

EXHIBIT 1

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 08-162

Comcast Phone of New Hampshire

Petition for Arbitration of Rates, Terms and Conditions of Interconnection
with Kearsarge Telephone Company, Merrimack County Telephone
and Wilton Telephone Company

**Brief of Kearsarge Telephone Company, Merrimack County
Telephone Company and Wilton Telephone Company, Inc.**

NOW COME Kearsarge Telephone Company (“KTC”), Merrimack County Telephone Company (“MCT”) and Wilton Telephone Company, Inc. (“WTC”) (collectively, “the TDS Companies”), and hereby submit the following Brief in connection with the Petition for Arbitration the (“Petition”) filed by Comcast Phone of New Hampshire, LLC (“Comcast Phone”):

I. INTRODUCTION

In a letter dated April 21, 2008, Comcast Phone requested interconnection negotiations with the TDS Companies pursuant to Sections 251(a) and (b) of the Act.¹ The TDS Companies and Comcast Phone agreed to November 17, 2008, and December 12, 2008, being the 135th and 160th day (respectively) for purposes of the negotiation time frames set forth within the Act.²

On December 12, 2008, Comcast Phone filed a Petition for Arbitration of what it characterizes as the one unresolved issue between the parties: whether Comcast Phone is a “telecommunications carrier” under the Act and therefore eligible to interconnect and interact

¹ See Petition, Exhibit A.

² See *id.*, Exhibit B.

Comcast Phone is not a telecommunications carrier for LIS. To begin with, this service offering is not widely and indiscriminately marketed. Comcast Phone has one customer in New Hampshire for its LIS service.²⁰ Moreover, as discussed further below, the potential market for LIS is one customer – Comcast Phone IP. Thus, it can hardly be said that Comcast Phone actively solicits customers on a widespread, general and indiscriminate basis.

Furthermore, the Comcast Phone LIS offering adheres closely to the other *NARUC I* factors that are indicative of a non-common carrier. First, it is only offered on a long term basis. Purchasers of LIS must commit to an initial term of three years.²¹ If the customer terminates early, it must pay a termination liability equal to 100% of all recurring charges through the remaining term of the agreement. If Comcast Phone discontinues service for cause, the customer must pay immediately all amounts that would have been paid over the three year term of the agreement.²² So, in addition to enforcing a lengthy term, these provisions also ensure that the LIS offering conforms to the second *NARUC I* factor: a relatively stable clientele, with terminations the exception rather than the rule.

Another aspect of this stability is that new clients are also the exception rather than the rule. Comcast Phone has not identified any entities which made bona fide inquiries to purchase the service, nor the substance of any discussions regarding the service.²³ This stands to reason, given how the restrictiveness of the purchase qualifications conform to the third *NARUC I* factor: highly individualized operations that comprise grounds for accepting or rejecting an applicant. As a practical matter, LIS is only available to Comcast Phone affiliates who provide

²⁰ Stipulation 10.

²¹ See LIS Guide, § 5.A.

²² *Id.*, § 5.B.

²³ See Prefiled Direct Testimony of Ms. Choroser, at 9:4-10.