]e do not address or express any opinion on any state commission’s evidentiary assessment of the facts before it in an arbitration or other proceeding regarding whether a carrier offers a telecommunications service. *TWC Order* at ¶ 14.

32. In particular, Comcast Phone claims that its LIS offering qualifies as a telecommunication service and that the FCC "...expressly ruled as much..." See Petition, para. 27, p. 12. In addition to relying on the FCC's decision in *Bright House*, which has no application to the present proceeding, Comcast Phone submitted its Local Interconnection Service Guide (the "LIS Guide") with its Petition. See Petition, LIS Guide attached thereto as Exhibit E. Comcast Phone argues that LIS is a telecommunications service "...offered to qualified providers of interconnected...VoIP services as that term is defined within Section 9.3 of the FCC's rules." See Petition, para. 25, p. 11 and fn. 26. Comcast Phone also asserts that its LIS provides various services or products to "interconnected VoIP service providers" and that LIS is available to "NH prospective customers" via the LIS Guide. See *id.* A close examination of the LIS Guide, however, does not establish that: (i) Comcast Phone is a telecommunications service provider; or (ii) LIS qualifies as a telecommunications service.

33. The LIS Guide is extremely restrictive and, as a practical matter, may be useful only to Comcast Phone affiliates who provide "unregulated" voice service to customers in the State of New Hampshire. LIS is available only to providers of interconnected VoIP services. Providers of nomadic VoIP service can not purchase services under the LIS Guide. See LIS Guide, sec. 1.F. Furthermore, providers of traditional landline telephone service, such as the TDS Companies, can not purchase services under the LIS Guide. The only providers who can purchase services under the LIS Guide are those whose facilities consist of an IP-based broadband network. This network must be a Cable Modem Termination System ("CMTS") and must employ network-based call signaling devices. If a provider of interconnected VoIP services does

not use CMTS technology, it will be denied access to services under the LIS Guide. *See* LIS Guide, sec. 3.A. Additionally, the network-based call signaling devices must be specified by Cable Television Laboratories, Inc, and only traffic in time division multiplex (“TDM”) protocol will be accepted and delivered. *See* LIS Guide, sec. 3.B.

34. The only customer who can use LIS to reach an end user’s premise is one who overbuilds the facilities of Comcast Phone’s affiliated provider of “unregulated” voice service. This situation rarely, if ever, will exist. In the 38 states in which Comcast Phone is operating, upon information and belief, not a single unaffiliated customer has ever subscribed to LIS. Although Comcast Phone states that LIS is made available to New Hampshire prospective customers, Comcast Phone has not identified any entities which made bona fide inquiries to purchase the service, nor the substance of any discussions regarding the service. *See* Prefiled Direct Testimony of Ms. Choroser, at 9.4-10. Regardless, the fact Comcast Phone failed to introduce evidence that any entity, other than affiliates Comcast Phone, has ever purchased LIS, supports the TDS Companies’ position that LIS, as a practical matter, is useful only to a Comcast Phone affiliate.

35. Even if it was technically feasible for a carrier to purchase LIS, other than an affiliate of Comcast Phone, the terms of the LIS Guide raise additional concerns. The recurring and non-recurring charges for LIS are determined by Comcast Phone on an individual case basis in response to a bona fide request. *See* LIS Guide, sec. 1.B. Although the LIS Guide implies that there will be a “negotiation” between Comcast Phone and the requesting party (*see* LIS Guide, sec. 1.C), there is nothing in the LIS Guide that compels Comcast Phone to agree to any particular terms; and, there are no

provisions for arbitration or dispute resolution by a regulatory body or third party if the parties can not agree on terms. A carrier is not a common carrier where its practice is to make individualized decisions, in particular cases, whether and/or what terms to deal. *See National Association of Regulatory Utility Commissioners v FCC*, 525 F.2d 630, at 641 (D.C. Cir. 1976). Furthermore, a carrier can be a common carrier with respect to some of its activities and not with respect to others. *Southwestern Bell Telephone Company v. Federal Communications Commission*, 19 F.3d 1475, 1481 (D.C. Cir. 1994) (holding that “it is at least logical to conclude that one can be a common carrier with regard to some activities but not others,” quoting *National Ass’n of Regulatory Util. Comm’ers v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976)). For example, if Comcast Phone were offering local exchange services on a common carrier basis in other parts of New Hampshire, it does not follow necessarily that Comcast Phone is offering its wholesale services in the TDS Companies’ service areas on a common carrier basis.

