

STATE OF NEW HAMPSHIRE
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

RESPONSE TO PETITION FOR WAIVER OF CERTAIN CLEC RULES

NOW COME the incumbent carriers (excluding affiliates of FairPoint Communications, Inc.) of the New Hampshire Telephone Association, a New Hampshire voluntary corporation (the "RLECs"), and respectfully object to Comcast's Petition for Waiver of Certain CLEC Rules, dated December 21, 2011 ("Petition"). In its Order No. 25,288, the Commission denied Comcast's various motions for rehearing in this proceeding, but did grant a temporary waiver of certain rules. The Commission further directed Comcast to submit, within 45 days of that Order, a list of provisions of Puc Parts 430 and 450 that it believed to be onerous, inapplicable, or whose purpose can be satisfied by a proposed alternative, with analysis and conclusions as to why such proposed waivers would be in the public interest.

As set forth further below, the Petition fails to establish that the requested waivers are in the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission. Rather, Comcast's justifications are all grounded in mere inconvenience or simple inertia, and do not establish why it alone should be relieved of obligations to which all other local exchange carriers are subject. Comcast prominently and aggressively markets its telephone service as a direct replacement for service offerings of other local exchange carriers in the state. The RLECs respectfully submit that it should also be held to the same standards as those other

carriers.

Rules 432.01(a)(4) and (5) – Dialing parity

Comcast requests a waiver of the Commission’s toll service dialing parity rules because it “lacks the intercarrier relationships, network capabilities, billing and operations support systems functionality, and processes necessary to adhere to the requirements”¹ However, the RLECs submit that this cannot be entirely true, at least without further qualification. While Comcast may not be in the practice of providing originating access to third party toll providers, it must certainly *terminate* traffic from many toll providers, and presumably it bills those carriers for this access to its network. This requires network gateway capabilities that are, for the most part, agnostic as to the direction of the traffic, and it naturally assumes that Comcast has the billing and operations support systems and the industry-standard intercarrier relationships for exchanging traffic and billing information. Consequently, while it may be necessary for Comcast to make modifications to its systems in order to conform to the dialing parity rules (which modifications Comcast admits are technically feasible²), it is not plausible that it is the enormous undertaking that Comcast implies.

Furthermore, Comcast’s proposed “alternative” to compliance is to simply evade the rule entirely. Comcast suggests that any person that wishes to presubscribe to a different toll provider can simply find a local exchange carrier that does comply with the Commission’s rules.³ In other words, Comcast’s approach to dialing parity for its customers is “take-it-or-leave-it,” rather than a true alternative.

Finally, it is important to remember that the Commission’s dialing parity rules did not

¹ Petition at 4.

² *Id.* at 5.

³ *Id.*

spring forth in a vacuum. Section 251(b)(3) of the Communications Act requires that all carriers provide dialing parity. The FCC has further clarified this in Section 51.209 of its rules, which provide that “[a] LEC shall implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically.”⁴ Rules Puc 432.01(a)(4) and (5) are thus consistent with federal law. It is difficult to imagine how the Commission could waive this requirement for any LEC. Certainly, it would “disrupt the orderly and efficient resolution of matters before the Commission.” As to serving the public interest, waiver of these rules would serve no interests but Comcast’s. The Commission should deny this request.

Rules 432.01(a)(11) and (12) – Directory Listings

Comcast has requested a waiver of the Commission’s directory listing rules because it provides an online directory tool, is more environmentally friendly, and compliance would be “onerous.”⁵ Comcast does not explain how this would serve those users who do not have online access, nor why it would be more onerous for it to submit its directly listings for publication than it is for any other CLEC. Comcast has not made the case for a waiver of this requirement, and the Commission should deny this request.

Rules 432.14(f)(1) and (2), 432.16(e)(4), (f) and (n) – Service Disconnection Rules

Comcast has requested a waiver of the Commission’s service disconnection rules for no other reason than that they are inconvenient. Certainly, it cannot argue that waiver of those rules is in the public interest. Instead, it complains that its internal systems and processes are not designed to comply with these types of rules and that compliance with these rules will be

⁴ 47 C.F.R. § 51.209(b).

⁵ Petition at 6.

“disruptive,”⁶ and would require manual processing that would involve “training and changes to Comcast’s business protocols.”⁷ Comcast also expresses doubt as to whether these changes are even technically feasible -- but cannot say for sure, even though the Commission gave it 45 days to investigate this issue.⁸ However, other than to complain of the inconvenience of it all, Comcast has given no reason why it should be subject to different rules than any other local exchange carrier. The Commission should deny the request to waive these rules.

Rule 432.14(h) – Medical Emergency Customers

Comcast has requested a waiver of the disconnection rules for medical emergency customers. As justification, it invokes the Cable TV Privacy Act of 1984, 47 U.S.C. § 551. Comcast asserts that compliance with this rule would be a violation of the Privacy Act and would subject it to liability. This is implausible. The Privacy Act is intended to protect consumers from *unauthorized* collection and disclosure of personal information. As Comcast admits, disclosure “requires valid legal process, *subscriber consent*, or an applicable exception” none of which Comcast believes apply in this situation.⁹ However, Comcast is too restrictive in its interpretation. The Privacy Act provides that “a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber *without the prior written or electronic consent of the subscriber concerned.*”¹⁰ It is entirely conceivable that Comcast could include a notification in its standard terms that this information will be revealed in confidence to the Commission if the situation presents itself, and this notification could be confirmed upon receipt of a Medical Emergency Certificate. At the very least, this or other alternatives should be

⁶ *Id.* at 7.

⁷ Petition at 8.

⁸ *Id.*

⁹ *Id.* at 10 (emphasis supplied).

¹⁰ 47 U.S.C. § 551(b)(1) (emphasis supplied).

considered before the Commission grants a permanent waiver of this rule, as Comcast requests.

Otherwise, when combined with the requested waivers of the service disconnection rules, a waiver of the medical emergency customer rule would mean that Comcast could disconnect phone service to medical emergency customers for failure to pay any part of their cable television bill. This is most assuredly not in the public interest. Furthermore, if the rule is so in violation of basic privacy provisions that it must be “permanently” waived for Comcast, then it must be waived for all customers, not just Comcast’s customers. Again, this is not in the public interest and the Commission should deny the request.

Rules 449.05(b)(2) and (d)(5) – Quality of Service Reports

Comcast has requested a waiver of the Commission’s quality of service reporting rules because those rules apply to “plain old telephone service” rather than the interconnected VoIP services that Comcast purportedly provides. This assertion assumes that none of the Commission’s findings in this proceeding apply, and elevates form over substance.

Notwithstanding Comcast’s persistent contention otherwise, the Commission has determined that Comcast is offering a telecommunication service and is subject to the same rules as other providers in this state. Aside from an exercise in semantics, Comcast has given no reason why it should not be subject to these rules. The Commission should not grant a waiver of this rule.

Conclusion

For the reasons stated above, the RLECs respectfully request that the Commission deny the Petition for Waiver in its entirety.

Respectfully submitted,

BRETTON WOODS TELEPHONE COMPANY,
INC.
DIXVILLE TELEPHONE COMPANY
DUNBARTON TELEPHONE COMPANY, INC.
GRANITE STATE TELEPHONE, INC.
HOLLIS TELEPHONE COMPANY, INC.
KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE
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WILTON TELEPHONE COMPANY, INC.

By Their Attorneys,
DEVINE, MILLIMET & BRANCH,
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Dated: January 3, 2012

By: 

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CERTIFICATE OF SERVICE

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

Dated: January 3, 2012

By: 

Kevin M. Baum, Esq.