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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

June 24, 2009 - 10:23 a.m.  
Concord, New Hampshire

RE: DT 09-044  
NEW HAMPSHIRE TELEPHONE ASSOCIATION:  
Petition for an Investigation into the  
Regulatory Status of IP Enabled Voice  
Telecommunications Services.  
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Graham J. Morrison  
Commissioner Clifton C. Below

Jody Carmody, Clerk

APPEARANCES: Reptg. New Hampshire Telephone Association:  
Frederick J. Coolbroth, Esq. (Devine...)  
Patrick C. McHugh, Esq. (Devine, Millimet...)

Reptg. Comcast Phone of New Hampshire:  
Susan S. Geiger, Esq. (Orr & Reno)  
Stacey L. Parker, Esq.

Reptg. TWC Digital Voice:  
Vincent Paladini, Esq.

Reptg. New England Cable & Telecom. Assn.:  
Robert J. Munnelly, Jr., Esq. (Murtha Cullina)

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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APPEARANCES: (C o n t i n u e d)

Reptg. MetroCast Cablevision of N.H.:  
Josh Barstow

Reptg. segTEL:  
Jeremy Katz

Reptg. Residential Ratepayers:  
Stephen Eckberg  
Office of Consumer Advocate

Reptg. PUC Staff:  
Robert Hunt, Esq.

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Mr. Eckberg	27
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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll open the prehearing conference in docket  
4 DT 09-044. On March 6, 2009, the rural carriers of the  
5 New Hampshire Telephone Association filed a petition  
6 asking that the Commission conduct a general inquiry into  
7 the appropriate regulatory treatment of Internet Protocol  
8 enabled voice service in New Hampshire. The RLECs  
9 describe their rate of return regulation as more  
10 burdensome than unregulated operations, and they assert,  
11 in particular, that affiliates of Comcast offer a fixed  
12 service -- voice service using Internet Protocol under the  
13 name "Comcast Digital Voice". According to the RLECs,  
14 Comcast contends that CDV is an information service exempt  
15 from regulation by this Commission. The RLECs, however,  
16 contend that CDV is not an information service and should  
17 therefore be regulated pursuant to RSA 362:2.

18 We issued a Order of Notice on May 6  
19 setting the prehearing conference for today. I'll note  
20 for the record that we have a -- an affidavit of  
21 publication has been filed. We have Notice of  
22 Participation by the Office of Consumer Advocate. We have  
23 an appearance filed by Comcast Phone, and Petitions to  
24 Intervene by segTEL, New Hampshire Internet Service

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1 Providers Association, Union Telephone Company, Otel  
2 Telekom, TWC Digital Phone, MetroCast Cablevision, and New  
3 England Cable and Telecommunications Association.

4 So, can we take appearances please.

5 MR. COOLBROTH: Good morning, Mr.  
6 Chairman, Commissioners. On behalf of the rural telephone  
7 companies within the New Hampshire Telephone Association,  
8 I'm Fred Coolbroth, from the firm of Devine, Millimet &  
9 Branch. With me today are Patrick McHugh, from our firm;  
10 as well as Valerie Wimer, who is a consultant with JSI;  
11 William Stafford, from Granite State Telephone; and  
12 Deborah Martone from TDS Telecom; and behind is Stephen  
13 Nelson from the Dunbarton Telephone Company; and Michael  
14 Reed, from TDS Telecom.

15 CMSR. BELOW: Good morning.

16 CMSR. MORRISON: Good morning.

17 CHAIRMAN GETZ: Good morning.

18 MR. COOLBROTH: Good morning.

19 CHAIRMAN GETZ: Other appearances?

20 MR. KATZ: Good morning. I'm Jeremy  
21 Katz, the Chief Executive Officer of segTEL.

22 CHAIRMAN GETZ: Good morning.

23 CMSR. MORRISON: Good morning.

24 CMSR. BELOW: Good morning.

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1                   MR. MUNNELLY: Robert Munnelly, of the  
2 firm Murtha Cullina, LLP. I'm here representing the New  
3 England Cable & Telecommunications Association. I should  
4 also note that one of my partners is representing  
5 MetroCast. He's not here today, but MetroCast does have  
6 Josh Barstow from the Company here in the room.

7                   CHAIRMAN GETZ: Okay. Good morning.

8                   CMSR. MORRISON: Good morning.

9                   CMSR. BELOW: Good morning.

10                  CHAIRMAN GETZ: Others?

11                  MS. GEIGER: Yes. Good morning, Mr.  
12 Chairman and Commissioner Morrison and Commissioner Below.  
13 Susan Geiger, from the law firm of Orr & Reno. I'm  
14 appearing today on behalf of Comcast. And, with me from  
15 the company are Stacey Parker and James White.

16                  CHAIRMAN GETZ: Good morning.

17                  CMSR. MORRISON: Good morning.

18                  CMSR. BELOW: Good morning.

19                  MR. PALADINI: Good morning. I'm  
20 Vincent Paladini, Senior Counsel - Regulatory, from Time  
21 Warner Cable, appearing on behalf of TWC Digital Phone.

