

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for Arbitration of
an Interconnection Agreement Between
COMCAST PHONE OF WASHINGTON,
LLC, and LEWIS RIVER TELEPHONE
COMPANY, D/B/A TDS TELECOM
Pursuant to 47 U.S.C. Section 252

DOCKET NO. UT-083055

**REPLY BRIEF OF
LEWIS RIVER TELEPHONE COMPANY D/B/A TDS TELECOM**

MAY 28, 2009

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OPENING STATEMENT

1. Lewis River Telephone Company d/b/a TDS Telecom (“TDS”) hereby files its Reply Brief to the brief filed by Comcast Phone of Washington, LLC (“Comcast Phone”). First and foremost, TDS requests that the Commission keep in mind three fundamental points as it considers the issues in this Docket.

Point 1: Comcast Phone must establish through the facts in this case that it is a common carrier for purposes of interconnection with TDS in Washington.

Point 2: A carrier can be a common carrier for some purposes and not for others.

Point 3: Even a common carrier is not entitled to interconnection with another carrier if the only traffic it will be delivering to that other carrier is information service traffic.

2. Comcast Phone cannot demonstrate on the facts in this case that Comcast Phone is a common carrier for purpose of interconnection with TDS in Washington. When properly analyzed, the LIS service offered by Comcast Phone is a private or contract carriage service tailored in such a way that only a Comcast Phone affiliate would enter into a contract with Comcast Phone for that service.

3. The Schools and Libraries service offered by Comcast Phone, when reviewed in proper context, is also a private or contract carriage service. Further, it is primarily offered for a school or library’s internal communications, not communications on the public switched telecommunications network (“PSTN”). There is no evidence in the record that Comcast Phone is offering this service in the State of Washington. There is no evidence in the record that the Schools and Libraries service will generate any traffic at all, let alone telecommunications traffic that will be exchanged with TDS. The only evidence of any offer is the mere posting of the terms and conditions of the Schools and Libraries service to the Comcast Phone web site. There is no

evidence of any solicitation, any holding out, any offer of any kind in the State of Washington.

The only fact in the record is that Comcast Phone has no customers for this service.¹

4. The Access Service from Comcast Phone is offered only in the terminating direction.² It is offered only to reach an information service provider, Comcast IP. Even if this can be construed to be common carriage, it is not offered in relationship to the interconnection with TDS and thus does not qualify Comcast Phone for interconnection with TDS. This service only has a relationship to Comcast IP in the terminating direction and has nothing to do with local interconnection traffic between Comcast IP and TDS. Thus, even if Comcast Phone is a common carrier for this purpose, it is not a common carrier for the purpose of interconnection with TDS in the State of Washington.

5. Finally, it is absolutely a fact in this case that the only traffic that Comcast Phone will be delivering to TDS is traffic which Comcast Phone asserts is information service traffic.³ Comcast Phone cannot claim a right to enter into an interconnection agreement with TDS when the only traffic Comcast Phone will deliver to TDS is traffic that Comcast Phone classifies as information service traffic.⁴

SUMMARY OF COMCAST PHONE'S ARGUMENTS

6. Comcast Phone's arguments in its Initial Brief fall into four categories. The first category is that other jurisdictions considering situations that Comcast Phone alleges to be similar in nature to that in this Docket have decided in favor of Comcast Phone or the alleged similarly situated carrier (the "everybody else is doing it" argument). The second category is that Comcast Phone has a certificate from this Commission and Comcast Phone is "choosing" to be a common carrier,

¹ Stipulated Fact 10.

² Comcast Phone Initial Brief at p. 9-10, ¶ 16; Stipulated Facts 2 and 6.

³ TR 57, l. 11-15 and TR 75, l. 16-18.

⁴ 47 C.F.R. § 51.100(b).

therefore it is a common carrier (the “just because” argument). The third category of argument presented by Comcast Phone is that the services it offers in Washington qualify Comcast Phone as a common carrier (the “common carrier” argument). Finally, Comcast Phone argues that it should be granted common carrier status for purposes of interconnection with TDS to enhance competition, even if there are doubts about Comcast Phone’s status (the “feel good” argument). TDS will reply to each of these arguments, beginning with Comcast Phone’s argument that if other state commissions are doing it, this Commission should too.

REPLY ARGUMENTS

A. Comcast Phone’s Reliance on Decisions from Other Jurisdictions is Misplaced.

7. As to Comcast Phone’s argument that “everyone else is doing it,” the parental response is, “And, if everyone else was jumping off a cliff, we should too?” The legal response to Comcast Phone’s argument is that the Commission must make its decision based upon the record in this Docket, not based upon the record that was before another state commission or the FCC.

8. The issue in this Docket is whether Comcast Phone has demonstrated that it is a common carrier for interconnection with TDS in the State of Washington. It is not whether Comcast Phone qualifies for interconnection with a TDS affiliate in another state. As we have discussed in detail and will discuss further below, Comcast Phone has failed to make the requisite showing.

9. Importantly, many of the cases cited by Comcast Phone can be distinguished on their face. Many of the cases referenced by Comcast Phone involve offerings by Sprint Communications Co., LP (“Sprint”). What is evident about the Sprint decisions is that Sprint was clearly offering service to an independent, third party cable provider who was serving end users.⁵ This is also true

⁵ There is one case involving MCI that falls into the same category. Re The Champaign Tel. Co., Case No. 04-1494-TP-UNC, et al. (Ohio PUC, April 13, 2005).

for the Sprint agreement in Washington with Whidbey Telecom cited by Comcast Phone.⁶ Indeed, from those cases in other states and the Sprint case in Washington it is clear that Sprint provides service to multiple cable companies. In contrast, in this Docket it is evident Comcast Phone is serving only what appears to be an artificially segmented affiliate under terms where only that affiliate would be the purchaser of the services offered by Comcast Phone. Thus, any decision involving Sprint and whether it was acting as a common carrier cannot be precedent for the facts presented in this Docket.

10. A recent case in the Eighth Circuit is in the same vein.⁷ In that case, the Eighth Circuit identified that the issue of whether an entity is a common carrier focuses on whether the entity undertakes to carry for all people indifferently and offers indiscriminate services to whatever public its service may legally and practically be of use.⁸ It is important to note that in the Eighth Circuit case, the ILEC agreed that Sprint was serving multiple providers, but alleged that since the contracts were confidential and had varying terms, Sprint was not a common carrier. Not surprisingly, under those circumstances, the Eighth Circuit held that the fact that contracts were confidential and varied among recipients did not disqualify an entity from common carriage. The Eighth Circuit also pointed to the Bright House analysis of the three factors to look at whether or not an entity is a common carrier. The Eighth Circuit found that none of the three factors by itself seems compelling.⁹ These three factors include: 1) holding out; 2) self-certification; and 3) entrance into interconnection agreements with the local exchange carrier.¹⁰ The Eighth Circuit case is not remarkable given that Sprint did provide service to multiple carriers and had

⁶ In the Matter of the Petition for Arbitration of an Interconnection Agreement Between Sprint Communications Company L.P. with Whidbey Telephone Company Pursuant to 47 U.S.C. Section 252(b), Docket No. UT-073031, Order 04 (2008).

