

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 08-162

Comcast Phone of New Hampshire

Petition for Arbitration of Rates, Terms and Conditions of Interconnection
with Kearsarge Telephone Company, Merrimack County Telephone
and Wilton Telephone Company

**Reply Brief of Kearsarge Telephone Company, Merrimack County
Telephone Company and Wilton Telephone Company, Inc.**

NOW COME Kearsarge Telephone Company (“KTC”), Merrimack County Telephone Company (“MCT”) and Wilton Telephone Company, Inc. (“WTC”) (collectively, “the TDS Companies”), and hereby submit the following Reply Brief in connection with the Petition for Arbitration (the “Petition”) filed by Comcast Phone of New Hampshire, LLC (“Comcast Phone”). The arguments and legal analysis expressed in Comcast’s Initial Brief (“Comcast Brief”) are essentially a reiteration of those in the Petition. Those arguments, and the flaws in the accompanying legal analysis, were fully addressed in the TDS Companies’ brief (“TDS Brief”); consequently, there is little need for further rebuttal in this brief. However, the Comcast Brief does contain additional material that raises questions about Comcast Phone’s understanding of the facts. In addition, Comcast Phone references additional case law that should be addressed. This Reply Brief is thus directed primarily to those two topics.

I. COMCAST'S INITIAL BRIEF IS FACTUALLY INCORRECT IN MANY RESPECTS.

Comcast Phone's review of the facts of this case contains a number of statements that must be corrected. To begin with, Comcast Phone claims that the parties have stipulated that "Comcast offers competitive telecommunications services to retail and wholesale customers."¹ This is not true. None of the Stipulated Facts, let alone the eight that Comcast Phone cites, admit or even imply that Comcast Phone offers any telecommunications service at all. At most, the Stipulated Facts establish that Comcast Phone has acquired certain emblems of a telecommunications carrier, based on representations that, as the TDS Companies explained in the TDS Brief, are erroneous. However, even though Comcast Phone has adopted the guise of a telecommunications carrier² through incorrect representations, this does not make it a telecommunications carrier. For that reason, the TDS Companies also do not agree that "[t]his arbitration is governed by the substantive and procedural requirements set forth in the Act and applicable Commission rules."³ Because Comcast Phone is not a telecommunications carrier, the TDS Companies have no obligation to negotiate under Section 251, and thus are is not subject to the requirements of the Act.

Likewise, the Stipulated Facts do *not* establish that "Comcast has four separate telecommunications service offerings which it *makes available to the public . . .*"⁴ Contrary to Comcast Phone's claim, this statement is not authorized by the Stipulated Facts. The TDS Companies have only agreed that Comcast Phone posts service schedules on the website that it shares with

¹ Comcast Brief at 2.

² *Id.* at 4.

³ *Id.*

⁴ *Id.* at 6 (emphasis supplied.)

its cable affiliate.⁵ However, these posted schedules are merely window dressing. Comcast Phone makes no service available to the public; its only intended customer is its cable affiliate. It has no customers for either its Schools and Libraries service or its Business Service,⁶ and the only plausible taker of its LIS service is its cable affiliate.⁷

Furthermore, the Stipulated Facts do not establish that Comcast Phone offers exchange access service, contrary to Comcast Phone's assertion. Comcast Phone states that it offers "[e]xchange access service which it makes available to requesting interexchange carrier customers," and cites to Stipulated Facts 5 and 7 to imply that the TDS Companies concur.⁸ The TDS Companies do *not* concur. Stipulated Fact 5 merely states that Comcast Phone posts an Access Service Guide, and Stipulated Fact 7 states that Comcast Phone sends out CABS bills. However, these two actions alone do not by any means constitute exchange access service.

Comcast Phone also asserts in its brief, as it did in the Petition, that the TDS Companies presented their concerns late in the negotiations.⁹ However, as the TDS Companies have already established, Comcast Phone was aware of these objections long before the end of the negotiations.¹⁰ Moreover, given its prior involvement in the *Bright House* case, it is highly likely that Comcast Phone contemplated these objections even before the TDS Companies expressed their concerns to Comcast Phone.