22                  CHAIRMAN GETZ: Good morning.

23                  CMSR. MORRISON: Good morning.

24                  CMSR. BELOW: Good morning.

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1 MR. ECKBERG: Good morning, Mr.  
2 Chairman, Commissioners. Stephen Eckberg, for the Office  
3 of Consumer Advocate.

4 CHAIRMAN GETZ: Good morning.

5 CMSR. MORRISON: Good morning.

6 CMSR. BELOW: Good morning.

7 MR. HUNT: Good morning. Rob Hunt,  
8 Staff attorney, and with me Kate Bailey and Michael LaDam.

9 CMSR. MORRISON: Good morning.

10 CMSR. BELOW: Good morning.

11 CHAIRMAN GETZ: Good morning. Well,  
12 before I ask whether there's any objections to any of the  
13 Petitions to Intervene, Ms. Geiger, I want to just clarify  
14 Comcast's position. The filing indicates an "appearance".  
15 Is there any issue about whether Comcast is a mandatory  
16 party or it's seeking to intervene or can you clarify just  
17 what your stance is?

18 MS. GEIGER: And, Mr. Chairman, I think  
19 that's a good question. Comcast read both the petition  
20 and the Order of Notice as indicating that Comcast would  
21 be afforded party status, and perhaps that was an error on  
22 our part. But the Order of Notice specifically talks  
23 about a tech session after the prehearing conference,  
24 which would include Staff, Comcast, and other intervenors.

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1                   So, if there is a need for us to file a  
2                   Petition for Intervention, I guess I'd make an oral motion  
3                   to that effect right now. But we interpreted the Order of  
4                   Notice as dispensing with that requirement.

5                   CHAIRMAN GETZ: Okay. Thank you. I was  
6                   just concerned that perhaps events were going in the  
7                   opposite direction.

8                   MS. GEIGER: Okay.

9                   CHAIRMAN GETZ: Okay. Thank you. Well,  
10                  are there any objections to any of the Petitions to  
11                  Intervene?

12                  (No verbal response)

13                  CHAIRMAN GETZ: Okay. Hearing no  
14                  objection, and recognizing that all the Petitions to  
15                  Intervene assert rights, duties, privileges, or other  
16                  interests to be affected by the proceeding, we grant  
17                  intervention to all of the parties who filed Petitions to  
18                  Intervene, and also to Comcast, in order to preclude any  
19                  debate about that issue.

20                  So, then, let's I guess begin with Mr.  
21                  Coolbroth, your statements of positions by the parties.

22                  MR. COOLBROTH: Thank you, Mr. Chairman.  
23                  This petition arises from concerns by NHTA companies  
24                  regarding a system which, in their eyes, treats businesses

1 that provide the same service very differently. Whether a  
2 customer is served by one of the NHTA companies or the IP  
3 affiliate of the cable company, as we see it, the same  
4 service is offered. The customer picks up a telephone,  
5 the customer receives a dial tone, the customer dials a  
6 call to a party using telephone dial numbers, the  
7 telephone of the called party rings, the called party  
8 answers the telephone, and a conversation ensues. The  
9 service is a wireline service. It's between fixed  
10 locations, many times within New Hampshire. And, our  
11 request really relates to calls that begin and terminate  
12 in New Hampshire. It does not use the Internet. And,  
13 based upon all of these factors, in our view, this is  
14 telephone service under New Hampshire law.

15 The Commission will hear much about what  
16 goes on between those two telephones, but the result is  
17 the same; an analogue voice signal at each end. Now, if  
18 the carrier is the customer of one of the NHTA companies,  
19 then the provision of that service results in full rate of  
20 return regulation. If the carrier serving the customer is  
21 the IP affiliate of Comcast, for instance, right now  
22 there's absolutely no regulation in New Hampshire of the  
23 provision of that service. The NHTA companies are unable  
24 to see the basis for the distinction. This is not

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1 computer-to-computer service, it's phone-to-phone service.  
2 Looking at the two ends of the call, there's no net change  
3 in protocol. The fixed cable VoIP service is not the same  
4 as the service offered by Vonage or Skype or pulver.com.  
5 Those companies offer an application which is provided  
6 over transmission facilities that are furnished by a third  
7 party, and "transmission" is the key issue here.

8 Here, the cable telephone service  
9 provider provides not only the application, but they  
10 provide the transmission path. So, again, in terms of the  
11 service that's provided to retail end-users of cable  
12 telephone VoIP service, it appears to us that that's  
13 telephone service. If we're wrong, and the cable VoIP  
14 service is not a telephone service, we're also asking the  
15 Commission to identify what's the distinguishing feature  
16 then that results in this difference in treatment. These  
17 companies are building fiber. They're employing soft  
18 switches. Over time, they will be using Internet Protocol  
19 in their networks. They have investment decisions to  
20 make, and the regulatory consequences can well affect  
21 those investment choices. And, therefore, we're asking  
22 the Commission to address these important regulatory  
23 issues.

