

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Puc 400 - Rules for Telecommunications

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) **DRM 08-126**
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COMMENTS OF COMCAST PHONE OF NEW HAMPSHIRE, LLC

Comcast Phone of New Hampshire, LLC (“Comcast Phone”) supports the Public Utilities Commission’s proposal to amend Puc 431.01 by removing the word "non-exempt" from 431.01(d). Because SB 386 repealed RSA 374:22-f and eliminated any distinction between telephone utilities with more than 25,000 access lines and those with fewer than 25,000 access lines,¹ the term “non-exempt” no longer has any meaning. The proposed amendment is therefore necessary to conform PUC regulations to the Legislature’s intent. Any additional change to Puc 431.01 would be contrary to that intent.

As a matter of constitutional law, New Hampshire has a policy in favor of “free and fair competition” and against “monopolies” that “tend to hinder or destroy” competition.² In adopting the statutory scheme governing competitive entry into telecommunications markets, the Legislature declared:

Competitive markets generally encourage greater efficiency, lower prices, and more consumer choice. It is the policy of the state of New Hampshire

¹ See An Act Relative to Service Territories Served by Several Telephone Utilities, 2008 N.H. Laws, Chapter 0350 (chaptering SB 0386, General Court 2008 Session (N.H. 2008)).

² N.H. Const., Pt. II, Art. 83.

to encourage competition for all telecommunications services, including local exchange services, which will promote lower prices, better service, and broader consumer choice for the residents of New Hampshire.³

The Commission implemented the legislative policy to encourage telecommunications competition by adopting rules in Puc 431.01 and 431.02 that streamline entry by competitive local exchange carriers (CLECs). These rules expedite CLEC entry by providing in Puc 431.01 for simple registration by a CLEC-10 form, providing that the Commission “shall issue” a CLEC authorization unless the application is denied based upon one of the acts or omissions enumerated in Puc 431.02,⁴ and providing in Puc 202.01 that a CLEC-10 application for registration as a CLEC is excepted from a general requirement for adjudicative hearings.⁵ This streamlined entry “provide[s] an appropriate balance between the interests of incumbent telecommunications providers and those of competitive entrants”⁶ that is consistent with the public good in light of the explicit state policy to encourage competition.

Before SB 386 was enacted, RSA 374:22-f created uncertainty as to whether different entry rules apply in the territories with fewer than 25,000 access lines. Because by its terms this statute could be read as giving incumbent providers veto power over competition in their territories, this Commission recognized that RSA 374:22-f potentially conflicted with federal law.⁷ The Federal Communications Commission held a similar Wyoming statute preempted as an unreasonable barrier to entry.⁸

³ 1995 N.H. Laws 147:1.

⁴ Puc 431.01.

⁵ Puc 431.01; Puc 431.02; Puc 202.01.

⁶ *Id.*

⁷ See 47 U.S.C. §253; *Comcast Phone of New Hampshire, LLC Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Order No. 24,843, Order Nisi Granting Application at 3 (N.H. Pub. Util. Comm’n, Apr. 4, 2008).

⁸ *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, Memorandum Opinion and Order, 12 FCC Rcd. 15639 (1997).

By enacting SB 386, the Legislature removed any uncertainty or question of preemption. The legislation made two simple changes with clear meaning: it repealed RSA 374:22-f, and it removed from RSA 374:22-g the language referring to telephone utilities with more than 25,000 access lines and with fewer than 25,000 access lines. As a result, there is no longer any statutory distinction between telephone utilities with more than 25,000 access lines and those with fewer than 25,000 access lines, and no basis for any differing set of entry requirements other than those in RSA 374:22-g and Puc 431.01-02. The word “non-exempt” in Puc 431.01(d) no longer has any statutory basis, and therefore has no meaning. For this reason, the proposal to remove it is all that is necessary to bring PUC rules into line with the legislative intent.

The proposal by the New Hampshire Telephone Association (NHTA) offered at the December 16, 2008 public hearing is contrary to that intent. From the Legislature’s straightforward changes to the law, NHTA conjures up an entirely new set of entry regulations that would subject any CLEC entry to an adversarial process and the prospect of an adjudicative proceeding. At the public hearing, Comcast Phone compared this proposal to medieval alchemists attempting to conjure lead into gold – it requires as much imagination, and it is almost as anachronistic. As the testimony of economist Michael Pelcovits in Docket 08-013 states, “[c]ompetition has largely replaced the old market structure of regulated monopoly phone companies serving different franchise areas and markets. After decades of questioning the wisdom of competitive entry, policymakers at the Federal and State level have largely embraced the competitive model for virtually all

telecommunications markets.”⁹ The proposed entry regulations are a throwback to a bygone era of telecommunication regulation – an era this Commission left behind when it adopted the streamlined registration process of Puc 431.01-02.

Nothing in SB 386 calls for repeal of this streamlined process, which was familiar to the Legislature when it enacted the bill. NHTA’s proposed scheme of entry regulation would simply increase barriers to entry and give incumbents an added mechanism to delay competition in spite of state policy. Already Comcast Phone’s application for authority to provide telecommunications services in the TDS rural territory has been held up for more than one year as NHTA and its rural incumbent members have purported to raise numerous factual questions that have amounted to little, if anything at all.¹⁰ The similar application of MetroCast Cablevision of New Hampshire, LLC (“MetroCast”) was filed September 19, 2008 and granted on September 30, 2008, but its status remains uncertain due to a Motion to Rescind filed by Union Telephone and supported by NHTA¹¹. Likewise, segTEL completed an application for authority in rural territories on October 21, 2008. To Comcast Phone’s understanding, processing is awaiting the outcome of this proceeding.

⁹ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Direct Testimony of Michael D. Pelcovits on Behalf of Comcast Phone of New Hampshire, LLC, at 6 (Sept. 9, 2008).

¹⁰ In Docket No. DT-08-013, after opposing Order No. 24,843, Order Nisi Granting Application on the basis that the application required extensive factual investigation, the TDS Companies were able to reach narrow stipulations for hearing by the Commission. *Compare* Motion by TDS Companies for Suspension of Order No. 24,843 Pending Resolution of Docket DT 07-27 or, Alternatively, For a Hearing (filed April 16, 2008) *with* Stipulated Facts, Letter from F. Anne Ross, Staff Attorney, New Hampshire Public Utilities Commission, to Debra A. Howland, Executive Director and Secretary, New Hampshire Public Utilities Commission (June 18, 2008). Likewise, after the Commission ordered hearing on the question whether grant of the application is consistent with the public good, the TDS Companies and NHTA undertook to introduce little evidence on the factors in RSA 374:22-g and the parties were able to waive hearing. *See id.* Secretarial Letter, Cancellation of Hearing (Sept. 22, 2008). For the record, Comcast Phone is incorporating by reference and attaching from Docket No. DT-08-013 (a) the Testimony of Michael Pelcovits, (b) its Initial Brief on The Public Good of its Application (filed Oct. 1, 2008), and (c) its Reply Brief on The Public Good of its Application (filed Oct. 10, 2008).

¹¹ See Docket No. DT 08-130.

It must be underscored that certification is just one step in the process of providing competitive services in rural territories. Competitive entry also requires agreements with incumbents for pole attachments and interconnection, which can delay entry still further. Indeed, the TDS Companies have refused to enter into interconnection agreements with Comcast Phone on the sole ground that Comcast Phone is not a carrier of “telecommunications” even though the Commission ruled that the services proposed in Comcast Phone’s CLEC-10 application are “retail telecommunications services” and that Comcast Phone “has met the requirements of our CLEC registration rules as we interpret them.”¹² As a result, Comcast Phone had no choice but to file a Petition for Arbitration on December 12, 2008 to resolve this sole remaining issue with respect to TDS. For Comcast Phone, arbitration of an issue already decided by this Commission means another delay up to five months before customers in TDS territories can have a competitive choice in voice providers.¹³

Such regulatory barriers to entry are contrary to the legislative policy of encouraging competition and inconsistent with legislation in SB 386 that the Commission has noted “makes it clear the legislature intends to allow competition in all areas of the state.”¹⁴ In this light, the Commission’s proposal to remove the word “non-exempt” from the regulation amounts to a ministerial change needed to bring the regulation in line with the statutory change. Nothing more than this concise change is needed to effectuate the Legislative intent.

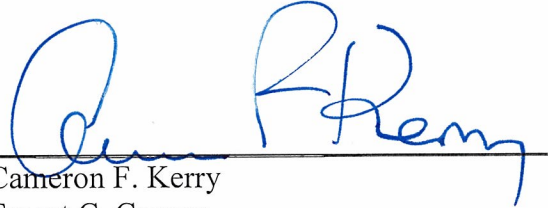
¹² *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, DT 08-013, Order No. 24,887, Order Granting Hearing, at 8 (Aug. 18, 2008).

¹³ *Petition for Arbitration of Comcast Phone of New Hampshire, LLC*, DT 08-162 (filed Dec. 12, 2008).

¹⁴ Order Granting Hearing, *supra* note 11 at 7.

The Commission therefore should adopt the amendment Puc 431.01 as proposed.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Cameron F. Kerry", is written over a horizontal line.