In addition to numerous mischaracterizations of the stipulated facts, Comcast Phone draws strained interpretations out of the facts that it does admit to. For example, Comcast Phone plays with words and dances around the definition of a local exchange carrier. It says that it

⁵ Stipulated Facts 5 and 6.

⁶ Stipulated Facts 11 and 12.

⁷ TDS Brief at 9.

⁸ Comcast Brief at 6.

⁹ *Id.* at 3.

¹⁰ TDS Brief at 2.

“qualifies” as a local exchange carrier, but it never comes right out and claims that it really *is* a local exchange carrier. Instead, it says that it “offers” [but does not actually provide, *see* Stipulated Facts 11 and 12] a “local calling capability” and that it “facilitates” traffic that is “locally rated.”¹¹ However, this “local calling capability” is not a switched local service nor does it involve interconnection with other local carriers. Furthermore, the statement that traffic with Fair-Point is “locally rated” is just a semantic nicety that dodges the issue of whether this traffic is local telecommunications traffic, and casts no light on the issue of whether Comcast Phone is truly offering local exchange service.

II. COMCAST’S ARGUMENT CONSISTS SOLELY OF REFERENCES TO “PRECEDENT” THAT IS IRRELEVANT, NONBINDING AND UNPERSUASIVE.

In its Initial Brief, Comcast Phone continues the oblique approach that it adopted in its Petition. Instead of undertaking a comprehensive analysis of the applicable law and applying it to the undisputed facts of the situation, Comcast Phone’s main argument is primarily a collection of snippets from numerous state and federal decisions. When strung together and combined with the “facts” as filtered by Comcast Phone, they create the appearance of a coherent argument. Thoughtful review of these cases reveals that all of these decisions are either inapplicable to the issues here or so lacking in analytical rigor that they deserve little credence.

Drawing on the standard litany of cases, Comcast Phone explains that a telecommunications carrier is only required to indiscriminately serve the customers it is suited to serve, and while it may not make individualized decisions about who and who not to serve, its services need not actually be available to the entire public, as long as it holds itself out to serve all poten-

¹¹ Comcast Brief at 8.

tial users indifferently.¹² The TDS Companies do not dispute this, so far as it goes. However, Comcast Phone veers off the rails – and at the same time confirms its intention to only serve a single customer – when it asserts that “a service provider may be deemed a common carrier ‘even where it is not yet actually supplying service to *any* customers’ in a particular area, and can be a common carrier even if it intends ‘to serve only a single customer.’”¹³ As the TDS Companies explained in their brief, this is a liberal paraphrasing and misinterpretation of a case that never reached this issue.¹⁴ Actually, the cited case is more supportive of the conclusion that if the defendant *had* produced such evidence, then it would have had a bearing on the decision. Comcast Phone also tries to defend its sole-customer strategy by citing the obvious statement that common carriers routinely offer service packages that “are based on contractual negotiations with a single customer and are specifically designed to meet the needs of only that customer.”¹⁵ However, it is plain that there is a difference between offering tailored variations of a telecommunications service to individual customers, and offering service to only a single Comcast related entity, as Comcast Phone does.

As expected, Comcast Phone continues to rely on *Bright House* as support for its claim that it is a telecommunications carrier, and makes further reference to the D.C. Circuit case affirming that decision.¹⁶ The TDS Companies have already explained that *Bright House* is inapplicable to this case.¹⁷ However, to the extent that the D.C. Circuit affirmed *Bright House*, it should be noted that the court based its decision on three facts, none of which “by itself seems

¹² *Id.* at 7.

¹³ *Id.* (citing *Fiber Technologies Networks, L.L.C. v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3392, para. 21 (2007)).

¹⁴ TDS Brief at 15 n.51.

¹⁵ Comcast Brief at 7 (citing *MCI Telecomms. Corp. v. FCC*, 917 F.2d 30, 34 (D.C. Cir. 1990).

¹⁶ *Verizon Cal. Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

¹⁷ TDS Brief at 12-13.

compelling.”¹⁸ One was Comcast Phone’s self certification, which the TDS Companies have previously shown is meaningless and not legally dispositive.¹⁹ Another was Comcast Phone’s CPCN, which the TDS Companies have demonstrated is based on Comcast Phone’s erroneous representation that it is a telecommunications carrier.²⁰ The last – apparently involving an estoppel theory – was that Verizon had *already assented to an interconnection agreement* with Comcast Phone, thus adding the weight of Verizon’s own determination.²¹ This is something that the TDS Companies most certainly have not done, and obviously should not do, based on the reasoning of the D.C. Circuit.