⁷ Iowa Telecom. Services v. Iowa Utilities Board, Cause No. 08-2140, Slip Opinion (April 28, 2009).

⁸ Slip Opinion at p. 5.

⁹ Slip Opinion at p. 10.

¹⁰ Slip Opinion at p. 9-10.

interconnection agreements, unlike Comcast Phone in this docket. This is certainly not a case which can support the concept that self-certification standing on its own is the end of the inquiry.

11. Comcast Phone cites to recent decisions by the Michigan Commission¹¹ and the Vermont Board¹² in its favor.¹³ Comcast Phone makes the unsupported statement that “The circumstances in that case [Michigan] were identical to those presented here.”¹⁴ As with many other loose assertions of what is fact made by Comcast Phone, this “fact” is not established in this record. Comcast Phone must rely on the record it has developed for this Docket, not facts that are outside the boundaries of the record in this Docket.

12. Further, as asserted by Comcast Phone, the key to the Michigan case is that, “The Michigan Commission has ruled that all the Comcast Phone entity needs is the proper authority from the Commission.”¹⁵ This is the Comcast Phone “just because” argument. As TDS will discuss when it addresses this argument, holding that a carrier is a common carrier for Section 251 purposes just because a state certificate has been issued is to reach an erroneous conclusion. All this demonstrates is that the Michigan Commission was incorrect.

13. In any event, the Michigan Decision is not a rousing endorsement of Comcast Phone’s status as a telecommunications carrier. The arbitrator found that Comcast Phone’s Michigan counterpart was “at least technically” a telecommunications carrier.¹⁶ The arbitrator relied, in

¹¹ In the Matter of the Petition of Communications Corporation of Michigan, d/b/a TDS Telecom, for Sections 251/252 arbitration of interconnection rates, terms and conditions with Comcast Phone of Michigan, d/b/a Comcast Digital Phone, Order, Case No. U-15725, U-15730 (Mich. PSC, March 5, 2009) (“Michigan Decision”), aff’d In the Matter of the Petition of Communications Corporation of Michigan, d/b/a TDS Telecom, for Sections 251/252 arbitration of interconnection rates, terms and conditions with Comcast Phone of Michigan, d/b/a Comcast Digital Phone, Decision of the Arbitrator, Case No. U-15725, U-15730 (Mich. PSC, Jan. 28, 2009).

¹² Petitions of Vermont Telephone Company, Inc. and Comcast Phone of Vermont, LLC d/b/a Comcast Digital Phone, for Arbitration of an Interconnection Agreement Between VTel and Comcast, Pursuant to Section 252 of the Telecommunications Act of 1996, and Applicable State Laws, Final Order, Docket No. 7469 (Vt. PSB, Feb. 2, 2009) (“Vermont Decision”).

¹³ Comcast Phone Initial Brief beginning at p. 10.

¹⁴ Comcast Phone Initial Brief at p. 10, ¶ 18.

¹⁵ Comcast Phone Initial Brief at p. 11, ¶ 18.

¹⁶ Michigan Decision at p. 20.

part, on a “private letter ruling” that “specifically ruled that ‘Comcast’s VoIP service is a telecommunications service...’”¹⁷ However, that document was by no means a “private letter ruling.” It was a letter from the FCC to Comcast Corporation requesting information pertinent to the FCC’s inquiry into Comcast Corporation’s network management practices.¹⁸ The letter suggested, but certainly did not “specifically rule[,]” that Comcast Corporation’s VoIP service might be a telecommunications service. Interestingly, if the VoIP service is a telecommunications service then Comcast IP is a telecommunications carrier. This “private letter ruling” has little to do with Comcast Phone’s wholesale service and underscores the confusion in the Michigan Decision.

14. Comcast Phone makes a very similar argument concerning the Vermont Public Utility Board.¹⁹ For the same reason, the Vermont Public Utility Board decision relying on the “just because” theory is in error. In addition, it is not at all clear that the Vermont Public Utility Board decision is final. While the arbitrator in Vermont relied on Bright House, incorrectly, the arbitrator recognized the weakness of the conclusion, stating there was “little basis for determining whether an offer by Comcast Phone to another party provides unjustly discriminatory service or whether Comcast Phone held itself out ‘indifferently to all potential users.’”²⁰ As a result, a condition that Vermont imposed upon Comcast Phone is public disclosure of all of the terms of the relationship between Comcast Phone²¹ and Comcast IP. Vermont Telephone, the ILEC in the case, has filed two Motions pointing out the deficiencies in Comcast Phone’s Vermont filing. The Vermont Board has recently issued an order directing a further investigation

¹⁷ Michigan Decision at p. 21, n. 6.

¹⁸ Letter to Kathryn A. Zachem, Vice President, Regulatory Affairs, Comcast Corporation, File No. EB-08-IH-1518; 2009 WL 151663 (January 18, 2009).

¹⁹ Comcast Phone Initial Brief at p. 11-12, ¶ 19-20.

²⁰ Vermont Decision at p. 17.

²¹ In this reference, “Comcast Phone” refers to a Comcast entity operating in the State of Vermont. Comcast Phone of Washington is not the same entity that is before the Vermont Board.

of Comcast's operations. A copy of the Motions and the Order are attached as Attachment 1. Nor does it appear that this issue is as cut and dried across all states as Comcast Phone asserts. A copy of the recent New Hampshire Order opening an inquiry into VoIP issues is attached as Attachment 2.

15. In any event, this Commission must decide this Docket on the facts before it as they apply to the State of Washington. The "everyone else is doing it" argument does not carry the day. In this Docket, Comcast Phone has failed to establish that it is a common carrier for purposes of interconnection with TDS.

B. Issuance of a Certificate to Comcast Phone by This Commission and Comcast Phone's Self-Certification That it is a Common Carrier are Insufficient to Establish Comcast Phone as a Common Carrier for Purposes of Interconnection with TDS.

16. Comcast Phone argues that because it has been issued a certificate by the Washington Commission, it is a common carrier in the State of Washington.²² Comcast Phone further argues that it is a common carrier because it "has chosen to be one."²³ This is the "just because" argument and is unavailing.

17. Comcast Phone argues that in Bright House,²⁴ the FCC held that because the entities in that case had received state certificates, they were common carriers. Comcast Phone further argues that the Michigan and Vermont Commissions relied upon Bright House to conclude that the only thing that is needed to be a common carrier is a state certificate.²⁵

18. Comcast Phone's reliance on Bright House is incorrect because it is incomplete. While the FCC did point to one of the factors as being the issuance of state certifications, that was not

²² Comcast Phone Initial Brief at p. 4, ¶ 9.