Cameron F. Kerry
Ernest C. Cooper
Mintz, Levin, Cohn, Ferris, Glovsky,
and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Tel. (617) 542-6000
Fax (617) 542-2241

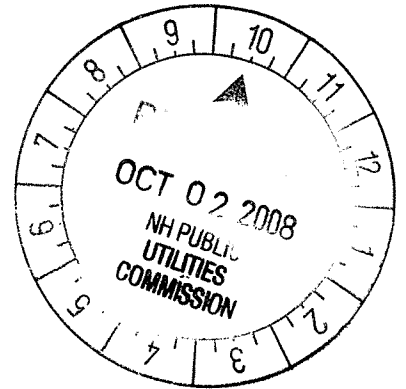
Brian A. Rankin
Vice President and Deputy General Counsel
Chief Telephony Counsel
Comcast Phone of New Hampshire LLC
One Comcast Center
Philadelphia, Pennsylvania 19103
Tel. (215) 286-7325
Fax (215) 286-5039

Attorneys for Comcast Phone of
New Hampshire, LLC

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**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Comcast Phone of New Hampshire, LLC)
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**BRIEF OF COMCAST PHONE OF NEW HAMPSHIRE, LLC
ON THE PUBLIC GOOD OF ITS APPLICATION**

This proceeding is the first time on record that the Public Utilities Commission (“Commission”) has allowed incumbent carriers to prompt a hearing on entry as a competitive local exchange carrier (“CLEC”) – first on the question whether Comcast Phone of New Hampshire, LLC (“Comcast Phone”) proposes to offer common carrier service, and now on whether granting Comcast Phone’s CLEC application “is consistent with the public good.”¹

This unprecedented proceeding comes in response to motions from Kearsarge Telephone Company and Merrimack County Telephone Company (the “TDS Companies”)² and the New Hampshire Telephone Association (“NHTA”) objecting to the Order Nisi granting Comcast Phone authority to provide services as a CLEC in the

¹ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, DT 08-013, Order No. 24,887, Order Granting Hearing, 8 (Aug. 18, 2008) (“Hearing Order”).

² While Comcast Phone has applied for authority to provide local exchange telecommunications in the territories of the Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, only the Kearsarge and Merrimack companies are interveners in this proceeding. Wilton Telephone Company has not intervened. It is party to the settlement approved in *Kearsarge Telephone Co., Wilton Telephone Co., Hollis Telephone Co. And Merrimack County Telephone Co. Petitions for Approval of Alternative Form of Regulation*, DT 07-027, Order No. 24,852, Order Regarding Joint Settlement Agreement (April 23, 2008) (“Alternative Regulation Order”), and therefore has agreed not to oppose any application for CLEC certification within its service area.

territory of the Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company.³ First, the Commission suspended its Order Nisi and commenced an adjudicative proceeding.⁴ At the prehearing conference on May 29, 2008, Chairman Getz then narrowed the issue presented by the TDS and NHTA objections to the question whether “there [is] some service that Comcast Phone . . . is going to provide that is a common carrier service?”⁵ The Commission, in its Order dated August 18, 2008, resolved this question in Comcast Phone’s favor, ruling that Comcast Phone’s application “is complete and complies with Commission rules governing CLEC applications.”⁶ Nevertheless, the Commission ordered a further hearing on the question “whether granting the Comcast Phone of New Hampshire CLEC application is consistent with the public good.”⁷ This is the sole issue remaining for briefing and decision.

On this issue, there is no genuine dispute. It is beyond doubt under New Hampshire public policy, as well as basic economic principles, that competition in local telecommunications is in the public good. The facts themselves are scarcely in dispute; just as the parties were able to stipulate facts in June, they have agreed to dispense with discovery, hearing, and cross-examination now, in this phase of the proceeding. The facts placed in evidence on their face demonstrate that Comcast Phone’s application advances the state policy encouraging competition in telecommunications markets, and meets statutory and regulatory standards. The evidence submitted by the TDS

³ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Order No. 24,843, Order Nisi Granting Application (N. H. Pub. Util. Comm’n, Apr. 4, 2008) (“Order Nisi”).

⁴ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Order No. 24,854, Order Suspending Order *Nisi* and Scheduling a Prehearing Conference (N. H. Pub. Util. Comm’n, May 2, 2008) (“Suspension Order”).

⁵ Prehearing Conference Transcript at 39.

⁶ Hearing Order at 8.

⁷ *Id.*

Companies and NHTA does not demonstrate any ground for denying the application under these standards; instead, it seeks to erect limits on Comcast Phone's entry that are outside the scope of this proceeding and contrary to state and federal law.

The Commission therefore should not allow incumbent carriers to delay competitive entry any longer. Local telecommunications competition is in the public good, granting Comcast Phone's application to offer telecommunications services in the TDS Companies' territory is in the public good, and the application should be approved once and for all.

I. New Hampshire Law And Policy Establishes Conclusively That Competition in Provision of Telecommunications Services Is in The Public Good.

The New Hampshire Legislature adopted RSA 374:22-g as part of a statutory scheme to enable competitive entry into telecommunications markets. In adopting this legislative scheme, the Legislature declared:

Competitive markets generally encourage greater efficiency, lower prices, and more consumer choice. It is the policy of the state of New Hampshire to encourage competition for all telecommunications services, including local exchange services, which will promote lower prices, better service, and broader consumer choice for the residents of New Hampshire.⁸

Thus, the statute governing this proceeding reflects that, as a matter of public policy in New Hampshire, competition in the provision of telecommunications services is in the public good.

The Commission already applied the standards of RSA 374:22-g to Comcast Phone's application in its Order Nisi.⁹ Any remaining question that these standards apply to an application to provide service in the territories of the TDS Companies as smaller providers was erased this year when the Legislature repealed RSA 374:22-f, leaving RSA

⁸ 1995 N.H. Laws 147:1.

⁹ Order Nisi at 3.

374:22-g as the single statute to apply to competitive entry throughout the state.¹⁰ As the Commission noted, “[t]he enactment of changes to RSA 374:22-g makes it clear the legislature intends to allow competition in all areas of the state.”¹¹

In turn, nothing in the record provides any basis to do otherwise here. The Commission has implemented the legislative policy to encourage competition by adopting CLEC rules in Puc 431.01 and 431.02 to streamline competitive entry. The Commission described these rules as “provid[ing] an appropriate balance between the interests of incumbent telecommunications providers and those of competitive entrants.”¹² They require that the Commission “shall issue” a CLEC authorization unless the application is denied based upon one of the acts or omissions enumerated in Puc 431.02.¹³ Neither the TDS Companies, nor any other party, has presented any evidence of any such act or omission. Accordingly, the balance struck by public policy and the Commission’s rules and regulations establishes conclusively that grant of Comcast Phone’s application is in the public good.

II. The Record Demonstrates That Grant of Comcast Phone’s CLEC Application Is Consistent with Public Policy.

Puc 431.02 places a burden on the incumbent LECs to show evidence why Comcast Phone's application should *not* be granted. In the absence of such evidence, the Commission need go no further. Nevertheless, the record in this proceeding amply demonstrates that Comcast Phone’s CLEC application is in the public good, both in

¹⁰ SB 0386, General Court 2008 Session (N.H. 2008). Comcast Phone sought, and in its Order Nisi the Commission granted, a waiver of Puc 431.01(d) “to the extent necessary.” Order Nisi at 3-4. Since the statutes no longer differentiate “exempt” ILECs, there is no longer any suggestion that the rules call for any different treatment of Comcast Phone’s application so as to require any waiver of Commission rules.

¹¹ Hearing Order at 7.

¹² *Id.*

¹³ Puc 431.01. *Cf., e.g., Allen v. State Wetlands Board*, 577 A.2d 92, 94 (N.H. 1990) (“The presence of the word ‘shall’ acts as a command”); *Appeal of Concord Natural Gas Corp.*, 433 A.2d 1291, 1295 (N.H. 1981) (“Absent an indication of legislative intent to the contrary, the word ‘shall’ acts as a command”).

advancing the legislative and Commission policy of encouraging competition in telecommunications markets, and in meeting specific statutory standards for assessing the public good with regard to CLEC applications.

A. Comcast Phone’s CLEC Application Is in the Public Good Because It Will Expand Choice And Bring The Benefits of Competition to Residents of The TDS Territories.

The testimony of Michael Pelcovits, Ph.D., an economist who helped develop deregulatory policies at the Federal Communications Commission and has an additional 25 years of experience in telecommunication regulation, underscores that New Hampshire legislative and Commission policy supporting competition in telecommunications markets is well-grounded. Dr. Pelcovits affirms that “[c]ompetition is essential to the proper functioning of free markets” because it “compels firms to produce the goods that consumers demand and produce them as efficiently as possible.”¹⁴ Competition’s ability to “encourage firms to innovate and create new services and new technology that can better serve the market . . . is particularly important in the telecommunications market.”¹⁵ The old structure of “regulated monopoly phone companies serving different franchise areas and markets” has been largely replaced on both the state and federal level – as it has throughout New Hampshire except in the territories of rural ILECs – by a competitive model that has “brought enormous benefits to market in terms of greater efficiency, lower prices, and dramatic technological innovations.”¹⁶

¹⁴ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Direct Testimony of Michael D. Pelcovits on Behalf of Comcast Phone of New Hampshire, LLC, at 6 (Sept. 9, 2008) (“Pelcovits Testimony”).

¹⁵ *Id.*

¹⁶ Pelcovits Testimony at 7.

Dr. Pelcovits explains that Comcast Phone's entry into the markets of the TDS Companies will benefit New Hampshire consumers by introducing the competitive model and bringing competition to the telecommunications services the company proposes to offer. "The entry of a highly qualified and experienced carrier [like Comcast Phone] into the local market to serve small businesses and schools and libraries is a very positive development" from the standpoint of bringing the benefits of competition to the markets.¹⁷ The benefits of competition are not limited to these initial offerings, however, because Comcast Phone's entry into the TDS Companies markets "also would enable competition in additional markets, since once authorized as a CLEC, Comcast Phone could introduce other forms of local exchange service, exchange access, or interexchange services."¹⁸ In addition, the wholesale communications services provided by Comcast Phone, while not relied as a basis for seeking certification as a CLEC because it is a wholesale service,¹⁹ enables Comcast IP to serve New Hampshire residential customers with Comcast Digital Voice Service, an interconnected voice over Internet protocol ("VoIP") service, offering New Hampshire consumers in the TDS Companies' territory another alternative in residential voice communications.²⁰

In Docket 07-027, the Commission examined closely the extent of competition in services areas of all the TDS Companies, and found with regard to the Kearsarge and Merrimack companies that "the record does not support a finding that competitive services are available to a majority of customers."²¹ The TDS Companies have accepted

¹⁷ Pelcovits Testimony at 9.

