

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

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Comcast Phone of New Hampshire, LLC)	
Request for Authority to provide)	DT 08-013
Local Telecommunications Services)	
)	
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**BRIEF OF COMCAST PHONE OF NEW HAMPSHIRE, LLC
ON THE PUBLIC GOOD OF ITS APPLICATION**

This proceeding is the first time on record that the Public Utilities Commission (“Commission”) has allowed incumbent carriers to prompt a hearing on entry as a competitive local exchange carrier (“CLEC”) – first on the question whether Comcast Phone of New Hampshire, LLC (“Comcast Phone”) proposes to offer common carrier service, and now on whether granting Comcast Phone’s CLEC application “is consistent with the public good.”¹

This unprecedented proceeding comes in response to motions from Kearsarge Telephone Company and Merrimack County Telephone Company (the “TDS Companies”)² and the New Hampshire Telephone Association (“NHTA”) objecting to the Order Nisi granting Comcast Phone authority to provide services as a CLEC in the

¹ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, DT 08-013, Order No. 24,887, Order Granting Hearing, 8 (Aug. 18, 2008) (“Hearing Order”).

² While Comcast Phone has applied for authority to provide local exchange telecommunications in the territories of the Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, only the Kearsarge and Merrimack companies are interveners in this proceeding. Wilton Telephone Company has not intervened. It is party to the settlement approved in *Kearsarge Telephone Co., Wilton Telephone Co., Hollis Telephone Co. And Merrimack County Telephone Co. Petitions for Approval of Alternative Form of Regulation*, DT 07-027, Order No. 24,852, Order Regarding Joint Settlement Agreement (April 23, 2008) (“Alternative Regulation Order”), and therefore has agreed not to oppose any application for CLEC certification within its service area.

territory of the Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company.³ First, the Commission suspended its Order Nisi and commenced an adjudicative proceeding.⁴ At the prehearing conference on May 29, 2008, Chairman Getz then narrowed the issue presented by the TDS and NHTA objections to the question whether “there [is] some service that Comcast Phone . . . is going to provide that is a common carrier service?”⁵ The Commission, in its Order dated August 18, 2008, resolved this question in Comcast Phone’s favor, ruling that Comcast Phone’s application “is complete and complies with Commission rules governing CLEC applications.”⁶ Nevertheless, the Commission ordered a further hearing on the question “whether granting the Comcast Phone of New Hampshire CLEC application is consistent with the public good.”⁷ This is the sole issue remaining for briefing and decision.

On this issue, there is no genuine dispute. It is beyond doubt under New Hampshire public policy, as well as basic economic principles, that competition in local telecommunications is in the public good. The facts themselves are scarcely in dispute; just as the parties were able to stipulate facts in June, they have agreed to dispense with discovery, hearing, and cross-examination now, in this phase of the proceeding. The facts placed in evidence on their face demonstrate that Comcast Phone’s application advances the state policy encouraging competition in telecommunications markets, and meets statutory and regulatory standards. The evidence submitted by the TDS

³ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Order No. 24,843, Order Nisi Granting Application (N. H. Pub. Util. Comm’n, Apr. 4, 2008) (“Order Nisi”).

⁴ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Order No. 24,854, Order Suspending Order Nisi and Scheduling a Prehearing Conference (N. H. Pub. Util. Comm’n, May 2, 2008) (“Suspension Order”).

⁵ Prehearing Conference Transcript at 39.

⁶ Hearing Order at 8.

⁷ *Id.*

Companies and NHTA does not demonstrate any ground for denying the application under these standards; instead, it seeks to erect limits on Comcast Phone's entry that are outside the scope of this proceeding and contrary to state and federal law.

The Commission therefore should not allow incumbent carriers to delay competitive entry any longer. Local telecommunications competition is in the public good, granting Comcast Phone's application to offer telecommunications services in the TDS Companies' territory is in the public good, and the application should be approved once and for all.

I. New Hampshire Law And Policy Establishes Conclusively That Competition in Provision of Telecommunications Services Is in The Public Good.

The New Hampshire Legislature adopted RSA 374:22-g as part of a statutory scheme to enable competitive entry into telecommunications markets. In adopting this legislative scheme, the Legislature declared:

Competitive markets generally encourage greater efficiency, lower prices, and more consumer choice. It is the policy of the state of New Hampshire to encourage competition for all telecommunications services, including local exchange services, which will promote lower prices, better service, and broader consumer choice for the residents of New Hampshire.⁸

Thus, the statute governing this proceeding reflects that, as a matter of public policy in New Hampshire, competition in the provision of telecommunications services is in the public good.