²³ Comcast Phone Initial Brief at p. 8, ¶ 13.

²⁴ In re Bright House Networks, LLC et al. v. Verizon California, Inc., EB-08-MD-002, Memorandum Opinion and Order, FCC 08-159 (Released June 23, 2008); affirmed as Verizon v. FCC, Docket No. 08-1274 (D.C. Cir. Feb. 10, 2009) ("Bright House").

²⁵ Comcast Phone Initial Brief beginning at p. 10.

the only proof of common carriage that the FCC relied upon. The FCC also relied on the fact that there were interconnection agreements in place between the VoIP providers and Verizon. The FCC relied on this combination to hold that a prima facie case of common carriage existed for Section 222 (not Section 251) purposes.²⁶ Indeed, the precise language of the FCC order is as follows: “These facts, in combination, establish a prima facie case that [VoIP providers] are indeed telecommunications carriers for purposes of Section 222(b)” (emphasis added).²⁷ At most, Comcast Phone has half a loaf in Washington and, as will be demonstrated, not even that.

19. Further, and most importantly, the FCC’s decision in Bright House clearly deferred the question of whether the entities providing service to VoIP providers could be considered to be common carriers for purposes of interconnection. The issue in Bright House was the extent to which one carrier may use the proprietary information (or CPNI) of another carrier without running afoul of Section 222 restrictions on use of CPNI. The FCC did not decide if a carrier was a common carrier for Section 251 purposes. The FCC made it very clear that Bright House has limited applicability:

We stress, however, that our holding is limited to the particular facts and the particular statutory provision at issue in this case...Here, section 222(b) has a different purpose – privacy protection – than many other provisions of the Communications Act, and we believe that this purpose argues for a broad reading of the provision. As a result, our decision holding the Competitive Carriers to be ‘telecommunications carriers’ for purposes of section 222(b) does not mean they are necessarily ‘telecommunications carriers’ for purposes of all other provisions of the Act. We leave those determinations for another day.²⁸ (Emphasis added and citations omitted.)

In Bright House, the FCC decided that the carriers were telecommunications carriers for purposes of use of CPNI under Section 222 of the Act. They did not decide Section 251 issues. This is

²⁶ Bright House at ¶ 39.

²⁷ Ibid.

²⁸ Bright House at ¶ 41.

clearly a case where a carrier can be a common carrier for one purpose, but not a common carrier for another.²⁹

20. Bright House may not be read for establishing the principle that anyone who provides wholesale service to a VoIP provider is a common carrier for purposes of Section 251 interconnection. That is not what Bright House is about in any respect. To the extent that the Michigan and Vermont Commissions relied on Bright House for Section 251 purposes, they were in error. The error is compounded to the extent Michigan and Vermont looked to the issuance of a state certificate by itself as establishing common carriage. That is not what the FCC did in Bright House.

21. In addition, the value of Comcast Phone's Washington certificate in establishing it is a common carrier is very much in doubt when compared to Bright House because of the actions of Comcast Phone. Comcast Phone represented to the FCC that it would be discontinuing "its provision of telecommunications service in Washington on or after November 28, 2007...."³⁰ As further stated by Comcast Phone in the same 214 filing, it was seeking authority to discontinue "local exchange and interexchange telephone service."³¹ Comcast Phone may hold a certificate issued by this Commission. However, Comcast Phone has made public representations that it no longer offers local exchange and interexchange telephone service in Washington. Those public representations were relied upon by the FCC and this Commission to allow Comcast Phone to discontinue service. There is little value to Comcast Phone's Washington certificate except to act as a smokescreen and, perhaps, it should be revoked.

²⁹ Nat'l Ass'n of Regulatory Util. Comm'r v. FCC, 533 F.2d 601, 608 (D.C. Cir. 716).

³⁰ Comcast Phone's Section 214 filing at the FCC attached to Comcast Phone's response to Bench Request 4 in this docket.

³¹ Comcast Phone's Section 214 filing at ¶ 4, attached to Comcast Phone's response to Bench Request 4 in this docket.

22. The other part of Comcast Phone's "just because" argument is that Comcast Phone is a common carrier because "it has chosen to be one."³² The concept of "choosing" or self-certifying is clearly an ineffective means to be classified as a common carrier. Self-certification was one of three factors cited in Bright House, not the determining factor. The recent Eighth Circuit decision cited at footnote 7 is in accord. Self-certification, by itself, is insufficient. An entity is a common carrier by virtue of what it does, rather than what it declares itself to be. This is the decision reached by the Court of Appeals in NARUC I.³³

23. The concept that actions speak louder than words is carried forward in the Southwestern Bell case.³⁴ In that case, the court stated as follows:

Whether an entity in a given case is to be considered a common carrier or a private carrier turns on the particular practice under surveillance. If the carrier chooses its clients on an individual basis and determines in each particular case 'whether and on what terms to serve' and there is no specific regulatory compulsion to serve all indifferently, the entity is a private carrier for that particular service and the Commission is not at liberty to subject the entity to regulation as a common carrier.³⁵

Self-certification does not result in classification as a common carrier. Both portions of Comcast Phone's "just because" argument fail.

C. Comcast Phone has Failed to Demonstrate that it Operates as a Common Carrier in the State of Washington for Purposes of Interconnection with TDS.

24. Comcast Phone and TDS take similar approaches to laying out the requirements of the law as they relate to establishing common carriage. TDS and Comcast Phone agree that in "order to meet this test the carrier must hold itself out to serve all potential users of its service indiscriminately and must allow customers to transmit information of their choosing."³⁶ Further,

³² Comcast Phone Initial Brief at p. 8, ¶ 13.

³³ Nat'l Ass'n of Regulatory Util. Comm'r v. FCC, 525 F.2d 630, 644 (D.C. Cir. 1976).

³⁴ Southwestern Bell Tel. Co. v. FCC, 19 F.3d 1475, 1481 (D.C. Cir. 1994).

³⁵ Southwestern Bell at 4181, citing NARUC 1 and NARUC 2.

³⁶ Comcast Phone Initial Brief at p. 6, ¶ 11.

TDS and Comcast Phone agree that a carrier must not make individualized decisions in particular cases about who and who not to serve.³⁷ Although TDS and Comcast Phone are in general agreement about the test to be applied, TDS and Comcast Phone argue for different conclusions.

25. Comcast Phone argues that it is a local exchange carrier, which it defines as a “telecommunications carrier that offers either ‘exchange access or telephone exchange services.’”³⁸ Comcast Phone goes on to argue that it provides “telephone exchange service.” However, Comcast Phone represented to the FCC that it would be discontinuing “its provision of telecommunications service in Washington on or after November 28, 2007....”³⁹ As further stated by Comcast Phone in the same 214 filing, it was seeking authority to discontinue “local exchange and interexchange telephone service.”⁴⁰ Thus, how can Comcast Phone convincingly assert that it offers exchange access (an interexchange service) or telephone exchange service when it asked for and was granted permission to discontinue those services in the State of Washington? It can not.