¹⁸ *Id.*

¹⁹ See Kowolenko Testimony at 4 & n.1; Letter from F. Anne Ross, Staff Attorney, New Hampshire Public Utilities Commission, to Debra A. Howland, Executive Director and Secretary, New Hampshire Public Utilities Commission, June 18, 2008,

²⁰ Pelcovits Testimony at 4.

²¹ Alternative Regulation Order at 29-30.

that competition in their service territories is in the public good, urging approval of their proposed settlement on the basis that it “enhances competitive options by removing barriers to entry in the TDS Companies’ service territories.”²² The Legislature declared competition in local telecommunications services to be in the public good because it “will promote lower prices, better service, and broader consumer choice for the residents of New Hampshire.”²³ The evidence demonstrates that approval of Comcast Phone’s CLEC application can bring these benefits to residents of the Kearsarge and Merrimack service areas.

B. Comcast Phone’s CLEC Application Meets All Statutory and Regulatory Standards for Serving the Public Good

Under RSA 374:22-g, when determining the public good with respect to an application for a CLEC to serve in the territory of incumbent carriers such as the TDS Companies,

the commission shall consider the interests of competition with other factors including, but not limited to fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility’s opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.²⁴

As noted above, the Commission struck the “appropriate balance between the interests of incumbent telecommunications providers and those of competitive entrants” when it adopted its rules for CLEC entry. These rules expedite CLEC entry for purposes of RSA 374:22-g by providing in Puc 431.01 for simple registration by a CLEC-10 form, limiting the grounds for denying certification in Puc 431.02, and providing in Puc 202.01

²² Alternative Regulation Order at 16.

²³ 1995 N.H. Laws 147:1.

²⁴ RSA 374:22-g.

that a CLEC-10 application for registration as a CLEC is excepted from a general requirement for adjudicative hearings.²⁵ There is no basis for striking any different balance in this case. On the contrary, conducting a case-by-case inquiry as the Commission has done here undermines the policy of encouraging competition and instead enables barriers to entry.

Even so, the evidence establishes that the factors in RSA 374:22-g favor the grant of Comcast Phone's application. The "interests of competition" are reflected in the policy of competition and the evidence that this policy is advanced by Comcast Phone's entry, and no other factors should alter the balance the Commission has struck.

Fairness hardly supports maintaining a monopoly. As a consideration of fairness, first and foremost the Commission should take into account fairness to consumers in the TDS Companies territory, who stand to benefit from the reduced prices, improved service, and product innovation that competition can bring. Failure to allow competitive entry into this territory would be unfair to those consumers.

TDS and NHTA offer the testimony of Valerie Wimer, an engineer and a marketer rather than an economist, that Comcast Phone's entry would be unfair because it would enable Comcast to "offer [Comcast Digital Voice services] with no regulation using wholesale CLEC services that are subject to very little regulation."²⁶ Ms. Wimer's testimony is irrelevant because the Commission has already determined that "the regulatory status of Comcast IP's digital voice service is not the subject of this docket and does not bear on whether we should expand Comcast's authority to operate in New

²⁵ Puc 431.01; Puc 431.02; Puc 202.01.

²⁶ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Testimony of Valerie Wimer, at 8 (Sept. 9, 2008) ("Wimer Testimony").

Hampshire.”²⁷ Moreover, because the TDS Companies offer video services in competition with Comcast Cable,²⁸ fairness dictates that Comcast also be able to offer residents in these same areas a choice of “triple play” bundles of video, data, and voice services.

Ms. Wimer also opines that the TDS Companies will suffer a loss of efficiency if they lose their monopoly position because their average cost per customer will increase,²⁹ and they will suffer a “negative economic effect.”³⁰ But competition laws exist “to protect competition, not competitors,”³¹ and inducing a monopoly to become efficient is one of the benefits of competition. As Dr. Pelcovits points out, while an “incumbent that sets its prices in excess of economic costs will lose its ability to earn monopoly profits once competition takes hold,”³² there is no inherent unfairness in the loss of ability to exact monopoly profits.³³ “An inefficient incumbent has much to fear from competition, because it will be unable to maintain a price level that allows it to recover its excessive level of costs.”³⁴ Competition forces efficiency. In a competitive market, “[i]f a competitive firm does not operate efficiently, or it attempts to overprice its output, competition will compel that firm to change its production process and its prices, or it will be forced to exit the market.”

Dr. Pelcovits explains that “an efficient, well managed market incumbent should be able to respond to competitors and still recover a reasonable return on past and future

²⁷ Hearing Order at 6.

²⁸ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Direct Testimony of David J. Kowolenko on Behalf of Comcast Phone of New Hampshire, LLC, at 7 (Sept. 9, 2008) (“Kowolenko Testimony”).

²⁹ Wimer Testimony at 9.

³⁰ *Id.*

³¹ Pelcovits Testimony at 6.

³² Pelcovits Testimony at 11.

³³ *Id.* (“[C]ompetition will benefit consumers, by driving down prices to economic costs.”).

³⁴ *Id.*

investment.”³⁵ Verizon, and now Fairpoint Communications, have faced competition from CLECs in New Hampshire for many years while maintaining the ability to earn a reasonable return on their investment. There is no reason to expect that the TDS Companies will not similarly be able to continue earning a reasonable return on their investment, even with competition from Comcast Phone. A Comcast Phone affiliate is currently certified as a CLEC in the territory of a TDS Companies affiliate in the state of Tennessee, where the TDS affiliate faces competition from multiple CLECs without the TDS Companies suggesting on this record that this affiliate is unable to earn a reasonable return on investment.³⁶

There is no reason to protect the TDS Companies. Their corporate parent recently announced that it was ranked on the Fortune 500 in 2008.³⁷ They already have declared to the Commission that they can retain their ability to preserve universal service access and serve as the provider of last resort, even in the presence of “competitive wireline, wireless or broadband service available to a majority of customers in each of the [TDS Companies] exchanges.”³⁸ Moreover, they receive ample subsidies to carry out universal service: the three TDS Companies received \$2.4 million in support from the federal Universal Service Fund High Cost Program last year, and benefit from continuing support from that program.³⁹ Universal service and carrier of last resort obligations therefore do not militate against approving Comcast Phone’s entry into the market.

Any expenses that might be incurred by the TDS Companies to benefit Comcast Phone as a competitive provider are expected to be limited to the costs of providing

³⁵ *Id.*

³⁶ *See* Kowolenko Testimony at 7.

³⁷ Pelcovits Testimony at 12.

³⁸ *Id.* (quoting Reed Testimony at 10).

³⁹ Pelcovits Testimony at 13.

interconnection, which under the Telecommunications Act of 1996 are recoverable through negotiated agreement.⁴⁰ Comcast Phone has reached such negotiated agreements with TDS companies in other states, including Tennessee and Vermont; is currently negotiating agreements with TDS companies in Georgia, Michigan, and Washington;⁴¹ and, anticipating final approval of its CLEC application by the Commission, has already entered into negotiations with the TDS Companies for an interconnection agreement in New Hampshire.⁴²

C. Comcast Phone Is Well-Qualified to Become A CLEC in The TDS Companies' Territory.

RSA 374:22-g sets specific standards for determining the public good with respect to CLEC entry. In light of the statutory scheme and the canon of construction that the specific modifies the general,⁴³ RSA 374:22-g governs rather than the more general franchising authority of RSA 374:26. For other non-competitive utilities under the latter statute, the Commission typically “reviews the need for service and the ability of the applicant to provide that service” by “assess[ing] the petitioner's financial backing, management and administrative expertise, technical resources, and general fitness to operate a utility.” Even if this qualifications standard does apply, there can be no dispute that Comcast Phone meets it.

By finding Comcast Phone qualified since 1998 to provide CLEC services in the New Hampshire territory of Verizon, now Fairpoint Communications, the Commission has already established that Comcast Phone is a qualified CLEC, and it already has the

⁴⁰ Kowolenko Testimony at 6; Pelcovits at 14.

⁴¹ Kowolenko Testimony at 7.

⁴² Kowolenko Testimony at 6.

⁴³ See, e.g., *State v. Farrow*, 667 A.3d 1029, 1032 (N.H. 1995) (“Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the latter will be regarded as an exception to the general enactment where the two conflict.”); *State v. Bell*, 480 A.2d 906, 911 (N.H. 1984) (same).

continuing ability to provide CLEC services under that authority.⁴⁴ Other Comcast subsidiaries parallel to Comcast Phone operate as CLECs in Maine, Vermont, Massachusetts, New York, and more than 30 other states.⁴⁵ Comcast Phone has extensive experience in providing services as a CLEC.

The Comcast Phone CLEC already qualified to operate in the Fairpoint territory is the same entity that will offer CLEC services in the TDS Companies territory.⁴⁶ To manage its CLEC services in the TDS Companies territory, Comcast Phone will “utilize the same organization, the same experienced management, and the same experienced technical staff that now operates the Comcast Phone services in the Fairpoint Communications territory.”⁴⁷ To the extent it is necessary to employ additional personnel to provide services in the TDS Companies territory, “any such personnel will be trained and supervised by Comcast Phone’s current management and technical staff, and have the benefit of their extensive knowledge and experience.”⁴⁸

Comcast Phone has the ability to draw upon significant financial resources in expanding its services into the TDS Companies territory. Comcast Phone’s parent company, Comcast Corporation, is a publicly-held Fortune 100 company with revenues of over \$30 billion and net income of over \$2.5 billion in 2007.⁴⁹ “Comcast is committed and is prepared to allocate the necessary resources to provide high-quality CLEC services to New Hampshire customers in the TDS Companies territory.”⁵⁰

⁴⁴ See Kowolenko Testimony, Ex. B.

⁴⁵ Kowolenko Testimony at 4.