As the TDS Companies explained in their brief, Comcast Phone meets none of the criteria that it professes make it a common carrier. It has no customers for half of the services that it purports to offer, and of those it does offer, they are affirmatively offered to only one customer, its cable affiliate, on terms that are designed to repel any other potential customer in the unlikely event that there should be any interest. Nor can it “choose” to be a common carrier. As the TDS Companies established in their brief, Comcast Phone’s “self-certification” claim is based on a tortured misreading of precedent that, in fact, directly contradicts Comcast Phone’s contention. The case law establishes that a service provider is a common carrier on the basis of what it *does*, not what it *says*. Comcast Phone is not *acting* as a telecommunications carrier; therefore it is not a telecommunications carrier.

Comcast Phone also references – but provides no analysis or explanation of – a long string of state decisions to support the noncontroversial conclusion that carriers are entitled to interconnection under subsections 251(a) and (b) of the Act if they “offer and provide telecom-

¹⁸ *Verizon Cal.*, 555 F.3d at 275.

¹⁹ TDS Brief at 13-15.

²⁰ *Id.* at 15.

²¹ *Verizon Cal.*, 555 F.3d at 275.

munications services.”²² The TDS Companies wholeheartedly agree – this is in fact the essence of their argument. It is interesting that Comcast Phone does not offer these cases to establish that it actually *is* indeed a telecommunications carrier. This is of no matter anyhow, since all of the cited cases involved either Sprint or MCI as the parties seeking interconnection. Comcast Phone was not a party to any of them, a fact that undermines Comcast Phone’s claim that these cases “found that the [Comcast] offerings satisfy the ‘common carrier test’ and entitle Comcast to Section 251(a)-(b) interconnection and related rights.”²³ As the TDS Companies explained in their brief, MCI and Sprint are undisputed telecommunications carriers, eligible for interconnection in their own right.²⁴ Comcast Phone, on the other hand, has not met this threshold qualification.

Comcast Phone does point to a couple of recent decisions in Michigan and Vermont.²⁵ Both, however, are questionable in their support. For example, the *Vermont Order* is, contrary to Comcast Phone’s characterization, anything but “emphatic” in support of Comcast Phone’s claims that it is a telecommunications carrier, and is in fact conditional. True, the arbitrator’s cursory, two sentence discussion of the inapplicable *Bright House*, made it “difficult not to conclude” that Comcast Phone was a telecommunications carrier. However, this unenthusiastic conclusion was followed immediately by the arbitrator’s concern that there was “little basis for determining whether an offer by Comcast Phone to another party provides unjustly discriminatory service or whether Comcast Phone held itself out ‘indifferently to all potential users.’”²⁶ Comcast Phone was directed to fully reveal and make generally known all prices, terms and condi-

²² Comcast Brief at 4.

²³ *Id.* at 9.

²⁴ TDS Brief at 10-11.

²⁵ Comcast Brief at 9-10.

²⁶ Petitions of Vermont Telephone Company, Inc. and Comcast Phone of Vermont, LLC d/b/a Comcast Digital Phone for Arbitration, Docket No. 7469, Final Order at 17 (Vt. PSB, Feb. 2, 2009) (“*Vermont Order*”).

tions related to the wholesale local interconnection services it provides to its affiliate.²⁷ Comcast Phone easily provided this window-dressing, just as it has in New Hampshire, but it is also worth mentioning that, in a footnote, the arbitrator gave credence to FCC Chairman Martin's observation in *Bright House* "that the finding affords affiliates of Comcast Corporation 'the privileges of a 'telecommunications carrier,' including the right to interconnection, even though there is scant evidence that the affiliates have ever offered telecommunications to the public and no evidence that they have provided telecommunications to any entity other than . . . Comcast.'"²⁸