26. Comcast Phone also argues that the provision of telephone exchange service is the ability to make and receive local calls.⁴¹ Since Comcast Phone does not make or receive local calls, it is hard to see how this argument helps Comcast Phone. More on point, if it is the case that telephone exchange service is the ability to make and receive local calls, it is Comcast IP that is providing telephone exchange service, not Comcast Phone. Under the Comcast Phone logic, the interconnection request should come from Comcast IP. However, for purposes of this

³⁷ Comcast Phone Initial Brief at p. 7, ¶ 13.

³⁸ Comcast Phone Initial Brief at p. 9, ¶ 15.

³⁹ Comcast Phone’s Section 214 filing at the FCC attached to Comcast Phone’s response to Bench Request 4 in this docket.

⁴⁰ Comcast Phone’s Section 214 filing at ¶ 4, attached to Comcast Phone’s response to Bench Request 4 in this docket.

⁴¹ Ibid.

proceeding, Comcast Phone is asserting that Comcast IP is providing an information service, not a telecommunications service.⁴² Is this yet another smokescreen?

27. Comcast Phone asserts that evidence that it is providing telecommunications services exists because it has interconnection arrangements in place with seven ILECs in Washington.⁴³ Most of those agreements were entered into before Comcast Phone discontinued its telephone exchange services in Washington and, thus, qualified for interconnection when those agreements were negotiated. Further, to the extent one agreement is post-214 discontinuance of service, it is likely the nature of the Comcast Phone/Comcast IP relationship was not evident. In addition, there is no evidence that the traffic Comcast Phone is delivering under those other interconnection agreements consists of one hundred percent information service traffic, which is the record before the Commission in this case. What Comcast Phone is doing with other carriers does not qualify it for interconnection with TDS. If the only traffic that Comcast Phone is delivering to TDS is information service traffic, then 47 C.F.R. § 51.100(b) disqualifies Comcast Phone from having the right to an interconnection agreement with TDS.

28. It is interesting that Comcast Phone advances very little argument in its Initial Brief concerning the LIS service and the Schools and Libraries service other than to simply assert that these are telecommunications services. It does so in several places in its Initial Brief. However, please note that the Stipulated Facts describe these services as “services it [Comcast Phone] asserts it offers in Washington.”⁴⁴ Contrary to Comcast Phone’s implication, if not an outright misstatement, the Stipulated Facts never identify these services as telecommunications services or that the services are offered on a common carriage basis in Washington. It is Comcast Phone’s

⁴² TR 57, l. 11-15 and TR 75, l. 16-18.

⁴³ Comcast Phone Initial Brief at p. 9, ¶ 15.

⁴⁴ Stipulated Fact 5.

burden to establish the “services” are “telecommunications services” and are actually offered as common carriage services in Washington.

29. TDS has set forth its arguments as to why the LIS service and the Schools and Libraries service do not serve to demonstrate that Comcast Phone is entitled to be classified as a common carrier for purposes of interconnection with TDS in Washington in the Opening Brief submitted by TDS. Given Comcast Phone’s superficial treatment of these services in its Initial Brief, there is no good reason to repeat that analysis here. TDS has demonstrated in detail why LIS service and Schools and Libraries service fail to advance Comcast Phone’s arguments. However, it can be expected that Comcast Phone may reply to TDS’ arguments by picking a few elements of the LIS service and Schools and Libraries service, such as ICB rates or early termination liability, and argue that these are routine in common carriage. The point that TDS makes is that in examining the totality of the offerings, they are private or contract carriage, not common carriage. Any reply argument advanced by Comcast Phone taking elements of its offerings out of context should be ignored.

30. Comcast Phone spends some time in its Initial Brief addressing its Access Service.⁴⁵ Comcast Phone agrees that its Access Service is limited to terminating traffic that terminates to Comcast IP: “Comcast Phone currently performs this service [Access Service] when it receives an incoming toll call and then routes it to its LIS customers for delivery to the end user.”⁴⁶ Comcast Phone argues that it is billing twelve to eighteen IXC customers in Washington per month and that its agreement with the Washington Exchange Carrier Association seems to recognize that Comcast Phone is providing an Access Service.⁴⁷ Assuming for argument

⁴⁵ Comcast Phone Initial Brief at p. 9-10, ¶ 16-17.

⁴⁶ Comcast Phone Initial Brief at p. 9, ¶ 16.

⁴⁷ Stipulated Facts 6 and 2.

purposes that Comcast Phone is correct that this is enough for the Access Service to constitute common carriage,⁴⁸ all this argument by Comcast Phone does is demonstrate that if Comcast Phone is providing its Access Service as a common carrier, it is doing so through instrumentalities that have nothing to do with interconnection for the exchange of local traffic with TDS. Comcast Phone may argue in reply that its Access Service is part of the interconnection with TDS. That is not true. First, the Access Service from Comcast Phone is provided in the terminating direction to Comcast IP. It has nothing to do with TDS. Second, the Access Service is not a service that is involved in the provision of local interconnection between Comcast IP and TDS which is what is sought under the proposed interconnection agreement. As such, this fails to meet the Time Warner⁴⁹ test.

31. In Time Warner, the FCC found that the rights of telecommunications carriers to Section 251 interconnection are limited “to those carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis.”⁵⁰ In addition, the FCC found that the telecommunications carrier must also be “offering telecommunication services through the same arrangement” as it seeks for interconnection.⁵¹ Comcast Phone is not offering Access Service (terminating direction only to Comcast IP) over the same arrangements that it seeks interconnection with TDS.

32. In the Time Warner proceeding, the wholesale providers of telecommunications services to Time Warner were MCI Worldcom (“MCI”) and Sprint Communications Company (“Sprint”).

⁴⁸ The issue of whether Comcast Phone’s Access Service is common carriage is addressed in more detail in TDS’ Opening Brief. That analysis need not be repeated here.

⁴⁹ Time Warner Cable Request for 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, DA 07-709 (rel. March 1, 2007) (“Time Warner”).

⁵⁰ Time Warner at ¶ 14 and footnote 39.

⁵¹ Time Warner at footnote 39 quoting 47 C.F.R. § 51.100(b).

It was never a disputed issue in the Time Warner proceeding whether Sprint and MCI were (or were not) CLECs entitled in their own right to Section 251 interconnection. The question presented was whether these entities could use their Section 251 rights, not only in their own right, but also to provide a wholesale service to an entity that was not a telecommunications carrier. Time Warner did not establish that MCI and Sprint were telecommunications carriers because they were offering a particular service – it established that they could obtain Section 251 interconnection because they were first telecommunications carriers.