⁴⁶ Kowolenko Testimony at 4-5.

⁴⁷ Kowolenko Testimony at 5.

⁴⁸ *Id.*

⁴⁹ *Id.* See also Comcast Corporation Annual Report Form 10-K for 2007, Kowolenko Ex. C, and Comcast Corporation Quarterly Report Form 10-Q for 2Q 2008, Kowolenko Ex. D.

⁵⁰ Kowolenko Testimony at 5.

Comcast Phone's CLEC application meets all of the statutory standards for assessing the public good and Comcast Phone is demonstrably able to operate as a CLEC.⁵¹

III. The Conditions Proposed by The TDS Companies' Witness Are Inconsistent with State and Federal Law And Policy.

The TDS Companies' consulting engineer argues that the Commission should condition a CLEC authorization on Comcast Phone restricting its offerings to the Business Local Service and Schools and Libraries Exchange Service Comcast Phone has suggested would be its initial offerings. Under this proposed restriction, Comcast Phone would be required to modify its CLEC-10 application and evidently seek further Commission approval "if and when Comcast proposes to offer wholesale services or any other telecommunication service that is not directly linked" to those initial services.⁵² The witness also asks the Commission to "open a comprehensive docket or other proceeding to address Comcast's wholesale service and retail VoIP service."⁵³ These kinds of conditions are directly at odds with Chairman Getz' ruling in the prehearing conference and the Commission's August 18 Hearing Order, as well as with both state and federal law on entry of competitive telecommunications carriers.

There is no basis in New Hampshire law to treat Comcast Phone differently from any other CLEC. The PUC has not previously inquired into the business plan of a CLEC applicant beyond the information required to be provided on the CLEC-10,⁵⁴ and in this

⁵¹ The suggestion by the TDS Companies' that Comcast Phone may pose a competitive threat to the incumbent carriers, while overstated, amounts to a tacit admission that Comcast Phone is well-qualified to provide CLEC services. *See* Wimer Testimony at 9.

⁵² Wimer Testimony at 15-16.

⁵³ Wimer Testimony at 16.

⁵⁴ As it typically does in such orders, the Commission included in its *Order Nisi* approving Comcast Phone's CLEC Application a provision nullifying the registration if Comcast Phone fails to offer telecommunications services in the TDS Companies' territory within two years, and allowed latitude as to

case has already ruled that Comcast's application is complete.⁵⁵ In this proceeding, the Commission has already ruled that "[i]ssues regarding whether and when Comcast offers retail telecommunications service to TDS customers are matters of enforcement."⁵⁶

Moreover under Puc 431.06, CLECs are free to introduce additional services as the market demands, without prior review by the Commission or prior notice. That Comcast Phone initially proposes to provide a limited range of telecommunications services in the TDS Companies territory is not unusual for a carrier entering a new market. As Dr. Pelcovits points out, the benefits of Comcast Phone's entry as a CLEC is not limited to competition in its initial services, "but also would enable competition in additional markets, since once authorized as a CLEC, Comcast Phone could introduce other forms of local exchange service, exchange access, or interexchange services."⁵⁷ To alter the Commission's rules and practice to confine a new entrant to only those services it initially proposes to offer would limit these benefits of competition and provide a recipe for endless hearings.

Any such conditions would also establish a troubling precedent. The Telecommunications Act of 1996 and pro-competitive laws and regulations in New Hampshire rely on competition to test CLEC qualifications and offerings. Accordingly, the Commission streamlined the entry process now embodied in Puc 431.01 and 431.02. The conditions suggested by the TDS Companies' witness have no basis in this well-established process. Already, the opposition of the TDS Companies has caused the adjudication of Comcast Phone's CLEC application, a process generally handled quickly,

services actually offered by requiring Comcast Phone to "file, ten days prior to commencing service, a rate schedule including the name, description, and price of each service." Order Nisi at 4.

⁵⁵ Hearing Order at 6.

⁵⁶ *Id.*

⁵⁷ Pelcovits Testimony at 9.

to drag out for almost a year, delaying Comcast Phone's entry into the market during this time at the detriment of consumers in the TDS Companies' territory. To suggest that Comcast Phone must reapply and face a similarly lengthy proceeding every time it desires to offer a new service in the TDS Companies' territory amounts to giving the TDS Companies an effective veto power over new competitive offerings in their markets. If every new entrant attempting to offer services in the TDS Companies' territory were subjected to the same delaying process not just for initial entry but also for each new offering, the resulting barrier to entry almost certainly amount to an unreasonable one prohibited by the Telecommunications Act of 1996.⁵⁸

The suggestion by the TDS Companies' witness that the Commission open a new proceeding "to address Comcast's wholesale service and the retail VoIP service" as a condition to approval of the CLEC application likewise would serve to introduce significant delay potentially amounting to a *de facto* barrier to entry. In any case, the Commission has already determined that "the regulatory status of Comcast IP's digital voice service is not the subject of this docket and does not bear on whether we should expand Comcast's authority to operate in New Hampshire."⁵⁹ The testimony proposing such a proceeding flies in the face of this determination.

There is no basis for the Commission to impose the suggested conditions on Comcast Phone's CLEC application, and the conditions as suggested could amount to a prohibited barrier to competitive entry. Consequently the suggestions for conditional approval of Comcast Phone's application should be ignored.

⁵⁸ See 47 U.S.C. § 253. *Cf. Order Nisi* at 3 (limiting CLEC registration in territory of rural ILECs "would raise issues of federal preemption . . .").

⁵⁹ Hearing Order at 6.

CONCLUSION

As described above, Comcast Phone's application for authorization as a CLEC in the territory of the TDS Companies is in the public good, and the application should be approved without further delay.

Respectfully Submitted,

/s/ Cameron F. Kerry

Cameron F. Kerry
Ernest C. Cooper
Mintz, Levin, Cohn, Ferris, Glovsky,
and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Tel. (617) 542-6000
Fax (617) 542-2241

Brian A. Rankin
Vice President and Deputy General Counsel
Chief Telephony Counsel
Comcast Phone of New Hampshire LLC
One Comcast Center
Philadelphia, Pennsylvania 19103
Tel. (215) 286-7325
Fax (215) 286-5039

Attorneys for Comcast Phone of
New Hampshire, LLC

October 1, 2008

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

_____)
Comcast Phone of New Hampshire, LLC Request for)
Authority to Provide Local Telecommunications) DT 08-013
Services)
_____)

CERTIFICATE OF SERVICE

I, Ernest C. Cooper, hereby certify that I have this 1st day of October, 2008, served the Brief of Comcast Phone of New Hampshire, LLC by email on all parties of record in this proceeding:



Ernest C. Cooper

bible

MINTZ LEVIN

Cameron F. Kerry | 617 348 1671 | cfkerry@mintz.com

One Financial Center
Boston, MA 02111
617-542-6000
617-542-2241 fax
www.mintz.com

October 10, 2008

BY E-FILING and U.S. MAIL

Ms. Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Comcast Phone of New Hampshire, LLC Request for Authority
to Provide Local Telecommunications Services, DT 08-013

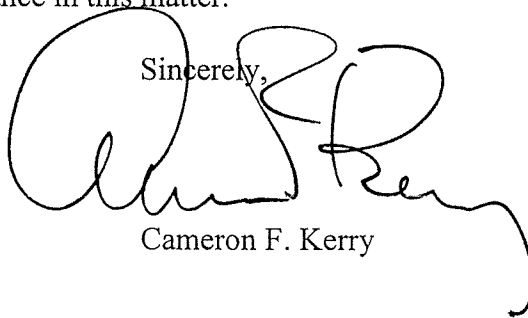
Dear Ms. Howland:

Enclosed for filing in the matter captioned above, please find the original and seven copies of:

1. Reply Brief of Comcast Phone of New Hampshire, LLC On the Public Good of Its Application; and,
2. Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,



Cameron F. Kerry

CFK/jdn

cc: All Parties of Record

4367414v.1

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON

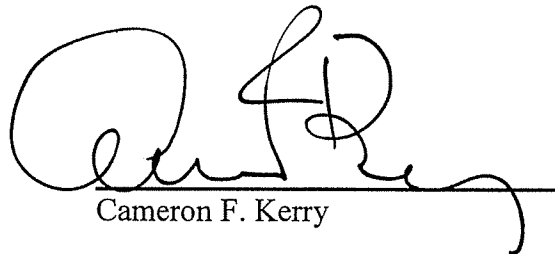
STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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| Comcast Phone of New Hampshire, LLC Request Request for Authority to Provide Local Telecommunications Services |))))) | DT 08-013 |
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CERTIFICATE OF SERVICE

I, Cameron F. Kerry, hereby certify that I have this 10th day of October, 2008, served the foregoing document by email, on all parties of record:

1. Reply Brief of Comcast Phone of New Hampshire, LLC On the Public Good of Its Application.


Cameron F. Kerry

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

DT 08-013

REPLY BRIEF OF COMCAST PHONE OF NEW HAMPSHIRE, LLC
ON THE PUBLIC GOOD OF ITS APPLICATION

The final phase of this docket is narrowly focused on the single question of whether granting the application of Comcast Phone of New Hampshire, LLC (“Comcast Phone”) for entry as a competitive local exchange carrier (“CLEC”) in the territories of the Kearsarge Telephone Company and Merrimack County Telephone Company (the “TDS Companies”)¹ “is consistent with the public good.”² The necessary answer to that question is “yes.”

Over the course of this proceeding and in the evidence submitted as to the public good, Comcast Phone has submitted far more information and evidence to support its application than has ever been required of any other CLEC applicant in New Hampshire. Nevertheless, the TDS Companies and the New Hampshire Telephone Association

¹ While Comcast Phone has applied for authority to provide local exchange telecommunications in the territories of the Kearsarge Telephone Company, Merrimack County Telephone Company, and Wilton Telephone Company, only the Kearsarge and Merrimack companies are interveners in this proceeding. Wilton Telephone Company has not intervened. It is party to the settlement approved in *Kearsarge Telephone Co., Wilton Telephone Co., Hollis Telephone Co. And Merrimack County Telephone Co. Petitions for Approval of Alternative Form of Regulation*, DT 07-027, Order No. 24,852, Order Regarding Joint Settlement Agreement (April 23, 2008) (“Alternative Regulation Order”), and therefore has agreed not to oppose any application for CLEC certification within its service area.