The Commission already applied the standards of RSA 374:22-g to Comcast Phone's application in its Order Nisi.⁹ Any remaining question that these standards apply to an application to provide service in the territories of the TDS Companies as smaller providers was erased this year when the Legislature repealed RSA 374:22-f, leaving RSA

⁸ 1995 N.H. Laws 147:1.

⁹ Order Nisi at 3.

374:22-g as the single statute to apply to competitive entry throughout the state.¹⁰ As the Commission noted, “[t]he enactment of changes to RSA 374:22-g makes it clear the legislature intends to allow competition in all areas of the state.”¹¹

In turn, nothing in the record provides any basis to do otherwise here. The Commission has implemented the legislative policy to encourage competition by adopting CLEC rules in Puc 431.01 and 431.02 to streamline competitive entry. The Commission described these rules as “provid[ing] an appropriate balance between the interests of incumbent telecommunications providers and those of competitive entrants.”¹² They require that the Commission “shall issue” a CLEC authorization unless the application is denied based upon one of the acts or omissions enumerated in Puc 431.02.¹³ Neither the TDS Companies, nor any other party, has presented any evidence of any such act or omission. Accordingly, the balance struck by public policy and the Commission’s rules and regulations establishes conclusively that grant of Comcast Phone’s application is in the public good.

II. The Record Demonstrates That Grant of Comcast Phone’s CLEC Application Is Consistent with Public Policy.

Puc 431.02 places a burden on the incumbent LECs to show evidence why Comcast Phone's application should *not* be granted. In the absence of such evidence, the Commission need go no further. Nevertheless, the record in this proceeding amply demonstrates that Comcast Phone’s CLEC application is in the public good, both in

¹⁰ SB 0386, General Court 2008 Session (N.H. 2008). Comcast Phone sought, and in its Order Nisi the Commission granted, a waiver of Puc 431.01(d) “to the extent necessary.” Order Nisi at 3-4. Since the statutes no longer differentiate “exempt” ILECs,” there is no longer any suggestion that the rules call for any different treatment of Comcast Phone’s application so as to require any waiver of Commission rules.

¹¹ Hearing Order at 7.

¹² *Id.*

¹³ Puc 431.01. *Cf., e.g., Allen v. State Wetlands Board*, 577 A.2d 92, 94 (N.H. 1990) (“The presence of the word ‘shall’ acts as a command”); *Appeal of Concord Natural Gas Corp.*, 433 A.2d 1291, 1295 (N.H. 1981) (“Absent an indication of legislative intent to the contrary, the word ‘shall’ acts as a command”).

advancing the legislative and Commission policy of encouraging competition in telecommunications markets, and in meeting specific statutory standards for assessing the public good with regard to CLEC applications.

A. Comcast Phone’s CLEC Application Is in the Public Good Because It Will Expand Choice And Bring The Benefits of Competition to Residents of The TDS Territories.

The testimony of Michael Pelcovits, Ph.D., an economist who helped develop deregulatory policies at the Federal Communications Commission and has an additional 25 years of experience in telecommunication regulation, underscores that New Hampshire legislative and Commission policy supporting competition in telecommunications markets is well-grounded. Dr. Pelcovits affirms that “[c]ompetition is essential to the proper functioning of free markets” because it “compels firms to produce the goods that consumers demand and produce them as efficiently as possible.”¹⁴ Competition’s ability to “encourage firms to innovate and create new services and new technology that can better serve the market . . . is particularly important in the telecommunications market.”¹⁵ The old structure of “regulated monopoly phone companies serving different franchise areas and markets” has been largely replaced on both the state and federal level – as it has throughout New Hampshire except in the territories of rural ILECs – by a competitive model that has “brought enormous benefits to market in terms of greater efficiency, lower prices, and dramatic technological innovations.”¹⁶

¹⁴ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Direct Testimony of Michael D. Pelcovits on Behalf of Comcast Phone of New Hampshire, LLC, at 6 (Sept. 9, 2008) (“Pelcovits Testimony”).

¹⁵ *Id.*

¹⁶ Pelcovits Testimony at 7.

