BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Petitions of Kearsarge Telephone Co., Wilton Telephone Co., Hollis Telephone Co. and Merrimack County Telephone Co. for Approval of Alternate Form of Regulation	)	Docket No. DT 07-027

MEMORANDUM OF COMCAST PHONE OF NEW HAMPSHIRE, LLC ON SCOPE OF PROCEEDING

Comcast Phone of New Hampshire, LLC ("Comcast") submits this memorandum regarding the scope of these proceedings at the suggestion of the Commission at the pre-hearing conference held on March 26, 2009. At that conference and in the follow-up technical session, the TDS Companies[1] presented a narrowly circumscribed view of this proceeding. According to their view, the only issue is whether newly submitted evidence establishes that competitive wireless alternatives are available to customers in the specific exchanges of the Kearsarge and Merrimack companies where the Commission found in Order No. 24,852 (the "Order") that such alternatives are lacking. If so, the TDS Companies contend, the Commission must extend to Kearsarge and Merrimack the terms of the Joint Settlement Agreement (the "Settlement Agreement") that the Commission previously approved with respect to Wilton and Hollis, and adopt the plans of alternate regulation ("Plans") of Kearsarge and Merrimack on the same terms as the Wilton and Hollis Plans. This conception of the scope of this proceeding is too narrow.

[1] The term "TDS Companies" shall refer to all of the petitioners collectively. When referring to the petitioners individually, Comcast will use first word in each petitioner entity's name (*e.g.*, "Kearsarge" shall refer to "Kearsarge Telephone Co.").

The Commission's Order explicitly stated that the Commission would "consider additional competitive developments as part of our ongoing procedure on those two petitions."[2] The Commission should do just that. The competitive developments since the April 23, 2008 Order raise the question as to whether the Plans approved in the Order will be effective to achieve their stated purposes as to Kearsarge and Merrimack going forward, but also whether the Wilton Plan should remain in effect unchanged. Accordingly, the Commission should consider in this proceeding whether Kearsarge and Merrimack can meet ***all*** the requirements of RSA 374:3-b, III and not just those of subsection III(a); and whether pursuant to RSA 374:3-b, III(f), modification of Wilton's Plan is in order in light of Wilton's joinder in efforts in Docket No. DT 08-013 to prevent Comcast from obtaining authorization to serve the TDS Companies' service areas as well as Wilton's opposition to Comcast's request for interconnection reflected in Docket No. DT 08-162.[3]

Opening the TDS territories to competition was a critical consideration in approving the plan of alternative regulation proposed in the Settlement Agreement. Both the Office of Consumer Affairs ("OCA")[4] and Commission Staff[5] highlighted the market-opening provisions of the Settlement Agreement as a reason to approve the agreement, and in turn the Commission found:

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2 Order, at 30-31.

3 Comcast's comments on whether the Joint Settlement has been breached and the Plan must be modified are directed solely at Wilton and not Hollis, as Comcast is not seeking certification or interconnection in the footprint of the Hollis Telephone Company.

4 *See Order* at p. 11.

5 *See id.* at 14-15.

> [b]y reducing barriers to competitive entry, the TDS Companies have ***clearly*** enhanced competition and thereby promoted the offering innovative telecommunications [and] ... enhanced their intercarrier service obligations in support of 374:3-b, III(d).[6]

Regrettably, the "additional competitive developments" since that time have reduced this conclusion to irony. If anything has been shown "clearly," it is that the TDS Companies – Wilton along with Kearsarge and Merrimack – are determined to prolong their local monopoly over wireline voice service as long as possible regardless of what the Commission said in the Order or what the State of New Hampshire's policy of competition promotes. The Commission should not approve extension of the Joint Settlement to Kearsarge and Merrimack without considering how to ensure that their Plans achieve the Commission's goal.

To this end, Comcast intends in this proceeding to introduce evidence of the TDS Companies' subsequent anticompetitive behavior since the Order was issued. The TDS Companies' actions should be considered by the Commission in its determination whether alternative regulation should be granted to the Kearsarge and Merrimack companies, as well as whether Wilton is in compliance with its current approved Plan or some modification of that Plan is required. By way of offer of proof, this memorandum summarizes this evidence and addresses its relevance to the terms of the Order, RSA 374:3-b, and N.H. Code Admin. R Puc 203.20.