² *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, DT 08-013, Order No. 24,887, Order Granting Hearing, 8 (Aug. 18, 2008) (“Hearing Order”).

(“NHTA”) jointly³ and Union Telephone Company (“Union Telephone”)⁴ contend that Comcast Phone has not met its burden. In addition, the TDS Companies and NHTA ask the Commission to carry out a broad investigation of the structure of competitive regulation⁵ before acting on what should be – at least after the repeal of RSA 374:22-f – a routine CLEC application no different from many others the Commission has granted without hearing.

As demonstrated in its initial brief,⁶ Comcast Phone’s unprecedented showing for a CLEC application provides ample evidence to show its application is in the public good under the standards established by the Legislature and the Commission. These standards place the burden on the incumbent carriers to present evidence within their knowledge and control to show why public policy favoring competitive entry should not apply here. This proceeding is not about what NHTA and the TDS Companies have selected as the reason to deny Comcast Phone’s application, VOIP regulation; the Commission already has stated twice that “the regulatory status of Comcast IP’s digital voice service is not the subject of this docket and does not bear on whether we should expand Comcast’s authority to operate in New Hampshire.”⁷ To hold Comcast Phone to a different, higher standard, impose unprecedented conditions, or undertake additional proceedings, would serve only to delay competitive entry further to the sole benefit of the incumbent carriers

³ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, DT 08-013, Joint Brief of New Hampshire Telephone Association, Merrimack County Telephone Company and Kearsarge Telephone Company (filed Oct. 1, 2008) (“TDS/NHTA Brief”).

⁴ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, DT 08-013, Initial Brief of Union Telephone Company (filed Oct. 1, 2008) (“Union Telephone Brief”).

⁵ TDS/NHTA Brief at 11-12.

⁶ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, DT 08-013, Brief of Comcast Phone of New Hampshire, LLC on the Public Good of Its Application (filed Oct. 1, 2008) (“Comcast Phone Brief”).

⁷ Hearing Order at 6. *See also Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Prehearing Conference Transcript, at 33 (May 21, 2008).

and the detriment of thousands of consumers in the areas they serve. Comcast Phone's CLEC application is in the public good and should finally be approved.

I. The Strong Public Policy Favoring Competitive Entry Places The Burden on The Incumbent LECs to Come Forward With Evidence Why Comcast Phone's Application Should Not Be Granted.

Comcast Phone has presented evidence that its CLEC application is in the public good under standards established in RSA 374:22-g. Moreover, while it is not clear that the qualification standards of the more general franchising authority of RSA 374:26 also apply, Comcast Phone presented evidence that it meets these additional standards as well. Comcast's qualification has not been contested, and no party has made any showing of disqualification under Puc 431.02. Claims by the incumbents that Comcast Phone has failed to present sufficient evidence assume an impossibly high standard of proof that is inconsistent with the policy of RSA 374:22-g, and with Commission rules and regulations.

As discussed in Comcast Phone's initial brief, RSA 374:22-g was enacted with the legislative intent "to encourage competition for all telecommunications services" and, in its CLEC entry rules, the Commission implemented this overarching policy by striking "an appropriate balance between the interests of incumbent telecommunications providers and those of competitive entrants."⁸ In adopting these policies, the Legislature and Commission undoubtedly were aware of the state constitutional provision that the TDS Companies and NHTA cite in favor of "free and fair competition" and against

⁸ Comcast Phone Brief at 3-4 (quoting 1995 N.H. Laws 147:1; *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, DT 08-013, Order No. 24,887, Order Granting Hearing, 7 (Aug. 18, 2008)).

“monopolies” that “tend to hinder or destroy” competition.⁹ Union Telephone recognizes that 374:22-g requires balancing between “the interests of competition” on the one hand, and the various listed factors relating to the interests of incumbents on the other.¹⁰ The balance already struck by the Commission creates a presumption in favor of competitive entry. The burden is therefore on the incumbents to come forward with reasons why the legislative policy encouraging competition should not apply and why the Commission should strike a different balance from the categorical balance it struck in Puc 431.01-02.

This is especially the case where the factors relating to the interests of incumbents listed in RSA 374:22-g involve information within the knowledge and control of those incumbents.¹¹ To require a CLEC applicant to carry the burden on an incumbent’s return on investment, its universal service costs and funding, or its costs of interconnection would erect a monumental barrier to entry because it would require the CLEC to extract information from incumbents in order to apply for entry and necessitate extensive proceedings.¹² This is at odds with the streamlined entry enabled by Puc 431.01-2, and an open invitation to incumbent LECs to act as gatekeepers to entry – precisely the problem with the entry statute preempted in *Silver Star*¹³ and, Comcast submits, the reason the Legislature had the foresight to repeal RSA 374:22-f.¹⁴

⁹ N.H. Const., Pt. II, Art. 83.

¹⁰ Union Telephone Brief at 4.

¹¹ See RSA 374:22-g (citing as among factors to be considered in determining the public good, “universal service; carrier of last resort obligations; the incumbent utility’s opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses”).

¹² Given the highly confidential nature of much of the financial information that might be relevant, there is some question whether the financial information could or would be made available to Comcast Phone – a future competitor – even through discovery.

¹³ See *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, Memorandum Opinion and Order, 12 FCC Rcd. 15639 (1997).

¹⁴ See An Act Relative to Service Territories Served by Several Telephone Utilities, 2008 N.H. Laws, Chapter 0350 (chaptering SB 0386, General Court 2008 Session (N.H. 2008)).

In any event, beyond providing ample evidence on the interests of competition, Comcast has submitted sufficient evidence on the additional factors set forth in RSA 374:22-g. First, Comcast Phone presented evidence from its expert, economist Michael Pelcovits, Ph.D., in support of “the incumbent utility’s opportunity to realize a reasonable return on its investment.”¹⁵ Dr. Pelcovits testified that “an efficient, well managed market incumbent should be able to respond to competitors and still recover a reasonable return on past and future investment,”¹⁶ as well as evidence that TDS’ parent company is a Fortune 500 Company and that TDS Companies’ affiliates are competing successfully in other states against Comcast Phone affiliates.¹⁷ There is no evidence in the record to refute Dr. Pelcovits’ testimony:

- Union Telephone argues, however, that the Commission must have before it additional evidence “specific to the incumbents” at issue.¹⁸ If there is some evidence that the well-known principles of economics do not apply to the TDS Companies in New Hampshire, the incumbents should come forward with it. Tellingly, the TDS Companies, with full access to their own financial information, did not try to argue specifically that competition from Comcast Phone as a CLEC would significantly affect their ability to recover a reasonable rate of return.¹⁹
- The ability of the TDS Companies involves projections of the impact Comcast Phone’s *future* services might have on the TDS Companies’ *future* ability to earn a reasonable rate of return. Comcast Phone has presented the best evidence on the subject – the informed judgment of an expert.
- Union Telephone’s attempt to draw a negative conclusion from a study performed by the New York Public Service Commission (“NYPSC”) is unconvincing. First, the NYPSC study has not been entered into evidence and

¹⁵ See Union Telephone brief at 6.

¹⁶ Comcast Phone Brief at 9-10.

¹⁷ Comcast Phone Brief at 10.

¹⁸ Union telephone Brief at 6.

¹⁹ The only related argument, that “[w]hen customers leave the TDS Companies, costs per customer rise,” TDS Companies and NHTA Brief at 10, is a general observation that does not speak directly to the ability to earn a reasonable rate of return. The argument that the regulated TDS companies are disadvantaged when competing against unregulated VoIP services, *id.*, similarly fails to directly address the ability to continue to earn a reasonable rate of return and, in any case, deals with the regulatory status of VoIP services, which is not under consideration in this proceeding.

is irrelevant on that basis alone. Second, on its facts the study is irrelevant because most New York RLECs studied faced greater competition from all sources than RLECs face in New Hampshire. By comparison, in Docket 07-027, the Commission found that “the record does not support a finding that competitive services are available to a majority of [MTC and KTC] customers.”²⁰ Third, where there was sufficient competition New York Public Service Commission granted relief in the form of alternate regulation (and did not grant relief to those RLECs that did not have competition); in New Hampshire RSA 374:3-b already affords the TDS Companies alternative regulation when and if they can show sufficient competition in their service areas.²¹

Second, Comcast Phone presented evidence that the TDS Companies are well-capitalized, receive substantial annual subsidies from the federal Universal Service Fund (“USF”) to undertake universal service and carrier of last resort obligations (including the Lifeline and LinkUp programs cited by TDS/NHTA witness Valerie Wimer), and have recently affirmed to the Commission in another proceeding their ability to preserve universal service access and serve as the carrier of last resort, even in the presence of competitive services.²² Union Telephone makes a series of conclusory arguments that Dr. Pelcovits’ reliance on these facts is unjustified.²³

- Union Telephone argues that Dr. Pelcovits’ conclusion relies on TDS Companies testimony “filed at least eight months prior to Comcast’s petition,” but neither Union Telephone nor the TDS Companies suggest any changes in the condition of the TDS Companies that would cause the testimony to be unreliable. It is reasonable for an expert to rely on admissions to the Commission from the companies at issue, and Dr. Pelcovits did not rely solely on these admissions, but also considered the financial status of the TDS Companies parent company and the substantial payments to the TDS Companies from the federal USF.
- Second, Union Telephone complains that the TDS Companies’ more than \$2.4 million in USF subsidies last year should be discounted as evidence because

²⁰ Alternative Regulation Order at 29-30.

