

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-027

Kearsarge Telephone Company, Wilton Telephone Company, Inc.,
Hollis Telephone Company, Inc. and Merrimack County Telephone Company
Petition for Alternative Form of Regulation

**Reply of Kearsarge Telephone Company,
Merrimack County Telephone Company and
Wilton Telephone Company, Inc. to
Memorandum of Comcast Phone of New Hampshire, LLC
on Scope of Proceeding**

Kearsarge Telephone Company (KTC”), Merrimack County Telephone Company (“MCT”) and Wilton Telephone Company, Inc. (“WTC”, and together with KTC and MCT, the “TDS Companies”) hereby respond as follows to the “Memorandum of Comcast Phone of New Hampshire, LLC on Scope of Proceedings”.

Pursuant to the Commission’s Order No. 24,852 in this Docket, KTC and MCT submitted additional evidence to the Commission on January 29, 2009 showing the availability of competitive alternatives to a majority of customers in each KTC and MCT exchange and thereby confirming compliance with the requirements of RSA 374:3-b. Following a prehearing conference on March 26, 2009, the Commission issued a Secretarial Letter setting forth the procedural schedule, which allowed for parties to file memoranda concerning the scope of this proceeding. Comcast Phone of New Hampshire, LLC (“Comcast Phone”) was the only party to file such a memorandum. Although the filing is cast as a pleading of Comcast Phone, it really

serves the interests of its affiliate, Comcast IP Phone II, LLC, in offering unregulated telephone service, and the two are referred to jointly herein as “Comcast”.

The proposals made by Comcast to enlarge the scope of this proceeding would only serve to prolong this proceeding for the purpose of enabling Comcast to advance its position that it should be able to compete unfairly on a completely unregulated basis while the TDS Companies are subject to full rate of return regulation. It does so in reliance on a settlement to which Comcast was not a party and which does not bind KTC and MCT, since it was not approved in respect to them. In order further to consolidate its uncompetitive advantage, Comcast asserts that the one competitor that did receive approval of alternative regulation, WTC, should return to rate of return regulation to be hobbled in its efforts to compete with an unregulated Comcast. Comcast’s self-serving arguments should be rejected. Instead, the TDS Companies respectfully request that the Commission proceed in accordance with the terms of Order No. 24,852 and “expedite a hearing on issues of availability and competitiveness consistent with the competitiveness test discussed in this order.” *Id.*, p. 30.

Comcast has accused the TDS Companies and the New Hampshire Telephone Association (“NHTA”) of everything from alchemy to irony. Comcast should look at its own house: from the alchemy of proposing to provide completely unregulated telephone service (subsidized by monopoly cable revenues?) to the irony of chastising the TDS Companies for asserting that CLEC authorization requests should be subject to the Commission review that *Comcast* itself assured the New Hampshire Legislature would be required when RSA 374:22-g was amended.

The legislative history regarding the 2008 amendment to RSA 374:22-g shows that Comcast submitted written comments to the Senate Energy, Environment and Economic

Development Committee that included the following statements regarding the repeal of RSA 374:22-f relating to companies with fewer than 25,000 access lines:

“This legislation does not cast aside the protections afforded these telephone utilities by current law. It simply helps to clear an unnecessary regulatory hurdle and sends a message that this legislature supports consumer choice. If adopted, consumers will still be amply protected as competitors will still be required to clear federal and NHPUC hurdles. The process will still be lengthy and expensive with specific protections for smaller rural providers built into the process. These protections, most specifically, the standard that new competition must not be ‘economically burdensome’ for the incumbent offers the smallest of providers a strong measure of protection and which given the cost of the process essentially ensures that all but the largest of these protected telephone utilities will not be challenged with competition.” [Emphasis added.] See “Comments of Comcast in Support of SB 386 relative to service territories served by telephone utilities” dated February 12, 2008 attached hereto as Appendix 1, p. 8.

After making these representations to the Legislature, Comcast appears before this Commission to assert that these protections really do not apply after all and that it is now “anti-competitive” for independent telephone companies to assert these statutory rights.

Comcast characterizes the lawful efforts of the TDS Companies to obtain legal redress as “gaming of the entry process”. Memorandum, p. 11. However, the real gaming is occurring in the proposed Comcast regulatory structure in which a so-called CLEC that provides no utility services obtains interconnection and other benefits from the TDS Companies while a retail telephone service provider provides broad-ranging telephone service without qualifying as a

CLEC or otherwise undertaking the duties of a public utility subject to the regulation of this Commission. That conduct is gaming.

Comcast purports to update the Commission with respect to three Commission dockets, with which the Commission is already fully familiar, DT 08-013, DT 08-126 and DT 08-162. As the Commission is fully aware, KTC and MCT argue vehemently that the Comcast regulatory model of a so-called CLEC that provides no utility services and an unregulated entity that provides full retail telephone services is untenable. This dispute is at the heart of DT 08-013. Those matters are properly adjudicated in that docket.