I. THE ORDER EXPLICITLY LEAVES THE RECORD OPEN TO CONSIDER THE TDS COMPANIES' BEHAVIOR IN IMPOSING BARRIERS TO ENTRY AND FAILING TO INTERCONNECT.

A. Events Leading Up to The Order.

On March 1, 2007, the TDS Companies each filed petitions for an alternate form of regulation under RSA 374:3-b. Comcast moved to intervene on October 1, 2007, "to provide evidence on the extent of competition in the exchanges served by the TDS [C]ompanies" and,

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[6] *Id.* at 28 (emphasis added).

more specifically, "to clarify the record as to competition in voice service - or the absence of it - in these exchanges."[7]

Subsequently, several of the parties to the proceeding negotiated and entered into the Settlement Agreement, under which the TDS Companies agreed to modify their Plans and other parties to the Settlement Agreement agreed to withdraw any opposition to the TDS Companies' petition.[8] While Comcast was not a party to the Settlement Agreement, given the express market-opening provisions in the Settlement Agreement set out below, it did not object to approval at the time.[9] The terms of Sections 1 and 2 of the Settlement Agreement explicitly addressed the TDS Companies' obligations to open their territories to competition:

> 1. CLEC Certification. Petitioners will not oppose Commission certification or registration of any company seeking to do business as a competitive local exchange carrier ("CLEC") in the service territories of the Petitioners.
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> 2. Rural Exemption.
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> 2.1 Petitioners agree 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 "Act") (47 U.S.C. §251(f)(1)); provided, however, that such waiver shall not result in the Petitioners being required to file wholesale UNE and resale tariffs, and to the extent applicable, the tariff filing requirements of Puc 419.01(f) and Puc 420.01 shall be deemed waived.
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> 2.2 Petitioners agree that a CLEC may request an interconnection agreement limited to the items set forth in section 251 (a), (b) and (c) (2), (4) and (6) of the Telecommunications Act of 1996, including, but not limited to the issue of the appropriate discount to be applied to resold retail services. For such a

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7 Petition To Intervene of Comcast Phone of New Hampshire, LLC (filed October 1, 2007)

8 *See* Settlement Agreement Among the Joint Petitioners and other Signatories Hereto (the "Settlement Agreement") (filed December 3, 2007). The parties to the settlement agreement are the TDS Companies, segTEL, Inc., the Office of Consumer Advocate, and the Staff of the New Hampshire Public Utilities Commission.

9 *See* Comcast Letter to Commission (filed Dec. 4, 2007) (stating that "Comcast has no objection to the Settlement Agreement").

> request, the time period set forth in Section 252(b)(1) of the Act to seek arbitration shall be between the 90th and 115th days after receipt of a request for negotiation (instead of between the 135th and the 160th day specified in such section). The expedited process set forth above shall be in addition to, not in lieu of, the obligation to negotiate in good faith for a complete interconnection agreement, including the obligation to negotiate in good faith to provide unbundled network elements under Section 251(c)(3) of the Act.

On April 23, 2008, the Commission issued the Order. It granted Wilton's and Hollis's petitions for an alternate form of regulation, but denied alternate regulation as to Kearsarge and Merrimack.[10] The Commission found that Wilton and Hollis had demonstrated adequate competition under RSA 374:3-b, III(a) and that their plans, as amended by the Settlement Agreement, met the remaining requirements of RSA 374:3-b, III. This included the finding that "the TDS Companies' agreements in the settlement: not to oppose CLEC registration, to waive the rural exemption, and to agree to shorter time frames for the negotiating of interconnection agreements, fulfill both 374:3-b, III(c) and (d)."[11]

With respect to Kearsarge and Merrimack, the Commission found that these companies had not met their burden to prove "available alternatives for all the exchanges in either Kearsarge or Merrimack."[12] The Commission stated that it would leave the docket open for one year to permit "Kearsarge and Merrimack [to] update their testimony on availability and the level of competition . . . ."[13] In addition, the Commission "encourage[d]" Kearsarge and Merrimack "to reduce market barriers by not opposing CLEC registrations, waiving the rural exemption and

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10 Order, at 27.

11 *Id.* at 28.

12 *Id.* at 29.