33. Finally, Time Warner was explicit that Section 251 interconnection is available only to those telecommunications carriers who “seek interconnection in their own right.”

Finally, we emphasize that our ruling today is limited to telecommunications carriers that provide wholesale telecommunications service and that seek interconnection in their own right for the purpose of transmitting traffic to or from another service provider. To address concerns from commenters about which parties are eligible to assert these rights, we make clear that the scope of our declaratory ruling is limited to wholesale carriers that are acting as telecommunications carriers for purposes of their interconnection request...⁵²

Comcast Phone argues in conclusory fashion that “CLECs have such rights [Section 251 interconnection] *regardless* of the classification of interconnected VoIP as either an information service or a telecommunications service” (emphasis in original) (citing Time Warner). What Comcast Phone fails to explain is that “right” comes only after it establishes that it is a common carrier for Section 251 purposes and, under Time Warner, seeks interconnection through the same arrangement that it uses as a common carrier. Comcast Phone fails to meet these requirements. The provision of Access Service by Comcast Phone is simply an illustration of the well-defined principle that a carrier may be a common carrier for one purpose, but not for another.⁵³

⁵² Time Warner at ¶ 16 (emphasis added).

⁵³ Nat'l Ass'n of Regulatory Util. Comm'r v. FCC, 533 F.2d 601, 608 (D.C. Cir. 716). In passing, TDS notes that Comcast Phone asserts that it offers Access Service in conjunction with the Schools and Libraries offering. See, Comcast Phone Initial Brief at p. 9-10. However, that asserted fact that is not in the record and should be ignored.

34. To the extent that Comcast Phone may argue that the Bright House logic does apply to TDS because affiliates of TDS have entered into interconnection agreements with Comcast Phone affiliates in three other states, that is an erroneous argument. It is not apparent from the record in this case whether in those other states there is telecommunications traffic as well as information service traffic. The factual basis for the traffic in those other states, even if it can somehow be argued that TDS is somehow bound by the actions of its separate affiliates, which it is not, is not in the record before this Commission. Further, as TDS stated in response to Bench Request No. 2, two of the agreements were early “opt-ins” by Comcast Phone affiliates and the third would not have been executed if the TDS affiliate was aware Comcast Phone’s affiliate had discontinued or planned to discontinue circuit switched service.

35. On the record in this Docket, it is clear that all traffic that Comcast Phone intends to deliver to TDS would be classified as information service traffic according to Comcast Phone’s position. Thus, Comcast Phone cannot argue that it is delivering telecommunications traffic to TDS for purposes of qualifying for interconnection pursuant to the requirements of 47 C.F.R. § 51.100(b).

D. Comcast Phone Does Not Need Interconnection Rights for Competition to Occur.

36. Comcast Phone describes TDS’ position as anticompetitive.⁵⁴ Comcast Phone further argues that the Commission should give Comcast Phone “the benefit of that doubt” in order to “bring the benefits of competition and lower cost innovative communications services to Washington’s consumers in TDS’ service territory.”⁵⁵ In other words, the Commission should “feel good” about Comcast Phone’s service and err on Comcast Phone’s side. What this argument ignores is that Comcast IP is free to offer its service in TDS’ service territory at any

⁵⁴ Comcast Phone Initial Brief at p. 2, ¶ 2.

⁵⁵ Comcast Phone Initial Brief at p. 15, ¶ 27.

time. There is nothing about the interconnection request that would prevent Comcast IP from selling the VoIP-based services to its cable customers in the TDS service territory, and, thus, bring Comcast Phone's description of benefits of competition and lower cost services to fruition.⁵⁶

37. Comcast Phone further argues that as a common carrier, it is subject to Commission oversight.⁵⁷ What Comcast Phone conveniently ignores by this argument is that the entity providing service to the end users, Comcast IP, is not subject to Commission regulation. Apparently, what Comcast Phone and Comcast IP desire to achieve through their artificial distinction of using two entities is to have all of the benefits of interconnection, such as local number portability, but none of the responsibilities for treatment of end users. There is nothing to feel good about in the Comcast Phone assertions.

CONCLUSION

38. Comcast Phone asserts that the services provided by Comcast IP are information services, apparently so that Comcast IP can avoid Commission regulation. Comcast Phone has discontinued "its provision of telecommunications service in Washington...." Specifically, Comcast Phone discontinued "local exchange and interexchange telephone service."⁵⁸ Now Comcast Phone argues that it offers telephone exchange service and exchange access in the State of Washington. Comcast Phone argues that the LIS services on its face a telecommunications service, even though it is readily apparent from reviewing the terms and conditions and the contract with Comcast IP that only a Comcast affiliate would execute such a contract. Comcast Phone argues that the Access Service is common carriage for purposes of Section 251

⁵⁶ Since the price and description of Comcast IP's services are not in the record, there is no factual basis for Comcast Phone's assertion of "lower cost innovative communications services."

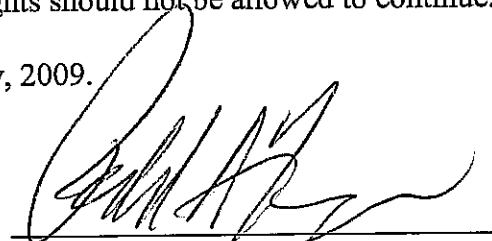
⁵⁷ Comcast Phone Initial Brief at p. 16, ¶ 28.

⁵⁸ Comcast Phone Section 214 filing at ¶ 4.

interconnection with TDS even though the service is offered only for traffic terminating to Comcast IP from interexchange carriers and Comcast Phone ignores analysis of the “same arrangements” component of the Time Warner case. Even if Comcast Phone can get around its discontinuance of local exchange and interexchange service in Washington, which it cannot, this means that Comcast Phone’s apparent position is that the LIS and Access Service services somehow transform Comcast IP’s information service traffic into telecommunications service traffic that entitle Comcast Phone to Section 251 interconnection rights for the exchange of Comcast IP traffic with TDS.

39. All of this taken together demonstrates that Comcast Phone’s extremely fine distinctions create an argument that is too clever by half. The Commission should see through the many veils and smokescreens created by Comcast Phone and determine that if Comcast IP registers as a telecommunications carrier, it may be eligible to seek interconnection with TDS. However, the artificial segmentation of Comcast into separate entities to avoid Commission regulation of end user services and assert artificial interconnection rights should not be allowed to continue.

Respectfully submitted this 28th day of May, 2009.