36. Moreover, purchasers of LIS must commit to an initial term of 3 years. *See LIS Guide*, sec. 5.A. If the customer terminates early, it must pay a termination liability equal to 100% of all recurring charges through the remaining term of the agreement. If Comcast Phone discontinues service for cause, the customer must pay immediately all amounts that would have been paid over the 3 year term of the agreement. *See LIS Guide*, sec. 5.B. In addition, the LIS Guide provides Comcast Phone with complete protection from most liability arising out of performance under the agreement (*see LIS Guide*, sec. 9); requires the customer to indemnify and hold harmless Comcast Phone in a multitude of situations (*see LIS Guide*, secs. 7.A, 9.H and 9.I); and imposes a variety of other onerous conditions on the customer.

37. Comcast Phone claims that its LIS is available without discrimination. As a practical matter, however, LIS is available only to Comcast Phone's affiliated providers of "unregulated" voice service. The LIS Guide permits Comcast Phone and its affiliated voice service providers to agree to prices and terms to which an unaffiliated customer could never agree. Between Comcast Phone and its affiliates, unreasonable prices and terms do not result in economic harm to the overall Comcast enterprise. To unaffiliated entities, unreasonable prices and terms effectively block them, as appears to be the case in the 38 states where Comcast Phone's affiliates operate, from competing with Comcast Phone's affiliated providers of voice service. For these reasons, the Commission should find that the mere existence of the LIS Guide and the alleged offering of LIS to "New Hampshire prospective customers" are not sufficient (whether considered individually or together) to prove that Comcast Phone is a provider of telecommunication services.

VI. THE ADDITIONAL SERVICES CITED BY COMCAST PHONE DO NOT DEMONSTRATE THAT COMCAST PHONE IS A TELECOMMUNICATIONS CARRIER.

38. In further support of the Petition, Comcast Phone cites additional services that it asserts qualify it as a telecommunications carrier for purposes of obtaining interconnection under Section 251 of the Act. The TDS Companies assert that Comcast Phone has not met its burden to show that services qualify it as a telecommunications carrier.

39. Comcast Phone says that it has two local exchange service offerings constituting telecommunications services that it offers to the public. First, it says that it offers "Local business service." However, this so-called service is simply a resale

offering of the business service offered by the TDS Companies priced at a level far above the rates at which the same services are sold by the TDS Companies, and the draft Interconnection Agreement does not include any provisions related to the resale service. The TDS Companies respectfully submit that (i) such an offering is not evidence of a bona fide offering of service to the public and (ii) such an offering does not qualify as an exchange of telecommunications service traffic over the TDS Companies' facilities as required by 47 CFR 51.100.

40. Lastly, Comcast Phone refers in the Petition to the fact that its local business service is offered in the service territory of Northern New England Telephone Operations, LLC (formerly Verizon New England, Inc.). However, there is no indication or evidence from Comcast Phone that any customer actually buys the resold service at prices well above the prices at which the service is available from FairPoint at retail. Therefore, based upon all of these factors, the Commission can and should reasonably conclude that Comcast Phone's local business service is not a bona fide offering of a telecommunications service.

41. Comcast Phone also relies on its proposed "Schools and Libraries Service," which it claims to offer to "e-rate eligible" institutions. This service purports to be a high-speed data service that uses point to point T1 circuits to connect local area networks across the customer's physical locations. The service is available only to primary and secondary educational institutions, corresponding municipal libraries and other "e-rate eligible" institutions. It is not available for resale. The service also provides for Point-to-Point Service to connect schools' and libraries' physically distributed locations as if they were on the same local area network. The service is

provided between designated customer locations within a metropolitan area. Finally, the service purports to provide a Channelized Exchange Service that offers to e-rate qualifying institutions local and long distance dialing capability through the public switch telephone network (“PSTN”), along with various features associated with local and toll service calling. This service is “subject to facility and system availability.”

42. The Network Services and Point-to-Point Service for schools and libraries simply connect customer locations and do not require any interconnection arrangements with the TDS Companies. Channelized Exchange Service does involve traffic on the PSTN. However, it is not known whether Comcast Phone is actually providing any such service, or will ever provide any Channelized Exchange Service, or whether this service (if provided) will be VoIP based. In any event, Comcast Phone’s claim that it is offering Channelized Exchange Service in New Hampshire is suspect because the offering of such service would appear to be inconsistent with Comcast Phone’s filings with this Commission and the FCC that it was discontinuing local and toll services in the state of New Hampshire. In light of this conflict, the TDS Companies request authority to pursue discovery of Comcast Phone related to the proposed Schools and Libraries Service.