A close examination of the *Michigan Decision* also shows it to be far from a rousing endorsement of Comcast Phone's status as a telecommunications carrier. The arbitrator found that Comcast Phone was "at least technically" a telecommunications carrier.²⁹ To support this unconvincing conclusion, the arbitrator accepted Comcast Phone's Schools and Libraries service and its LIS offerings as local exchange services, noting (erroneously) that the TDS Companies had no concerns about Comcast Phone's purported end user services.³⁰ Accepting at face value that Comcast Phone "stands ready to provide . . . both exchange and exchange access service," the arbitrator found that there was "*no reasonable choice*" but to default to the conclusion that Comcast Phone was a telecommunications carrier.³¹

The questionable reasoning of this analysis is further weakened in light of the arbitrator's gross misreading of the FCC's position on IP voice traffic. The arbitrator relied on a "private letter ruling" that "specifically ruled that 'Comcast's VoIP service is a telecommunications ser-

²⁷ *Id.*

²⁸ *Id.*, n.15 (citing Statement of Chairman Keith J. Martin, dissenting in *Bright House*).

²⁹ Petition of Communications Corporation of Michigan, d/b/a TDS Telecom, Case No. U-15725, U-15730, Decision of the Arbitrator at 20 (Mi. PSC, Jan. 28, 2009) ("*Michigan Decision*").

³⁰ *Id.*

³¹ *Id.* at 20-21.

vice . . .”³² However, that document was by no means a “private letter ruling.” It was a letter from the FCC to Comcast Corporation requesting information pertinent to the FCC’s inquiry into Comcast Corporation’s network management practices.³³ The point of the letter was to suggest, but certainly not “specifically rule,” that Comcast Corporation’s VoIP service might be a telecommunications service. It is particularly noteworthy that Comcast Phone was quick to file an Objection to the characterization that Comcast Digital Voice (“CDV”) is a telecommunications service.³⁴

The Commission is not bound by the decisions of other commissions, and even where it turns to them for guidance, it is hoped that it would be persuaded only by those that are well reasoned. The *Vermont Order* clearly expresses doubt as to its conclusions, and the *Michigan Decision* does not reflect a critical review of the facts. Both were simply content to accept Comcast Phone’s representations at face value. Signaling the underlying weakness of its position, Comcast Phone nevertheless asks for the “benefit of the doubt,”³⁵ that it apparently has received in the other state proceedings. The TDS Companies urge the Commission to undertake a more thorough analysis. If the Commission looks at all the facts and relates them to the existing law, it will easily see that there is no doubt that Comcast Phone is not a telecommunications carrier.

Comcast Phone concludes its brief by awarding itself plaudits because it has “subjected itself to oversight by this Commission” so that the Commission can “oversee Comcast and to as-

³² *Id.* at 21 n.6.

³³ Letter from Dana Schafer, FCC to Kathryn A Zachem, Comcast Corporation, File No. EB-08-IH-1518 (January 18, 2009) (attached hereto as Exhibit 1).

³⁴ Petition of Communications Corporation of Michigan, d/b/a TDS Telecom, Case No. U-15725, U-15730, Comcast Limited Objection to Decision of Arbitration Panel (Feb. 9, 2009) (attached hereto as Exhibit 2).

³⁵ Comcast Brief at 14.

sure its compliance” with its obligations as a telecommunications carrier.³⁶ Although some hyperbole is to be expected in the course of zealous advocacy, the insincerity of this statement is striking. If Comcast Phone was truly so magnanimous, it would come clean with the Commission, admit that its cable “affiliate” is offering local exchange telecommunications service, cease its game of regulatory arbitrage, and really submit to the jurisdiction of the Commission. It is plainly obvious that Comcast Phone is merely the alter ego of its cable affiliate, created solely so the cable affiliate can interconnect to the public phone network without having to submit to the oversight that Comcast Phone professes to welcome. It is in the public interest for the Commission to call a halt to this sham so that New Hampshire consumers can enjoy *both* the benefits of competition *and* the uniform protection of the Commission’s rules.

³⁶ *Id.* 14-15.