24 Turning to the, in summary, to the three

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1 issues outlined in the Order of Notice: These companies  
2 believe that retail cable VoIP telephone service provided  
3 to -- from point-to-point in New Hampshire is telephone  
4 service. That the parties providing that service to the  
5 retail customer are telephone utilities. And, as we see  
6 it, this is not preempted by the FCC. And, again, if  
7 we're wrong, we'd like to know what the difference is, so  
8 that companies that are seeking to achieve parity in  
9 regulatory treatment have an idea of how to go about doing  
10 so.

11 So, that's our position.

12 CHAIRMAN GETZ: Okay. Thank you.

13 Mr. Katz.

14 MR. KATZ: SegTEL does not presently  
15 offer Voice-over IP or use Voice-over IP for the  
16 transmission over its network, even though we do provide  
17 voice throughout New Hampshire. The results of this  
18 docket might push us in one direction or the other on what  
19 technologies we choose to employ. But, as of right now,  
20 we have no position on any of the questions in the docket.

21 CHAIRMAN GETZ: Thank you.

22 Mr. Munnelly.

23 MR. MUNNELLY: Sure. NECTA has several  
24 members, both in New Hampshire and other states, that

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1 offer services using IP technology. At this point, there  
2 are several individual members here who are represented in  
3 this case. At this point, we're monitoring the case, and  
4 we will participate at some point, as appropriate.

5 CHAIRMAN GETZ: Thank you. Mr. Barstow,  
6 did you want to make a statement?

7 MR. BARSTOW: I'll follow NECTA's lead.

8 CHAIRMAN GETZ: Okay. Thank you. And,  
9 Ms. Geiger.

10 MS. GEIGER: Thank you, Mr. Chairman.  
11 Comcast Phone of New Hampshire, LLC, appreciates the  
12 opportunity to present this preliminary statement of  
13 position. Comcast's affiliate, Comcast IP Phone, offers  
14 interconnected VoIP service to New Hampshire customers  
15 throughout the Comcast service territory. Comcast's  
16 facilities pass approximately 418,000 New Hampshire homes.  
17 Comcast has invested \$220 million since 2003 to expand its  
18 networks and bring advanced services and competitive  
19 choice to its customers. Comcast's Divisional  
20 headquarters is in Manchester, New Hampshire, and its  
21 1,500 employees work and live in the communities it  
22 serves. It's due to the federal policies encouraging  
23 broadband deployment and light regulatory touch that  
24 Comcast customers are able to enjoy a broad array of

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1 advanced services and features.

2 Comcast's position in this docket can be  
3 summarized as follows: First, Comcast Digital Voice and  
4 Business Class Digital Voice, collectively "CDV", or  
5 "Comcast Digital Voice", are Comcast's VoIP services, and  
6 are information services under the Federal  
7 Telecommunications Act. As such, they are subject to  
8 federal regulation, but not subject to state utility  
9 commission jurisdiction. Comcast IP Phone does not offer  
10 any telecommunications services as defined by the federal  
11 Telecom Act, nor does it offer any service that  
12 constitutes the "conveyance of a telephone message" under  
13 RSA 362:2. As the Commission observed, this Commission  
14 has observed in Order Number 24,958, at Page 8, "CDV has  
15 not been ruled a telecommunications service".  
16 Accordingly, Comcast IP Phone is not a public utility  
17 under New Hampshire law.

18 While the FCC has thus far declined to  
19 classify interconnected VoIP as a telecommunications  
20 service, it has, however, issued a series of rulings  
21 imposing nationally consistent regulatory obligations on  
22 all interconnected VoIP services as defined by the FCC in  
23 47 C.F.R. Section 9.3. In light of the fact that the FCC  
24 is continuing the process of crafting the national

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1 framework of interconnected VoIP regulation, this  
2 Commission should defer further action in this docket  
3 until such time as the FCC has resolved all outstanding  
4 questions before it. A new administration, along with a  
5 new FCC chairman, are poised to consider these important  
6 issues. Premature imposition of state utility regulation  
7 at this juncture will conflict with the process that's  
8 underway at the FCC.

9 I'd like to speak a little further about  
10 the three issues that the Commission has flagged in its  
11 Order of Notice. The first point that Comcast would like  
12 to make is that CDV, or Comcast Digital Voice, is an  
13 information service under federal law and is not subject  
14 to state jurisdiction. It qualifies as an information  
15 service under the standards defined in federal case law,  
16 the Telecom Act, and FCC rules. This is the case for two  
17 different but related reasons. The first is that VoIP  
18 services, like Comcast Digital Voice, allow for voice  
19 calls to go between IP-enabled networks and traditional  
20 networks, and therefore involve what the FCC has  
21 identified as a "net protocol conversion". A critical  
22 feature of the service is that it offers the ability to  
23 transform a customer's call from the Internet Protocol on  
24 CDV's network to the Time Division Multiplexing, or TDM,

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1 protocol used on the Public Switched Telephone Network,  
2 and transform a call from the Public Switched Telephone  
3 Network from the TDM protocol to Internet Protocol,  
4 thereby allowing users of different, incompatible networks  
5 to communicate with one another. The FCC has conclusively  
6 determined that a service that provides such net protocol  
7 conversion meets the statutory definition of an  
8 "information service" under the Telecom Act.