In that regard, the Commission should reject the Comcast attack on WTC that is factually false. Comcast states on page 6 of its memorandum that WTC has “opposed Comcast’s efforts to obtain certification in the TDS territories in Commission Docket No. DT 08-013.” That statement is false. Even though it would not have constituted a breach of the settlement agreement for WTC to join with KTC and MCT in pointing out to the Commission that Comcast Phone is not a CLEC at all, WTC did not join KTC and MCT in those pleadings, specifically due to the settlement.

Separately, WTC had asserted with KTC and MCT that Comcast Phone is not a “telecommunications carrier” entitled to interconnection under Section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”). Comcast Phone has sought arbitration of that issue in a separate docket, Docket DT 08-162. This arbitration was complicated by the Commission’s Order No. 24,938 in Docket DT 08-013, which went beyond the issue of certification and reached the very question at issue in DT 08-162, namely, whether Comcast Phone is entitled to interconnection. *Id.*, p. 22. WTC’s participation in the motion for rehearing was expressly limited to that issue to preserve WTC’s position in the

arbitration docket. Joint Motion for Rehearing by New Hampshire Telephone Association, *et al.* dated March 6, 2009, p. 2, n. 1. WTC did not challenge Comcast Phone's certification.

DT 08-162 is a self contained proceeding that is the result of Comcast's unlawful regulatory model. In that proceeding, Comcast is claiming interconnection rights on behalf of Comcast Phone, which is not a telecommunications carrier. Comcast Phone claims the right to arbitrate this issue. That issue is appropriately addressed in DT 08-162.

In DRM 08-126, the TDS Companies and the New Hampshire Telephone Association assert quite simply that the Commission's rules relating to CLEC certification, to the extent consistent with federal law, must follow the requirements of RSA 374:22-g. The proposed rule change by the Commission does not include a public good finding or consideration of the public good factors prescribed in that statute. It is lawful and proper for the TDS Companies to point this out to the Commission and to the Joint Legislative Committee on Administrative Rules. Again, these matters are properly addressed in the context of that docket.

There is no question but that the TDS Companies and Comcast have fundamental differences with respect to the regulatory model proposed by Comcast. The issues raised in DT 08-013, DRM 08-126 and DT 08-162 are properly addressed in the respective dockets, not in this proceeding.

Finally, at this late stage of the proceeding Comcast proposes for the first time to introduce evidence relating to the other statutory factors under RSA 374:3-b(III). In its petition to intervene in this docket filed on October 1, 2007, Comcast stated as follows:

“Under the Procedural Schedule issued July 20, 2007, such testimony is due October 12, 2007. Comcast Phone will be able to submit testimony by that date and to pick up with the ensuing dates on the schedule. Thus, Comcast Phone is prepared to take this proceeding as it finds it without causing any delay.”

Id. p. 5.

The time for Comcast to present its direct case with respect to the other statutory factors as they relate to the alternative regulation plans of the TDS Companies has long passed. Comcast has had its opportunity to be heard. Now it wishes an opportunity to cause delay. The request by Comcast is not in keeping with the procedural schedule and should be rejected.

For all of the foregoing reasons, the TDS Companies respectfully urge this Commission to reject the scope expansion proposed by Comcast and conduct the proceeding as specified in Order No. 24,852.

Respectfully submitted,

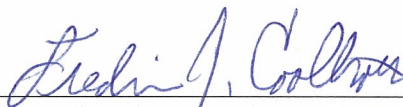
KEARSARGE TELEPHONE CO., WILTON
TELEPHONE CO., INC., HOLLIS TELEPHONE
CO., INC. AND MERRIMACK COUNTY
TELEPHONE CO.

By their Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: April 14, 2009

By:



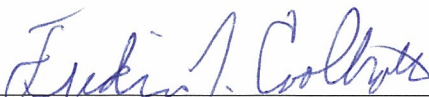
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CERTIFICATE OF SERVICE

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

Dated: April 14, 2009

By:



Frederick J. Coolbroth, Esq.



Comcast Cable
54 Regional Drive
Concord, NH 03301

**Comments of Comcast in Support of
SB 386 relative to service territories served by telephone utilities
2/12/2008**

Good afternoon my name is Chris Hodgdon, Legislative Affairs Director for Comcast New Hampshire, I would like to offer these comments in support of this legislation.

Comcast offers this written testimony in support of SB 386, a bill that if adopted would remove a potential barrier to consumer choice that exists in current NH law. This legislation will allow facilities based voice providers to pursue a regulatory course of action which may result in the ability to provide voice or phone services in communities served by a rural provider. This is accomplished by adding two exceptions to current law. They would allow a new provider to begin the regulatory process if the incumbent has been granted Alternative Regulation or the new provider can demonstrate that the means to provide a competitive service already exists.