III. CONCLUSION.

The Comcast Brief is essentially a repetition of its Petition, and does nothing to strengthen Comcast Phone's argument that it is a telecommunications carrier. Comcast Phone has not met its burden of demonstrating that it is a telecommunications carrier. Accordingly, the Petition should be dismissed on the ground that Comcast Phone does not qualify as an entity entitled to seek interconnection under Section 251 of the Act or arbitration under Section 252 of the Act.

Respectfully submitted,

KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE
COMPANY
WILTON TELEPHONE COMPANY

By Their Attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: May 15, 2009

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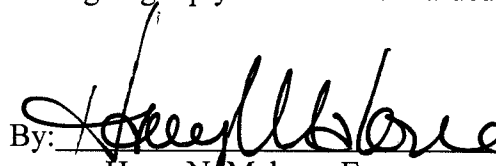
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CERTIFICATE OF SERVICE

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

Dated: May 15, 2009

By:



Harry N. Malone, Esq.



Federal Communications Commission
Washington, D.C. 20554

January 18, 2009

VIA FACSIMILE
AND FIRST CLASS MAIL

Kathryn A. Zachem
Vice President, Regulatory Affairs
Comcast Corporation
2001 Pennsylvania Ave. NW, Suite 500
Washington, DC 20006
FAX: (202) 466-7718

Re: In the Matters of Formal Complaint of Free Press and Public Knowledge
Against Comcast Corporation for Secretly Degrading Peer-to-Peer
Applications; Broadband Industry Practices: Petition of Free Press et al.
for Declaratory Ruling that Degrading an Internet Application Violates the
FCC's Internet Policy Statement and Does Not Meet an Exception for
"Reasonable Network Management," File No. EB-08-IH-1518, WC
Docket No. 07-52.

Dear Ms. Zachem:

The Commission has received your submission of September 19, 2008, detailing Comcast's broadband network management practices, Comcast's planned deployment of protocol-agnostic network management practices, and Comcast's plan for complying with the *Comcast Network Management Practices Order*, and your submission of January 5, 2009, certifying Comcast's fulfillment of the compliance plan.

We seek clarification with respect to an apparent discrepancy between Comcast's filing and its actual or advertised practices. Specifically, in Appendix B of your September 19 submission, Comcast notes that if a consumer uses 70% of his provisioned bandwidth for 15 minutes or more when his neighborhood Cable Modem Termination System (CMTS) node has been near capacity for a period of 15 minutes or more, that consumer loses priority when routing packets through congested portions of the network. See Letter from Kathryn A. Zachem, Vice President of Regulatory Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, App. B at 8-10 (filed Sept. 25, 2008). If such a consumer then places a Voice over Internet Protocol (VoIP) call along a route experiencing actual congestion, Comcast states that consumer may find that his "VoIP call sounds choppy." *Id.* at 13. Critically, the Appendix draws no distinction between Comcast's VoIP offering and those offered by its competitors.

Comcast's website, however, suggests that such a distinction does in fact exist. The website claims that "Comcast Digital Voice is a separate facilities-based IP phone

service that is not affected by this [new network management] technique.” Comcast Help & Support, Frequently Asked Questions about Network Management, at <http://help.comcast.net/content/faq/Frequently-Asked-Questions-about-Network-Management> (last visited Jan. 12, 2009) (“*Frequently Asked Questions*”). It goes on to state, by contrast, that customers of other “VoIP providers that rely on delivering calls over the public Internet . . . may experience a degradation of their call quality at times of network congestion.” *Id.*

We request that Comcast explain why it omitted from its filings with the Commission the distinct effects that Comcast’s new network management technique has on Comcast’s VoIP offering versus those of its competitors. We also ask that you provide a detailed justification for Comcast’s disparate treatment of its own VoIP service as compared to that offered by other VoIP providers on its network. In particular, please explain how Comcast Digital Voice is “facilities-based,” how Comcast Digital Voice uses Comcast’s broadband facilities, and, in particular, whether (and if so, how) Comcast Digital Voice affects network congestion in a different manner than other VoIP services.

