

**BEFORE THE
PUBLIC UTILITIES COMMISSION**

DT 09-044

NEW HAMPSHIRE TELEPHONE ASSOCIATION

**Petition for an Investigation into the Regulatory Status of
IP Enabled Voice Telecommunications Services**

PETITION FOR WAIVER OF CERTAIN CLEC RULES

NOW COMES Comcast Corporation and its affiliates, Comcast Phone of New Hampshire, LLC and Comcast IP Phone II, LLC (collectively “Comcast”) and, pursuant to Order No. 25, 274 (Sept. 28, 2011), Order No. 25, 288 (Nov. 10, 2011) and N.H. Admin. R. Puc 201.05, respectfully petitions the New Hampshire Public Utilities Commission (“the Commission”) for a waiver of certain Commission rules. In support of this petition, Comcast states as follows:

I. INTRODUCTION/PROCEDURAL HISTORY

On August 11, 2011, the Commission issued Order No. 25, 262 in the above-captioned docket. The Order found, *inter alia*, that cable voice service offered by Comcast and Time Warner in New Hampshire constitutes the conveyance of telephone messages under RSA 362:2 and that providers of such services are New Hampshire public utilities subject to the Commission’s regulations governing competitive local exchange carriers (“CLECs”). Order No. 25, 262 further directed Comcast and Time Warner to comply with registration and other CLEC requirements for their intrastate cable voice services pursuant to New Hampshire law and Commission rules. On September 12, 2011, pursuant to RSA 541:3, Comcast filed a timely Motion for

Rehearing and Suspension of Order No. 25, 262, as well as a Motion to Reopen the Record of this proceeding. The rural local exchange carriers of the New Hampshire Telephone Association (“RLECs”) filed objections to both Motions on September 19, 2011. The Commission issued a Secretarial Letter on September 22, 2011 indicating its determination to suspend Order No. 25, 262 pending further consideration of the issues raised in Comcast’s Motions. On September 28, 2011 the Commission issued Order No. 25,274 denying Comcast’s Motion for Rehearing and Suspension and Motion to Reopen the Record. In so doing, the Commission indicated that “to the extent that Comcast believes that it cannot reasonably comply with Puc 432.14(f)...or any other rule, it is free to seek a waiver pursuant to Puc 201.05 or to request that the Commission amend or repeal the rule...” *New Hampshire Telephone Association Petition for an Investigation into the Regulatory Status of IP Enabled Voice Telecommunications Services*, DT 09-044, Order No. 25, 274 (Sept. 28, 2011) at 10-11.

On October 28, 2011, Comcast filed a motion for reconsideration or rehearing of Order No. 25,274 to the extent that the order denied Comcast’s request for a suspension of Order No. 25, 262 and, in the alternative, requested a general waiver of the Commission’s CLEC rules. On November 4, 2011, New Hampshire Telephone Association (“NHTA”) objected to Comcast’s motion. The Commission issued Order No. 25, 288 on November 10, 2011. Among other things, the order: 1) granted Comcast’s waiver petition for 60 days with respect to Puc PARTs 430 and 450 exclusive of 37 CLEC rules enumerated in the order which the Commission did not waive; 2) directed Comcast to inform the Commission within 45 days if Comcast cannot comply with any of the 37 rules listed in the order, including the reason(s) it cannot comply; and

3) directed Comcast to review the provisions of Puc PARTs 430 and 450 to determine which rules it believes to be onerous, inapplicable, or whose purpose can be satisfied by a proposed alternative method and to submit to the Commission within 45 days Comcast's analysis and conclusions, including why such proposed waivers would be within the public interest. The instant petition is filed in compliance with Order No. 25, 288 and pursuant to N.H. Admin. 201.05.

II. STANDARD OF REVIEW: RULES SHALL BE WAIVED IF SUCH WAIVER SERVES THE PUBLIC INTEREST AND WILL NOT DISRUPT THE ORDERLY AND EFFICIENT RESOLUTION OF MATTERS BEFORE THE COMMISSION.

The relevant waiver standard is set forth in N.H. Admin. R. Puc 201.05(a) which provides that the Commission “**shall** waive the provisions of any of its rules, except where precluded by statute, upon request by an interested party” upon a finding that the waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission. (Emphasis added). In determining the “public interest,” the Commission “**shall waive a rule**” if compliance with it would be onerous or inapplicable under the circumstances or the rule’s purpose would be satisfied by an alternative proposed method. *See* N.H. Admin. R. Puc 201.05 (b) (Emphasis added).