Dr. Pelcovits explains that Comcast Phone’s entry into the markets of the TDS Companies will benefit New Hampshire consumers by introducing the competitive model and bringing competition to the telecommunications services the company proposes to offer. “The entry of a highly qualified and experienced carrier [like Comcast Phone] into the local market to serve small businesses and schools and libraries is a very positive development” from the standpoint of bringing the benefits of competition to the markets.¹⁷ The benefits of competition are not limited to these initial offerings, however, because Comcast Phone’s entry into the TDS Companies markets “also would enable competition in additional markets, since once authorized as a CLEC, Comcast Phone could introduce other forms of local exchange service, exchange access, or interexchange services.”¹⁸ In addition, the wholesale communications services provided by Comcast Phone, while not relied as a basis for seeking certification as a CLEC because it is a wholesale service,¹⁹ enables Comcast IP to serve New Hampshire residential customers with Comcast Digital Voice Service, an interconnected voice over Internet protocol (“VoIP”) service, offering New Hampshire consumers in the TDS Companies’ territory another alternative in residential voice communications.²⁰

In Docket 07-027, the Commission examined closely the extent of competition in services areas of all the TDS Companies, and found with regard to the Kearsarge and Merrimack companies that “the record does not support a finding that competitive services are available to a majority of customers.”²¹ The TDS Companies have accepted

¹⁷ Pelcovits Testimony at 9.

¹⁸ *Id.*

¹⁹ See Kowolenko Testimony at 4 & n.1; 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 Pelcovits Testimony at 4.

²¹ Alternative Regulation Order at 29-30.

that competition in their service territories is in the public good, urging approval of their proposed settlement on the basis that it “enhances competitive options by removing barriers to entry in the TDS Companies’ service territories.”²² The Legislature declared competition in local telecommunications services to be in the public good because it “will promote lower prices, better service, and broader consumer choice for the residents of New Hampshire.”²³ The evidence demonstrates that approval of Comcast Phone’s CLEC application can bring these benefits to residents of the Kearsarge and Merrimack service areas.

B. Comcast Phone’s CLEC Application Meets All Statutory and Regulatory Standards for Serving the Public Good

Under RSA 374:22-g, when determining the public good with respect to an application for a CLEC to serve in the territory of incumbent carriers such as the TDS Companies,

the commission shall consider the interests of competition with other factors including, but not limited to fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility’s opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.²⁴

As noted above, the Commission struck the “appropriate balance between the interests of incumbent telecommunications providers and those of competitive entrants” when it adopted its rules for CLEC entry. These rules expedite CLEC entry for purposes of RSA 374:22-g by providing in Puc 431.01 for simple registration by a CLEC-10 form, limiting the grounds for denying certification in Puc 431.02, and providing in Puc 202.01

²² Alternative Regulation Order at 16.

²³ 1995 N.H. Laws 147:1.

²⁴ RSA 374:22-g.

that a CLEC-10 application for registration as a CLEC is excepted from a general requirement for adjudicative hearings.²⁵ There is no basis for striking any different balance in this case. On the contrary, conducting a case-by-case inquiry as the Commission has done here undermines the policy of encouraging competition and instead enables barriers to entry.

Even so, the evidence establishes that the factors in RSA 374:22-g favor the grant of Comcast Phone's application. The "interests of competition" are reflected in the policy of competition and the evidence that this policy is advanced by Comcast Phone's entry, and no other factors should alter the balance the Commission has struck.

Fairness hardly supports maintaining a monopoly. As a consideration of fairness, first and foremost the Commission should take into account fairness to consumers in the TDS Companies territory, who stand to benefit from the reduced prices, improved service, and product innovation that competition can bring. Failure to allow competitive entry into this territory would be unfair to those consumers.

TDS and NHTA offer the testimony of Valerie Wimer, an engineer and a marketer rather than an economist, that Comcast Phone's entry would be unfair because it would enable Comcast to "offer [Comcast Digital Voice services] with no regulation using wholesale CLEC services that are subject to very little regulation."²⁶ Ms. Wimer's testimony is irrelevant because the Commission has already determined that "the regulatory status of Comcast IP's digital voice service is not the subject of this docket and does not bear on whether we should expand Comcast's authority to operate in New

²⁵ Puc 431.01; Puc 431.02; Puc 202.01.

²⁶ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Testimony of Valerie Wimer, at 8 (Sept. 9, 2008) ("Wimer Testimony").