9 Net protocol conversion is precisely the  
10 type of information processing service that has been held,  
11 repeatedly, to constitute an information service, and  
12 serves as a paradigmatic example of the new, innovative  
13 technologies that the FCC has long tried to encourage  
14 through an express policy of non-regulation.

15 CDV is an information service for a  
16 second, independent reason. The statutory definition of  
17 "information service" also includes services that have the  
18 capability of storing, retrieving, utilizing or making  
19 available information via telecommunications. The  
20 processing and accessing of stored data is tightly  
21 integrated into the Comcast Digital Voice service. For  
22 example, unlike a traditional telephone service, CDV  
23 functions are part of Comcast's converged Internet  
24 Protocol -- Protocol-based network that can be accessed

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1 and managed through a web interface, accessible through an  
2 Internet browser, that grants users an unprecedented  
3 degree of control over their voice communications,  
4 including in real-time. The integration of CDV with  
5 web-based features is continuing to grow as the service  
6 continues to change and evolve, improvements that are  
7 being made possible because CDV can take advantage of the  
8 information storage and processing opportunities of  
9 IP-based technology. Additionally, CDV includes querying  
10 information stored in a Domain Name System, a DNS  
11 database, to retrieve IP addresses for call routing. In  
12 some cases, CDV calls are routed completely within CDV's  
13 IP network based on a DNS look-up, making them akin to  
14 peer-to-peer calls.

15 Many enhanced features are made possible  
16 by the integration of voice, video and data products on  
17 Comcast's converged IP network. For example, Comcast's  
18 newly-launched SmartZone Communication Center is an  
19 on-line application made possible through IP technology  
20 that integrates Comcast's voice, data and video services.  
21 Using SmartZone from any Internet connection, CDV  
22 customers can send and receive e-mail; check, manage and  
23 forward voice mails; manage a single address book; and  
24 access personalized information about weather, news and

1 investments. Future enhancements include remote  
2 programming of a customer's Digital Video Recorder.

3 Comcast has also developed an enhanced  
4 cordless telephone that is compatible with CDV and  
5 integrated with SmartZone. CDV customers will be able to  
6 use this phone to check e-mail, view/forward and manage  
7 voice mail from the phone or PC, read news, access a  
8 universal address book and search the Yellow Pages, as  
9 well as placing calls. The ECT is in market trials today  
10 and Comcast plans on launching it in New Hampshire in  
11 2009. Finally, in a few short weeks, New Hampshire  
12 customers will be able to enjoy Comcast's Universal Caller  
13 ID, which enables Caller ID information to be viewed on  
14 televisions and PCs simultaneously. All of these  
15 integrated features and functionalities demonstrate the  
16 vast differences between Comcast's CDV and "plain old  
17 telephone service", or "POTS", over which this Commission  
18 has jurisdiction.

19 These dynamic new features are precisely  
20 the type of information that federal policy aims to  
21 encourage through non-regulation of information services,  
22 and highlight why it would be contrary to that policy of  
23 non-regulation to hamper the growth and development of  
24 such services by subjecting them to a patchwork of

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1 state-by-state regulations designed for traditional  
2 telephone systems. For all of these reasons, as an  
3 information service, CDV is not subject to state  
4 regulatory jurisdiction.

5 In addition, because CDV is an  
6 information service, it doesn't fit within the state  
7 definition of a service that constitutes the conveyance of  
8 a telephone message. Comcast IP Phone is providing CDV,  
9 and, as I've indicated, it's an information service. It's  
10 not commensurate with conveying "telephone messages" as  
11 that term is used in RSA 362:2. The statutory criteria  
12 for determining whether an entity is a public utility  
13 subject to this Commission's regulatory authority are:  
14 The ownership, operation or management of plant and  
15 equipment used for the conveyance of telephone messages.  
16 As I've explained, Comcast IP Phone provides only an  
17 information service to end-users. It, therefore, is not a  
18 public utility under 362:2. As the New Hampshire Supreme  
19 Court has held in the Omni Communications case, in  
20 enacting RSA 362:2, the Legislature did not intend to  
21 place all businesses somehow related to telephone  
22 companies under the umbrella of the PUC's regulatory  
23 power. Comcast and others have been offering VoIP service  
24 in New Hampshire for years without any action by the

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1       Legislature indicating that such services should be  
2       regulated. Accordingly, there is no basis for this  
3       Commission to broadly construe RSA 362:2 to regulate new  
4       information services such as VoIP or the entities that  
5       provide them.