13 *Id.* at 30.

expediting interconnection negotiations, as proposed in the settlement."[14] Finally, the Commission stated that if the TDS Companies did submit additional testimony, "we will consider additional competitive developments as part of our ongoing procedure on those two petitions."[15]

B. The Additional Competitive Developments Since The Order.

The specific obligations to open their territories to competition was binding only on Wilton and Hollis. But the Commission's "encouragement" to Kearsarge and Merrimack to fulfill the same obligations as required of Wilton and Hollis served as an invitation to the two companies to demonstrate good faith and the effectiveness of their Plans, which are again before this Commission for approval. The TDS Companies have flunked this test. Since issuance of the Order, the TDS Companies have done anything but "reduce market barriers by not opposing CLEC registrations, waiving the rural exemption and expediting interconnection negotiations."[16] Specifically, Kearsarge and Merrimack – lately joined by Wilton – have opposed Comcast's efforts to obtain certification in the TDS territories in Commission Docket No. DT 08-13. In addition, the TDS Companies have prolonged, not expedited, interconnection with Comcast, as reflected in the pending interconnection arbitration proceeding, Docket No. DT 08-162. Finally, in DRM 08-126, the TDS Companies have joined the efforts of the New Hampshire Telecommunications Association ("NHTA") to layer onto the Commission's streamlined CLEC registration rules new burdens for those seeking entry into rural territories. The Commission should therefore take notice of these three open proceedings, in which Wilton as well as

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14 *Id.*

15 *Id.* at 30-31.

16 Order, at 30.

Kearsarge and Merrimack seek to add barriers to competitive entry, at the same time the latter two companies asking for alternative regulation based upon the claimed presence of competition. The proffered evidence is discussed below in more detail.

- ***Docket No. DT 08-13: Comcast Phone of New Hampshire, LLC, Petition To Waive Puc 431.01(d)***

In this docket, Comcast is seeking approval of its Form CLEC-10 registering it to provide service in the TDS Companies' service area, which it applied for pursuant to the Commission's streamlined rules on December 12, 2007. After the Commission issued an Order *Nisi* Granting Application granting this authority on April 4, 2008,[17] the TDS Companies sought a stay pending resolution of their petitions for alternate form of regulation in Docket No. DT 07-027. They then opposed the Order *Nisi* Granting Application on the basis that the application required extensive factual investigation.[18] On May 2, 2008, Comcast's registration was suspended by Order 24,854 pending further investigation. Despite the many questions the TDS Companies alleged required investigation, Comcast and the TDS Companies were able to reach narrow stipulations for hearing by the Commission.[19] As a result, the Commission subsequently found on August 18, 2008, that Comcast's CLEC-10 application was complete "and complies with Commission rules governing CLEC applications," but also ordered a hearing on the question whether grant of the application would be "consistent with the public good."[20] After submitting pre-filed testimony

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17 Order No. 24,843, Order *Nisi* Granting Application (April 4, 2008).

18 *See* Motion by TDS Companies for Suspension of Order No. 24,843 Pending Resolution of Docket DT 07-27 or, Alternatively, For a Hearing (filed April 16, 2008)

19 *See* Stipulated Facts, Letter from F. Anne Ross, Staff Attorney, New Hampshire Public Utilities Commission, to Debra A. Howland, Executive Director and Secretary, New Hampshire Public Utilities Commission (June 18, 2008).

20 *See* Order No. 24,887, Order Granting Hearing , at 8 (Aug. 18, 2008)

on this issue going to the factors in RSA 374:22-g, the parties agreed to waive a hearing.[21] In briefs, the TDS companies took the opportunity to restate their arguments (now thrice-rejected) that granting Comcast's registration did not serve the public good on the theory Comcast was not a *bona fide* telecommunications carrier offering services to the public.[22]

On February 6, 2009, the Commission again granted authority to Comcast to offer services in the TDS Companies service areas.[23] On March 6, 2009, Kearsarge and Merrimack as well as the NHTA – now joined by Wilton – moved for rehearing. The TDS Companies claimed, via footnote, that Wilton's participation in the motion for rehearing was for the sole purpose of objecting to that portion of the Commission's February 6, 2009 Order, which ostensibly – in the TDS Companies' view – required Kearsarge, Merrimack and Wilton to

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21 *See* Secretarial Letter, Cancellation of Hearing (Sept. 22, 2008).

