

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION  
DT 08-013

Comcast Phone of New Hampshire, LLC  
Request for Authority to Provide  
Local Telecommunications Services

Testimony of  
Valerie Wimer

1   **I.     INTRODUCTION**

2

3   **Q:     PLEASE STATE YOUR NAME, OCCUPATION, AND PLACE OF BUSINESS.**

4   A:     My name is Valerie Wimer. I am employed by John Staurulakis, Inc. (“JSI”) as  
5           Director New Business Development. JSI is a telecommunications consulting firm  
6           headquartered in Greenbelt, Maryland. My office is located at 7852 Walker Drive,  
7           Greenbelt, Maryland 20770. JSI has provided telecommunications consulting  
8           services to rural local exchange carriers since 1963.

9

10   **Q:     PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND**  
11       **EDUCATIONAL BACKGROUND.**

12   A:     I have been employed by JSI since 1997. At JSI, I am responsible for helping rural  
13           companies offer new products and prepare for competition. In this position, I have been  
14           involved in many interconnection agreements between competitive local exchange  
15           carriers (“CLECs”) and incumbent local exchange carriers (“ILECs”).

16

17           Prior to my employment at JSI, I worked for Southern New England Telephone  
18           (“SNET”) for eighteen years. I started my career in outside plant engineering where I was  
19           responsible for the planning of the economic placement of facilities to meet customer  
20           growth. I held several manager positions in switching operations, procurement, and

1 network planning prior to being promoted to Director of Transmission Engineering. In  
2 that position, I was responsible for transmission performance, equipment testing, and  
3 microwave engineering. After a year, I moved to the Marketing and Product  
4 Management Department to plan and implement emerging technology based products  
5 including ISDN, SS7, and small business centrex products. I was responsible for  
6 quantifying customer demand, translating that information into a product definition,  
7 identifying the cost and price of the service, and implementing the service across all the  
8 operations departments. Subsequently, I served as Director of Network Architecture for  
9 two years. In this capacity, I was responsible for the evolution of switching, signaling,  
10 trunking, and outside plant network technologies in Connecticut. My duties included  
11 evaluating the addition or elimination of tandem switches and the migration to  
12 host/remote switch architecture. Lastly, I was Director of Network Services for three  
13 years. In this capacity, I was responsible for the development and implementation of  
14 SNET's corporate policies governing local competition in Connecticut. I supervised the  
15 marketing and technical development of interconnection agreements, resale service, and  
16 unbundled elements. I was the SNET technical and marketing witness for several  
17 dockets relating to the development of competition in Connecticut. I also managed a  
18 CLEC users group for SNET, which educated CLECs on the requirements of local  
19 service and solicited input from the CLEC industry regarding operational requirements.  
20

1 I graduated with honors from Cornell University with a BS in engineering. I completed  
2 Executive Engineering Education at Stanford University, Continuing Engineering  
3 Courses at George Washington University, and SNET's Advanced Management  
4 Development Program.

5  
6 **Q: HAVE YOU EVER TESTIFIED IN NEW HAMPSHIRE?**

7 A: Yes. I testified before this Commission in the consolidated Dockets DT 00-223 and  
8 DT 00-054 (Investigation into Whether Certain Calls Are Local).

9  
10 **Q: ON WHOSE BEHALF ARE YOU TESTIFYING?**

11 A: I am testifying on behalf of New Hampshire Telephone Association, Merrimack  
12 County Telephone Company ("MCT") and Kearsarge Telephone Company ("KTC")  
13 (collectively, the "RLEC Representatives").

14  
15 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A: The purpose of my testimony to the New Hampshire Public Utilities Commission  
17 (the "Commission") is to provide my opinion as to whether it is in public good to  
18 grant the request for authority to engage in business as a CLEC in the local  
19 exchange service territories of MCT and KTC filed by Comcast Phone of New  
20 Hampshire, LLC ("Comcast") under the current regulatory rules. I have concluded  
21 that absent Commission action to address the regulatory treatment of Comcast's

1 digital voice affiliate (the “CDV Affiliate”), competition from Comcast in the rural  
2 areas of MCT and KTC would be under a regulatory structure skewed heavily in  
3 Comcast’s favor. In addition, the specific services referenced in Comcast’s  
4 application are not targeted to the public at large. Until the regulatory requirements  
5 for MCT and KTC, on the one hand, and Comcast on the other, are fair and  
6 equitable, the public good standard is not met, and the PUC should not approve the  
7 CLEC application.