6                       The last issue raised in the  
7       Commission's Order of Notice deals with preemption.  
8       Comcast's third point here is that VoIP's status as an  
9       information service under present law resolves this  
10      question in the Commission's May 6th Order of Notice.  
11      Under current law firm, it's clear that state utility  
12      regulation is impermissible for services that qualify as  
13      "information services" due to the clear federal policy of  
14      encouraging competition in such services, including in  
15      particular broadband-based services through  
16      non-regulation. Indeed, this Commission implicitly  
17      recognized in its May 6th Order of Notice that it cannot  
18      subject CDV to utility regulation if it's an information  
19      service, and that the Commission's regulatory jurisdiction  
20      here turns on this particular classification.

21                      Finally, as mentioned earlier, this is  
22      an issue that belongs at the FCC and is currently being  
23      decided there. The FCC has been issuing a string of  
24      orders about the regulatory issues surrounding VoIP

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1 services, and the exact question that the Petitioners  
2 would have this Commission decide, the appropriate  
3 regulatory treatment of VoIP, is before the FCC right now.  
4 Indeed, just a few weeks ago, the FCC issued a public  
5 letter to Comcast reaffirming that the statutory  
6 classification of "Voice over Internet Protocol Services"  
7 is "an open question under active consideration", and  
8 emphasizing that the FCC has multiple open dockets in  
9 which it is grappling with these complex and important  
10 open questions regarding the treatment of VoIP services.

11 Comcast would ask the Commission to  
12 consider that the FCC is developing a national framework  
13 for VoIP issues. The FCC has been developing an extensive  
14 record on these issues and will set the national  
15 regulatory framework for VoIP services. If this  
16 Commission were to prematurely establish a separate set of  
17 rules for VoIP in New Hampshire, the Commission's decision  
18 would most likely have to be reconsidered or modified when  
19 the FCC issues its decisions. It, therefore, would not be  
20 a prudent use of this Commission's limited time and  
21 resources to engage in a protracted proceeding to decide  
22 these questions now. Instead, the more appropriate course  
23 of action is to respect the primary jurisdiction of the  
24 FCC and defer consideration of the petition until the FCC

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1 has ruled.

2 Also, from a consumer protection  
3 standpoint, there's no reason for this Commission to rush  
4 to decide these issues before the FCC has had a chance to  
5 do so. It's noteworthy that the Rural Carriers' petition  
6 here makes no allegations that regulation is necessary to  
7 protect consumers. Comcast has been offering CDV in New  
8 Hampshire since 2005, with significant benefit to  
9 consumers. In fact, based on a recent study, cable based  
10 VoIP has saved New Hampshire residential customers  
11 \$61 million in 2007 alone, and it's projected to save  
12 \$533 million for residential and small business customers  
13 through 2012. CDV's presence in New Hampshire -- in New  
14 Hampshire's market has enhanced competition, provided  
15 benefits to consumers, and has furthered the policy of  
16 encouraging broadband deployment. Comcast voluntarily  
17 pays all state-based regulatory taxes and fees for CDV,  
18 and, unlike the Petitioners, is not a universal service  
19 fund recipient. Thus, there's no adverse financial effect  
20 upon the state arising from the present regulatory status  
21 of CDV services.

22 Significantly, as this Commission  
23 recently recognized in approving Comcast's CLEC  
24 application to offer service in the Petitioners' service

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1 areas, the fact that VoIP services are not regulated by  
2 this Commission is not, despite the Petitioners' repeated  
3 protestations to the contrary, unfair to ILECs or harmful  
4 to competition. In the Commission's own words, the  
5 current non-state regulation of facilities-based VoIP  
6 "does not impact the fairness of Comcast's entry into the  
7 TDS Companies' territories, because we have found that  
8 both regulated and unregulated services already contribute  
9 to the competitive market."

10 In sum, CDV is an information service  
11 and is not subject to state regulatory jurisdiction. CDV  
12 and other types of competitive VoIP services have  
13 flourished in a national deregulatory movement, bringing  
14 with them customer choice, enhanced services and spurring  
15 broadband deployment. The regulatory framework governing  
16 interconnected VoIP services, like Comcast Digital Voice,  
17 is being decided by the FCC, so there is no compelling  
18 reason to impose a patchwork of traditional telephone  
19 regulation on a state-by-state basis or for this  
20 Commission to rush into the regulatory regime urged by the  
21 Petitioners. Thank you.

22 CHAIRMAN GETZ: Thank you.

23 Mr. Paladini.

24 MR. PALADINI: Yes. Similar to  
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1 Cablevision, Time Warner Cable appreciates this  
2 opportunity to present its positions to the Commission.  
3 This proceeding broadly encompasses a variety of issues  
4 relating to the status of interconnected Voice over  
5 Internet Protocol Services in New Hampshire. As a  
6 provider of facilities-based interconnected VoIP services  
7 in this state, Time Warner Cable will be affected by the  
8 outcome of this proceeding. Time Warner Cable's  
9 interconnected VoIP service for residential subscribers is  
10 branded as "Digital Phone", and its service for commercial  
11 subscribers is "Business Class Phone". These services are  
12 interconnected VoIP services as defined by the FCC,  
13 because they (1) enable real-time two-way voices  
14 communications; (2) require use of a broadband connection;  
15 (3) use IP-compatible customer premises equipment; and (4)  
16 permit users to generally receive calls that originate  
17 from the Public Switched Telephone Network and to  
18 terminate calls to the PSTN.