Richard A. Finnigan, WSB #6443
Attorney for Lewis River Telephone
Company, d/b/a TDS Telecom

ATTACHMENT 1

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7469

Petitions of Vermont Telephone Company, Inc.)
("VTel"), and Comcast Phone of Vermont, LLC,)
d/b/a Comcast Digital Phone ("Comcast"), for)
Arbitration of an Interconnection Agreement)
Between VTel and Comcast, Pursuant to Section)
252 of the Telecommunications Act of 1996, and)
Applicable State Laws)

Order entered: 5/15/2009

ORDER IN RESPONSE TO MOTION FOR CLARIFICATION

On April 22, 2009, Vermont Telephone Company, Inc. ("VTel") filed a motion with the Public Service Board ("Board") requesting clarification of the effect of one requirement in the Board's Order of February 2, 2009 ("February Order") on the interconnection rights of Comcast Phone of Vermont, LLC ("Comcast Phone") under the Federal Communications Act of 1996 ("Act"). Condition number 2 of the February Order ("Condition 2") required that "[w]ithin 14 days, [Comcast Phone] . . . shall file with the Public Service Board . . . the terms and conditions of its service arrangements with its affiliate, CDV, and make them publicly available on its web site."¹

VTel contends that compliance with Condition 2 is a prerequisite to determining that Comcast Phone is a telecommunications carrier under the Act. It argues that the Board did not intend its conclusion in the February Order that Comcast Phone is entitled to interconnection with VTel to become effective until a determination is first made that the filings made by Comcast Phone comply with Condition 2. VTel supports this interpretation by reference to certain statements in the February Order.

1. February Order at 82.

In its reply of March 7, 2009, Comcast Phone agrees with VTel that the Board should clarify the scope of Condition 2. Comcast Phone, however, asserts the Board did not premise its conclusion that Comcast Phone is a telecommunications carrier on Comcast Phone's compliance with Condition 2 and argues, in any case, that it has complied with Condition 2. To the extent the Board has continuing concerns about the extent to which Comcast Phone's service offerings comply with its responsibilities as a telecommunications carrier, Comcast Phone recommends that a new docket be established for such an examination to avoid any question about the finality of the February Order.

The Department of Public Service ("Department"), in its filing of May 7, 2009, also agrees that the Board should clarify the effect of Condition 2 and supports the position of Comcast Phone that Condition 2 is not a condition precedent to interconnection. The Department shares the Board's concerns and supports an inquiry into whether Comcast Phone is appropriately offering its services to all potential users on a non-discriminatory basis.

The Board issued an Order on March 25, 2009 ("March Order") in which it approved the executed Interconnection Agreement between VTel and Comcast Phone. Also in the March Order, the Board appointed a Hearing Officer to consider whether Comcast Phone's filing of February 17 was fully compliant with Condition 2. At that time, the Board defined the scope of the Hearing Officer's inquiry as follows:

The scope of this inquiry is to focus on whether Comcast Phone offers services to its affiliate in a manner that ensures that all terms and conditions of service are offered on a common-carrier basis. As such, the inquiry shall address whether Comcast Phone has satisfied the Board's requirements that all terms and conditions of service are readily available and sufficient for the Department of Public Service, the Board, and potential customers of Comcast Phone to determine whether the services that Comcast Phone offers to its affiliate are not unjustly discriminatory. To the extent warranted, the Hearing Officer is asked to make recommendations to address any deficiency that he finds.²

After considering the motion, the comments of the parties and our existing orders in this docket, we conclude that a clarification of our previous orders is appropriate. To clarify, we

2. March Order at 2.

found in the February Order that Comcast Phone had presented sufficient evidence for us to determine that it is a telecommunications carrier for purposes of the Act, with all the rights and responsibilities that entails, including interconnection rights. We did not intend this finding to be conditioned on a subsequent determination as to Comcast Phone's compliance with Condition 2. In our February Order, we directed the parties to enter into an interconnection agreement consistent with that order and approved that agreement in March. Accordingly, VTel and Comcast Phone are each subject to all the rights and obligations of the interconnection agreement.

Condition 2 of the February Order arose from concerns about the extent to which Comcast Phone is offering its services on a non-discriminatory common-carrier basis to non-affiliated third parties. Although there was a sufficient evidentiary basis to conclude that Comcast Phone is a telecommunications carrier entitled to interconnection with VTel, these concerns warranted further inquiry. This inquiry has been delegated to a Hearing Officer pursuant to the March Order.

To avoid further uncertainty, the Board also wishes to clarify further the scope of the Hearing Officer's inquiry. The inquiry should address both whether Comcast Phone has met its obligations under Condition 2 and whether its satisfaction of those obligations provides adequate confidence as to the availability of its services to non-affiliated third parties and the absence of undue discrimination. In addition to the items set forth in the March Order, the Hearing Officer should assess whether Comcast Phone is offering services on a non-discriminatory basis that a potential non-affiliated customer could reasonably purchase. As part of this inquiry, the Hearing Officer should ensure that the terms and conditions of service do not limit the pool of potential customers to so narrowly a defined niche that only Comcast's affiliate likely falls into the potential customer pool.

If the Hearing Officer concludes that Comcast Phone has not met the requirements of Condition 2 or its continuing obligations as a common carrier, the Hearing Officer shall identify appropriate actions that might be needed to correct any deficiencies. If corrective action is inadequate or is unlikely to succeed, the Board could ultimately conclude that Comcast Phone no longer meets the requirements of a telecommunications carrier under the Act.

SO ORDERED.

Dated at Montpelier, Vermont, this 15th day of May, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: May 15, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

**BEFORE THE STATE OF VERMONT
PUBLIC SERVICE BOARD**

**Petitions of Vermont Telephone Company, Inc.)
("VTel"), and Comcast Phone of Vermont, LLC,)
d/b/a Comcast Digital Phone ("Comcast"), for)
Arbitration of an Interconnection Agreement) **Docket No. 7469**
Between VTel and Comcast, Pursuant to Section)
252 of the Telecommunications Act of 1996, and)
Applicable State Laws)**

**MOTION OF VERMONT TELEPHONE COMPANY,
INC. TO REOPEN RECORD**

Vermont Telephone Company, Inc. ("VTel") hereby moves the Public Service Board ("Board"), pursuant to Board Rule 2.221 and Vt. R. Civ. Pro. 60(b), to reopen the record in order to introduce into evidence, the Local Interconnection Service ("LIS") Guide filed by Comcast Phone of Vermont, LLC ("Comcast Phone") on February 17, 2009 and the LIS Agreement ("LIS Contract") filed on April 21, 2009.¹ As demonstrated herein, the LIS Guide and LIS Contract show that Comcast IP's arrangements are far more beneficial than Comcast Phone's offering to the public, and therefore that Comcast Phone is not a telecommunications carrier offering service to the public on a nondiscriminatory basis.²

A summary of the discriminatory differences between the LIS Guide and LIS Contract are summarized in the table attached as Attachment 1. As the table demonstrates, the Comcast IP arrangement does not include the T-1 port charge applicable to other customers, and, unlike other customers, Comcast IP can avoid a penalty under certain circumstances where it terminates the arrangements due to a price increase. Comcast IP is also not subject to limitations on service availability that apply to other customers. The liability, indemnification and related provisions applicable to Comcast IP are bilateral, whereas they are one-sided, in favor of Comcast Phone,

¹ The LIS Guide and LIS Contract constitute newly-discovered evidence, for purposes of Vt. R. Civ. Pro. 60(b), because they weren't made available until after the Board's February 2, 2009 Order ("Order"). In fact, the LIS Guide is dated February 13, 2009, and therefore did not even exist at the time of the hearings in this case, and was provided only in response to Condition 2 of the Order.