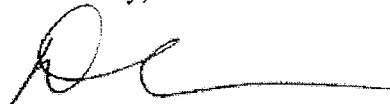
To the extent that Comcast maintains that its VoIP offering is a telephone service offering transmission facilities for VoIP calls distinct from Comcast’s broadband offering, then it would appear that the fee Comcast assesses its customers for VoIP service pays in part for the privileged transmission of information of the customer’s choosing across Comcast’s network. As we have stated before, the “heart of ‘telecommunications’ [under the Act] is transmission.” *Pulver.com Order*, 19 FCC Rcd 3307, 3312, para. 9 (2004) (holding that the Internet-based service at issue was not “telecommunications” because the provider “neither offers nor provides transmission to its members”); see 47 U.S.C. § 153(43) (defining “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received”). And offering “telecommunications for a fee directly to the public” is the statutory definition of a telecommunications service. 47 U.S.C. § 153(46); cf. *Cable Modem Order*, 17 FCC Rcd 4798, 4823, para. 40 (2002) (classifying cable modem service as an information service only because the “telecommunications component is not . . . separable from the data-processing capabilities of the service” and because no cable modem service provider made a “stand-alone offering of transmission for a fee directly to the public”). Given that Comcast apparently is maintaining that its VoIP service is a “separate facilities-based” telephone service that is distinct from its broadband service and differs from the service offered by “VoIP providers that rely on delivering calls over the public Internet,” *Frequently Asked Questions*, it would appear that Comcast’s VoIP service is a telecommunications service subject to regulation under Title II of the Communications Act of 1934, as amended.

We thus request that Comcast explain any reason the Commission should not treat Comcast’s VoIP offering as a telecommunications service under Title II — a service subject, among other things, to the same intercarrier compensation obligations applicable to other facilities-based telecommunications carriers. See *IP-in-the-Middle Order*, 19 FCC Rcd 7457, 7466–67, para. 15 (2004) (holding that access charges apply to AT&T’s IP-in-the-middle telephony, given that “[e]nd users place calls using the same method” as


they would otherwise, that the service provides no "enhanced functionality," and that the service "imposes the same burdens on the local exchange as do circuit-switched interexchange calls"). We understand that Comcast's VoIP service is not yet complying with such intercarrier compensation obligations.

Please submit your response by the close of business on Friday, January 30, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Shaffer', with a long horizontal flourish extending to the right.

Dana R. Shaffer
Chief
Wireline Competition Bureau

A handwritten signature in black ink, appearing to read 'Matthew Berry', with a stylized flourish at the end.

Matthew Berry
General Counsel
Federal Communications Commission

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February 9, 2009

Ms. Mary Jo Kunkle
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Re: In the matter of the Petition of Communications Corporation of Michigan d/b/a
TDS Telecom for Sections 251/252 arbitration of interconnection rates, terms, and
conditions with Comcast Phone of Michigan, LLC d/b/a Comcast Digital Phone.
MPSC Case No. U-15725

In the matter of the Petition of Comcast Phone of Michigan, LLC for Arbitration
pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an
Interconnection Agreement with TDS Telecom/Communications Corp. of MI
(CCM).
MPSC Case No. U-15730

Dear Ms. Kunkle:

Enclosed for filing, please find Comcast Phone of Michigan, LLC's Limited Objections
to the Decision of the Arbitrator in the above-captioned proceedings. Proof of Service upon the
Parties of Record is also enclosed.

Very truly yours,

CLARK HILL PLC



Haran C. Rashes

:hcr
Attachment

cc: Parties of Record

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the Petition of)
COMMUNICATIONS CORPORATION OF)
MICHIGAN, d/b/a TDS TELECOM, for)
Sections 251/252(b) arbitration of)
interconnection rates, terms, and conditions)
with COMCAST PHONE OF MICHIGAN,)
d/b/a COMCAST DIGITAL PHONE.)

Case No. U-15725

In the matter of the Petition of COMCAST)
PHONE OF MICHIGAN, LLC, for Arbitration)
pursuant to Section 252(b) of the)
Telecommunications Act of 1996 to establish an)
Interconnection Agreement with TDS)
TELECOM/COMMUNICATIONS)
CORPORATION OF MICHIGAN.)

