

**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 Suspending Order *Nisi* and
Scheduling Prehearing Conference**

ORDER NO. 24,854

May 2, 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 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, Boscawen, Chichester, Deering, Henniker, Hillsboro, Hopkinton, Loudon, New London, Salisbury, Wilmot and Wilton served by the TDS companies. It is the first request for CLEC authorization to operate in a service territory in New Hampshire 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 grants such ILECs' service territory exclusivity, but applicable federal law, 47 U.S.C. § 253(a), prohibits states from preventing any entity from providing intrastate or interstate telecommunications service.

On January 31, 2008, Comcast filed a letter requesting, to the extent necessary, a waiver of N.H. Code Admin. Rules Puc 431.01(d). This rule 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)," i.e., not subject to the so-called "rural exemption" from otherwise applicable requirements under federal law to interconnect with competing carriers. 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 RSA 347:22-g and federal law.

The TDS companies filed a second letter on January 31, 2008, stating that they had not waived their 47 U.S.C. § 251(f) rural exemption, but noting their non-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.

On April 4, 2008, we issued an order *nisi* granting Comcast's CLEC application. On April 16, 2008, the TDS companies filed a motion to suspend the order *nisi* until issuance of an order approving a settlement in Docket No. DT 07-027, concerning the TDS companies' request for an alternative form of regulation pursuant to RSA 374:3-b. In the alternative, the TDS companies requested a hearing. On April 21, 2008, the New Hampshire Telephone Association (NHTA) filed an objection to the order *nisi* and requested a hearing on the Comcast CLEC application. The TDS Companies and NHTA raised concerns about the type of services

Comcast would be offering, the Commission's statutory authority to approve the application and the process for interconnection with the TDS companies' networks. Comcast filed objections to the TDS and NHTA pleadings on April 30, 2008 and May 2, 2008, respectively.

Each party has the right to have an attorney represent them at their own expense.

Based upon the foregoing, it is hereby

ORDERED, that Order No. 24,843 granting 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 **SUSPENDED**, pending further Commission action; and it is

FURTHER ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on May 21, 2008 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, Comcast, the Staff of the Commission and any Intervenors hold a Technical Session to review the petition and allow Comcast to provide any amendments or updates to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.12, Comcast notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than May 9, 2008, in one or more newspapers with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before May 21, 2008; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to Comcast and the Office of the Consumer Advocate on or before May 16, 2008, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before May 21, 2008.

By order of the Public Utilities Commission of New Hampshire this second day of May, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary