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January 22, 2009

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Ms. Ann Cole, Director
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Petition of Comcast Phone of Florida, LLC d/b/a
Comcast Digital Phone, etc. Docket No. 080731

Dear Ms. Cole:

Enclosed for filing in the above docket are the original and fifteen (15) copies of TDS Quincy Telephone's Response to the Petition of Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



J. Jeffrey Wahlen

JJW/jh
Enclosure

cc: All Parties of Record (w/enc.)

COM _____
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone for Arbitration of an Interconnection Agreement with Quincy Telephone Company d/b/a TDS Telecom Pursuant to Section 252 of the Federal Communications Act of 1934, as amended, and Sections 120.57(1), 120.80(13), 364.012, 364.15, 364.16, 364.161 and 364.162, F.S., and Rule 28-106.201, F.A.C.

DOCKET NO. 080731
Filed: January 22, 2009

**TDS TELECOM/QUINCY TELEPHONE'S
RESPONSE TO PETITION TO ARBITRATION**

Quincy Telephone Company, d/b/a TDS Telecom/Quincy Telephone ("TDS Quincy") or "Respondent" responds to the Petition for Arbitration filed by Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone ("Comcast Phone") on December 29, 2008 ("Petition") as follows:

O. INTRODUCTION

The arbitration presents one basic issue, whether Comcast Phone has interconnection rights under Section 251 of the Communication Act of 1934, as amended ("the Act").¹ The parties have fully negotiated an interconnection agreement that TDS Quincy will sign if the answer is affirmative; however, TDS Quincy asserts that Comcast Phone has no such rights. TDS Quincy's response to the specific allegations in Comcast Phone's Petition are set forth in the body of this response, Sections I through IV, and are subject to further factual development

¹ This very issue is currently the subject of an arbitration or other proceeding between TDS and Comcast before the state regulatory commissions in Washington, Michigan, Indiana, Georgia and New Hampshire. On January 18, 2009, the Federal Communications Commission ("FCC") sent a letter to Comcast indicating that the FCC is investigating whether Comcast Phone is offering Telecommunications Services. A copy of that letter is attached hereto as Exhibit B.

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FPSC-COMMISSION CLERK

during discovery. TDS Quincy's preliminary legal arguments showing that Comcast Phone is not entitled to interconnection under Section 251 are included in Exhibit A to the Response.

I. PARTIES

1. Paragraph 1. TDS Quincy admits the allegations in the first two sentences in paragraph 1 of the Petition. TDS Quincy denies the allegations in the third and fourth sentences of the Petition, except for the allegations in the fourth sentence that Comcast Phone "is authorized to provide local exchange, interexchange and other telecommunications services in Florida pursuant to Certificate Nos. 4404 and 7834," which are admitted. TDS Quincy requests that all pleadings, motions, notices, orders and other papers filed and served in this docket be served on the following persons associated with TDS Quincy:

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2. Paragraph 2. TDS Quincy admits the allegations in paragraph 2 of the Petition.
3. Paragraph 3. TDS Quincy admits the allegations in paragraph 3 of the Petition.

II. APPLICABLE LEGAL STANDARDS

4. Paragraph 4. TDS Quincy admits the allegations in paragraph 4 of the Petition.
5. Paragraph 5. TDS Quincy admits that it received Comcast Phone's request for negotiation on July 23, 2008 ("Request Date"), that the 160th day after the Request Date was December 30, 2008 and that nine months after the Request Date is April 23, 2009; however, TDS Quincy denies all of the legal conclusions and representations regarding applicable law on grounds that the law speaks for itself. Interconnection rights under Section 251 of the Communications Act of 1934, as amended, in 47 U.S.C. 151 et seq. (the "Act"), are only available to providers of telecommunications services. In this Response and Exhibit A, TDS Quincy asserts that Comcast Phone has not and cannot show (1) that Comcast Phone meets the definition of a "telecommunications carrier" as defined in Section 3 (49) of the Act (see 47 U.S.C. § 153 (49) or (2) that Comcast Phone is a "telecommunications company" as defined in Section 364.02(14), Florida Statutes. That being the case, the arbitration provisions in Section 252 of the Act do not apply to the instant proceeding and the Commission is not bound by the timeframes set forth therein. However, to the extent the arbitration deadlines in the Act apply, TDS Quincy will consent to an extension of the deadline.