43. Comcast Phone further relies on its purported offering of terminating switched access service. However, Comcast Phone has ceased offering its Digital Phone local exchange service in the State of New Hampshire. The discontinuance of exchange service by Comcast Phone would suggest that Comcast Phone does not serve local exchange customers who originate toll calls, or to whom toll calls are terminated. “Access service” enables a provider to originate or terminate telecommunication services within the local exchange. If Comcast Phone does not operate within the local exchange,

due to its discontinuance of local exchange service, Comcast Phone has no local exchanges and no local exchange customers that are “accessed” by providers of toll service. As such, Comcast Phone could not be a provider of access service. Instead, it appears that Comcast Phone is an intermediary who facilitates access, not to its customers, but to those of its affiliated VoIP service provider. As acknowledged in its Petition (*see* Petition, p. 18), it uses facilities “to help” terminate a toll call. Providing “help” related to access service, does not make one a toll access service provider. Again, the TDS Companies request the Commission to permit discovery of Comcast Phone so that the true nature of the “access service” that Comcast Phone claims it is providing can be ascertained. Comcast Phone has not provided sufficient evidence to prove that it is a provider of access service.

VII. CONCLUSION.

44. The TDS Companies respectfully submit that Comcast Phone has not met its burden of demonstrating that it is a telecommunications carrier. Accordingly, the Petition should be dismissed on the ground that Comcast Phone does not qualify as an entity entitled to seek interconnection under Section 251 of the Act or arbitration under Section 252 of the Act.

[The signature page follows.]

Respectfully submitted,

KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE
COMPANY
WILTON TELEPHONE COMPANY

By Their Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: January 9, 2009

By:



Frederick J. Coolbroth, Esq.

Patrick C. McHugh, Esq.

43 N. Main Street

Concord, NH 03301

(603) 226-1000

fcoolbroth@devinemillimet.com

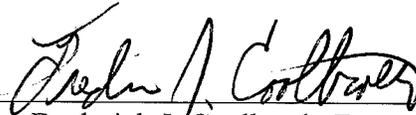
pmchugh@devinemillimet.com

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: January 9, 2009

By:



Frederick J. Coolbroth, Esq.

Patrick C. McHugh, Esq.

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 08-162

Comcast Phone of New Hampshire

Petition for Arbitration of Rates, Terms and Conditions of Interconnection
with Kearsarge Telephone Company, Merrimack County Telephone
and Wilton Telephone Company

**Answer of Kearsarge Telephone Company, Merrimack County
Telephone Company and Wilton Telephone Company, Inc.**

EXHIBIT A



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 08-871
Released: April 14, 2008

COMMENTS INVITED ON APPLICATION OF COMCAST PHONE OF MASSACHUSETTS, INC. AND COMCAST PHONE OF NEW HAMPSHIRE, LLC

WC Docket No. 08-52
Comp. Pol. File No. 861

Comments Due: April 29, 2008

Section 214 Application

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

On April 3, 2008, Comcast Phone of Massachusetts, Inc. and Comcast Phone of New Hampshire, 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 and New Hampshire.

Comcast indicates that it currently provides interstate and intrastate telecommunications services throughout Massachusetts and New Hampshire (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 these Service Areas. Comcast explains that it previously filed an application to discontinue Comcast Digital Phone service in New Hampshire, Massachusetts, Pennsylvania and Ohio, but states that it has since learned that approximately 2,200 customers in Massachusetts and New Hampshire did not receive the discontinuance notices.¹ Accordingly, Comcast states that it now anticipates discontinuing Comcast Digital Phone service to these remaining customers on or after May 15, 2008. Comcast explains that the proposed May 15, 2008 disconnection will be a "soft disconnect" and that 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 June 15, 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 April 2, 2008. Finally, Comcast asserts that it is non-dominant in the local exchange, interstate, and interexchange services markets.

¹ See *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*, Public Notice, WC Docket No. 08-45, DA 08-760 (rel. Mar. 28, 2008).

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 May 15, 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 to the affected customers in Massachusetts and New Hampshire on or after **May 15, 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 29, 2008**. Such comments should refer to **WC Docket No. 08-52 and Comp. Pol. File No. 861**. 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 Applicants. 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 –

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 08-162

Comcast Phone of New Hampshire

Petition for Arbitration of Rates, Terms and Conditions of Interconnection
with Kearsarge Telephone Company, Merrimack County Telephone
and Wilton Telephone Company

**Answer of Kearsarge Telephone Company, Merrimack County
Telephone Company and Wilton Telephone Company, Inc.**

EXHIBIT B



June 18, 2008

Mr. Robert Munoz
Comcast
183 Inverness Dr. W, Suite 300S
Englewood, CO 80112

Re: Status Update- Requests for Interconnection (MI, NH, WA & GA)

Dear Mr. Munoz:

This correspondence provides a status update on the requests for interconnection submitted by various Comcast entities to certain operating company affiliates of TDS Telecommunications Corporation.