Case No. U-15730

**LIMITED OBJECTION TO DECISION OF ARBITRATION PANEL
OF COMCAST PHONE OF MICHIGAN, LLC**

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February 9, 2009

**LIMITED OBJECTION TO DECISION OF ARBITRATION PANEL
OF COMCAST PHONE OF MICHIGAN, LLC**

The well reasoned decision of the Arbitrator correctly found that Comcast is entitled to interconnection by virtue of its status as a telecommunications carrier. Indeed, the Vermont Public Service Board just reached the same conclusion as the Arbitrator did here in a final order¹ resolving an arbitration between Comcast's Vermont affiliate and another incumbent carrier..

Comcast, however, is concerned about footnote 6 in the Decision of the Arbitrator ("DAP"), specifically the incorrect statement that "on page 2 of its January 18, 2009 private letter ruling issued in File No. EB-08-IH-1518, WC Docket No. 07-52, the FCC specifically ruled that 'Comcast's VoIP service is a telecommunications service subject to regulation under Title II of the Communications Act of 1934, as amended.'" This statement fundamentally mischaracterizes the referenced document. The referenced document is not a "private letter ruling" of the Federal Communications Commission ("FCC") or, indeed, a ruling of any kind. Rather it is merely a letter from Dana R. Shaffer, the Chief of the FCC's Wireline Competition Bureau and Matthew Berry, the FCC's General Counsel, requesting additional information from Comcast Corporation in connection with a filing Comcast Corporation made in an FCC docket that has nothing to do with the appropriate regulatory classification of interconnected voice over Internet protocol ("VoIP") services. The letter does not purport in any way to declare or otherwise state a position of the Wireline Competition Bureau, much less of the FCC, on the regulatory classification of interconnected VoIP.

¹ *Petitions of Vermont Telephone Company, Inc. ("VTel"), Comcast Phone of Vermont, LLC, d/b/a Comcast Digital Phone ("Comcast"), for Arbitration of an Interconnection Agreement Between VTel and Comcast, Pursuant to Section 252 of the Telecommunications Act of 1996 and Applicable State Laws*, Vermont Public Service Board Docket No. 7469, Final Order issued Feb 2, 2009 <<http://www.state.vt.us/psb/orders/2009/files/7469final.pdf>>.

Therefore, since the text in footnote 6 in the DAP is inaccurate and not necessary to the outcome or rationale of the DAP, it should be omitted from the Commission's final decision.

Respectfully Submitted,

CLARK HILL PLC



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Attorneys For:
Comcast Phone of Michigan, LLC

Date: February 9, 2009

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the Petition of Communications)	
Corporation of Michigan d/b/a TDS Telecom)	
for Sections 251/252 arbitration of)	
interconnection rates, terms, and conditions)	Case No. U-15725
with Comcast Phone of Michigan, LLC d/b/a)	
<u>Comcast Digital Phone.</u>)	

In the matter of the Petition of)	
Comcast Phone of Michigan, LLC)	
for Arbitration pursuant to Section 252(b))	
of the Telecommunications Act of 1996)	Case No. U-15730
to establish an Interconnection Agreement)	
with TDS Telecom/Communications Corp.)	
<u>of MI (CCM).</u>)	

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Patricia A. Tooker, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on February 9, 2009 she arranged for service of the Comcast Phone of Michigan, LLC's Limited Objections to the Decision of the Arbitrator in the above captioned proceedings, upon the parties on the attached service list. Service was accomplished via Electronic Mail and United States First Class Mail



Patricia A. Tooker

Subscribed and sworn to before me
this 9th day of February, 2009



Haran C. Rashes, Notary Public
Washtenaw County, Michigan
Acting in Ingham, Michigan
My Commission Expires: September 18, 2013

**MPSC Case Nos. U-15725 & U-15730
Service List**

MEDIATOR

Hon. Mark E. Cummins
State Office of Administrative
Hearings and Rules
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
P.O. Box 30221
Lansing, MI 48911
E-mail: cumminsm1@michigan.gov

**MICHIGAN PUBLIC SERVICE
COMMISSION –
TELECOMMUNICATIONS DIVISION**

Mr. Barry Harmon
Michigan Public Service Commission
6545 Mercantile Way, Suite 7
P.O. Box 30221
Lansing, MI 48911
E-Mail: bharmon@michigan.gov

**TDS TELECOM/COMMUNICATIONS
CORP. OF MI (CCM)**

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