8  
9 However, if the Commission does approve the CLEC application, the approval  
10 should be specifically limited to the services listed in the application. Until the  
11 Commission establishes the regulatory framework for the CDV Affiliate and the  
12 related wholesale service, the Commission should prevent Comcast from  
13 circumventing the applicable telecom rules by offering wholesale service to its CDV  
14 Affiliate. Approval of the application should be limited to the proposed business  
15 local service and schools and libraries exchange service until a comprehensive  
16 docket addresses the regulatory treatment of the CDV Affiliate and the related  
17 wholesale services.

18  
19 **Q: PLEASE PROVIDE BACKGROUND ON THE COMCAST APPLICATION.**

20 A: Comcast filed for authorization to engage in business as a CLEC in the service  
21 territories of MCT and KTC on December 12, 2007 and supplemented its

1 application on January 22, 2008. The request included references to the offering of  
2 the residential “Comcast Digital Phone” service even though that service had been  
3 discontinued for new customers. Subsequently, Comcast fully terminated its  
4 Comcast Digital Phone service. On April 4, 2008, the Commission issued an Order  
5 Nisi granting Comcast’s application, with the authorization to be effective May 5,  
6 2008. On April 16, 2008 MCT and KTC (and two affiliate companies) filed a  
7 motion for suspension of the Order 24,843 pending the outcome of the DT 07-027  
8 alternative regulation proceeding, and on April 21, the NHTA filed an objection to  
9 the approval based on the fact that Comcast was no longer offering the service on  
10 which the application was based. These objections resulted in a hearing, a technical  
11 session and briefing of the issues.

12  
13 In the technical session the parties developed an agreed upon stipulation of facts,  
14 including stipulations that Comcast (i) “is relying on Business Local Service and  
15 Schools and Libraries Network Service as retail telecommunications services for  
16 CLEC certification in New Hampshire” and (ii) “is not relying on Local  
17 Interconnection Service for CLEC certification in New Hampshire.” Local  
18 Interconnection Service is a wholesale service provided to the CDV Affiliate to

1 provide IP enabled voice service<sup>1</sup>. This revised application is the current CLEC-10  
2 application.

3  
4 On August 18, 2008, the Commission issued Order No 24,887 scheduling a hearing  
5 to address the question of whether granting the Comcast request will be consistent  
6 with the public good.

7  
8 **Q: PLEASE DESCRIBE YOUR UNDERSTANDING OF THE MATTERS TO BE**  
9 **CONSIDERED BY THE COMMISSION IN DETERMINING WHETHER**  
10 **COMCAST’S REQUESTED AUTHORIZATION WILL BE CONSISTENT WITH**  
11 **THE PUBLIC GOOD?**

12 **A:** I am advised that approval of Comcast’s request requires the Commission to  
13 determine that such approval will be consistent with the public good and that New  
14 Hampshire RSA 374:22-g provides as follows:

15  
16 “In determining the public good the commission shall consider the interests of  
17 competition with other factors including, but not limited to, fairness; economic  
18 efficiency; universal service; carrier of last resort obligations; the incumbent utility's  
19 opportunity to realize a reasonable return on its investment; and the recovery from  
20 competitive providers of expenses incurred by the incumbent utility to benefit

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<sup>1</sup> DT 08-013 Comcast Phone of New Hampshire, LLC request for Authority to Provide Local Telecommunications  
Service Stipulation of Facts June 18, 2008

1 competitive providers, taking into account the proportionate benefit or savings, if  
2 any, derived by the incumbent as a result of incurring such expenses.”  
3

4 **Q: IS IT CONSISTENT WITH THE PUBLIC GOOD FOR THE COMMISSION TO**  
5 **APPROVE THE COMCAST APPLICATION IN ADVANCE OF A**  
6 **COMPREHENSIVE DOCKET TO DETERMINE THE APPROPRIATE**  
7 **REGULATORY TREATMENT OF VOIP SERVICE?**

8 A: No. It is not in the public good for the Commission to allow Comcast to proceed  
9 with its plan to provide wholesale service to its CDV Affiliate without further  
10 regulatory review. The regulatory playing field would be skewed in the extreme  
11 under Comcast’s plan to provide digital voice (“CDV”) – entirely unregulated at the  
12 state level and without the consumer protections afforded other telephone service  
13 customers. Only after the Commission determines the appropriate regulatory  
14 treatment of the CDV Affiliate can the Commission address the public good issues  
15 raised in this filing. Until these issues are addressed, the Commission cannot  
16 determine whether the Comcast proposal will be fair, promote efficiency, promote  
17 universal service and allow the ILEC to obtain a reasonable rate of return.  
18

19 **Q: DOES COMCAST’S REQUESTED AUTHORIZATION MEET THE FAIRNESS**  
20 **CRITERION?**



1 A: No. There are two different issues that need to be addressed. The first is whether the  
2 retail services listed on the CLEC-10 application are in the public good. Second is  
3 whether the wholesale service Comcast intends to offer to its CDV Affiliate is in the  
4 public good. In neither case is the proposal fair under the regulatory structure  
5 suggested by Comcast.

6  
7 **Q: HOW ARE MCT AND KTC DISADVANTAGED BY THE DIFFERENCES IN**  
8 **THE RULES?**

9 A: MCT and KTC are disadvantaged because the pricing rules, the reporting rules and  
10 other regulations that benefit consumers heavily favor Comcast. Comcast proposes  
11 to offer CDV with no regulation using wholesale CLEC services that are subject to  
12 very little regulation.

13  
14 **Q: DOES ALTERNATIVE REGULATION RESOLVE THESE DISCREPANCIES?**

15 A: No. Alternative regulation plans are subject to being approved by the Commission  
16 with conditions. For example, the negotiated settlement that enabled Wilton  
17 Telephone Company, Inc. and Hollis Telephone Company, Inc. (affiliates of MCT  
18 and KTC) to receive approval of their alternative regulation plans included  
19 conditions such as the waiver of the rural telephone company exemption under the  
20 Section 251(f)(1) of the Communications Act of 1934 (as amended) and significant  
21 rate caps on basic service. While the alternative regulation environment is an

1 improvement over full rate of return regulation, it comes nowhere near the  
2 regulatory freedom provided to Comcast.

3  
4 Moreover, alternative regulation only provides improvement in comparison to the  
5 CLEC the services proposed in Comcast's CLEC 10 application. Until the  
6 Commission opens a comprehensive docket to determine how the CDV Affiliate and  
7 the associated wholesale service are to be regulated, an alternative form of  
8 regulation is not adequate.

9  
10 **Q: WILL APPROVAL OF COMCAST'S CLEC-10 APPLICATION ADVERSELY**  
11 **AFFECT ECONOMIC EFFICIENCY, UNIVERSAL SERVICE, CARRIER OF**  
12 **LAST RESORT OBLIGATIONS, AND RETURN ON INVESTMENT?**

13 A: Yes. There will be a negative economic impact on these relatively small rural  
14 companies wherever they lose customers. Comcast is not a small new entrant in the  
15 service territory. Comcast is a well-funded nationwide conglomerate that has  
16 established customer relationships through its incumbent cable service offering.  
17 Comcast does not have to develop access to a customer base; it already has such  
18 access through its incumbent network. If business customers leave, the incumbent  
19 rural telephone carrier's efficiency is reduced, and its cost per customer increases.  
20 Meanwhile, the responsibility for providing universal service and serving as the  
21 carrier of last resort are unchanged. Although some costs may be reduced when a

1 customer leaves the network, the carrier of last resort obligation requires the ILEC  
2 (here, MCT and KTC) to continue to have the ability to provide service to all  
3 customer locations, regardless of whether such customers are actually purchasing  
4 service from the ILEC.

5  
6 **Q: ARE THERE OTHER MCT AND KTC OBLIGATIONS THAT DO NOT APPLY**  
7 **TO COMCAST?**

8 A: Yes. Comcast is not required to offer equal access to all IXC's for toll service which,  
9 even under alternative regulation, MCT and KTC are required to provide. In  
10 addition, MCT and KTC are required to provide Lifeline and Link-up services.

11  
12 **II. COMCAST'S CLEC-10 APPLICATION IS REALLY INTENDED TO**  
13 **FACILITATE CDV TO BE OFFERED IN THE SERVICE TERRITORIES OF**  
14 **MCT AND KTC.**

15  
16 **Q: PLEASE DESCRIBE THE CDV AFFILIATE AND EXPLAIN ITS**  
17 **RELATIONSHIP TO THIS PROCEEDING.**

18 A: Comcast, through its CDV Affiliate, provides what Comcast describes as an IP  
19 enabled (or VoIP) service known as CDV. Comcast presently provides CDV in  
20 FairPoint's service territory on an unregulated basis. Comcast takes the position  
21 that CDV is an information service and not a regulated telephone service and other

1 carriers views are not yet known. This Commission has not had the opportunity to  
2 address this important issue. In order to enable CDV customers to interact with the  
3 public switched telephone network, Comcast requires telephone numbers and  
4 interconnection. It is these features that Comcast is really seeking to provide on a  
5 wholesale basis to its captive currently unregulated affiliate. Comcast agreed in the  
6 stipulation that it would not rely on this wholesale service (“Local Interconnection  
7 Service”) for purposes of obtaining CLEC approval. However, it is clear to the  
8 RLEC Representatives that Comcast does intend to offer this service within the  
9 MCT and KTC service areas once the certification process is finalized. Comcast is  
10 trying to gain the ability to offer a controversial service without being exposed to  
11 any regulatory scrutiny.

12  
13 **Q: WHY IS OFFERING CDV SERVICE THROUGH A WHOLESALE CLEC**  
14 **AFFILIATE CONTROVERSIAL?**

15 A: CDV currently is in regulatory limbo. The FCC has not categorized it either as a  
16 telecommunications service or as an information service.<sup>2</sup> As such, the regulatory  
17 rules that apply to the service are not clear from the FCC. There are several dockets  
18 at the FCC to address the issue of the nature of the service<sup>3</sup> and the interconnection

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<sup>2</sup> Vonage Order footnote 46. “We do not determine the statutory classification of Digital Voice under the Communications Act, and thus do not decide here the appropriate federal regulations, if any that will govern this service in the future.”

<sup>3</sup> IP-Enabled Services, Federal Communications Commission, WC Docket No. 04-36, Notice of Proposed Rulemaking

1 rights of wholesale companies that wish to interconnect for their retail VoIP  
2 provider customers<sup>4</sup>. It is also controversial because the wholesale services offered  
3 by Comcast and other CLECs are not well understood and may or may not qualify  
4 as telecommunications service.

5  
6 **Q: CAN THIS COMMISSION RESOLVE ANY PORTION OF THIS**  
7 **CONTROVERSY?**

8 A: Yes. Other states have addressed these issues and ruled that States may regulate  
9 intrastate telecommunications services for both retail voice service to end users and  
10 for wholesales services. For example, the United States District Court for the  
11 Western District of Missouri Central Division found:

12 Congress' intent to allow states to regulate intrastate telecommunications services  
13 is clear. Furthermore, state agencies, such as MoPSC, are capable of interpreting  
14 federal statutes necessary to classify communications services as either  
15 telecommunications or information services. Finally, the FCC did not preempt the  
16 entire field of VoIP regulation by beginning its *IP-Enabled Proceeding*<sup>5</sup>.  
17

18 I recommend that this Commission act similarly and address the treatment of retail  
19 VoIP and wholesale CLEC services.  
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<sup>4</sup> VTel request for clarification, Federal Communications Commission, WC Docket No. 08-56.

<sup>5</sup>United States District Court for the Western District of Missouri Central Division Case No. 06-4233-CV-C-NKL,  
page 6

1   **Q:    ARE ANY STATES ADDRESSING THIS ISSUE?**

2    A;    Yes.  For example, Missouri and Vermont are addressing the treatment of CDV. In  
3       Missouri, the Public Service Commission found that the retail VoIP service offered  
4       by Comcast was a telecommunication service and subject to regulation.  This  
5       decision was upheld in the federal District Court case referenced above.  
6       Subsequently, in Missouri legislation was enacted that required VoIP providers to  
7       register with the Commission, make regulatory payments based on retail revenues,  
8       and be subject to some consumer protections while allowing LECs to be relieved of  
9       some of their regulatory burdens once a VoIP provider is registered in their service  
10      territories.

11  
12      The Vermont Public Service Board opened a generic docket to address issues related  
13      to VoIP service on April 9, 2007.  Specifically the proceeding will address the  
14      following issues:

15           (1) The extent to which Vermont law under Title 30 applies to VoIP services;

16           (2) The extent to which federal law preempts Vermont law with regard to  
17      VoIP services; and

18           (3) To the extent that Vermont law applies and federal law does not preempt,  
19      the degree to which it is necessary or desirable to apply the same or different

1 regulations and levels of regulation to VoIP carriers as apply to other telephone  
2 services.<sup>6</sup>

3  
4 The Vermont case is still in process.