The potential for benefits to consumers if this legislation is adopted are significant. The cost savings for services offering similar features can be nearly \$15/month – a substantial savings. Even greater savings could be achieved if a customer chooses to purchase a bundled group of services ie phone, video & internet. Consumers currently residing within a protected franchise will also get to enjoy an environment where they can purchase the services offered by either provider. This will mirror the competition that exists today when for example, Verizon and Comcast share territories. Such change will also help to avoid a situation that frequently occurs under the current law where a customer of Comcast for example who already has our cable TV product or internet product seeks to purchase our voice product and is unable to do so because they are serviced by a small telephone company that has the “non-compete” protections afforded by current law. In many cases, Comcast does not discover that this new customer can not be served until the number porting part of the process is initiated. By this point a service call has already been scheduled and the customer has already made plans to be at home for the installation. The customer is obviously unhappy when we have to call and let them know that they can't have the service.

Comcast's network currently passes over 400,000 New Hampshire homes with infrastructure, that is 100% upgraded to provide High Speed Broadband, Voice Services and Cable TV service. In more than a quarter of the 110 communities we serve and in tens of thousands of homes, customers are unable to buy our voice services because of special protections afforded certain telephone utilities under state and federal law. Even under the protections afforded by Federal law, there is a clear path by which a competitor could enter an independent territory. No such path exists under current state law.

The telecommunications industry is changing very quickly and traditional phone providers are offering cable TV services while traditional cable companies are providing voice or telephone services. Comcast has been providing voice services in New Hampshire for nearly a decade. Time Warner and MetroCast, other New Hampshire cable TV companies also offer voice services.

Providing protections against competition in rural areas for certain telephone providers has been a matter of public policy for many years. As the telecommunications landscape has changed and new technologies have come to the market place, policy makers have responded by granting incumbents relief from regulation through Alternative Regulation laws. Similarly, the FCC has developed rules and guidance for state Public Utilities Commissions to utilize when a new entrant seeks to bring a new service to one of these territories. Strong rules and a multi step process are in place to guarantee that competition is good for the consumer and not overly burdensome for the incumbent.

Should this law pass it will allow Comcast or another provider to petition the New Hampshire Public Utilities Commission for certification and pursue negotiations to interconnect and exchange traffic with the incumbent. Should negotiations be unsuccessful it will allow the New Hampshire Public Utilities Commission to apply FCC standards to determine whether in fact the protections the incumbent currently enjoys should be pierced and competition allowed.

Should this law not be enacted, new entrants will be left without a clear path towards competition. A new entrant might seek a waiver from the NHPUC, as Comcast has done to provide a service in TDS' service area, but the rules governing certification of voice providers do not contemplate competition in these protected service territories and, in fact, do not even exist for areas served by these types of telephone utilities. Lacking any rules to guide the PUC in its consideration of such a waiver, new entrants face a lengthy, uncertain and surely expensive path.

This legislation does not cast aside the protections afforded these telephone utilities by current law. It simply helps to clear an unnecessary regulatory hurdle and sends a message that this legislature supports consumer choice. If adopted, consumers will still be amply protected as competitors will still be required to clear federal and NHPUC hurdles. The process will still be lengthy and expensive with specific protections for smaller rural providers built into the process. These protections, most specifically, the standard that new competition must not be "economically burdensome" for the incumbent offers the smallest of providers a strong measure of protection and which given the cost of the process essentially ensures that all but the largest of these protected telephone utilities will not be challenged with competition.

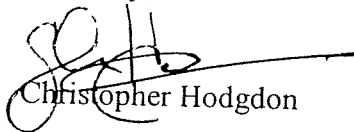
You may wonder if Comcast wants the ability to compete with a telephone utility by offering phone service, does the telephone utility have the ability to compete with

Comcast. The answer is yes. In fact, federal and state laws expressly state that no franchise, which is the document allowing us to offer our cable TV service in a town, is exclusive. In addition to not being exclusive a level playing field exists because the law calls for the terms of any succeeding franchise granted to a new provider to not be more or less onerous than the franchise held by the incumbent. By all accounts our friends at Fairpoint and probably other telephone companies plan on offering their own triple play of Voice, Video and Broadband and in hundreds of other communities around the country Verizon has sought and received franchises.

Comcast supports this legislation because it allows the providers like Comcast to proceed down a clear path towards offering a competitive phone service in New Hampshire. Competition, will offer consumers something they want, and should have --the ability to choose their incumbent telephone provider.

Thank you for your consideration of these comments. If clarification or additional information is desired, please let me know.

Sincerely,



Christopher Hodgdon