Hampshire.”²⁷ Moreover, because the TDS Companies offer video services in competition with Comcast Cable,²⁸ fairness dictates that Comcast also be able to offer residents in these same areas a choice of “triple play” bundles of video, data, and voice services.

Ms. Wimer also opines that the TDS Companies will suffer a loss of efficiency if they lose their monopoly position because their average cost per customer will increase,²⁹ and they will suffer a “negative economic effect.”³⁰ But competition laws exist “to protect competition, not competitors,”³¹ and inducing a monopoly to become efficient is one of the benefits of competition. As Dr. Pelcovits points out, while an “incumbent that sets its prices in excess of economic costs will lose its ability to earn monopoly profits once competition takes hold,”³² there is no inherent unfairness in the loss of ability to exact monopoly profits.³³ “An inefficient incumbent has much to fear from competition, because it will be unable to maintain a price level that allows it to recover its excessive level of costs.”³⁴ Competition forces efficiency. In a competitive market, “[i]f a competitive firm does not operate efficiently, or it attempts to overprice its output, competition will compel that firm to change its production process and its prices, or it will be forced to exit the market.”

Dr. Pelcovits explains that “an efficient, well managed market incumbent should be able to respond to competitors and still recover a reasonable return on past and future

²⁷ Hearing Order at 6.

²⁸ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Direct Testimony of David J. Kowolenko on Behalf of Comcast Phone of New Hampshire, LLC, at 7 (Sept. 9, 2008) (“Kowolenko Testimony”).

²⁹ Wimer Testimony at 9.

³⁰ *Id.*

³¹ Pelcovits Testimony at 6.

³² Pelcovits Testimony at 11.

³³ *Id.* (“[C]ompetition will benefit consumers, by driving down prices to economic costs.”).

³⁴ *Id.*

investment.”³⁵ Verizon, and now Fairpoint Communications, have faced competition from CLECs in New Hampshire for many years while maintaining the ability to earn a reasonable return on their investment. There is no reason to expect that the TDS Companies will not similarly be able to continue earning a reasonable return on their investment, even with competition from Comcast Phone. A Comcast Phone affiliate is currently certified as a CLEC in the territory of a TDS Companies affiliate in the state of Tennessee, where the TDS affiliate faces competition from multiple CLECs without the TDS Companies suggesting on this record that this affiliate is unable to earn a reasonable return on investment.³⁶

There is no reason to protect the TDS Companies. Their corporate parent recently announced that it was ranked on the Fortune 500 in 2008.³⁷ They already have declared to the Commission that they can retain their ability to preserve universal service access and serve as the provider of last resort, even in the presence of “competitive wireline, wireless or broadband service available to a majority of customers in each of the [TDS Companies] exchanges.”³⁸ Moreover, they receive ample subsidies to carry out universal service: the three TDS Companies received \$2.4 million in support from the federal Universal Service Fund High Cost Program last year, and benefit from continuing support from that program.³⁹ Universal service and carrier of last resort obligations therefore do not militate against approving Comcast Phone’s entry into the market.

Any expenses that might be incurred by the TDS Companies to benefit Comcast Phone as a competitive provider are expected to be limited to the costs of providing

³⁵ *Id.*

³⁶ *See* Kowolenko Testimony at 7.

³⁷ Pelcovits Testimony at 12.

³⁸ *Id.* (quoting Reed Testimony at 10).

³⁹ Pelcovits Testimony at 13.

interconnection, which under the Telecommunications Act of 1996 are recoverable through negotiated agreement.⁴⁰ Comcast Phone has reached such negotiated agreements with TDS companies in other states, including Tennessee and Vermont; is currently negotiating agreements with TDS companies in Georgia, Michigan, and Washington;⁴¹ and, anticipating final approval of its CLEC application by the Commission, has already entered into negotiations with the TDS Companies for an interconnection agreement in New Hampshire.⁴²

C. Comcast Phone Is Well-Qualified to Become A CLEC in The TDS Companies' Territory.

RSA 374:22-g sets specific standards for determining the public good with respect to CLEC entry. In light of the statutory scheme and the canon of construction that the specific modifies the general,⁴³ RSA 374:22-g governs rather than the more general franchising authority of RSA 374:26. For other non-competitive utilities under the latter statute, the Commission typically “reviews the need for service and the ability of the applicant to provide that service” by “assess[ing] the petitioner's financial backing, management and administrative expertise, technical resources, and general fitness to operate a utility.” Even if this qualifications standard does apply, there can be no dispute that Comcast Phone meets it.