III. SPECIFIC CLEC RULES FOR WHICH COMCAST SEEKS A PERMANENT WAIVER

As directed by Order No. 25, 288, Comcast has undertaken a review of the provisions of Puc PARTs 430 and 450, as well as its own business systems and operations and is seeking a permanent waiver of the rules set forth below. At the outset, Comcast notes as a policy matter that its waiver request illustrates the changing nature of the communications landscape and how Comcast’s New Hampshire consumers choose to

address their communications needs. Overwhelmingly, such customers obtain voice service as a component in bundled packages that result in consumer savings. Comcast believes that many of the rules from which it is seeking relief are inapplicable to the competitive and multiproduct communications environment generally, and should be revised or eliminated when the Commission re-addresses its rules in 2013, if not sooner. Moreover, implementation of certain rules may even thwart the public interest by creating customer confusion, as discussed below.

1. 432.01(a)(4) – requirement that, as part of basic service, CLECs provide presubscription to other interLATA toll carriers.

2. 432.01(a)(5) - requirement that, as part of basic service, CLECs provide presubscription to other intraLATA toll carriers.

Reason for waiver: Comcast today does not offer customers the opportunity to presubscribe to other interLATA or intraLATA toll carriers, nor has it done so since 2008 when it discontinued its circuit switched telephone service. Rather, each of Comcast's nationally consistent voice service packages bundle together local, intraLATA toll and interLATA toll services. Comcast lacks the intercarrier relationships, network capabilities, billing and operations support systems functionality, and processes necessary to adhere to the requirements of N.H. Admin. R. Puc 432.01(a)(4) and (5). Requiring Comcast to engage in burdensome and costly reconfigurations of its national business systems and service plans in order to meet requirements of this sort would be quite onerous and would immediately and adversely impact Comcast's business operations and product offerings, as well as consumer savings. Switching equipment used to provide bundled voice services to Comcast's customers is not currently programmed to permit customers the option of presubscribing to another toll provider. While such

programming may be technically feasible (with a substantial investment of time and resources), it is unnecessary in light of the lack of customer benefits that would justify the associated costs. Moreover, Comcast's bundled pricing benefits consumers by enabling Comcast to price its voice service in the most competitive manner possible. It is unlikely that a Comcast voice customer would elect to forego bundled intraLATA and interLATA toll services and instead incur the additional costs of obtaining those services from another toll service provider through presubscription with an alternate toll service provider.

To the extent that a consumer wants to presubscribe to a different toll provider, it may do so via the incumbent or other competitive service providers operating in the market. Thus, the underlying purpose of these two rules is also satisfied by an alternative means, i.e. the customer's ability to choose another carrier offering presubscription services.¹ The public interest would therefore be served by waiving these rules. Lastly, granting Comcast waivers of these two rules will not disrupt the orderly and efficient resolution of matters before the Commission. In fact, precedent exists for such waivers as the Commission has waived these rules for at least one other CLEC that petitioned for a waiver for the same reasons cited above by Comcast. *See* DT 07-065, Letter of Debra Howland to Robert J. Munnelly, Jr. (May 17, 2007).

3. 432.01 (a)(11) – requirement that, as part of basic service, CLECs make available a white pages directory listing.

4. 432.01 (a)(12) – requirement that, as part of basic service, CLECs make available a non-electronic telephone directory.

¹ Furthermore, Comcast believes that there are substantial doubts as to whether the imposition of equal access requirements on CLECs by state utility commissions is consistent with the Federal Communications Act, 47 U.S.C. §251(g), which limits such obligations to incumbent local exchange carriers ("ILECs").

Reason for waiver: Comcast has created a new on-line directory tool called Ecolisting™ which can be accessed at www.ecolisting.com, and no longer proactively places customers' telephone numbers in residential white pages telephone books. Comcast's new policies are consistent with the environmentally friendly trend that has motivated phone companies to modify their policies regarding printing and distribution of paper directories. Unless a Comcast customer asks for a non-published number, the customer's published listing information will be made available at www.ecolisting.com and through the Comcast directory assistance operator. Ecolisting is available to all Internet users and will include listings from Comcast and non-Comcast customers. Published listing information may also appear in other online directories and directory assistance (411) data bases, as well as printed directories upon specific request by the publisher. As a result, Comcast no longer guarantees a residential listing in a traditional, paper telephone book, nor guarantees the receipt of a telephone directory. It should be noted that in some cities within two dozen states,² incumbent phone companies are not obligated to deliver residential white pages directories to customers (including Comcast customers) unless the customer specifically requests such deliveries.