22 *See* Joint Brief of New Hampshire Telephone Association, Merrimack County Telephone Company and Kearsarge Telephone Company (filed Oct. 1, 2008); Joint Reply Brief of New Hampshire Telephone Association, Merrimack County Telephone Company and Kearsarge Telephone Company (filed Oct. 10, 2008). From the outset of Docket DT-08-013 the Commission repeatedly made clear that questions of how VoIP service would be regulated was separate from certification. Specifically, at the pre-hearing conference in DT 08-013, Commission Chairman Getz acknowledged that "jurisdictional issues" about other operations of Comcast "would not be part and parcel to this CLEC application ...[but] would be something we would deal separately from the issue of whether they should be qualified as a CLEC in New Hampshire." Pre-hearing Conference Transcript, at 33 (May 21, 2008). Then, in its order granting a hearing, the entire Commission made clear that the regulatory status of Comcast's digital voice service was "not the subject of this docket and does not bear on whether we should expand Comcast's authority to operate in New Hampshire." Order No. 24,887, Order Granting Hearing, at 6 (Aug. 18, 2008). Finally, the Commission reiterated in its order granting authority that "[w]hether or not . . . VoIP services are regulated does not impact the fairness of Comcast [Phone]'s entry into the TDS Companies' territories. Order No. 24,938, Order Granting Authority, at 19 (Feb. 6, 2009). It was only one month ago that the TDS Companies requested that the Commission open an independent docket to address the regulatory status of VoIP in Docket No. DT 09-044. *See* Docket No. DT 09-044: *Petition under RSA 365:5 by the Rural Carriers of the New Hampshire Telephone Association for the Commission to Conduct an Independent Inquiry into the Regulatory Status of IP Enabled Voice Telecommunications Service*

23 Order No. 24,938, Order Granting Authority (Feb. 6, 2009).

interconnect with Comcast. But Wilton, which is obligated to expedite interconnection with requesting CLECs pursuant to its approved Plan and the Joint Settlement, can only have one purpose in pursuing this course: to preserve its insulation from competition under the umbrella of the Kearsarge's and Merrimack's ongoing maneuvers to forestall Comcast's entry.

- ***Docket No. DT 08-162: Comcast Phone of New Hampshire, LLC d/b/a Comcast Phone, Petition for Arbitration of Rates, Terms and Conditions of Interconnection with TDS.***

Beginning in April of 2008, and continuing through the remainder of the year, Comcast and the TDS Companies negotiated the terms of an interconnection agreement to enable Comcast to provide service in the TDS Companies' territory once it received Commission authority to do so. Because the parties used an executed interconnection agreement between Comcast and TDS entities in Vermont as a template, few issues required prolonged negotiations. In fact, Comcast and the TDS Companies resolved all outstanding operational issues of interconnection. The single issue presented in the arbitration to the Commission is the TDS Companies' refusal to execute the fully-negotiated interconnection agreement based on their assertion that Comcast is not a telecommunications carrier under Section 3(44) of the Communications Act of 1934 entitled to the rights of such carriers under Sections 251(a)-(b) of that Act.[24]

In short, notwithstanding its obligation under Section 2.2 of the Settlement Agreement approved by this Commission to interconnect with CLECs with an "expedited process," Wilton (joined by Kearsarge and Merrimack) simply ignores this obligation by unilaterally declaring that Comcast is not a CLEC within the meaning of the Settlement Agreement. In fact, the TDS Companies have maintained this argument even though the Commission has, in Docket No. DT

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[24] *See* Comcast Petition for Arbitration of Rates, Terms and Conditions of Interconnection with TDS (filed Dec. 15, 2008), at ¶ 18; Answer of Kearsarge Telephone Company, Merrimack County Telephone Company and Wilton Telephone Company, Inc. (filed Jan. 9, 2009), at ¶¶ 21-44.

08-013, granted Comcast's application for authority to serve the TDS Companies areas and determined that the services proposed in Comcast's CLEC-10 application are "retail telecommunications services" and that Comcast "has met the requirements of our CLEC registration rules as we interpret them."[25] Given Wilton's complete disregard for this obligation under the Settlement Agreement and its approved Plan, as well as Kearsarge and Merrimack's identical actions, the Commission should consider whether the proposed Kearsarge and Merrimack Plans and existing Wilton Plan fulfill their statutory purpose, given TDS Companies' belief that the Plans permit them to refuse interconnection with Comcast and oppose Comcast's entry into the TDS territories on the basis that in TDS' unilateral opinion (in contradiction to the effect of this Commission's Orders), Comcast is not a CLEC.