6. Paragraph 6. TDS Quincy denies all the legal conclusions and representations regarding applicable federal law in paragraph 6 of the Petition on grounds that the law speaks for itself.

7. Paragraph 7. TDS Quincy denies all of the legal conclusions and representations regarding applicable state law in paragraph 7 of the Petition on grounds that state law speaks for

itself. TDS Quincy also denies that Comcast Phone has (1) requested access and interconnection under Section 364.16, Florida Statutes, or (2) invoked the process specified in Section 364.162, Florida Statutes.

III. BRIEF SUMMARY OF THE NEGOTIATION HISTORY

8. Paragraph 8. TDS Quincy admits the allegations in paragraph 8 of the Petition, except for the allegations in the last sentence, which TDS Quincy denies.

9. Paragraph 9.

A. TDS Quincy admits that the parties have agreed on all issues except whether Comcast Phone is providing a telecommunication service or qualifies as a telecommunications carrier under the Act and that the parties reached an impasse on that issue, but denies all remaining allegations in paragraph 9 of the Petition.

B. The parties' negotiation impasse resulted from Comcast Phone's lack of information concerning its services and the mechanisms by which Comcast Phone's services are to be provided. TDS Quincy has not been able to confirm that Comcast Phone is providing a telecommunications service or qualifies as a telecommunications carrier under the Act and the applicable rules of the Federal Communications Commission ("FCC"). Based on a filing with the FCC, it appears that Comcast Phone has ceased the provision of telecommunications services in many jurisdictions as shown in paragraph 9D, below, including the State of Florida. See Section 63.71 Application of Comcast Phone of Florida, LLC, WC Docket No. 07-189 (filed August 20, 2007), attached hereto as Exhibit C.

C. TDS Quincy made Comcast Phone aware of concerns with respect to its qualifications as a telecommunications carrier by letter on June 18, 2008. See Letter from Ms. Linda Lowrance to Mr. Robert Munoz, June 18, 2008 (attached hereto as Exhibit D).

Comcast Phone acknowledged the issue in correspondence dated June 24, 2008, from Mr. Robert Munoz, Director of Regulatory Compliance (attached hereto as Exhibit E). Mr. Munoz' letter was not responsive to the issues and simply asserted in relevant part that Comcast Phone "is...entitled to the rights of a telecommunications carrier." In support thereof, Comcast Phone cited to the FCC's decision in *In re 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, Memorandum Opinion and Order*, 22 FCC Rcd 3513 rel'd March 1, 2007 (hereinafter referred to as "*TWC*"). Therefore, the implication from Comcast Phone's Petition that TDS Quincy "raised unspecified 'concerns' about Comcast Phone's telecommunications carrier status..." for the first time on October 13, 2008, is not factually correct. Cf. Letter from Mr. Munoz (Exhibit E) to Petition, para. 9, p. 5.

D. As more has been made known about Comcast Phone's operations, it has become clear that the concerns of TDS Quincy are well founded. As noted in footnote 1, above, on January 18, 2009, the Federal Communications Commission ("FCC") sent a letter to Comcast indicating that the FCC is investigating whether Comcast Phone is offering Telecommunications Services. See Exhibit B. Moreover, to the extent the Comcast Phone's affiliates and parent entity previously provided a telecommunications service throughout America, it appears its affiliates ceased providing such service. The FCC received multiple requests from Comcast Phone's affiliates to cease providing such services: Section 63.71 Application of Comcast Phone of Washington, LLC, WC Docket No. 02242 (filed October 9, 2007) ("*Washington 63.71*"); Section 63.71 Application of Comcast Phone of Illinois, LLC, WC Docket No. 08-41 (filed March 6, 2008) (Illinois); Section 63.71 Application of Comcast Phone of Massachusetts, Inc., *et*

al, WC Docket Nos. 08-45 and 08-52 (filed February 20, 2008 and April 3, 2008, respectively) (Massachusetts, New Hampshire, Ohio and Pennsylvania); Section 63.71 Application of Comcast Phone of Virginia, Inc., WC Docket No. 08-42 (filed February 20, 2008) (Virginia); Section 63.71 Application of Comcast Phone of California, LLC, WC Docket No. 08-35 (filed February 16, 2008) (California); Section 63.71 Application of Comcast Phone of Maryland, LLC, WC Docket No. 07-276 (filed November 19, 2007) (Maryland); Section 63.71 Application of Comcast Phone of Minnesota, LLC, WC Docket No. 07-277 (filed November 20, 2007) (Minnesota); Section 63.71 Application of Comcast Phone of Oregon, LLC, WC Docket No. 07-228 (filed September 28, 2007) (Oregon); Section 63.71 Application of Comcast Phone of Colorado, LLC, WC Docket No. 07-231 (filed October 1, 2007) (Colorado); Section 63.71 Application of Comcast Phone of Connecticut, LLC, WC Docket No. 07-200 (filed August 6, 2007) (Connecticut); Section 63.71 Application of Comcast Phone of Georgia, LLC, WC Docket No. 07-187 (filed August 8, 2007) (Georgia); Section 63.71 Application of Comcast Phone of Florida, LLC, WC Docket No. 07-189 (filed August 20, 2007) (Florida) (attached as Exhibit C); Section 63.71 Application of Comcast Phone of Utah, LLC, WC Docket No. 07-185 (filed August 20, 2007) (Utah); Section 63.71 Application of Comcast Phone of Michigan, WC Docket No. 07-177 (filed August 2, 2007) (Michigan). Collectively, these Comcast Phone filings shall be referred to as the “Discontinuance Filings.”

10. Paragraph 10. TDS Quincy admits that Comcast Phone has tariffs and price lists on file at the FCC and in Florida, but notes that Comcast Phone made its Discontinuance Filings in August 2007. TDS Quincy is without knowledge whether Comcast Phone has interconnection agreements with other ILECs in Florida, whether those agreements were executed before or after

the August 2007 Discontinuance Filings and denies the remaining allegations in paragraph 10 of the Petition.

11. Paragraph 11. TDS Quincy denies the allegations in the first sentence of paragraph 11. TDS Quincy admits that it maintains that Comcast Phone does not qualify as a Telecommunications Carrier and it is not entitled to interconnection under Section 251 of the Act as alleged in the second sentence of paragraph 11. TDS Quincy denies the remaining allegations in paragraph 11 of the Petition. TDS Quincy's position on the legal arguments set forth in paragraph 11 of the Petition is set forth in Section B of Exhibit A to this Response.

12. Paragraph 12. TDS Quincy denies the allegations in paragraph 12 of the Petition. TDS Quincy's position in response to the legal arguments set forth in paragraph 12 of the Petition is set forth in Section C of Exhibit A to this Response.

13. Paragraph 13. TDS Quincy denies the allegations in paragraph 13 of the Petition. TDS Quincy's position in response to the legal arguments set forth by Comcast in paragraph 13 is set forth in Section D of Exhibit A to this Response.

14. Paragraph 14. TDS Quincy denies the allegations contained in the first two sections in paragraph 14. TDS Quincy denies the allegations contained in the third sentence of paragraph 14 and states that Exhibit B to the Petition speaks for itself. With the clarification that the agreements were entered into before Comcast Phone made its Discontinuance Filings (Tennessee and Indiana) or before TDS Quincy knew that Comcast Phone had made its Discontinuance Filings (Vermont), TDS Quincy admits that its affiliates have entered into interconnection agreements with Comcast Phones's affiliates in Tennessee, Indiana and Vermont, but denies that doing so creates an estoppel because each state law is different and denies all other allegations in paragraph 14.

IV. DISCOVERY AND CONFIDENTIALITY

15. Paragraph 15. TDS Quincy believes that discovery will be useful in this case and will serve discovery on Comcast contemporaneous with or shortly after the filing of this Response. TDS Quincy agrees that privileged, confidential and/or trade secret information may be exchanged by the parties and agrees that appropriate protective orders and protective agreements should be entered. Subject to the caveat that discovery may reveal additional issues, TDS Quincy has identified the following preliminary issues of disputed fact to be resolved in an evidentiary hearing pursuant to Section 120.57(1), Florida Statutes:


- A. What purported telecommunication services is Comcast Phone providing in Florida?
- B. What technology is Comcast Phone using in Florida for its service offerings in Florida?
- C. Which Comcast Phone entities are providing IP Voice Services in Florida and where?
- D. Is Comcast Phone providing wholesale services to an affiliate or any other unaffiliated entity that, in turn, provides VoIP services to the public?
- E. Does Comcast Phone have any local exchange customers and if so what services is it providing to them and are any of them in TDS Quincy's service territory?
- F. How is Comcast Phone's network configured and what technology is it using?
- G. Does Comcast Phone provide purported exchange access services in Florida and if so to whom and using what technology is the service provided?
- H. What is the nature of Comcast Phone's "networking service" it allegedly offers to school and libraries, what type of facilities are used to offer such service, whether

the service involves the public switched network and are any customers actually using such service?

- I. Is Comcast Phone actually providing a local interconnection service to any customers in Florida and if so, are the customers are affiliated with Comcast?

16. Paragraph 16. TDS Quincy denies that Comcast Phone should be given the relief it requests in paragraph 16 of the Petition. TDS Quincy requests that the Commission establish a procedural schedule for this case that allows time for both parties to conduct discovery, for the filing of pre-filed direct and rebuttal testimony, for a Section 120.57(1), Florida Statutes, evidentiary hearing and for post-hearing briefing on the ultimate legal issue, i.e., whether Comcast Phone is entitled to interconnection under section 251 of the Act.

DATED this 22nd day of January, 2009.



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ATTORNEYS FOR TDS QUINCY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

United States Mail (*Hand Delivery) this 22nd day of January, 2009 to the following:

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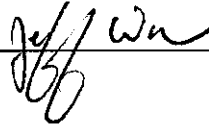


EXHIBIT A

**COMCAST PHONE DOES NOT HAVE SECTION 251
INTERCONNECTION RIGHTS**

A. INTRODUCTION

1. The Act makes clear that an entity must be a “Telecommunications Carrier” in order to have Section 251 interconnection rights. Under Section 251, a telecommunications carrier must, at minimum, “interconnect. . . with the facilities and equipment of other *telecommunications carriers*[.]”² As part of its interconnection duties pursuant to Section 251, a local exchange carrier must also provide dialing parity to “competing providers of *telephone exchange service and telephone toll service*” and access to rights-of-way “to competing providers of *telecommunications services*[.]”³ Furthermore, the FCC has concluded that section 251 obligations “are triggered by the provision of a ‘telecommunications service’.”⁴ Section 51.100 of the FCC’s rules requires that there be telecommunications services over facilities obtained pursuant to Section 251 before other non-telecommunications services may be provided over the same facilities.⁵ Accordingly, Comcast Phone must be a Telecommunications Carrier providing Telecommunications Services in order to have interconnection rights pursuant to Section 251.

2. Moreover, to the extent that Comcast Phone will act as an intermediary carrier providing wholesale services to its affiliate VoIP provider, Comcast Phone only has Section 251 interconnection rights to the extent that the wholesale services it provides are Telecommunications Services as determined by this Commission based on the facts in this

² 47 U.S.C. § 251(a).

³ § 251 (b)(3) & (4).

⁴ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd. 24011 at ¶ 34 (rel Aug. 7, 1998).

⁵ See 47 C.F.R. § 51.100; see also *Time Warner Declaratory Ruling* at fn 39 (citing § 51.100 and stating, “[a] telecommunications carrier that has interconnected or gained access under section []. . . section 251(a) . . . of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.”)

proceeding.⁶ The FCC has made clear that “the rights of telecommunications carriers to Section 251 interconnection are limited to carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis.”⁷ Thus, in order for Comcast Phone to have the right to obtain Section 251 interconnection facilities for the purpose of offering a wholesale service, it must have Telecommunications Services over those facilities to the extent that it will also have non-telecommunications services over the same facilities.⁸

3. The issue in this docket is whether Comcast Phone is a Telecommunications Carrier providing a Telecommunications Service and therefore entitled to interconnection under Section 251 of the Act. In its *Time Warner Declaratory Ruling*,⁹ the FCC left to the states to determine, based on the facts of the particular case, whether a service provider is a Telecommunications Carrier providing a Telecommunications Service.¹⁰ The FCC stated “we do not find it appropriate to revisit any state commission’s evidentiary assessment of the facts before it in an arbitration or other proceeding regarding whether a carrier offers a telecommunications service.”¹¹

4. The Act defines a “Telecommunications Carrier” in relevant part as “. . . any provider of telecommunications services...”¹² The Act defines “Telecommunications Service”

⁶ See *Time Warner Declaratory Ruling*, ¶ 14.

⁷ *Id.*

⁸ See *id.* at fn 39.

⁹ *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*, Memorandum Opinion and Order, WC Docket No. 06-55 (rel. Mar. 1, 2007)(“*Time Warner Declaratory Ruling*”).

¹⁰ See *id.* at ¶ 14. The FCC also stated, “we do not find it appropriate to revisit any state commission’s evidentiary assessment of whether an entity demonstrated that it held itself out to the public sufficiently to be deemed a common carrier under well-established law.” *Id.* at ¶ 17. In the *Time Warner Declaratory Ruling*, the FCC made clear that “the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services.” *Id.* at ¶ 12.

¹¹ *Id.*

¹² 47 U.S.C. § 153 (44).

in relevant part as “the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”¹³ Under the Act, “Telecommunications” is defined in relevant part as “the transmission between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”¹⁴ In addition, the FCC has determined that Telecommunications Services “are intended to encompass only telecommunications provided on a common carrier basis.”¹⁵

5. Under Section 364.02(14), Florida Statutes, a “Telecommunications Company” includes:

every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term “telecommunications company” does not include:

- (a) An entity which provides a telecommunications facility exclusively to a certificated telecommunications company;
- (b) An entity which provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;
- (c) A commercial mobile radio service provider;
- (d) A facsimile transmission service;
- (e) A private computer data network company not offering service to the public for hire;
- (f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; or
- (g) An intrastate interexchange telecommunications company.

¹³ § 153 (46).

¹⁴ § 153 (43).

¹⁵ *Time Warner Declaratory Ruling* at ¶ 12 citing *Implementation of the Non-Accounting Safeguards of Sections 271 and 271 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Red 21905 at ¶ 265.

6. According to Section 364.02(13), Florida Statutes, the term “service” is to be construed in its broadest and most inclusive sense, but “does not include broadband service or voice-over-Internet protocol service for purposes of regulation by the commission.” Under Section 364.02(16), Florida Statutes, the term “VoIP” means “the voice-over-Internet protocol as that term is defined in federal law.” TDS Quincy avers, and believes that the discovery process and evidence presented in this case will show, that although Comcast Phone has been certificated by the FPSC, Comcast Phone is no longer providing a telecommunications “service” under Florida law, is not a “Telecommunications Company” under Florida law, is not a “Telecommunications Carrier” under the Act, does not provide “Telecommunications Services” under the Act, and therefore is not entitled to interconnection under Section 251 of the Act.

B. COMCAST PHONE HAS NOT DEMONSTRATED THAT IT QUALIFIES AS A TELECOMMUNICATIONS CARRIER UNDER THE ACT

7. In its discussion with TDS and in its Petition, Comcast Phone relies heavily on the FCC’s decisions in *TWC* and *In re Bright House Networks, LLC et.al. v Verizon California, Inc*, 23 FCC Rcd 10704 (rel’d June 23, 2008) (hereinafter referred to as “*Bright House*”). See Petition, para. 11, ps. 6-7. In addition, Comcast Phone claims its Local Interconnection Service (“LIS”) qualifies as a telecommunications service. The Commission should reject these arguments.

8. In its discussion with TDS and in the Petition, Comcast Phone has not demonstrated that the facts in this Docket are the same as those in *TWC*; and, Comcast Phone ignores certain limiting language in the *TWC* decision. In *TWC*, the wholesale providers of telecommunications services to TWC were MCI Worldcom (“MCI”) and Sprint Communications Company (“Sprint”). MCI and Sprint provided to *TWC* transport for the origination and termination of traffic on the public switched network (PSTN) through their

interconnection agreements with ILECs. It was undisputed in *TWC* that Sprint and MCI were 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.

9. In this instance involving Comcast Phone, there is serious doubt about Comcast Phone's status as a provider of telecommunications service in its own right, separate and distinct from the Local Interconnection Service ("LIS") that it provides to its affiliates. Indeed, the *TWC* decision was explicit that Section 251 interconnection is available only to those telecommunications carriers who "seek interconnection in their own right":

In making this clarification, we emphasize 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. We do not address or express any opinion on any state Commission's evidentiary assessment of the facts before it in an arbitration or other proceeding regarding whether a carrier offers a telecommunications service. [*TWC*, ¶ 14.]

* * * * *

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, [*TWC*, ¶ 16 (emphasis added)]

10. Also, the FCC concluded in *TWC* that a telecommunications carrier must use its Section 251 interconnection rights to actually provide a telecommunications service. *TWC* at ¶ 14 and fn 39. The FCC quoted 47 CFR 51.100(b):

For example, under the Commission's existing rules, "[a] telecommunications carrier that has interconnected or gained access

under section [] 251(a) . . . of the Act, may offer information services through the same arrangements, *so long as it is offering telecommunications services through the same arrangement as well.*" [TWC, fn 39 (emphasis original).]

11. Therefore, under 47 CFR, §51.100(b), Comcast Phone may not obtain interconnection exclusively for traffic that is not telecommunications. Comcast Phone must exchange telecommunications service traffic over the facilities that are the subject of a Section 251 interconnection arrangement, if it also wishes to use that arrangement to handle information services traffic. If this Commission determines that Comcast Phone will use the requested interconnection arrangements exclusively for the transmission of VoIP service traffic, which Comcast Phone claims is not a telecommunications service, then Comcast Phone is not meeting the requirements of Section 51.100(b) and this Commission should find that Comcast Phone does not have rights to Section 251 interconnection.

12. Only if Comcast Phone meets the following two conditions would it qualify as a Telecommunications Carrier offering a telecommunications service in a wholesale setting: (1) Comcast Phone must meet the FCC's rule governing access to interconnection facilities codified at 47 CFR 51.100(b), discussed above, and (2) Comcast Phone must provide its wholesale service on a common carrier basis. If Comcast Phone is not meeting these standards, then it is not a Telecommunications Carrier providing a Telecommunications Service and TDS Quincy is not required to negotiate interconnection terms pursuant to Section 251 of the Act.

13. Comcast Phone appears to be asking the Commission to adopt the reasoning of the *Bright House* decision. See Petition, para. 11, p. 7-8. The FCC's rulings in *Bright House* do not apply to this Docket because the FCC ruled that they do not. The FCC's decision is clear as to its limited applicability:

Here, section 222(b) has a different purpose – privacy protection . . . 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 that they are necessarily ‘telecommunications carriers’ for purposes of all other provisions of the Act.** We leave those determinations for another day. [*Bright House*, ¶ 41. (emphasis added)]

14. In addition to the FCC’s limitation of its rulings in *Bright House*, as quoted above, there were also different facts upon which the FCC made its ruling. First, the FCC noted that Comcast and Bright House had both obtained certificates of public convenience and necessity from the states in which they operated. Second, the FCC noted that Comcast and Bright House had Section 251 interconnection agreements with Verizon. The FCC said that “[t]hese facts, in combination, establish a prima facie case that the Comcast and Bright House Competitive Carriers are indeed telecommunications carriers for purposes of Section 222(b).” See *Bright House*, ¶ 39.

15. In the instant matter, according to its August 2007 filing with the FCC, Comcast Phone has discontinued exchange service to residential and business customers in Florida. See Section 63.71 Application of Comcast Phone of Florida, LLC, WC Docket No. 07-189 (filed August 20, 2007) and attached to this response as Exhibit C. Furthermore, Bright House and Comcast Phone had existing Section 251 agreements with Verizon; and, there was no evidence presented of changed circumstances showing that Bright House and Comcast were no longer Telecommunications Carriers for purposes of Section 222(b).¹⁶ Here, TDS Quincy refused, because of changed circumstances related to the discontinuance of services in the State of Florida and the lack of information from Comcast Phone concerning the provision of its services, to

¹⁶ Here, it is not clear whether any of the Florida interconnection agreements between Comcast and carriers other than TDS Quincy were executed after the Discontinuance Filings. The interconnection agreements between TDS companies in Tennessee and Indiana and Comcast Phone were entered into before Comcast Phone made its Discontinuance Filings and the interconnection agreement between the TDS company in Vermont and Comcast Phone was executed before TDS knew that Comcast Phone had made its Discontinuance Filings

finalize a Section 251 interconnection agreement until it is determined that Comcast Phone is a Telecommunications Carrier. Therefore, the facts as understood by TDS Quincy related to the issue of Comcast Phone's status as a Telecommunications Carrier under the Act are far different from the facts in *Bright House*.

C. COMCAST PHONE HAS NOT DEMONSTRATED THAT ITS LOCAL INTERCONNECTION SERVICE ("LIS") QUALIFIES AS A TELECOMMUNICATIONS SERVICE UNDER THE ACT

16. In addition to relying on the FCC's decision in *Bright House*, Comcast Phone asserts that its wholesale LIS entitles Comcast Phone to interconnection under the Act. Comcast Phone argues that LIS is a Telecommunications Service "offered to qualified providers of interconnected ...VoIP services as that term is defined within Section 9.3 of the FCC's rules." See Petition, para. 12, p. 7 and fn. 9. Comcast Phone also asserts that its LIS provides various services or products to "interconnected VoIP service providers." See *id.* A close examination of its LIS service, (See Comcast LIS Guide attached as Exhibit F), however, does not establish that: (i) Comcast Phone is a telecommunications service provider; or (ii) LIS qualifies as a Telecommunications Service.

17. Comcast Phone's LIS offering is extremely restrictive and, as a practical matter, may be useful only to Comcast Phone affiliates who provide "unregulated" voice service to customers in the State of Florida. LIS is available only to providers of interconnected VoIP services. Providers of nomadic VoIP service cannot purchase services under the LIS Guide. See LIS Guide, sec. 1.F. Furthermore, providers of traditional landline telephone service, such as TDS Telecom, cannot purchase services under the LIS Guide. The only providers who can purchase services under the LIS Guide are those whose facilities consist of an IP-based broadband network. This network must be a Cable Modem Termination System ("CMTS") and

must employ network-based call signaling devices. If a provider of interconnected VoIP services does not use CMTS technology, it will be denied access to services under the LIS Guide. *See* LIS Guide, sec. 3.A. Additionally, the network-based call signaling devices must be specified by Cable Television Laboratories, Inc, and only traffic in time division multiplex (“TDM”) protocol will be accepted and delivered. *See* LIS Guide, sec. 3.B.

18. The only customer who can use LIS to reach an end user’s premise is one who overbuilds the facilities of Comcast Phone’s affiliated provider of “unregulated” voice service. This situation rarely, if ever, will exist. In the 38 states in which Comcast is operating, upon information and belief, not a single unaffiliated customer has ever subscribed to LIS. Although Comcast Phone states that LIS is made available to prospective customers, Comcast Phone has not identified any entities that made bona fide inquiries to purchase the service, nor the substance of any discussions regarding the service. Regardless, the fact that Comcast Phone has failed to provide TDS with evidence that any entity, other than affiliates of Comcast, has ever purchased LIS, supports TDS Quincy’s position that LIS, as a practical matter, is useful only to a Comcast Phone affiliate.