Compelling Comcast to comply with these rules is inconsistent with the public interest because such compliance would be onerous and environmentally unfriendly, with no clear benefit to Comcast customers who, in Comcast's experience, are increasingly turning to on-line information in lieu of printed directories. In addition, the purpose of these rules is satisfied by Comcast's Ecolisting™ and the availability of directory assistance services. Thus, a waiver of these rules should be granted.

² These states include: Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Missouri, Mississippi, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, Washington and Wisconsin.

5. 432.14(f)(1) – disconnection prohibited for unpaid past due bills for regulated services in an amount less than \$25.

6. 432.14(f)(2) – disconnection prohibited for past due bills for unregulated services.

7. 432.16(n) – disconnect notice must include language that separately lists the amount due for regulated services and that includes a statement that the customer cannot be disconnected for nonpayment of other charges such as internet connectivity, telephone directory advertising, or telephone equipment charges.

Reason for waiver: Compliance with these three related rules would have an immediate, costly and operationally disruptive impact on Comcast's billing, provisioning, customer service and collections processes. Comcast's billing and provisioning systems are built around its national converged platform, which serves customers across multiple states with multiple services, including high-speed Internet, cable video, and voice. Comcast has built these systems and has conducted business in New Hampshire since the first launch of Xfinity Voice in 2005 pursuant to and in accordance with federal laws, orders, regulations and policies that are premised on the legal characterization of cable voice service as an information service (rather than a telecommunications service) not regulated by this Commission. Comcast's billing systems and software were designed around the expectation that a customer would be purchasing a suite of Comcast's bundled advanced products and services.

Today, if a customer does not pay his/her bill in full, after the required delinquency period under New Hampshire telephone rules, all Comcast services for which the customer is billed will enter into Comcast's collections and disconnection processes.³ Importantly, however, and as described in Comcast's previous filings⁴, when

³ Comcast will be adjusting its payment due date and delinquency date on its combined bill to comply with N.H. Admin. R. Puc 1202.09 and Puc 432.14 (b)(1) so that customers will not enter into delinquency prior to the time period required by the rules for telephone service.

a customer only pays part of their bundled bill, Comcast does not currently have the technical capability to prioritize such a partial payment towards New Hampshire customers' voice services (as opposed to their High Speed Internet or cable video services) in a manner that would enable Comcast to comply with the above-referenced disconnection rules.⁵ In order to comply with these rules, which were designed solely for the provision of telephone service, Comcast would need to suspend the automated functionality of its billing and provisioning systems and manually process all New Hampshire past due bills.

Manual processing of collections activities for all New Hampshire customers with voice service would have a significant, immediate and costly impact to Comcast's business practices and would require extensive training and changes to Comcast's business protocols. It would likely also generate multiple bills and disconnection notices to the customer within a single billing period, which would also have to be manually managed, ultimately creating confusion for both the customer and account representatives who care for multiple states, thereby adding to the potential for error. Moreover, without further extensive analysis by the billing vendor, it is unknown at this time whether and to what extent such changes to Comcast's existing billing and provisioning systems are even technically feasible.

⁴ See Motion for Rehearing and Suspension of Order No. 25, 262 and Motion to Reopen Record (Sept. 12, 2011) at 13-14; Declaration of Beth Choroser (Sept. 12, 2011) at 3-4; and Motion for Rehearing/Reconsideration of Order No. 25, 274 Denying Motion For Suspension of Order No. 25, 262 and/or Petition for Waiver of CLEC Rules (Oct. 28, 2011) at 9-10, all of which are hereby incorporated into the within Petition by reference.

⁵ Adding to the inherent difficulty in allocating payments for a multi-service bundle is that most of Comcast's New Hampshire voice customers subscribe to Comcast's Unlimited plan, which includes long distance calling at a flat rate, along with multiple vertical features such as caller ID, voice mail, three way calling, etc. Compliance with this rule would mean that Comcast would not only have to apply payment across service types (i.e. video, voice and high speed Internet), but also within the voice service component to allocate payment to basic voice service only – which Comcast is unable to do and could not manage manually.