- ***DRM 08-126 – Proposed Change to Rule 431.01(d)***

In this proceeding, Commission Staff proposed a ministerial change to the CLEC registration rules to effectuate the Legislature's intent when it repealed RSA 374:22-f through SB386. The repeal of 374:22-f eliminated any residual distinction in terms of service area between telephone utilities with more than 25,000 access lines and those with fewer than 25,000 access lines. This statutory change reflected New Hampshire's policy of free and fair competition, and it opened up the entire state to streamlined competitive entry. Thus, the exemption language then contained in the Commission's registration rules for carriers with fewer than 25,000 access lines thus was an artifact of the former statute. To conform to this legislative change, Staff simply proposed to delete the word "non-exempt" from the rule, as SB 386 rendered it meaningless.

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[25] Order No. 24,887, Order Granting Hearing (Aug. 18, 2008), at 6.

The NHTA companies (including the Kearsarge, Merrimack and Wilton TDS Companies) proposed an entirely new set of rules on CLEC entry that were at odds with the intent of the Legislature.[26] The two pages of proposed rules prescribed an adjudicative proceeding on CLEC entry into the service territory of small ILECSs in place of the streamlined registration process approved by the Commission in 2005. The policy impact of NHTA's proposed rules is clear – to increase the barriers to competition in small ILEC territories and add to the delay of bringing much wanted competition to these areas. Ultimately, the Commission rejected the NHTA's proposed rules and agreed with the Staff proposal, and the Commission sent the rule to the Legislative Committee where it sits today, with the single word – "non-exempt" – deleted.

II. THESE ADDITIONAL COMPETITIVE DEVELOPMENTS ARE RELEVANT TO ESTABLISH WHETHER THE TDS ALTERNATIVE REGULATION PLAN COMPLIES WITH RSA 374:3-B AND IS JUST, REASONABLE, AND IN THE PUBLIC INTEREST.

Consideration of the TDS Companies' anticompetitive conduct and gaming of the entry process is relevant to this proceeding for two reasons. First, Kearsarge's and Merrimack's conduct calls into question whether, even if they establish compliance with RSA 374:3-b, III(a) through their additionally filed evidence, the other sections of that statute are met sufficiently to allow their petitions.[27] Second, Wilton's conduct is relevant to consideration whether Wilton has complied with the terms of the Settlement Agreement and its Plan, and thus whether modification of the Plan is necessary under RSA 374:3-b, III(f). If the Plan approved in the April 23, 2008 Order has not proven adequate to ensure that Wilton opens its territory to

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[26] See Comments of New Hampshire Telecommunications Association, DRM 08-126 (filed December 18, 2008).

[27] Order, at 30-31.

competition, the Commission would be remiss in finding that the Plan is just and reasonable and in the public interest as to Kearsarge and Merrimack.

A. Kearsarge's and Merrimack's Compliance with All Aspects Of RSA 374:3-b.

The alternate regulation statute at issue in this proceeding, RSA 374:3-b, III establishes the standards that must be met before the Commission may allow a petition for alternate regulation of a small local exchange carrier. As the Commission has recognized, Kearsarge and Merrimack have the burden as petitioners to establish the availability of competition to a majority of residents in each exchange of their service areas per RSA 374:3-b, III(a). But in order for their petitions to be granted, Kearsarge and Merrimack also must establish that:

- "The plan promotes the offering of innovative telecommunications services in the state"[28], and
- "The plan meets intercarrier service obligations under other applicable laws."[29]

In approving the petitions of Hollis and Wilton, the Commission found these two provisions were met based on the TDS Companies' uncontroverted representations in the settlement agreement.[30] There were no independent findings in the Order as to whether Kearsarge or Merrimack met these standards, as the Order denied entry of the settlement as to those entities solely based on failure to meet 374:3-b, III(a).[31] The Commission only "encourage[d Kearsarge and Merrimack] to reduce market barriers by not opposing CLEC

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[28] RSA 374:3-b, III(c).

[29] RSA 374:3-b, III(d).

[30] Order, at 28.

[31] *Id.* at 28-30.

registrations, waiving the rural exemption and expediting interconnection negotiations, as proposed in the settlement."[32]

As described above, rather than heed this encouragement, Kearsarge and Merrimack have done the opposite. The Commission should, therefore, consider evidence as to whether approval of Kearsarge's and Merrimack's Plans - including the TDS Companies' oft-stated assertion that Comcast is not a CLEC and therefore that the proffered terms of the Settlement Agreement do *not* apply to Comcast - will comply with their obligations under 374:3-b, III(c) and (d).