By finding Comcast Phone qualified since 1998 to provide CLEC services in the New Hampshire territory of Verizon, now Fairpoint Communications, the Commission has already established that Comcast Phone is a qualified CLEC, and it already has the

⁴⁰ Kowolenko Testimony at 6; Pelcovits at 14.

⁴¹ Kowolenko Testimony at 7.

⁴² Kowolenko Testimony at 6.

⁴³ See, e.g., *State v. Farrow*, 667 A.3d 1029, 1032 (N.H. 1995) (“Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the latter will be regarded as an exception to the general enactment where the two conflict.”); *State v. Bell*, 480 A.2d 906, 911 (N.H. 1984) (same).

continuing ability to provide CLEC services under that authority.⁴⁴ Other Comcast subsidiaries parallel to Comcast Phone operate as CLECs in Maine, Vermont, Massachusetts, New York, and more than 30 other states.⁴⁵ Comcast Phone has extensive experience in providing services as a CLEC.

The Comcast Phone CLEC already qualified to operate in the Fairpoint territory is the same entity that will offer CLEC services in the TDS Companies territory.⁴⁶ To manage its CLEC services in the TDS Companies territory, Comcast Phone will “utilize the same organization, the same experienced management, and the same experienced technical staff that now operates the Comcast Phone services in the Fairpoint Communications territory.”⁴⁷ To the extent it is necessary to employ additional personnel to provide services in the TDS Companies territory, “any such personnel will be trained and supervised by Comcast Phone’s current management and technical staff, and have the benefit of their extensive knowledge and experience.”⁴⁸

Comcast Phone has the ability to draw upon significant financial resources in expanding its services into the TDS Companies territory. Comcast Phone’s parent company, Comcast Corporation, is a publicly-held Fortune 100 company with revenues of over \$30 billion and net income of over \$2.5 billion in 2007.⁴⁹ “Comcast is committed and is prepared to allocate the necessary resources to provide high-quality CLEC services to New Hampshire customers in the TDS Companies territory.”⁵⁰

⁴⁴ See Kowolenko Testimony, Ex. B.

⁴⁵ Kowolenko Testimony at 4.

⁴⁶ Kowolenko Testimony at 4-5.

⁴⁷ Kowolenko Testimony at 5.

⁴⁸ *Id.*

⁴⁹ *Id.* See also Comcast Corporation Annual Report Form 10-K for 2007, Kowolenko Ex. C, and Comcast Corporation Quarterly Report Form 10-Q for 2Q 2008, Kowolenko Ex. D.

⁵⁰ Kowolenko Testimony at 5.

Comcast Phone's CLEC application meets all of the statutory standards for assessing the public good and Comcast Phone is demonstrably able to operate as a CLEC.⁵¹

III. The Conditions Proposed by The TDS Companies' Witness Are Inconsistent with State and Federal Law And Policy.

The TDS Companies' consulting engineer argues that the Commission should condition a CLEC authorization on Comcast Phone restricting its offerings to the Business Local Service and Schools and Libraries Exchange Service Comcast Phone has suggested would be its initial offerings. Under this proposed restriction, Comcast Phone would be required to modify its CLEC-10 application and evidently seek further Commission approval "if and when Comcast proposes to offer wholesale services or any other telecommunication service that is not directly linked" to those initial services.⁵² The witness also asks the Commission to "open a comprehensive docket or other proceeding to address Comcast's wholesale service and retail VoIP service."⁵³ These kinds of conditions are directly at odds with Chairman Getz' ruling in the prehearing conference and the Commission's August 18 Hearing Order, as well as with both state and federal law on entry of competitive telecommunications carriers.

There is no basis in New Hampshire law to treat Comcast Phone differently from any other CLEC. The PUC has not previously inquired into the business plan of a CLEC applicant beyond the information required to be provided on the CLEC-10,⁵⁴ and in this

⁵¹ The suggestion by the TDS Companies' that Comcast Phone may pose a competitive threat to the incumbent carriers, while overstated, amounts to a tacit admission that Comcast Phone is well-qualified to provide CLEC services. *See* Wimer Testimony at 9.