Finally, as a policy matter, it is unclear whether retrofitting systems and processes to comply with outdated provisions requiring the continuation of payment priority for voice service in a bundled environment even serves the best interests of the customer, who might prefer a different payment priority.⁶

Comcast is not subject to regulatory requirements in any other jurisdiction that would require allocation of partial payments to a specific service, as opposed to the customer's overall balance. As explained above, compliance with these rules above will negatively and profoundly impact Comcast's business and operations in New Hampshire given the integrated nature of its systems with all of its products, including unregulated video and broadband services. In view of the foregoing, and the fact that Comcast has been operating under the same collection guidelines since it began to offer Xfinity Voice (formerly Comcast Digital Voice) in New Hampshire in 2005, it would be onerous and unreasonable to require Comcast to change its uniform systems to comply with New Hampshire-specific disconnection rules. A waiver of these rules is therefore in the public interest. In addition, because such a waiver will not disrupt the orderly and efficient resolution of any matter pending before the Commission, it should be granted.

8. 432.16(f) – before disconnecting, CLEC must attempt to notify an adult occupant of the premises by telephone.

Reason for waiver: Comcast provides written disconnection notices to customers who fail to pay their account balances and are subject to disconnection. Comcast is

⁶As part of the collections process, Comcast will always work with the customers who contact Comcast and who are unable to meet their monthly payment obligations to find the packaging and pricing that works best for them, which may including downgrading their level of service or entering into a payment plan. A literal reading of the Commission's rules, however, could inhibit customers from prioritizing their Internet or video services over their voice services as part of such a downgrade.

unaware of any Xfinity Voice customer complaints on this issue.⁷ Thus, Comcast questions what benefit, if any, results from this rule. Comcast believes that the cost of complying with this rule (approximately \$10,000 per month) is onerous and unjustified in light of the lack of any additional customer benefits. Moreover, an alternative method of satisfying the purpose of this rule exists in the form of the disconnection notice that is sent to the customer via U.S. mail.⁸

9. 432.14(h) – requires a utility intending to terminate service of a certified medical emergency customer for failure to enter into or comply with a payment arrangement, to provide 5 days business days notice to the Commission prior to termination.

Reason for waiver: Comcast believes that this rule, as written, violates Comcast's applicable privacy policy for its subscribers, *see* <http://www.comcast.com/Corporate/Customers/Policies/CustomerPrivacy.html>, and the Cable Act at 47 U.S.C. §551. This requirement would force Comcast to disclose to the Commission personally identifiable information ("PII") regarding its customer, that the customer has a medical condition requiring protection, and that the individual is having financial difficulties and is unable to pay his or her bill. Such a disclosure of PII to a governmental entity such as the Commission for a voice service requires valid legal process, subscriber consent, or an applicable exception, none of which Comcast believes applies in this situation. *See* 47 U.S.C. §551(c)(2)(D) (referencing specified sections of the federal criminal code in Title 18 of the U.S. Code). Thus, compliance with these rules could expose Comcast to civil privacy claims under federal law, including class

⁷On the issue of customer complaints, Comcast notes that to date for 2011, it has received from the Commission only 46 complaints by Xfinity Digital Voice customers. This number amounts to approximately .03% of Comcast's voice customers in New Hampshire.

⁸Comcast's disconnection notice to customers informs them of a "soft" disconnection period during which time Comcast continues to provide 911 service.

action claims. For this reason, permanent waiver of this rule by the Commission should be granted.

10. 432.16(e)(4) requires that CLECs shall not disconnect service to residential customers during the day preceding the day the Commission is closed to the public, unless otherwise requested by the Customer.

Reason for waiver: This rule would require Comcast to change its current collections practices by not processing non-pay disconnections on Fridays. As discussed above, Comcast has been offering Xfinity Voice service in New Hampshire since 2005 as part of a multi-product bundle. Since that time, Comcast has as a matter of course, processed non-pay bundled disconnections during the week, including Fridays, without any indication of customer complaints related to this rule. Comcast carefully manages its collection and disconnection processes to spread them out evenly throughout the week, both for operational and staffing purposes, so that its collections representatives are able to work with impacted customers.

The majority of Comcast Xfinity Voice customers in New Hampshire are also bundled customers. Due to Comcast's billing and provisioning system limitations, implementation of this rule would impact not only voice service, but other products as well. As discussed at length above, Comcast does not have the technical capability to disconnect other products separately, and compelling Comcast to do so would be costly, burdensome and would serve only to confuse customers with multiple notices and add unnecessary complexity for the customer service representatives who care for them.