19 TWC obtains interconnection and other  
20 wholesale telecommunications services from a separate  
21 entity that is authorized to do business in New Hampshire  
22 as a public utility, enabling Time Warner Cable customers  
23 to communicate with users served by the PSTN. In  
24 connection with our residential and commercial

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1 interconnected VoIP offerings, although the FCC has  
2 preempted state jurisdiction, TWC pays the regulatory fees  
3 and assessments in response to consumer complaints and  
4 cooperates with the Commission and Staff, information  
5 requests, including providing detailed real-time outage  
6 information, such as during last year's ice storm.

7 The Commission's decisions regarding the  
8 regulatory classification and treatment of  
9 facilities-based VoIP services, as well as preemption  
10 issues, will directly and substantially impact Time Warner  
11 Cable's operations in New Hampshire, just as they will  
12 impact Comcast or any other similar provider.

13 But to lay out our four positions:  
14 First, in relation to its VoIP services, TWC cannot  
15 reasonably be clarified as a "public utility" under state  
16 law. As counsel for Comcast has mentioned, a public  
17 utility includes a corporation that owns, operates or  
18 manages any plant or equipment or any part of the same for  
19 the conveyance of telephone and telegraph messages. The  
20 Legislature could not have intended for this language to  
21 encompass VoIP, which did not exist during the monopoly  
22 era when the statute was enacted. And, the New Hampshire  
23 Supreme Court has ruled, in response to similar questions  
24 that arose in the context of radio paging, that the

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1       Legislature did not intend to place all companies and  
2       businesses that are somehow related to telephone companies  
3       under the PUC's regulatory power.

4                       Our second item is federal law precludes  
5       the Commission from subjecting Time Warner Cable to public  
6       utility requirements because it provides interconnected  
7       VoIP services. The FCC's Vonage order established that  
8       interconnected VoIP services, including those provided by  
9       Time Warner Cable, are not subject to regulation by state  
10      public utility commissions. With that ruling, the FCC  
11      sought to establish a uniform national regulatory  
12      framework that is free from economic regulations and to  
13      avoid patchwork regulation of VoIP services. The Vonage  
14      order concluded that subjecting such VoIP services to  
15      state certification and tariff requirements would conflict  
16      with and frustrate federal support for increased market  
17      entry by non-dominant service providers.

18                      The FCC made clear that its preemption  
19      analysis, which I've already described, applies to all  
20      interconnected VoIP services, including facilities-based  
21      interconnected VoIP services provided by cable companies.  
22      Also, the FCC's preemption analysis does not exclude VoIP  
23      services that are functionally similar to traditional  
24      local exchange and long distance voice service.

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1                   Time Warner Cable is entitled to reply  
2                   on a separate carrier to obtain wholesale  
3                   telecommunications services. Time Warner Cable obtains  
4                   interconnection and other wholesale telecommunications  
5                   services from a separate certified CLEC. And, the RLECs  
6                   are wrong to claim that this kind of arrangement is not  
7                   contemplated by the federal Telecom Act. To the contrary,  
8                   the FCC has specifically and repeatedly endorsed this type  
9                   of arrangement, highlighting that it is an effective means  
10                  for interfacing with PSTN, provisioning E-911, and  
11                  enabling local number portability. The D.C. Circuit has  
12                  also confirmed the interconnection rights of wholesale  
13                  carriers that provide such wholesale and  
14                  telecommunications services to affiliated and unaffiliated  
15                  VoIP service providers.

16                  Finally, the Commission should not seek  
17                  to impose interLATA -- intraLATA access charges on VoIP  
18                  calls. The RLECs state that VoIP calls that traverse an  
19                  RLEC's local calling area should be subject to intraLATA  
20                  access charges. As a practical matter, the Commission  
21                  should not attempt to address this question. The  
22                  intercarrier compensation rulings -- rules applicable to  
23                  interconnected VoIP calls are an open issue in ongoing FCC  
24                  proceedings. And, in any event, the wholesale carriers,

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1 from which Time Warner Cable obtains interconnection  
2 services to transmit calls from Time Warner Cable's  
3 customers and pay intercarrier compensation in the same  
4 manner that applies to traditional telephone calls.

5 In closing, I'd like to say that Time  
6 Warner Cable looks forward to working with the Commission  
7 on this proceeding, and believes that the Commission  
8 should take its time to develop the factual record and  
9 allow the parties to brief the legal issues based on that  
10 record. Thank you.

11 CHAIRMAN GETZ: Thank you. Mr. Eckberg.

12 MR. ECKBERG: Thank you, Mr. Chairman.  
13 The OCA has no initial position to articulate in this  
14 docket. We are generally interested in matters that are  
15 raised by NHTA's petition, as well as issues related to  
16 the variety of telecom and information services that are  
17 offered throughout the state.

