

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

**Rural Carriers of the New Hampshire
Telephone Association's Petition for
Investigation into the Regulatory Status
of IP Enabled Voice Telecommunications
Service**

Docket No. DT 09-044

MOTION FOR LEAVE TO FILE SUR-REPLY BRIEFS

NOW COMES Comcast Phone of New Hampshire, LLC ("Comcast") on behalf of itself and its affiliates, and respectfully moves this honorable Commission to permit the filing of Sur-Reply Briefs in the above-captioned docket. In support of this Motion, Comcast states as follows:

1. By Secretarial Letter dated July 2, 2009, the Commission established the procedural schedule for this docket and set January 29, 2010 as the deadline for filing Reply Briefs. The procedural schedule presently does not contemplate filings or other deadlines beyond the above-referenced January 29 deadline.

2. Comcast has reviewed the Reply Brief filed by NHTA on January 29, 2010, and believes that the Brief introduces a number of new issues that were not presented in NHTA's Opening Brief.

3. For instance, NHTA's Reply Brief introduces several factual assertions that were not part of the record in this proceeding. NHTA introduces engineering literature to suggest for the first time on reply that Time Division Multiplexing is not a "protocol." See NHTA Reply Br. at 12-13 & Appx. 3. NHTA also introduces a January

18, 2009 Letter an FCC representative sent to Comcast, which NHTA frames as evidence of the FCC's position on the regulatory status of interconnected VoIP providers. *See* NHTA Reply Br. at 6-7 & Appx. 1.

4. NHTA's Reply Brief also contains new legal arguments that NHTA did not raise in its Opening Brief. For instance, NHTA contends in its Reply Brief that the protocol conversion offered by interconnected VoIP providers falls within the FCC's exception, from the definition of an 'information service,' for protocol conversion services where "basic network technology is introduced into the network in a piecemeal fashion, and conversion equipment is used in the network to maintain compatibility with CPE." *See* NHTA Reply Br. at 16; *In re Independent Data Communications Manufacturers Ass'n, Inc. and AT&T Petition for a Declaratory Ruling*, Memorandum Opinion and Order, 10 FCC Rcd. 13717, 13719, ¶ 15 (1995) ("*Frame Relay Order*"). NHTA's Opening Brief argued that such protocol conversion fell within the FCC's "internetworking" and "communications between a subscriber and the network itself" exceptions, but did not argue that the "maintain[ing] compatibility with CPE" exception was pertinent. *See* NHTA Br. at 30-31 & n.100; *Frame Relay Order*, 10 FCC Rcd at 13719, ¶¶ 14-16. NHTA's Reply Brief also contends that the FCC's *Computer II* decision requires that CPE be "clearly severable" from the service, a legal argument that was also not raised in NHTA's Opening Brief. NHTA Reply Br. at 15.

5. Comcast suggests that the Commission would benefit from a more developed and complete record if the parties were given the opportunity to address new legal and factual statements introduced in the Reply Briefs, such as the ones listed above. This is a significant case of first impression before the Commission. Providing the

parties with an opportunity to file short Sur-Reply Briefs will ensure that the Commission has the most complete record before it to decide these issues.

6. Comcast also believes that Sur-Reply briefs should be permitted as a matter of fairness. Because issues such as the ones detailed above were not presented in NHTA's Opening Brief, Comcast has not yet had an opportunity to respond to them.

7. Given the limited scope of the new issues introduced in the Reply Briefs, Comcast suggests that a five-page limit on Sur-Reply Briefs should be sufficient to address any new issues without substantially burdening the Commission with additional filings.

8. Given that the procedural schedule in this case does not specify a date by which the Commission will issue a decision, granting the within Motion will not cause a delay in the remainder of the procedural schedule in this docket.

9. The undersigned has contacted the parties to this docket by electronic mail on February 4 and 5, 2010 in a good faith effort to obtain their concurrence with the relief sought herein. As of the time of the filing of this Motion, the following parties have indicated their positions on it as follows: NECTA and TWC Digital Phone, LLC concur; Commission Staff and segTEL do not object; the Office of Consumer Advocate takes no position; and the Rural LECs of NHTA disagree with the assertions and conclusions in the Motion, but to insure that all parties are satisfied with the record, it will not object to one more round of briefing and believes that the deadline for submission should be February 19, 2010 instead of two weeks from an order granting the within Motion. The remaining parties have not responded with their position.

WHEREFORE, Comcast respectfully requests that the Commission:

A. Issue an order allowing the parties until two weeks from the date of the order to file Sur-Reply Briefs (of up to 5 pages) in response to the Reply Briefs filed on January 29, 2010; and

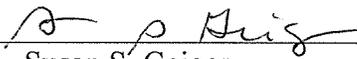
B. Grant such further relief as it deems appropriate.

Date: February 5, 2010

Respectfully submitted,

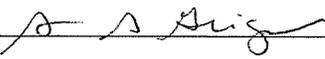
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Certificate of Service

I hereby certify that a copy of the foregoing Motion has on this 5th day of February, 2010 been sent by electronic mail to persons listed on the Service List.


Susan S. Geiger