Each of the requests mentioned above seeks to utilize the Interconnection Agreement negotiated between Comcast Phone of Vermont, LLC and the TDS Telecom operating companies in Vermont which was executed in April, 2008 as the starting point for negotiations. While TDS Telecom concurs that using this agreement as a starting point would facilitate our discussions, recent activities in various state regulatory dockets have raised some questions within the TDS Telecom organization regarding the interconnection between our companies.

As a result, TDS Telecom needs to perform a comprehensive review of the existing agreement before proceeding to use that agreement in these other states in which you've requested interconnection. In order to facilitate that review, it would be helpful if Comcast could respond to the following questions to help us better understand the relationship between the various Comcast affiliates and services and how they will utilize any interconnection agreement that we ultimately finalize.

- 1) Is Comcast Digital Voice a legal entity, a regulated service offering, an information service or a technology?
- 2) Will the interconnection/services obtained in an interconnection agreement with TDS Telecom be used by Comcast Phone to provide service directly to end-user customers, or will the interconnection/services be provided solely to another Comcast affiliate for use in providing end-user services? If affiliate, what is the legal name of that entity and is that entity certified to provide Telephone Exchange Service in the respective states?
- 3) In Comcast's opinion, does the offering of Comcast Digital Voice change the VT interconnection agreement in any way or require modification to the agreement language? Please explain.

TDS Telecom recognizes that we are working within a statutory timeframe on these requests. By our calculation, the arbitration window for the earliest of the requests mentioned above opens on September 2, 2008. We will work to complete our agreement review as quickly as possible and will forward updated drafts to you as soon as they are available.

Sincerely,

Linda Lowrance
Manager-Carrier Relations

PO BOX 22995
KNOXVILLE, TN 37983-0995
10025 INVESTMENT DRIVE, SUITE 200
KNOXVILLE, TN 37922
OFFICE: 865.966.4700
FAX: 865.675.3881

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 08-162

Comcast Phone of New Hampshire

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**Answer of Kearsarge Telephone Company, Merrimack County
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EXHIBIT C



Robert Munoz
Director, Regulatory Compliance
183 Inverness Dr. W, Suite 300S
Englewood, CO 80112
(720) 267-2660

VIA EMAIL

June 24, 2008

Ms. Linda Lowrance
Manager -- Interconnection
TDS Telecom -- Knoxville
10025 Investment Drive, Suite 200
Knoxville, TN 37932
Linda.Lowrance@tdstelecom.com

RE: TDS Telecom's Status Letter and Request for Information Regarding Comcast Phone of Michigan, LLC, Comcast Phone of New Hampshire, LLC, Comcast Phone of Washington, LLC and Comcast Phones of Georgia, LLC (together "Comcast Phone")

Dear Ms Lowrance:

I am writing in response to your letter dated June 18, 2008. Comcast Phone acknowledges your confirmation that (1) it will use the Vermont agreement as the basis for negotiating interconnection agreements for Michigan, New Hampshire, Washington and Georgia, and (2) the first arbitration window for these negotiations opens on September 2, 2008. In addition, you should know a request to negotiate an interconnection agreement with two of TDS' subsidiaries in Indiana was sent to you on June 19, 2008. It is Comcast Phone's expectation that the parties will use the Vermont agreement as a starting point for negotiations in that state as well.

In your letter, you stated that TDS needs to perform a "comprehensive review" of the Vermont agreement due to various state regulatory dockets that have "raised some questions within TDS Telecom." In response to your various questions, Comcast Phone provides the following:

1. Comcast Phone has requested negotiations on behalf of the above-defined Comcast Phone entities. The entities are certificated local exchange carriers ("CLECs") in the TDS service territories in Michigan, Washington and Georgia. As you know, Comcast Phone is in the process of seeking such certification in NH.
2. The customer base served by Comcast Phone is not germane to the instant negotiations. Comcast Phone is, in its provision of retail or wholesale services, entitled to the rights of a telecommunications carrier under section 251(a) and 251(b) of the Act. As TDS is aware, the FCC last year reaffirmed its prior holding on this matter. 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

Ms. Lowrance

June 24, 2008

RE: TDS Telecom's Status Letter and Request for Information

Page 2

Amended, to Provide Wholesale Telecommunications Services to VoIP Providers,
Memorandum Opinion and Order, 22 FCC Red 3513, ¶ 1 (WCB 2007). Accordingly,
Comcast Phone fully expects TDS to comply with its obligations under the Act and
implementing regulations, and negotiate interconnection terms and conditions with
Comcast Phone pursuant to Section 251 of the Act.