⁵² Wimer Testimony at 15-16.

⁵³ Wimer Testimony at 16.

⁵⁴ As it typically does in such orders, the Commission included in its *Order Nisi* approving Comcast Phone's CLEC Application a provision nullifying the registration if Comcast Phone fails to offer telecommunications services in the TDS Companies' territory within two years, and allowed latitude as to

case has already ruled that Comcast's application is complete.⁵⁵ In this proceeding, the Commission has already ruled that "[i]ssues regarding whether and when Comcast offers retail telecommunications service to TDS customers are matters of enforcement."⁵⁶

Moreover under Puc 431.06, CLECs are free to introduce additional services as the market demands, without prior review by the Commission or prior notice. That Comcast Phone initially proposes to provide a limited range of telecommunications services in the TDS Companies territory is not unusual for a carrier entering a new market. As Dr. Pelcovits points out, the benefits of Comcast Phone's entry as a CLEC is not limited to competition in its initial services, "but also would enable competition in additional markets, since once authorized as a CLEC, Comcast Phone could introduce other forms of local exchange service, exchange access, or interexchange services."⁵⁷ To alter the Commission's rules and practice to confine a new entrant to only those services it initially proposes to offer would limit these benefits of competition and provide a recipe for endless hearings.

Any such conditions would also establish a troubling precedent. The Telecommunications Act of 1996 and pro-competitive laws and regulations in New Hampshire rely on competition to test CLEC qualifications and offerings. Accordingly, the Commission streamlined the entry process now embodied in Puc 431.01 and 431.02. The conditions suggested by the TDS Companies' witness have no basis in this well-established process. Already, the opposition of the TDS Companies has caused the adjudication of Comcast Phone's CLEC application, a process generally handled quickly,

services actually offered by requiring Comcast Phone to "file, ten days prior to commencing service, a rate schedule including the name, description, and price of each service." Order Nisi at 4.

⁵⁵ Hearing Order at 6.

⁵⁶ *Id.*

⁵⁷ Pelcovits Testimony at 9.

to drag out for almost a year, delaying Comcast Phone's entry into the market during this time at the detriment of consumers in the TDS Companies' territory. To suggest that Comcast Phone must reapply and face a similarly lengthy proceeding every time it desires to offer a new service in the TDS Companies' territory amounts to giving the TDS Companies an effective veto power over new competitive offerings in their markets. If every new entrant attempting to offer services in the TDS Companies' territory were subjected to the same delaying process not just for initial entry but also for each new offering, the resulting barrier to entry almost certainly amount to an unreasonable one prohibited by the Telecommunications Act of 1996.⁵⁸

The suggestion by the TDS Companies' witness that the Commission open a new proceeding "to address Comcast's wholesale service and the retail VoIP service" as a condition to approval of the CLEC application likewise would serve to introduce significant delay potentially amounting to a *de facto* barrier to entry. In any case, the Commission has already determined that "the regulatory status of Comcast IP's digital voice service is not the subject of this docket and does not bear on whether we should expand Comcast's authority to operate in New Hampshire."⁵⁹ The testimony proposing such a proceeding flies in the face of this determination.

There is no basis for the Commission to impose the suggested conditions on Comcast Phone's CLEC application, and the conditions as suggested could amount to a prohibited barrier to competitive entry. Consequently the suggestions for conditional approval of Comcast Phone's application should be ignored.

⁵⁸ See 47 U.S.C. § 253. *Cf. Order Nisi* at 3 (limiting CLEC registration in territory of rural ILECs "would raise issues of federal preemption . . .").

⁵⁹ Hearing Order at 6.

CONCLUSION

As described above, Comcast Phone's application for authorization as a CLEC in the territory of the TDS Companies is in the public good, and the application should be approved without further delay.

Respectfully Submitted,

/s/ Cameron F. Kerry

Cameron F. Kerry
Ernest C. Cooper
Mintz, Levin, Cohn, Ferris, Glovsky,
and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Tel. (617) 542-6000
Fax (617) 542-2241

Brian A. Rankin
Vice President and Deputy General Counsel
Chief Telephony Counsel
Comcast Phone of New Hampshire LLC
One Comcast Center
Philadelphia, Pennsylvania 19103
Tel. (215) 286-7325
Fax (215) 286-5039

Attorneys for Comcast Phone of
New Hampshire, LLC

October 1, 2008