The underlying purpose of these rules, i.e. that customers should be able to dispute non-pay disconnection with the Commission in order to avoid immediate disconnection, is served by a number of alternative means. First, customers are notified

in writing (via a disconnection notice) of the date on which service will be interrupted. Thus, customers have advanced notice of upcoming service interruption and can reach out to the Commission with as much as fourteen days notice. Second, Comcast has multiple channels by which customers can reach Comcast representatives to discuss outstanding balances or enter into a payment plan prior to any proposed disconnection date to avoid disconnection for non-payment. Comcast is available by phone twenty-four hours a day, seven days a week or by a service center visit Monday through Saturday. Customer service is also available online. Finally, it is Comcast's practice generally not to disconnect service when a valid customer dispute is pending over an outstanding balance.

For these reasons, waiver of this rule is in the public interest. In addition, because such a waiver will not disrupt the orderly and efficient resolution of any matter pending before the Commission, it should be granted.

11. 449.05(b)(2)- requires CLECs to include on the "Quality of Service Report" information regarding the installation of plain old telephone service (POTS) that indicates the percentage of installation appointments the CLEC failed to keep.

12. 449.05(d)(5)- requires CLECs to include on the "Quality of Service Report" information that indicates the percentage of repair appointments which the CLEC failed to keep.

Reason for waiver: First, rule 449.05(b)(2) by its terms does not apply to Comcast, because as noted in the Commission's orders in this docket, Comcast provides Interconnected VoIP Services, not POTS. In addition, as a communications service provider that offers installations of bundled voice, video and data service, Comcast does not maintain metrics data related in the regular course of business as applied solely to

installation or repair of voice service. Although Comcast maintains information about missed installation and repair appointments generally, based upon how the data is kept, Comcast cannot determine whether the appointment was for installation and/or repair of facilities for voice service or for the other unregulated services that Comcast provides.

If the purpose of reporting on these service quality metrics is to induce Comcast to meet installation and repair appointments, then the rules' purpose can be satisfied by an alternative means as follows: Comcast's "Customer Guarantee" commits to its customers that Comcast will always be on time within the customer's appointment window, or Comcast will credit the customer \$20 or provide a free premium channel for three months.

Lastly, because Comcast is not the voice provider of last resort in the New Hampshire territories where it operates, it should not be required to maintain service quality standards that are more applicable to incumbent providers of voice services.

For these reasons, waiver of this rule serves the public interest in that compliance would be both burdensome and unnecessary, and will not disrupt the orderly and efficient resolution of matters before the Commission.

IV. CONCLUSION

Given the pending judicial appeal concerning whether Comcast's cable voice services are subject to the Commission's current regulatory authority, and the upcoming expiration of the Part 400 rules in 2013, the future applicability of the Commission's rules to Comcast remains uncertain. Notwithstanding this uncertainty, Comcast is making a good faith effort to comply with the Commission's CLEC rules to the extent

such compliance is possible.⁹ Given that, as explained above, compliance with the above-listed rules is either onerous, impractical or the rules' purposes can be met through an alternative method of compliance, Comcast meets the requirements of N.H. Admin. R. 201.05 and therefore qualifies for a waiver of the CLEC rules listed above.

The Commission must grant the waiver if it finds that the waiver serves the public interest and will not disrupt the orderly efficient resolution of matters before the Commission. The public interest will be served by granting Comcast a waiver of the CLEC rules because it will avoid a costly and time-consuming compliance effort that would result in business disruption, customer confusion, and may ultimately be unnecessary if either the New Hampshire Supreme Court (or the Legislature) determines that such compliance is unnecessary. Additionally, because none of the requested waivers will disrupt any proceedings before the Commission, they should be granted.

WHEREFORE, Comcast respectfully requests that the Commission:

- A. Issue an order granting Comcast a waiver the rules identified above; and
- B. Grant such additional relief as it deems appropriate.

December 21, 2011

Respectfully submitted,

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And Its Affiliates
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⁹ Comcast IP Phone II, LLC will not be registering with the Commission as a CLEC as all of Comcast's voice service customers will be seamlessly served by Comcast Phone of New Hampshire, LLC, which is already registered as a New Hampshire CLEC.

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Certificate of Service

I hereby certify that a copy of the foregoing Petition has on this 21st day of December, 2011 been sent by electronic mail to persons listed on the Service List.

Susan S. Geiger
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