²¹ Alternative Regulation Order at 30.

²² Comcast Phone Brief at 10.

²³ Union Telephone Brief at 9-10.

“funding from the Federal High Cost Universal Service Fund is based upon costs and does not increase to respond to loss of revenues due to additional competition.”²⁴ But as the TDS Companies and NHTA explain, “[w]hen customers leave the TDS Companies [for competitors], costs per customer rise” and that “[w]hile some costs may decrease due to access line losses, ILECs such as [the TDS Companies] must continue to provide service to all customer locations.”²⁵ Since USF subsidies are based on costs, they should continue to absorb any higher costs attributable to providing universal services in high cost rural areas.

- USF subsidies are provided to rural carriers to ensure that “that consumers in all regions of the nation have access to and pay rates for telecommunications services that are reasonably comparable to those services provided and rates paid in urban areas.”²⁶ Rural carriers all over the country face competition from CLECs and other carriers while receiving USF High Cost Program support that enables them to perform universal service and carrier of last resort responsibilities. There is no reason to believe the USF program, which adequately supports rural carriers throughout the nation (including affiliates of the TDS Companies in other states) in the face of competition, would be inadequate to support the TDS Companies in New Hampshire as they face competition from Comcast Phone as a CLEC.

In its brief, Union Telephone supports its argument on an applicant’s burden by citation to *Long Distance North*.²⁷ This a case from 1990 – predating either RSA 372:22-g²⁸ or the federal Telecommunications Act of 1996,²⁹ much less CLEC entry regulations in former Puc Part 1300 or the current regulations in Puc 431.01-02. Union Telephone’s reliance on such outdated precedent shows the extent to which the entry process the rural incumbents urge in this case is a throwback to a different era of telecommunications regulation. The Commission should not accept the imposition of any greater, special barriers to Comcast Phone’s entry into the TDS Companies’ territories than it has already, and should act now granting the requested CLEC authority.

²⁴ Union Telephone Brief at 9.

²⁵ Union Telephone Brief at 10.

²⁶ Universal Service Administrative Company, High Cost Program, Overview of the Program, at <http://www.usac.org/hc/about/default.aspx>.

²⁷ Union Telephone Brief at 5 (citing *Long Distance North of New Hampshire, Inc.*, NH PUC Docket DE 87-249, Order No. 19,698 (February 2, 1990)).

²⁸ 1995 N.H. Laws 147:1.

²⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

II. Broad Questions about Appropriate Regulatory Treatment of VoIP Services or New Rules for “Fair and Equitable Competition” Are Outside of the Scope of This Hearing.

The TDS Companies and NHTA continue their relentless effort to expand the scope of this proceeding into a review of appropriate regulatory treatment for VoIP services, explore whether competition from VoIP services is “fair competition,” and impose special restrictions on the scope of services Comcast Phone may offer now or in the future. These issues are outside of the scope established by the Commission and would serve only to further delay what is already the longest-running CLEC application proceeding in New Hampshire at least since the enactment of RSA 374:22-g. “Free and fair competition” under Article 83 of the New Hampshire Constitution hardly means no competition at all.

The TDS Companies and NHTA conclude at one point that “[a]bsent the Commission providing a level regulatory playing field and allowing ‘fair competition’, the evidence does not support” a finding of public good for Comcast Phone’s CLEC application.³⁰ Throughout their brief, the TDS Companies and NHTA complain of disadvantages the ILEC may face in competing against “a completely unregulated entity,”³¹ an obvious reference to the VoIP services that may be offered in the TDS Companies territory by Comcast Phone’s affiliate Comcast IP. Comcast Phone has freely acknowledged its intention to provide wholesale services to Comcast IP in the TDS Companies territory.³²

³⁰ TDS/NHTA Brief at 11.

³¹ TDS/NHTA Brief at 10.

³² Although Comcast description of its proposed offerings included its wholesale Local Interconnection Service (“LIS”), Comcast Phone stipulated that it is not seeking certification on the basis of this offering in light of Commission policy that wholesale service is not subject to certification in New Hampshire. *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Stipulated Facts (June 12, 2008). As stated in its Brief filed June 26,

The Commission in turn has made clear that “the regulatory status of Comcast IP’s digital voice service is not the subject of this docket and does not bear on whether we should expand Comcast’s authority to operate in New Hampshire.”³³ In fact, asymmetry in regulatory treatment of competitive voice, video, and data services is common. Dominant ILECs are regulated differently from non-dominant CLECs, which are regulated differently from cell phone providers. Heavily regulated cable companies compete against lightly regulated satellite services – as Comcast Cable does against the TDS Companies’ Dish Network service, offered to its subscribers in the New Hampshire territories at issue³⁴ – and both cable and satellite service compete against unregulated video services offered via the Internet. The registration of a CLEC, a routine proceeding ordinarily not subject to briefing or adjudicative hearings,³⁵ is not the occasion to address the cosmic questions of convergence of these regulatory schemes. The incumbents are

2008, Comcast Phone accepts that policy for purposes of this proceeding but restates its view that LIS also qualifies the company for certification as a CLEC. The Federal Communications Commission declared that “common carrier services include services offered to other carriers, such as exchange access service, which is offered on a common carrier basis, but is offered primarily to other carriers.” *Time Warner Cable Request for a Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd. 3513, ¶ 12 (2007). In the same order, the FCC elaborated that “the rights of telecommunications carriers under sections 251 (a) and (b) apply regardless of whether the telecommunications services are wholesale or retail, and a state decision to the contrary is inconsistent with the Act and Commission precedent.” *Id.* ¶ 14. Moreover, because under RSA 362:2 a utility service is a service “ultimately sold to the public,” it need not be offered directly to retail end-users. Wholesale carriers provide service “ultimately sold to the public” by providing service to carriers who offer service to end-users. RSA 362:2. *See also Bright House Networks, LLC v. Verizon California, Inc.*, File No. EB-08-MD-002, Memorandum Opinion and Order, FCC 08-159, ¶¶ 30-33 (rel. June 23, 2008) (holding that provision of local number portability service “is a wholesale input that is a necessary component of a retail telecommunications service” and is therefore a telecommunications service for purposes of 47 U.S.C. § 222(b)).

³³ Hearing Order at 6.

³⁴ *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Direct Testimony of David J. Kowolenko on Behalf of Comcast Phone of New Hampshire, LLC, at 7 (Sept. 9, 2008); *Comcast Phone of New Hampshire, LLC, Request for Authority to Provide Local Telecommunications Services*, Docket No. DT-08-013, Direct Testimony of Michael D. Pelcovits on Behalf of Comcast Phone of New Hampshire, LLC, at 10-11 (Sept. 9, 2008).

³⁵ *See* Puc 431.01.

free at any time to petition the appropriate regulatory authority to address such issues without holding Comcast Phone's CLEC application hostage.³⁶

Simply put, as demonstrated in Comcast Phone's initial brief,³⁷ there is no basis in statute or regulations for the Commission to impose the onerous conditions and limitations proposed by the NHTA and TDS Companies on the services that Comcast Phone would be allowed to offer. Such conditions could amount to a prohibited barrier to competitive entry. Consequently, the Commission should disregard any recommendation for conditional approval of Comcast Phone's application, and approve its application without limitation.

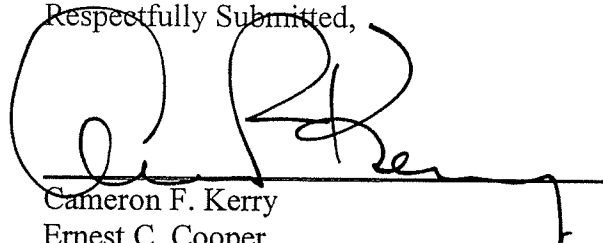
³⁶ Hearing Order at 6.

³⁷ Comcast Phone Brief at 13-15.

CONCLUSION

As described above and in Comcast Phone's initial brief and pre-filed testimony, Comcast Phone's application for authorization as a CLEC in the territory of the TDS Companies is in the public good. Comcast Phone's application therefore should be approved without further delay.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. Kerry', is written over a horizontal line. The signature is stylized and cursive.

Cameron F. Kerry
Ernest C. Cooper
Mintz, Levin, Cohn, Ferris, Glovsky,
and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Tel. (617) 542-6000
Fax (617) 542-2241

Brian A. Rankin
Vice President and Deputy General Counsel
Chief Telephony Counsel
Comcast Phone of New Hampshire LLC
One Comcast Center
Philadelphia, Pennsylvania 19103
Tel. (215) 286-7325
Fax (215) 286-5039

Attorneys for Comcast Phone of
New Hampshire, LLC

October 10, 2008

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Comcast Phone of New Hampshire, LLC)
Request for Authority to Provide) Docket No. DT 08-013
Local Telecommunications Services)

**DIRECT TESTIMONY OF
MICHAEL D. PELCOVITS**

ON BEHALF OF

COMCAST PHONE OF NEW HAMPSHIRE, LLC
September 9, 2008

1 I. **INTRODUCTION AND SUMMARY**

2 Q. **Please state your name, occupation, and business address.**

3 A. My name is Michael D. Pelcovits. I am a principal with the economic
4 consulting firm of Microeconomic Consulting and Research Associates (MiCRA).
5 My business address is 1155 Connecticut Avenue, N.W. Suite 900, Washington,
6 D.C. 20036.

7 Q. **Would you please summarize your experience and educational
8 qualifications?**

9 A. I received my Ph.D. in Economics from the Massachusetts Institute of
10 Technology in 1976. Since serving on the economics faculty of the University of
11 Maryland and as a Senior Economist at the Civil Aeronautics Board, I have spent
12 my entire career specializing in the economics of regulation and competition in
13 the telecommunications industry.