18 We look forward to participating in this  
19 docket with the parties. And, that's all we have at the  
20 moment.

21 CHAIRMAN GETZ: Thank you. Mr. Hunt.

22 MR. HUNT: Thank you, Mr. Chairman.  
23 Staff's position is that the Commission has jurisdiction  
24 pursuant to 374:3 to make a determination of the issues in

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1 this docket, and that federal law does not preempt such a  
2 determination. The FCC has not clearly indicated that it  
3 intends to exclude states from determining whether  
4 particular services are telecommunications or information  
5 services, or whether the provision of a particular service  
6 establishes a company as a public utility subject to state  
7 regulation. Staff takes no position on the other two  
8 issues outlined.

9 CHAIRMAN GETZ: Thank you. Well, let me  
10 start here, because it seems we've got -- we may run into  
11 a number of procedural issues. I'll give you an  
12 opportunity to respond, Mr. Coolbroth, and we may go  
13 further than that. But, Ms. Geiger, the assertion that  
14 "this issue is currently being decided, it's an open  
15 question under active consideration at the FCC", and that,  
16 I guess, constitutes the basis for your request that we  
17 defer consideration. I guess I'd like to see, you know,  
18 the documents that you're citing to, if we can get copies  
19 of those.

20 MS. GEIGER: May I approach?

21 CHAIRMAN GETZ: Please.

22 MS. GEIGER: Yes, Mr. Chairman. This is  
23 the letter that I was speaking about in our preliminary  
24 position of statement. It's a letter from the FCC to

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1 Comcast. And, if you'll note, in the footnotes appearing  
2 at the bottom of the pages of that letter, there are  
3 several dockets referenced, all of which deal with issues  
4 relating to matters associated with VoIP. So, those are  
5 the dockets that we were alluding to, in terms of pending  
6 matters at the FCC that will have a bearing on the issues  
7 that have been raised by the Petitioners in this docket.

8 CHAIRMAN GETZ: Mr. Coolbroth, you're  
9 familiar with this letter or would you like an opportunity  
10 to respond?

11 MR. COOLBROTH: Mr. Chairman, I'm seeing  
12 the letter for the first time. But I think that there is  
13 so much uncertainty about the timing of FCC action that  
14 it's difficult to see when this docket would ever go  
15 forward. And, I would cite, for example, the length of  
16 time it has taken the FCC to deal with intercarrier  
17 compensation. The time that the -- I read today, the  
18 latest FCC brief that has been filed in the D.C. Circuit  
19 relating to the issue of how to treat internet-bound calls  
20 that use a dial-up modem, that issue has not been  
21 resolved. I think it seems inappropriate to try to wait.  
22 I think it would simply stall and delay the resolution of  
23 this important issue. So, I don't think that the  
24 Commission should stay.

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1                   In addition, the, you know, the utility  
2 statutes remain in effect. They require prior Commission  
3 approval, not subsequent Commission approval, but prior  
4 Commission approval to offer a utility service. This  
5 service is ongoing. It seems to us, that it's, as a  
6 matter of regulatory policy, important for the Commission  
7 to address this issue.

8                   I did want to say one thing relating to  
9 the -- I just don't know quite how the Commission should  
10 take the issue about the location of Comcast's  
11 headquarters in New Hampshire. I'm not quite sure what  
12 Comcast was trying to say. That is irrelevant to the  
13 legal issue, if it was to apply some sort of inappropriate  
14 pressure, I think it was a very inappropriate comment to  
15 make. In response, I would point out that these rural  
16 telephone companies have histories that go back over 100  
17 years in New Hampshire. Their contribution to New  
18 Hampshire, to its telecommunications infrastructure, and  
19 to its communities just goes back for over a century.  
20 And, I think perhaps that's adequate response.

21                   I think that the Commission has heard  
22 that there are a number of factual and legal questions  
23 that are involved here. Certainly, there will need to,  
24 and certainly a point with which I agree with Time Warner,

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1       there needs to be an appropriate way to develop a factual  
2       record and have parties brief the issues to the  
3       Commission. That's what we're asking for, and I think we  
4       should go forward.

5                   CHAIRMAN GETZ: Well, I wanted to  
6       inquire about Mr. Paladini's remark about the factual  
7       record and then briefing. Is this something that's, and  
8       I'm thinking procedurally, is this something that could be  
9       susceptible to stipulations of fact or is this going to  
10      have to be a full-blown adjudicative process? Do you have  
11      any thoughts on how to proceed in that matter?

12                   MR. COOLBROTH: I think we could take  
13      that up in a technical session. There are some issues  
14      that lend themselves I think to agreement; there are some  
15      issues that won't. But I think a general process to  
16      present the Commission with a factual record, and perhaps  
17      simultaneous presentations of briefs on the legal issues  
18      raised by that would be something that could be worked out  
19      in technical session. I think an inquiry-type approach is  
20      appropriate, an appropriate way to do this, because this  
21      is sort of a generic issue, I think.

