

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 10-239

COMCAST OF MAINE/NEW HAMPSHIRE, INC. et al.

RESPONSE TO ORDER NO. 25, 175

AND MOTION FOR ENLARGEMENT OF TIME

Comcast of Maine/New Hampshire, Inc. (and its affiliates, Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, Comcast of Massachusetts/New Hampshire, LLC and Comcast of New Hampshire, Inc.) (“Comcast”), the franchised cable entities that own the cable network and facilities located in approximately 100 cities and towns within the State of New Hampshire, hereby respond to Order No. 25, 175 of the New Hampshire Public Utilities Commission (“the Commission”) issued November 30, 2010 in the above- referenced proceeding (“the Order”) and seek an Enlargement of the July 1, 2011 deadline contained in the Order. In support of this pleading, Comcast states as follows:

1. The Order directed Comcast of Maine/New Hampshire, Inc. to review all of its existing water crossings in New Hampshire to determine whether each crossing requires a license pursuant to RSA 371:17. In addition, the Order directed that “to the extent unlicensed crossings of public waters are discovered, Comcast is expected to comply with RSA 371:17 no later than July 1, 2011.”

2. As a preliminary matter, Comcast notes that it has been working diligently with the Commission Staff to identify and review all water crossings in New Hampshire as directed by

the Order. Comcast Senior Operations and Construction Manager, Glenn Fiore, has been working directly with Commission Staff Attorney Fabrizio on this matter. Approximately one month after the Order was issued, Commission Staff provided Comcast with a list of waterways in a usable format against which Comcast could review its own water crossing information. Since that time, Comcast has undertaken comprehensive record reviews, conducted Geographic Information System (“GIS”) map surveys and numerous site visits to determine the location, status and inventory of Comcast facilities that cross over New Hampshire waterways. This review has taken many months and has been ongoing since the Commission’s November 2010 Order.

3. As a result of this comprehensive review, Comcast has determined that its records include very few water crossing licenses. It is important to note that Comcast’s current foot print in New Hampshire was created by predecessor companies (Continental Cablevision, MediaOne and AT&T Broadband) and as a result of the acquisition of numerous unrelated cable companies over time, including but not limited to Adelphia, Colony Communications, Harron Communications, Mountain Cable, American Cablesystems, Community TV Corporation, Time Warner Cable and others. It is also important to note that the bulk of Comcast’s New Hampshire cable network was constructed over thirty to forty years ago by these predecessors. Thus, it is not clear at this time whether or when petitions for licenses relative to these facilities were filed with the Commission under RSA 371:17. For this reason, Comcast was prompted to undertake additional review of the statutory requirements and overall legal implications of RSA 371:17 in light of Comcast’s rights and obligations as a cable provider with authority to occupy rights of way pursuant to a well-defined federal, state and municipal cable franchising framework.

4. As indicated above, Comcast's (and its predecessors') cable systems in New Hampshire were built many years ago pursuant to an existing framework of federal law, which established a system of franchising for cable systems. All of Comcast's facilities in New Hampshire public ways are constructed, owned and maintained pursuant to its franchise agreements with municipalities. Federal law clearly establishes authority for franchised cable operators to occupy public rights of way and easements dedicated for compatible uses, and to deploy cable plant using existing utility poles, conduit and rights of way. *See* 47 U.S.C. § 541(a)¹; 47 U.S.C. § 224.² State or local requirements that are inconsistent with this federal regime are preempted.³

5. New Hampshire law authorizes municipalities to award cable television franchises. *See* N.H. RSA 53-C:3. Such municipal franchising authority includes the authority to construct or operate a cable system. *See* RSA 53-C:1, III. In 1974, all existing licenses, permits and other authorizations for a cable system in operation as of April 2, 1974 were deemed to be a franchise. *See* RSA 53-C:5.

¹ Specifically, Section 621 of the Cable Act, 47 U.S.C. § 541, provides for a system of local franchising. Under the statute, a "franchise" is "an initial authorization, or renewal thereof," issued by a franchising authority to construct or operate a cable system. 47 U.S.C. § 522(9). Section 621(a)(2) provides that cable franchises "shall be construed to authorize construction of a cable system over public rights-of-way, and through easements, which is [sic] within the area to be served by the cable system and which have been dedicated for compatible uses."