14 From 1979 to 1981, I was a Senior Economist at the Federal
15 Communications Commission, Office of Plans and Policy. From 1981 to 1988, I
16 was a founding member and principal of the consulting firm Cornell, Pelcovits
17 and Brenner. In 1988 I joined MCI Communications Corporation and remained
18 with the Company following its merger with WorldCom, until 2002. I held
19 positions of increased responsibility at MCI, and was appointed Vice President
20 and Chief Economist of the corporation. In this position I was responsible for the

1 economic analyses of policy and regulatory matters provided and presented by the
2 Corporation before federal, state, foreign, and international government agencies,
3 legislative bodies and courts.

4 **Q. What are your professional responsibilities at MiCRA?**

5 A. I joined MiCRA in October 2002, immediately after leaving MCI, and am
6 one of six principals of the firm. MiCRA is an economic consulting firm based
7 in Washington, DC. The firm was founded in 1991 by a group of economists who
8 served in senior positions at the Antitrust Division of the U.S. Department of
9 Justice. MiCRA provides economic analysis, expert testimony, and economic
10 research to clients in a wide range of antitrust, regulatory, and other legal and
11 public policy settings. Since joining MiCRA, I have testified before several state
12 regulatory commissions on telecommunications policy and ratemaking issues.
13 These testimonies have focused on the importance of establishing the proper
14 foundation to facilitate competition in telecommunications markets. I have also
15 filed several declarations before the Federal Communications Commission on a
16 wide range of common carrier, wireless, and international telecommunications
17 policy issues. I have consulted and provided testimony on telecommunications,
18 intellectual property and competition matters before several other Courts and
19 administrative bodies, including: Federal District Court; U.S. Copyright Royalty
20 Judges; and London Court of International Arbitration.

1 **Q. Have you testified previously before the New Hampshire Public Utilities**
2 **Commission?**

3 A. Yes. I testified on behalf of the New England Cable &
4 Telecommunications Association, Inc. and Comcast Phone of New Hampshire,
5 LLC on the petition of Verizon and FairPoint to transfer assets in Docket No. DT
6 07-111.

7 **Q. What is the purpose of this testimony?**

8 A. My testimony addresses whether a grant of franchise to Comcast Phone of
9 New Hampshire, LLC (“Comcast Phone”) in the service territories of the three
10 affiliated incumbent local exchange carriers is for the public good. I conclude
11 that such a grant is in the public good because it brings the recognized benefits of
12 competition to additional areas of New Hampshire.

13 **Q. What authority does Comcast Phone seek in its application before the Hew**
14 **Hampshire PUC?**

15 A. I understand that Comcast Phone has filed for authority to provide local
16 exchange telecommunications services pursuant to RSA 374:22 in the service
17 territories of Kearsarge Telephone Company (KCT), Merrimack County
18 Telephone Company (MCT) and Wilton Telephone Company (WTC). All of
19 these companies are subsidiaries of TDS Telecom, which is owned by Telephone
20 and Data Systems Inc. In these service territories, Comcast Phone proposes to

1 offer the same services as in areas now served by FairPoint Communications.
2 There, it now offers a single-line, resold business Local Service. Comcast Phone
3 will also be offering high-speed T1 voice and data service to primary and
4 secondary schools, municipal libraries and other “e-rate” eligible institutions in
5 both the FairPoint and TDS service areas. These are the retail
6 telecommunications services that Comcast Phone relies on as a basis for seeking
7 certification in New Hampshire. In addition, although it does not rely on this
8 service in its application for certification as a retail service in New Hampshire,
9 Comcast Phone also provides its affiliate, Comcast IP Phone II, LLC (“Comcast
10 IP”), with two-way interconnection with the public switched telephone network
11 for the exchange of voice traffic, access to and administration of numbering
12 resources, local number portability, operator services, access to the 911 network,
13 and directory listing and directory assistance services. This wholesale “Local
14 Interconnection Service” is made available via the service guide posted on
15 Comcast’s website. The wholesale telecommunications services provided by
16 Comcast Phone enable Comcast IP to serve New Hampshire residential customers
17 with Comcast Digital Voice service, an interconnected voice over Internet
18 protocol (“VoIP”) service.

19 **Q. What is the standard that governs Comcast Phone’s application?**

20 A. My understanding is that in general the Commission has the authority to
21 authorize public utility service when it finds that the grant of authority is
22 consistent with the public good. More specifically, as explicated in RSA 374:22-

1 g, in determining the public good with respect to the grant of authority a
2 competing telecommunications provider in a service territory already served by a
3 telephone utility,

4 “ the commission shall consider the interests of competition with other
5 factors including, but not limited to fairness; economic efficiency;
6 universal service; carrier of last resort obligations; the incumbent utility’s
7 opportunity to realize a reasonable return on its investment; and the
8 recovery from competitive providers of expenses incurred by the
9 incumbent utility to benefit competitive providers, taking into account the
10 proportionate benefit or savings, if any, derived by the incumbent as a
11 result of incurring such expenses.”

12 I further understand that this provision now applies to competition in all areas of
13 the state, regardless of the size of the local exchange.

14 **Q. How do you propose to address the issue of public good in your testimony?**

15 A. First, I will address the benefits from removing entry barriers to
16 competition in telecommunications markets. Competition is the bedrock of our
17 economic system and is presumed to serve the public good, absent some serious
18 market failure. Competition in telecommunications is incorporated into public
19 policy New Hampshire. Second, I will discuss the effect of competition on the
20 incumbent local exchange company and whether Comcast Phone’s application
21 should trigger concern about universal service, carrier of last resort obligations,
22 and the incumbent utility’s opportunity to realize a reasonable return on its
23 investment. Third, I will discuss the mechanism by which the incumbent utility
24 will recover the expenses of providing service to Comcast Phone.

1 **Q. How does competition serve the public good?**

2 A. Competition is essential to the proper functioning of free markets. A free
3 market system solves the complex economic problems of determining what goods
4 and services should be produced, by which firms they should be produced, and
5 how they should be produced. In the absence of functioning free markets, there
6 would be no way for the U.S. economy to solve these problems short of
7 government ownership or control of the means of production.

8 Competition is the engine that drives the free market. It compels firms to
9 produce the goods that consumers demand and to produce them as efficiently as
10 possible. If an individual firm does not operate efficiently, or it attempts to
11 overprice its output, competition will compel that firm to change its production
12 process and its prices, or it will be forced to exit the market.

13 Competition will also encourage firms to innovate and create new services
14 and new technology that can better serve the market. This long-term benefit from
15 competition is particularly important in the telecommunications market.

16 The New Hampshire regulatory environment explicitly recognizes these
17 benefits of competition as a matter of policy. In adopting the standard for
18 competitive telecommunications entry quoted above, the New Hampshire
19 Legislature declared in 1995 N.H. Laws 147:1 that "Competitive markets
20 generally encourage greater efficiency, lower prices, and more consumer choice.
21 It is the policy of the state of New Hampshire to encourage competition for all

1 telecommunications services, including local exchange services, which will
2 promote lower prices, better service, and broader consumer choice for the
3 residents of New Hampshire.” In its Order No. 24,887 scheduling this hearing,
4 the Public Utilities Commission stated that “current CLEC registration rules
5 provide for an appropriate balance between the interests of incumbent
6 telecommunications providers and those of competitive entrants.” These
7 legislative and regulatory policies favoring rapid competitive entry embody the
8 economic principles that are so vital to the proper functioning of markets.

9 **Q. What role has competition played in telecommunications markets?**

10 A. Competition has largely replaced the old market structure of regulated
11 monopoly phone companies serving different franchise areas and markets. After
12 decades of questioning the wisdom of competitive entry, policymakers at the
13 Federal and State level have largely embraced the competitive model for virtually
14 all telecommunications markets. Competitive telecommunications markets have
15 brought enormous benefits to market in terms of greater efficiency, lower prices,
16 and dramatic technological innovations.

17 **Q. How has competition for residential and small business customers evolved in
18 local voice service markets?**

19 A. Following the enactment of The Telecommunications Act of 1996, several
20 companies, including large long distance carriers, began to offer voice service in
21 local residential markets using the unbundled network element platform

1 (“UNEP”). The UNEP-based services were very popular and reached over 17
2 million subscriber lines at the height of their success.¹ This mode of entry into
3 local voice markets, however, was closed off after adverse rulings by the Courts
4 and the FCC.²

5 Over the last few years, the cable companies have taken over the leading
6 competitive role in local voice markets. The cable companies have invested over
7 \$100 billion in the past ten years on their infrastructure,³ which is now capable of
8 providing high-speed Internet (and in most cases IP-voice service) to over 117.7
9 million housing units in the United States.⁴ Presently, the cable companies
10 provide voice service to over 15 million customers.⁵

11 **Q. How will the grant of Comcast’s application increase competition in the**
12 **relevant New Hampshire markets?**

13 A. Despite the general policy in New Hampshire of opening
14 telecommunications markets to competition, to date the telephone market in the
15 MTC, KTC, and WTC service areas has retained many of the elements of the old
16 model of regulated monopoly telephone companies, with the incumbents facing
17 limited competition from wireline voice providers. Competition in local voice

¹ Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2007*, March 2008, Table 4.

² Federal Communications Commission, *Order on Remand*, WCC Docket No. 04-314, December 15, 2004

³ National Cable & Telecommunications Association, <http://www.ncta.com/Statistic/Statistic/InfrastructureExpenditures.aspx> (date visited, September 3, 2008)

⁴ National Cable & Telecommunications Association, <http://www.ncta.com/Statistic/Statistic/CableBroadbandAvailability.aspx>, (date visited, September 3, 2008).

⁵ *Id.*

1 markets has been slow to develop in these areas because of regulatory and other
2 barriers to entry. The repeal by SB 386 signed into law July 7, 2008 of potential
3 statutory barriers in RSA 374:22-f now applies the same sound policies in the
4 MTC, KTC, and WTC service areas as in the rest of New Hampshire.