² VTel may supplement this motion to the extent Comcast Phone files additional documentation purporting to relate to its arrangements with Comcast IP Phone II, LLC ("Comcast IP").

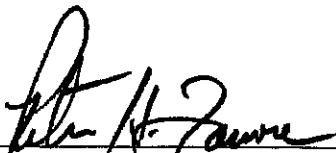
with respect to other customers. The Comcast IP arrangements bind two Comcast Corporation affiliates, neither of which is Comcast Phone; to the extent Comcast Phone has less assets or is less profitable than the two other Comcast Corporation affiliates, a customer may have less ability to recover damages in the event of a breach than Comcast IP.

Comcast Phone has identified no reason why Comcast IP's arrangements should be more favorable than those relating to other potential customers. In fact, Comcast Phone claimed that the provisions of the LIS Guide and LIS Contract were identical, except as to LIS Guide liability limitations, which it merely described as "more detailed," and other provisions not relevant to this analysis. Tr. 4-16-09 (Raubvogel) at 12-14.

The discriminatory differences between the LIS Guide and LIS Contract go to the heart of Comcast Phone's status as a telecommunications carrier, and therefore to its entitlement to interconnection with VTel. As a result, the Board should reopen the record to consider the impact of the LIS Guide and LIS Contract.³

Dated at Burlington, Vermont this 27th day of April, 2009.

Respectfully submitted,
VERMONT TELEPHONE COMPANY,
INC.


By: Peter H. Zamoje, Esq.
SHEEHY FURLONG & BEHM P.C.
30 Main Street
PO Box 66
Burlington, VT 05402

³ It should also be noted that the LIS Contract retains other LIS Guide provisions recently found objectionable by the Department of Public Service ("DPS"). Tr. 4-16-09 (Elias) at 24-25. Service is limited to customers with facilities consisting of an IP-based broadband network employing network-based call signaling specified by Cable Television Laboratories, Inc., even though traffic is accepted and delivered only in TDM protocol. LIS Guide, Sections 3(A)-(B); LIS Contract Sections 1.2(A)-(B). In addition, service is available only where suitable facilities exist, are technologically available and are operationally and economically feasible, even though Comcast Phone is able to recover all costs associated with any additional facilities needed for service. LIS Guide Sections 1(B), 3(C); LIS Contract 1.2(C).

**COMPARISON OF VERMONT LIS GUIDE
AND COMCAST IP LIS CONTRACT**

Issue	LIS Guide		LIS Contract	
Provider		Comcast Phone of Vermont, LLC (Company)		Comcast Phone, LLC & Comcast Phone II, LLC (Customer)
Service availability	4Ad	Limited to subscribers located in areas served by the Company within the state		No corresponding limitation
	8A, F	Company may offer 911 services, subject to technical and other limitations; 911-specific, comprehensive liability limitations	1.6(A), (C)	Company will offer 911 services, subject to limitations; 911-specific liability limitation only if negotiated with customer and based on unforeseen regulatory requirements
Rates for LIS services	12D	Port charge of \$1200/T-1	Exh B	No port charge
	1B, 12A	Charges not specifically listed will be developed on a customer-specific (ICB) basis	1.4(A), Exh. B	Charges not specifically listed will be billed at Company standard rates (although unclear where such standard rates are located)
	5B, 12B	Where customer terminates due to price change, customer must pay termination fee equal to all recurring charges for remaining term	1.4(B)	Where Customer terminates due to price change, no termination fee if rate change materially impacts Customer's ability to continue providing VoIP service to its subscribers
Liability limitations	9A-F	Extensive liability limitations protecting only the Company	5.12	Simplified liability limitations protecting both parties
	9H-I	Extensive indemnification protecting only Company	5.4	Simplified indemnification protecting both parties
	9J	Company disclaimer of all express, implied warranties		No corresponding provision
Miscellaneous	6A	Customer must submit customer orders in Company-required format	1.3(A)	Customer may submit customer orders; no prescribed format
	4A1b	No Company obligation to provide electronic interface	1.5(B)	Company provides electronic interface for subscriber information

**BEFORE THE STATE OF VERMONT
PUBLIC SERVICE BOARD**

**Petitions of Vermont Telephone Company, Inc.)
("VTel"), and Comcast Phone of Vermont, LLC,)
d/b/a Comcast Digital Phone ("Comcast"), for) **Docket No. 7469**
**Arbitration of an Interconnection Agreement)
Between VTel and Comcast, Pursuant to Section)
252 of the Telecommunications Act of 1996, and)
Applicable State Laws)****

**RESPONSE OF VERMONT TELEPHONE COMPANY,
INC. TO COMCAST PHONE OF VERMONT, LLC
FILING CONCERNING CONDITION 2**

Vermont Telephone Company, Inc. ("VTel") hereby responds to the April 21, 2009 filing of Comcast Phone of Vermont, LLC ("Comcast Phone") concerning Condition 2 of the Public Service Board's ("Board's") February 2, 2009 Order ("Order"). As demonstrated herein, the filing fails to comply with the requirements of Condition 2.

Condition 2 requires that Comcast Phone file with the Board the prices, terms and conditions of its service arrangements with its affiliate, Comcast IP Phone II, LLC ("Comcast IP"). In its initial response dated February 17, 2009, Comcast Phone filed a slightly revised version of its Local Interconnection Service ("LIS") Guide. In its filing, Comcast Phone represented that the LIS Guide constitutes "the terms and conditions of Comcast's service arrangements with its affiliate, Comcast IP Phone II, LLC." In response to VTel's subsequent claim that the LIS Guide did not reflect all aspects of the arrangements, however, Comcast Phone admitted that the arrangements are governed by a contract that contains terms different than those contained in the LIS Guide. Tr. 4-16-09 (Raubvogel) at 12-13. More than two months after the original deadline for compliance, Comcast Phone filed on April 21, 2009, a document that it claims is "the Local Interconnection Service Agreement (and First Amendment) between Comcast [Phone] and Comcast IP Phone II, LLC" ("LIS Contract").

The April 21 filing is even more deficient than the February 17 filing. Contrary to its representation in the April 21 filing, the LIS Contract does not relate to service provided by Comcast Phone (*i.e.*, Comcast Phone of Vermont, LLC), unlike the LIS Guide. Instead the LIS Contract relates to LIS services provided by "Comcast Phone, LLC and Comcast Phone II, LLC." Although it appears that Comcast Phone of Vermont, LLC, Comcast Phone, LLC and

Comcast Phone II, LLC are three of the many hundreds of Comcast Corporation subsidiaries (see Attachment 1, consisting of Exhibit 21 to Comcast Corporation 2008 10-K), there is no explanation of how a contract involving Comcast Phone, LLC and Comcast Phone II, LLC relates to service purportedly provided by Comcast Phone of Vermont, LLC, the entity which is a party to the interconnection agreement with VTel.