5  
6 **Q: COULD THIS COMMISSION ADDRESS THE ISSUE IN A COMPREHENSIVE**  
7 **DOCKET?**

8 A: Yes. The RLEC Representatives have expressed their support of the PUC opening a  
9 comprehensive docket to address the regulatory treatment of VoIP and continue to  
10 urge the Commission to commence such a proceeding. The RLEC Representatives  
11 believe doing so will be the only fair way to discover the facts concerning the  
12 proposed service and to determine the proper regulatory treatment.

13  
14 **Q: WOULD CUSTOMERS BE PROTECTED THROUGH COMMISSION RULES**  
15 **GOVERNING COMCAST'S WHOLESALE SERVICE?**

16 A: No. Comcast takes the position that this Commission would have no regulatory  
17 jurisdiction over the CDV Affiliate. Regulation of the wholesale service provided by  
18 Comcast to its CDV Affiliate would not reach the CDV provided by that unregulated  
19 affiliate. It is highly likely that there would be only one wholesale customer of the  
20 Comcast CLEC, the CDV Affiliate. If financial reports are still required, only the

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<sup>6</sup> Vermont Public Service Board Docket 7316 Investigation into Regulation of Voice over Internet Protocol (VoIP) services Order opening investigation and Notice of Pre-hearing conferences dated May 16, 2007, page 1.

1 revenue from the CDV Affiliate wholesale customer would be reported, not the revenue  
2 from the underlying retail VoIP provider. I expect Comcast would only make PUC  
3 assessment payments on this reduced revenue. The service provided as wholesale seems  
4 to be only a trunking service; there would be no quality of service reporting for end user  
5 consumers. The regulated portion of the Comcast network would be very limited  
6 (interconnection and telephone numbers). Therefore, network reports would be  
7 significantly reduced. Unlike situations where CLECs use unbundled network elements  
8 or resale, and the ILEC wholesaler provides service reports on service levels, an  
9 unregulated VoIP or cable company would have no such requirements. All of these  
10 issues could be addressed in a comprehensive docket.

11  
12 **Q: WHAT IS YOUR RECOMMENDATION ON HOW TO PROCEED?**

13 A: I recommend a fair and equitable compromise. Although, the CLEC-10 application as it  
14 stands does not meet the public good criteria described above, a possible compromise  
15 would be to limit the approval to the specific services listed in the application (Business  
16 Local Service and Schools and Libraries Exchange Service). In limiting the services to  
17 those listed in the CLEC-10, no interconnection trunks or porting will be required of  
18 MCT and KTC until such time as Comcast wins a schools and libraries customer in the  
19 respective Company's service territory. Since schools and libraries services are  
20 accomplished via a public bidding process, all the parties will know when the  
21 interconnection trunks may be required. No porting or interconnection is required for a



1        resold business service. The PUC could then open a comprehensive docket or other  
2        proceeding to address Comcast's wholesale service and the retail VoIP service. This  
3        approach is appropriate particularly since the MCT and KTC alternative regulation plans  
4        have not yet been approved in the respective service territories. I recommend that  
5        Comcast be required to modify its CLEC-10 application if and when Comcast proposes  
6        to offer the wholesale service or any other telecommunication service that is not directly  
7        linked to the services listed in the current CLEC-10 application.

8  
9        **Q: WHY IS THIS RECOMMENDATION CONSISTENT WITH THE PUBLIC**  
10       **GOOD?**

11      A: This proposal gives Comcast exactly what it has requested in its CLEC-10 application.  
12       The controversy concerning CDV and the associated wholesale service can be properly  
13       addressed by the Commission in a proceeding in which all parties have an opportunity to  
14       present their positions instead of simply accepting Comcast's determination of the  
15       regulatory status of its CDV and wholesale services. The overall impact of the CDV and  
16       wholesale service can be weighed against any benefits it may bring. The Commission  
17       would also be able to address in that proceeding the regulatory treatment of the wholesale  
18       service offering, since the current Commission rules do not appear to contemplate such  
19       an offering.

1    **Q:     DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

2    **A:     Yes.**