5 In turn, grant of Comcast Phone's application will extend the competitive
6 model to these additional areas of New Hampshire. Comcast Phone is seeking
7 CLEC certification for these service areas based on the offer of business local
8 service and schools and libraries network service as retail telecommunications
9 services. The entry of a highly-qualified and experienced carrier into the local
10 market to serve small businesses and schools and libraries is a very positive
11 development. The grant of Comcast Phone's application not only would
12 introduce competition for businesses and schools and libraries but also would
13 enable competition in additional markets, since once authorized as a CLEC,
14 Comcast Phone could introduce other forms of local exchange service, exchange
15 access, or interexchange services. From an economic standpoint, if the
16 authorization of Comcast Phone's application for CLEC certification reduces
17 entry barriers affecting Comcast IP's participation in the market, then it will
18 contribute to the public good.

19 **Q. Could you elaborate and the potential benefits from cable-voice competition?**

20 A. Yes. I recently conducted a study estimating consumer benefits from
21 cable voice competition, and found the potential benefits to be in excess of \$100

1 billion over a five year period.⁶ The continuing success of cable voice
2 competition in the marketplace and the vigorous price and service competition are
3 evidence that the predictions found in the study are very likely to be realized.
4 These benefits can accrue to consumers in any market, including the New
5 Hampshire territories served by KCT, MCT and WTC.

6 Another major development in the residential market is the popularity of
7 service bundles, especially the “triple play” of voice, data, and video service.
8 Comcast offers a triple play service in most of its operating territory nationwide,
9 including in other franchise areas in New Hampshire. Insofar as granting the
10 instant application ultimately would facilitate Comcast’s ability to offer the triple
11 play in the service territories of KCT, MCT, and WTC through Comcast IP, it will
12 enable competition for bundles with the three TDS Companies, which apparently
13 offer the triple play already to their customers.⁷

14 TDS has emphasized the importance of the triple play to their own
15 business plan, which lists “aggressively market Triple Play service bundles to new
16 and existing customers” as one of the five TDS Telecom Objectives for 2008.⁸
17 This continues the strategy that TDS pursued in 2007, during which it
18 “aggressively marketed its Triple Play bundles of voice, high-speed data, and
19 DISH Network™ television services to gain new revenue-generating units, to

⁶ MiCRA, “Consumer Benefits from Cable-Telco Competition,” November 2007.
http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf

⁷ <http://www.tdstelecom.com/Residential/NH>

⁸ Telephone and Data Systems, Inc., “Notice of Meeting and Proxy Statement for 2008 Annual Meeting of Shareholders and 2007 Annual Report,” April 15, 2008, at v.

1 retain existing customers by reducing churn, and to make its service offerings
2 more attractive to customers who might otherwise choose services from cable
3 companies.”⁹ While it is beneficial to the public good to encourage TDS to offer
4 new and innovative bundles of service, these benefits will be limited unless
5 competition from other players, such as Comcast, is also permitted.

6 **Q. What is the likely impact of competition in local telecommunications markets**
7 **on an incumbent?**

8 A. Competition presents a challenge to the firm or firms already in a market.
9 An inefficient incumbent has much to fear from competition, because it will be
10 unable to maintain a price level that allows it recover its excessive level of costs.
11 Similarly, even an efficient incumbent that sets its prices in excess of economic
12 costs will lose its ability to earn monopoly profits once competition takes hold.
13 While harmful to the interests of the individual firm in either of these cases,
14 competition will benefit consumers, by driving down prices to economic costs.

15 On the other hand, an efficient, well-managed market incumbent should be
16 able to respond to competitors and still recover a reasonable return on past and
17 future investment. Competitors cannot, and will not, price below their own long-
18 run costs and therefore they will not drive prices below the costs of an equally or
19 more efficient incumbent.

⁹ *Id.* at iv.

1 **Q. How will Comcast Phone's entry into the market affect the TDS companies'**
2 **ability to continue to offer universal service and serve as the carrier of last**
3 **resort in their service territories?**

4 A. There is no reason to believe that the TDS Companies cannot continue to
5 serve basic local telephone customers and serve as the carrier of last resort, upon
6 Comcast Phone's entry into the market. The TDS Companies' corporate parent,
7 Telephone and Data Systems, Inc., announced it was ranked on the Fortune 500
8 list this year.¹⁰ The TDS Companies have already acknowledged their ability to
9 serve as the provider of last resort and to preserve universal access to affordable
10 basic service even in the presence of what it characterizes as "competitive
11 wireline, wireless or broadband service available to a majority of the retail
12 customers in each of the exchanges" served by Merrimack County, Kearsarge,
13 Wilton, and Hollis Telephone Companies. Further, as recognized in the testimony
14 of Mr. Michael Reed, Manager of State Government Affairs at TDS, "what is
15 even more important is that significant competition exists at this very moment,
16 and will increase tomorrow."¹¹ Clearly, the TDS Companies have already had to
17 come to grips with the advent of competition and do not foresee a problem in
18 meeting their historic provider of last resort responsibilities.

¹⁰ Press Release, "TDS Climbs Fortune 500,"
http://www.tdstelecom.com/absolutenews/templates/news_template.asp?articleid=522&zoneid=5%20
(April 29, 2008)

¹¹ Kearsarge Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc. and Merrimack County Telephone Company Petition for an Alternate Form of Regulation, DT 07-027, Direct Testimony of Michael C. Reed, at 10 (filed March 1, 2007).

1 Moreover, the three TDS Companies will continue to receive Federal high
 2 costs support to offset the embedded cost of their local switching and common
 3 line plant. In 2007, the three companies received \$2.4 million in Federal high-
 4 cost support.¹² The composition of the high-cost support payments made in the
 5 last five years to these companies is shown in the table below.

Amounts in US \$

Keasarge Telephone Company

| ID # 120045 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--|---------|-----------|---------|-----------|---------|-----------|
| Interstate Common Line Support Trued-up Payments by Study Area | 48,263 | 144,404 | 233,150 | 393,590 | 413,436 | 366,522 |
| Local Switching Support Trued-up Payments by Study Area | 568,432 | 560,844 | 536,626 | 561,924 | 380,124 | 639,096 |
| Total High-Cost Support Payments by Study Area | 994,233 | 1,153,084 | 958,710 | 1,100,450 | 793,560 | 1,005,618 |

Merrimack County Telephone Company

| ID # 120047 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--|-----------|---------|---------|---------|---------|---------|
| Interstate Common Line Support Trued-up Payments by Study Area | 142,701 | 0 | 3,392 | 280,172 | 181,524 | 359,820 |
| Local Switching Support Trued-up Payments by Study Area | 943,765 | 563,172 | 662,704 | 699,312 | 437,556 | 585,024 |
| Total High-Cost Support Payments by Study Area | 1,605,400 | 976,440 | 921,054 | 977,708 | 619,080 | 944,844 |

Wilton Telephone Company - New Hampshire

| ID # 120050 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--|---------|---------|---------|---------|---------|---------|
| Interstate Common Line Support Trued-up Payments by Study Area | 22,033 | 67,085 | 70,414 | 97,188 | 79,044 | 126,966 |
| Local Switching Support Trued-up Payments by Study Area | 330,193 | 262,692 | 256,418 | 251,652 | 121,764 | 298,176 |
| Total High-Cost Support Payments by Study Area | 352,226 | 329,777 | 326,832 | 348,840 | 233,112 | 457,446 |

Sources:

FCC, Universal Service Monitoring
 Report, CC Docket No. 98-202, 2007,
 Tables 3.27, 3.29, 3.30

6

¹² FCC, *Universal Service Monitoring Report*, CC Docket No. 98-202, 2007, Table 3.30, at 3-134.

1 **Q. How will the incumbent local exchange companies recover the expenses**
2 **incurred to serve a new entrant, such as Comcast Phone?**

3 A. The expenses incurred by the incumbents to serve Comcast Phone can be
4 expected to be limited to the costs of providing interconnection. Interconnection
5 consists of the physical exchange of traffic from one carrier to another.
6 According to the provisions of the 1996 Telecommunications Act, the incumbents
7 must terminate calls to their own customers that originate on a competitor's
8 network. The cost of terminating this traffic consists of the incremental cost of
9 interoffice transport and local switch terminating usage. The TDS Companies are
10 entitled under the Act to recover the forward looking economic costs of transport
11 and termination that they provide to the interconnecting CLEC.¹³ Similarly, the
12 competitive carrier is entitled to recover its own costs of terminating traffic
13 originating on the TDS Companies' network. The cost-based interconnection fees
14 must be set by a negotiated agreement among the parties. If the parties fail to
15 reach agreement, the Commission must arbitrate to set these rates. In addition to
16 compensation for traffic exchange, any carrier that provides facilities to another
17 carrier to enable direct interconnection – comparable to the ILEC special access
18 facilities – would be able to charge for use of those facilities.

19 **Q. What precedent is there for an agreement on the terms and conditions of**
20 **interconnection?**

¹³ 47 CFR §51.505

1 A. Comcast Phone of Vermont and the TDS Telecom companies in Vermont
2 evidently have reached an interconnection agreement, which was approved by the
3 Public Service Board of the State of Vermont on August 20, 2008. This
4 agreement can serve as a template for an agreement between Comcast Phone and
5 the TDS Telecom Companies in New Hampshire, and is already doing so in the
6 negotiations currently underway between the companies.¹⁴

7 **Q. Are there any other issues that you would recommend the Commission**
8 **should consider in this case?**

9 A. No. In my opinion, the authorization of a fully qualified
10 telecommunications company into a new market should be a routine matter. The
11 laws of New Hampshire allow for competition and indeed competition has
12 already come to many of the markets served by the TDS Companies. There is no
13 reason to delay any longer the entry of a new and vigorous competition into these
14 markets.

15 **Q. Does this conclude your testimony?**

16 A. Yes.

¹⁴ One option that is being considered in these negotiations is to use a “bill and keep” regime for interconnection. This regime provides many benefits to the market and is allowed under FCC rules.