22                   CHAIRMAN GETZ: Then, let me just throw  
23      it open then and go around the room, because I want to  
24      address procedural issues and make sure we've got all of

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1 the procedural arguments on the record before we make any  
2 decisions.

3 Anyone else want to address any of these  
4 procedural issues? Ms. Geiger.

5 MS. GEIGER: Yes, Mr. Chairman. By way  
6 of clarification, Comcast was not suggesting an indefinite  
7 stay of this docket until such time as the FCC might act  
8 well into the future. To clarify, I think we'd be willing  
9 to allow or to suggest that the Commission give the FCC a  
10 period of time to act, perhaps by the end of the year, the  
11 next six months or so, now that a new chairman is coming  
12 on board, give them an opportunity to resolve some of  
13 these outstanding dockets, perhaps schedule a status  
14 conference in January. And, if nothing has happened at  
15 that point in time, then we can all sit down here and  
16 hammer out a procedural schedule for the duration of the  
17 docket.

18 We just think there are too many open  
19 issues at the FCC that will have a bearing on things that  
20 this Commission is being asked to decide. And, it doesn't  
21 make sense to move ahead now and develop a full-blown  
22 factual record right now, with briefs, etcetera, to only  
23 have the FCC issue some decision that's dispositive and  
24 that up-ends all the work that we've done. So, we think

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1       that it makes sense, for some limited period of time, for  
2       the next six months or so, that the Commission wait to see  
3       what happens at the FCC, and then convene a status  
4       conference of the parties in January of next year to  
5       address the fact that the FCC has not ruled yet, if that's  
6       the case, and then work out a procedural schedule for the  
7       duration of this docket.

8                       CHAIRMAN GETZ:  Okay.  Anyone else want  
9       to address those issues?  Give you the last chance, Mr.  
10      Coolbroth, then.

11                      MR. COOLBROTH:  Mr. Chairman, I just  
12      might point out that there are ongoing proceedings very  
13      much like this in both Maine and Vermont, and those have  
14      not been stayed pending FCC action.

15                      CHAIRMAN GETZ:  Okay.  You also, Mr.  
16      Coolbroth, mentioned something about "conducting this in  
17      the matter of an inquiry".  Are there any issues I should  
18      be concerned about?  Are there any debates about burden of  
19      proof, burden of persuasion, burden of going forward that  
20      we're going to have to deal with?  Or you won't know until  
21      you've sat down in a technical session and talked to all  
22      the parties?

23                      MR. COOLBROTH:  I think we can try to  
24      work that out in technical session.  To the extent that

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1 those issues are a problem, we are willing to take on the  
2 burden of proof. If the only way parties think that this  
3 can be handled is through an adjudicative process, we're  
4 willing to take that on. We don't think so. We think  
5 that a process to provide for discovery, either statements  
6 of fact or presentations of factual issues through  
7 witnesses, if there are contested factual issues,  
8 opportunities for cross-examination, and simultaneous  
9 briefing, in the nature of an investigation, promptly  
10 handled with the Staff at the center of it, with the  
11 Commission Staff at the center. If that's problematic, as  
12 I say, we're willing to do it the other way and to take on  
13 the burden of petitioner and pursue it to conclusion.

14 (Chairman Getz, Commissioner Morrison  
15 and Commissioner Below conferring.)

16 CHAIRMAN GETZ: We're going to take a  
17 short recess to address some of these issues, and we'll  
18 return shortly.

19 (Whereupon a recess was taken at 11:04  
20 a.m. and the prehearing conference  
21 resumed at 11:17 a.m.)

22 CHAIRMAN GETZ: Okay. We're back on the  
23 record in 09-044. I will address first the request that  
24 we defer consideration pending FCC action on cases before

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1 it. And, for our purposes today, we do not find that  
2 there are sufficient assurances that the FCC will rule on  
3 open proceedings before it in the near future. So, we  
4 would proceed with the technical session today and ask the  
5 parties to propose a procedural schedule. I'm not going  
6 to try and micromanage that schedule at this point, give  
7 the parties an opportunity to see if you can come to some  
8 agreement about what such a procedural schedule would look  
9 like. But we will note that, to the extent that the FCC  
10 takes any action in the near future that indicates or  
11 would provide us some assurance that they would act on  
12 these issues pending before it in such a way that might  
13 preempt our consideration of the issues, then, of course,  
14 we would entertain any information or filings about such  
15 activities from any of the parties.

16 So, I think that addresses all of the  
17 open procedural issues we have before us. But, before we  
18 close the prehearing conference and the parties tend to  
19 the technical session, are there any other issues that we  
20 need to address today?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Hearing nothing,  
23 then we will close the prehearing conference and await a  
24 recommendation of the parties as to a procedural schedule

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1 in this docket. Thank you, everyone.

2 (Whereupon the prehearing conference  
3 ended at 11:19 a.m. and the PUC Staff  
4 and the Parties convened a technical  
5 session thereafter.)

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