In contrast to the (incorrect) representation in the February 17 filing that it reflected the terms and conditions of the Comcast Phone-Comcast IP arrangements, moreover, the April 21 filing contains no representation that the LIS Contract reflects all prices, terms and conditions associated with the arrangements between Comcast Phone and Comcast IP. Instead, the filing merely states (again incorrectly) that it includes the contract between Comcast Phone and Comcast IP. This is troubling in light of Comcast Phone's acknowledgement of the relevance of such a representation. Tr. 4-16-09 (Raubvogel) at 23-24. More importantly, it precludes any basis for finding that Comcast Phone has complied with Condition 2.

A review of the LIS Contract makes clear that it does not reflect all aspects of the Comcast Phone-Comcast IP arrangements. The LIS Contract states that "[c]harges for additional services are billed at Comcast standard rates, which are available on Comcast's web site and may be updated from time to time." There is absolutely no guidance as to which additional documents that must be reviewed to understand the applicability or amount of any additional charges.¹ There is not even guidance as to which of Comcast Corporation's hundreds of affiliates' price lists, etc., must be reviewed or where "Comcast standard rates ... are available on Comcast's web site." In addition, charges in these undefined documents may supersede the few prices specifically identified in the LIS Contract.² As a result, the LIS Contract provides no assurance that it contains a complete list of prices, or even that the listed prices are applicable to Comcast IP.³

¹ Presumably the LIS Guide would not be a source, since service is provided by an entity different than the entities providing service under the LIS Contract.

² In particular, the contract provides that to the extent of a conflict between any term of the LIS Contract and the terms of a "Comcast tariff, price list, or other statement of generally available terms and conditions," the latter document prevails. LIS Contract at 1.

³ Although the agreement conditions Comcast Phone's LIS service on receipt of an assigned DID/DOD (telephone number), which is defined as a telephone number assigned by Comcast Phone for use by a subscriber of the LIS Contract customer, LIS Contract, Sections 1.1, 1.3, and further states that charges associated with DID/DOD apply irrespective of whether the DID/DOD is provided by Comcast or ported to Comcast phone, *id.*, Section 1.4(A), Exhibit B does not include any charges identified as DID/DOD charges. By contrast, documentation of LIS arrangements provided by other Comcast Corporation affiliates is far more specific. Attachment 2 contains portions of the current Pennsylvania tariff of Comcast Business Communications, LLC. In addition to charges and other

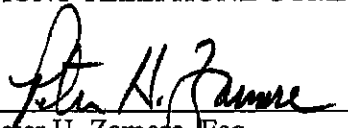
The LIS Contract is similarly vague in another critical respect. The only charges set out in Exhibit B relate to monthly charges per line, separately stated for residence and business. Yet the LIS Contract contains no definition of line. There is no guidance, for instance, as to whether it is the same for a single voice connection or multiple voice connections to the same customer such as in a T-1 (24 voice grade channels), or whether it varies depending on the number of assigned telephone numbers

After two opportunities, Comcast Phone has failed to provide all prices, terms and conditions associated with its arrangements with Comcast IP. It isn't even a party to the LIS Contract that it claims governs the arrangements with Comcast IP. More fundamentally, it has not represented that it has filed all prices, terms and conditions relating to the Comcast IP arrangements. It has therefore failed to comply with Condition 2.

Based on Comcast Phone's cavalier attitude towards its compliance obligations, it is time to stop this exercise of smoke and mirrors. Rather than engaging in a continuing stream of incomplete and inadequate documentation purporting to reflect the terms of Comcast IP arrangements, Comcast Phone should be required to provide all source documents relating to implementation of the Comcast IP arrangements, including purchase orders, invoices and other documentation of what the arrangements, in fact, have been. Only in this way is there any real prospect of understanding the true nature of the Comcast IP arrangements, and consequently the benchmark necessary to test whether Comcast Phone is offering service to the public on a nondiscriminatory basis.

Dated at Burlington, Vermont this 27th day of April, 2009.

Respectfully submitted,
VERMONT TELEPHONE COMPANY,
INC.


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PO Box 66
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provisions that are almost identical to the LIS Guide (Attachment 2 at Section 7), it also contains detailed recurring charges specifically associated with DID. Attachment 2 at Section 4.2.1(B). The absence from the LIS Contract of corresponding provisions strongly suggests that it does not include all prices, terms and conditions of the Comcast IP arrangements.

ATTACHMENT 2

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

DT 09-044

ORDER OF NOTICE

On March 6, 2009, the rural carriers of the New Hampshire Telephone Association (the RLECS)¹ filed with the New Hampshire Public Utilities Commission (Commission) a petition under RSA 365:5 for the Commission to conduct an inquiry into the appropriate regulatory treatment of internet protocol (IP) enabled voice service in New Hampshire.

The RLECs describe their rate of return regulation as more burdensome than unregulated operations, and are therefore concerned at the prospect of competitors offering similar services on an unregulated basis. According to the filing, affiliates of Comcast Corporation (collectively Comcast) are offering a fixed voice service using internet protocol in New Hampshire, under the name Comcast Digital Voice (CDV). The RLECs assert that Comcast claims CDV is an information service that is free from any regulation by this Commission. The RLECs contend that CDV is not an information service. Instead they argue that CDV meets the definition of a public utility under RSA 362:2 and should therefore be regulated and be subject to intraLATA access charges.

. The filing raises, *inter alia*, issues related to whether fixed voice over internet protocol (VoIP) service in general, or CDV in particular, constitutes conveyance of a telephone message within the context of RSA 362:2, whether the Comcast affiliate providing such service

¹ The RLECs include: Bretton Woods Telephone Company, Inc.; Dixville Telephone Company; Dunbarton Telephone Company, Inc.; Granite State Telephone, Inc.; Hollis Telephone Company, Inc.; Kearsarge Telephone Company; Merrimack County Telephone Company; and Wilton Telephone Company, Inc.

is a public utility, and the extent to which federal law preempts New Hampshire law with regard to VoIP services.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on June 24, 2009 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, the RLECs, Comcast, the Staff of the Commission and any Intervenors hold a Technical Session to review the petition and allow the RLECs to provide any amendments or updates to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.12, the RLECs shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than June 3, 2009, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before June 24, 2009; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to the RLECs, Comcast, Staff and the Office of the Consumer Advocate on or before June 19, 2009, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before June 24, 2009.

By order of the Public Utilities Commission of New Hampshire this sixth day of May, 2009.

Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.