B. Wilton's Breach of Its Approved Settlement Obligations.

As described above, Wilton has joined the other TDS Companies' efforts to impede Comcast's entry into the TDS Companies' service areas, particularly by arguing, despite the Commission's statements to the contrary, that Comcast is not a telecommunications carrier entitled to interconnection under federal law. Under RSA 374-b, III(f) and the Wilton Plan, the Commission may require "modifications to the alternative regulation plan or return to rate of return regulation" if the Plan no longer meets the stated requirements of the alternative rate regulation statute, which include the obligation to promote innovative services in the state and to meet intercarrier service obligations under federal law.

Wilton has claimed that it is not opposing Comcast's application for authority to serve, rather, it is only disputing whether Comcast is a CLEC entitled to interconnection under federal law. This is a distinction without a difference, as the end result is the same. Comcast is unable to provide service in the Wilton territory. The Commission has already determined from the outset of Docket DT 08-013 that: (1) the services proposed in Comcast's CLEC-10 application

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[32] *Id.* at 30.

are "retail telecommunications services";[33] (2) Comcast "has met the requirements of our CLEC registration rules as we interpret them";[34] and (3) questions of VoIP regulation were separate from certification.[35] It is clear that the only purpose for – and effect of – Wilton's actions in Docket Nos. DT 08-013 and 08-162 is to delay Comcast's entry into its service area. For this reason, it is necessary and appropriate in this proceeding to consider evidence of Wilton's conduct to determine whether the Wilton Plan should be modified. To proceed without considering evidence Wilton's conduct would frustrate the purposes of the alternate regulation statute.

In approving the Settlement Agreement, the Commission acted pursuant to its authority under N.H. Code Admin. R Puc 203.20. This rule requires a finding that the Settlement Agreement was just, reasonable and serves the public interest.[36] Wilton's willingness to block Comcast's entry into its service area calls into question whether the Settlement Agreement has proved in fact to meet this standard. Comcast did not oppose the Settlement Agreement because of the explicit market-opening provisions it contained. The presence of these provisions likely were central to the decision of other parties, including OCA and Staff, to endorse the Settlement Agreement. But in hindsight, it is now clear that the TDS Companies had no intention of extending the benefit of these market opening provisions to Comcast. What the TDS Companies did not say then is abundantly clear now – they claim that Comcast is not a CLEC and thus excluded from benefit from the benefit of their obligations under the Settlement Agreement to

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33 Order No. 24,887, Order Granting Hearing , at 6 (Aug. 18, 2008).

34 *Id.*

35 *See* note 20, *supra.*

36 *See* Order, at 26.

open their territories to competition. The TDS Companies have demonstrated this repeatedly and brazenly, as evidenced by Wilton's actions. The Settlement Agreement cannot be extended to Kearsarge and Merrimack, and those companies' Plans cannot be approved, without consideration of these actions.

Comcast and other interested parties should have the opportunity to present evidence of Wilton's conduct and the other "additional competitive developments" outlined above, and all of the parties should have the opportunity to address whether these developments warrant a conclusion that the TDS Companies meet the statutory requirements of RSA 374:3-b and whether the Settlement Agreement is still just, reasonable, and in the public interest. The same must be said for any Settlement Agreement or Plan proffered by Kearsarge and Merrimack in this proceeding. The TDS Companies' actions should be considered as evidence of "further competitive developments" as required by the Commission in the Order, and the Commission should determine in light of this evidence first, whether Kearsarge and Merrimack's Plans should be approved and, second, whether the approved Wilton Plan should be modified by, for example, adding the requirement that Wilton withdraw from its participation in DT 08-013 and DT 08-162 and execute the fully negotiated interconnection agreement with Comcast, or revoked in entirety.

CONCLUSION

In light of the foregoing concerns and consistent with the directive on pages 30-31 of the Order that the Commission "will consider additional competitive developments as part of our ongoing procedure on" the Merrimack and Kearsarge petitions, the Commission should consider evidence of the TDS Companies' anticompetitive behavior prior and determine whether the existing alternative regulation Plan is adequate to comply with all of the requirements of RSA 374:3-b, III.

Respectfully submitted,

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Dated: April 8, 2009

CERTIFICATE OF SERVICE

I, Paul D. Abbott, hereby certify that I have, this 8th day of April, 2009, served the foregoing *Memorandum Of Comcast Phone Of New Hampshire, LLC On Scope Of Proceeding* document by email, on all parties of record.

Paul D. Abbott

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