

Legal Notice

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
DT 08-013

Comcast Phone of New Hampshire, LLC
Request for Authority to Provide
Local Telecommunications Services
Order Nisi Granting Application
ORDER NO. 24,843
April 4, 2008

On December 12, 2007, Comcast Phone of New Hampshire ("Comcast") filed an application for authority to provide local exchange telecommunications services pursuant to RSA 374:22 and to do business as a competitive local exchange carrier ("CLEC") in the service territories of three affiliated incumbent local exchange carriers (ILECs) -- Kearsarge Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company -- all subsidiaries of TDS Telecom. Comcast completed the required attachments to its CLEC application on January 22, 2008. Comcast is a CLEC currently authorized to provide intrastate telecommunications services in the New Hampshire exchanges formerly served by Verizon and now served by Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (FairPoint).

Comcast plans to provide access, exchange access, and interexchange service in the areas of Andover, Antrim, Bennington, Boscaawen, Chichester, Deering, Henniker, Hillsboro, Hopkinton, Loudon, New London, Salisbury, Wilnot and Wilton served by the TDS companies. This marks the first time we must consider granting a CLEC authorization to operate in a service territory other than the former Verizon territory now served by FairPoint. The three ILECs affected by the petition each have fewer than 25,000 access lines. RSA 374:22-f purports generally to grant such ILECs service territory exclusivity, while 47 U.S.C. § 253(a), prohibits States from preventing any entity from providing intrastate or interstate service.

Part Puc 431 of the New Hampshire Code of Administrative Rules governs CLEC certification applications. Puc 431.02 describes the circumstances in which the Commission may deny such an application; generally, the grounds relate to prior transgressions or material false statements of fact in the application.

On January 31, 2008, Comcast filed a letter requesting, to the extent necessary, a waiver of Puc 431.01(d). This provision specifies that, unless denial of an application under Puc 431.02 is warranted, the Commission shall authorize "the applicant to provide competitive local exchange service in the territory of non-exempt ILECs" (emphasis added), defined in Puc 402.33 as ILECs that are "not exempt pursuant to 47 U.S.C. § 251(f)." Comcast maintained that Puc 431.01(d) should not be read as prohibiting registration of CLECs to operate in such territories, further contending that such a limitation would be contrary to both the competitive goals set out in RSA 347:22-g and applicable federal law. See, e.g., 47 U.S.C. § 253(a) (overriding state or local requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service").

Also on January 31, 2008, the TDS companies filed a letter disagreeing with the contention that they had waived their 47 U.S.C. § 251(f) rural exemption in connection with their pending request in another docket, No. DT 07-027, for an alternative form of regulation pursuant to RSA 374:3-b. However, the TDS companies noted their lack of an objection to Comcast's request for CLEC registration. By memorandum filed on March 12, 2008, the Staff of the Commission recommended approval of the Comcast application.

Because Comcast has satisfied the requirements of Puc 431.01 (c) and RSA 374:22, we grant the petition, subject to any hearing requests as noted below. We have considered the public good and, more specifically, the interests of competition, fairness, economic efficiency, universal service, and carrier-of-last-resort obligations. See RSA 374:22-g (enumerating these considerations for service territories with more than 25,000 access lines). In so ruling, we note that Puc 431.01(d) does not expressly limit CLEC registrations to non-exempt ILEC service territories. Reading such a limitation into the rules would raise issues of federal preemption, which need not be resolved here because the TDS companies do not object to the Comcast petition. Furthermore, we note that our ruling is not intended to affect TDS's right to assert the "rural exemption." See 47 U.S.C. § 251 (f).

As more competitors enter the market, greater pressure is put on the 603 area code. We require, therefore, that Comcast request and use numbers responsibly and conservatively, joining in the exploration of alternative number assignment mechanisms as appropriate. In approving this petition, we require Comcast to comply with our orders on number resource optimization, including but not limited to Order No. 23,385 (January 7, 2000) and Order No. 23,392 (January 27, 2000).

Based upon the foregoing, it is hereby ORDERED NISI, that subject to the effective date below, the application of Comcast

Phone of New Hampshire LLC for authority to provide access, exchange access and interexchange telecommunications services in the service territories of Kearsarge Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company, is GRANTED, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that Comcast's request for waiver of Puc 431.01 (d) is hereby GRANTED to the extent necessary; and it is

FURTHER ORDERED, that the Petitioner shall file, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Code Admin. Rules Puc 431.06.

FURTHER ORDERED, that Comcast shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation, such publication to be no later than April 14, 2008 and to be documented by affidavit filed with this office on or before May 5, 2008; and it is

FURTHER ORDERED, that all persons interested in responding to this Order Nisi shall submit their comments or file a written request for a hearing on this matter before the Commission no later than April 21, 2008; and it is

FURTHER ORDERED, that this Order Nisi shall be effective May 5, 2008, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that, should the petitioner fail to exercise the authority granted herein within two years of the date of this order, the authority granted shall be deemed withdrawn, null, and void.

By order of the Public Utilities Commission of New Hampshire this fourth day of April, 2008.

Thomas B. Getz, Chairman
Graham J. Morrison, Commissioner
Clifton C. Below, Commissioner

(UL - April 11)

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