3. If TDS believes that modifications to the Vermont agreement are necessary, TDS may,
only where appropriate, invoke change of law provisions in the agreement.

We look forward to moving forward with TDS on negotiations in the additional states. To that
end, we have already reviewed and provided red line edits to TDS' proposed Michigan
agreement. Please contact us at your earliest possible time to discuss that agreement.

Sincerely,



Robert Munoz

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 08-162

Comcast Phone of New Hampshire

Petition for Arbitration of Rates, Terms and Conditions of Interconnection
with Kearsarge Telephone Company, Merrimack County Telephone
and Wilton Telephone Company

**Answer of Kearsarge Telephone Company, Merrimack County
Telephone Company and Wilton Telephone Company, Inc.**

EXHIBIT D



Beth Choroser
Senior Director, Regulatory Compliance

One Comcast Center
50th Floor
Phila., PA 19103-2838
Tele: (215) 286-7893
Fax: (215) 286-5039

VIA EMAIL

April 17, 2008

Ms. Linda Lowrance
Manager – Interconnection
TDS Telecom – Knoxville
10025 Investment Drive, Suite 200
Knoxville, TN 37932
Linda.Lowrance@tdstelecom.com

RE: Request of Comcast Phone of Michigan, LLC d/b/a Comcast Digital Phone to Negotiate an Interconnection Agreement with Communication Corporation of Michigan for the state of Michigan

Dear Linda:

Pursuant to Sections 251(a) and (b) of the Communication Act of 1934, as amended (the "Act"), Comcast Phone of New Michigan, LLC., d/b/a Comcast Digital Phone, a Delaware Limited Liability Company ("Comcast"), requests that Communication Corporation of Michigan ("TDS-Michigan") enter into negotiations with Comcast for an interconnection agreement (the "Agreement") in the state of New Hampshire. The Agreement should include terms and conditions for interconnection, including but not limited to the following:

1. Direct and indirect network interconnection;
2. Number portability;
3. Reciprocal compensation at "bill and keep";
4. Access to directory listings and directory assistance; and
5. Access to 911/E911 facilities, if owned or controlled by TDS-New Hampshire.

To the extent that TDS-Michigan does not currently support permanent local number portability ("LNP") in its applicable switches in Michigan, this letter shall also serve as a bona fide request ("BFR") for TDS-Michigan to open the switch(es) for number portability in the Augusta and Hickory Corners rate center exchanges:

For the purposes of the negotiation, Comcast represents the following:

1. Comcast represents that it holds a Certificate of Authority to provide competitive local exchange service in the state of Michigan, including in the above exchanges.
2. In entering into the Agreement, Comcast does not waive any rights it may have to negotiate or arbitrate amendments to the Agreement, to negotiate a successor agreement or to adopt a replacement agreement should an adoptable agreement become available. In negotiating the Agreement in the state of Michigan, Comcast does not waive any of its rights or remedies under the Act, and such other state and federal law, rules, regulations, and decisions as may be applicable.
3. Notice to Comcast as may be required under the terms of the Agreement shall be provided as follows:

Mr. Brian Rankin
Assistant General Counsel
One Comcast Center, 50th Floor
Philadelphia, PA 19103
brian_rankin@comcast.com
Tel: (215) 286-7325
Fax: (215) 286-5039

with a copy to:

Ms. Beth Choroser
Senior Director of Regulatory Compliance
One Comcast Center, 50th Floor
Philadelphia, PA 19103
beth_choroser@comcast.com
Tel: (215) 286-7893
Fax: (215) 286-5039

Since at this time I believe we have reached substantive agreement on the terms for the Vermont agreement, we propose to use that agreement as a starting point for negotiating the Michigan Agreement; provided however, neither Party shall be considered to waive any rights it may have in negotiating or arbitrating terms of the Agreement in the state of Michigan.

In connection with the negotiation of the Agreement, please contact me as soon as possible at the email address or phone number above to commence these negotiations. For the purposes of Section 252 of the Act, Comcast will consider the start date for negotiations to be April 21, 2008 unless the Parties agree to use an alternate start date.

Please let me know how you wish to proceed and advise me immediately if there is additional information that you require to process this request. Should you have any questions, please contact me at (215) 286-7893.

Sincerely,

A handwritten signature in cursive script that reads "Beth Choroser".

Beth Choroser
Senior Director of Regulatory Compliance

cc: Joyce Gailey (Kelley Drye)
Andrew Fisher (Comcast)
Beth O'Donnell (Comcast)