² Section 224 of the Cable Act establishes a legal framework for cable operators' use of existing utility poles, conduits and rights of way. Section 224(f) requires electric and telephone utilities give telecommunications carriers access to "any pole, duct, conduit, or right-of-way owned or controlled" by them. Until recently, pole attachments in New Hampshire were governed by federal laws, which dictated the rates, terms and conditions of attachment. The State of New Hampshire certified to regulate poles in 2010 and now the rates, terms and conditions of pole attachments are governed by state laws. *See* RSA 374:34-a; PUC Rules 1300 et seq. PUC rules include a similar obligation of non-discriminatory access to utility poles, ducts and rights of way. *See* PUC Rule 1303.01.

³ *See Office of Consumer Counsel and New England Cable and Telecommunications Association, Inc. v. Southern New England Telephone Company d/b/a AT&T Connecticut, Inc. and Department of Public Utility Control of the State of Connecticut*, 514 F. Supp. 2d 345 (D. Conn. 2007); *Qwest Broadband Services, Inc. v. City of Boulder*, 151 F. Supp. 2d 1236 (D. Colo. 2001) (finding statutory scheme that placed franchise approval process in hands of voting electorate to be preempted, and recognizing that "in establishing regulatory guidelines, Congress was concerned both with relieving the cable industry from unnecessary, burdensome regulation, and with ensuring that cable systems remained responsive to the needs of the public.")

6. Cable system plant in New Hampshire was largely built using existing pole infrastructure and the large majority of Comcast's water crossings are constructed aerially using existing poles owned by New Hampshire public utilities. Comcast has license agreements with utility pole owners that govern all of its pole attachments in New Hampshire, requiring all facilities to be built in compliance with specifications of the latest editions of the Bellcore Bluebook of Construction Practices, the National Electric Safety Code (NESC) and the National Electric Code (NEC). Upon information and belief, all of the utilities with whom Comcast has license agreements have been authorized by the Commission for their water crossings. In these circumstances, Comcast believes that all of its water crossings using the poles of New Hampshire public utilities comply with RSA 371:17.

7. In addition to its pole attachment agreements, Comcast holds franchises to serve all of the New Hampshire communities in which it has cable system facilities and in which its water crossings are located. Comcast's franchises in New Hampshire generally authorize Comcast to construct, operate and maintain facilities in "Public Ways," which are defined as public waterways, bridges and public waters located within the franchise area. Accordingly, Comcast believes that these franchises and pole attachment agreements provide the requisite authority to cross public waterways.

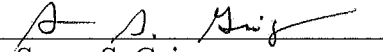
8. Although, for the reasons cited above, Comcast believes that no additional permission for its facilities is required under RSA 371:17, Comcast recognizes that the Order raises complex and multi-jurisdictional legal and practical issues, and therefore seeks an Enlargement of Time of the Order's July 1, 2011 deadline (i.e. until January 6, 2012) so that it can explore the legal applicability of RSA 371:17 with Commission Staff, and to identify whether there are any

situations where license applications under RSA 371:17 may be appropriate. Comcast desires to resolve this matter without all parties, including the Commission Staff, expending a substantial amount of time and resources to comply with a process that is likely inapplicable to the majority of Comcast's cable facilities.

WHEREFORE, Comcast respectfully requests that the Commission extend the July 1, 2011 deadline until January 6, 2012 so that Comcast and Commission Staff can explore the issues described above and whether or to what extent Comcast is required to make any filings under RSA 371:17 for its existing cable facilities.

Respectfully submitted,

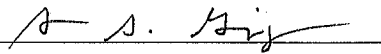
Comcast of Maine/New Hampshire, Inc.
et al.
By their attorneys,
ORR & RENO, P.A.

By: 
Susan S. Geiger
One Eagle Square
Concord, NH 03301
603-223-9154
sgeiger@orr-reno.com

Dated: July 1, 2011

Certificate of Service

I hereby certify that a copy of the foregoing pleading has on this 1st day of July, 2011 been either sent by electronic mail or first class mail, postage prepaid, to persons listed on the Service List.


Susan S. Geiger