19. Even if it was technically feasible for a carrier, other than an affiliate of Comcast Phone, the terms of the LIS Guide raise additional concerns. The recurring and non-recurring charges for LIS are determined by Comcast Phone on an individual case basis in response to a bona fide request. *See* LIS Guide, sec. 1.B. Although the LIS Guide implies that there will be a “negotiation” between Comcast Phone and the requesting party (*see* LIS Guide, sec. 1.C), there is nothing in the LIS Guide that compels Comcast Phone to agree to any particular terms; and, there are no provisions for arbitration or dispute resolution by a regulatory body or third party if the parties cannot agree on terms. A carrier is not a common carrier where its practice is to make

individualized decisions, in particular cases, whether and/or what terms to deal. *See National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, at 641 (D.C. Cir. 1976). Furthermore, a carrier can be a common carrier with respect to some of its activities and not with respect to others. *Southwestern Bell Telephone Company v. Federal Communications Commission*, 19 F.3d 1475, 1481 (D.C. Cir. 1994) (holding that “it is at least logical to conclude that one can be a common carrier with regard to some activities but not others,” quoting *National Ass’n of Regulatory Util. Comm’ers v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976)). For example, if Comcast Phone were offering local exchange services on a common carrier basis in other parts of Florida, it does not follow necessarily that Comcast Phone is offering its wholesale services in the TDS Quincy service areas on a common carrier basis.

20. Moreover, purchasers of LIS must commit to an initial term of 3 years. *See LIS Guide*, sec. 5.A. 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 3-year term of the agreement. *See LIS Guide*, sec. 5.B. In addition, the LIS Guide provides Comcast Phone with complete protection from most liability arising out of performance under the agreement (*see LIS Guide*, sec. 9); requires the customer to indemnify and hold harmless Comcast Phone in a multitude of situations (*see LIS Guide*, secs. 7.A, 9.H and 9.I); and imposes a variety of other onerous conditions on the customer.

21. Comcast Phone claims that its LIS is available without discrimination. As a practical matter, however, LIS is available only to Comcast Phone’s affiliated providers of “unregulated” voice service. The LIS Guide permits Comcast Phone and its affiliated voice service providers to agree to prices and terms to which an unaffiliated customer could never

agree. Between Comcast Phone and its affiliates, unreasonable prices and terms do not result in economic harm to the overall Comcast enterprise. To unaffiliated entities, unreasonable prices and terms effectively block them, as appears to be the case in the 38 states where Comcast operates, from competing with Comcast Phone's affiliated providers of voice service. For these reasons, the Commission should find that the mere existence of the LIS Guide and the alleged offering of LIS to "prospective customers" are not sufficient (whether considered individually or together) to prove that Comcast Phone is a provider of Telecommunication Services.

D. THE ADDITIONAL SERVICES CITED BY COMCAST PHONE DO NOT DEMONSTRATE THAT COMCAST PHONE IS A TELECOMMUNICATIONS CARRIER

22. In paragraph 13 of the Petition, Comcast Phone cites additional services that it asserts qualify it as a telecommunications carrier for purposes of obtaining interconnection under Section 251 of the Act. TDS Quincy disagrees for the following reasons.

23. First, Comcast Phone relies on its proposed "Schools and Libraries Service," which it claims to offer to "e-rate eligible" institutions. This service purports to be a high-speed data service that uses point-to-point T1 circuits to connect local area networks across the customer's physical locations. The service is available only to primary and secondary educational institutions, corresponding municipal libraries and other "e-rate eligible" institutions. It is not available for resale. The service also provides for Point-to-Point Service to connect schools' and libraries' physically distributed locations as if they were on the same local area network. The service is provided between designated customer locations within a metropolitan area. Finally, the service purports to provide a Channelized Exchange Service that offers to e-rate qualifying institutions local and long distance dialing capability through the public switch

telephone network (“PSTN”), along with various features associated with local and toll service calling. This service is “subject to facility and system availability.”

24. The Network Services and Point-to-Point Service for schools and libraries simply connect customer locations and do not require any interconnection arrangements with TDS Quincy. Channelized Exchange Service does involve traffic on the PSTN. However, it is not known whether Comcast Phone is actually providing any such service, or will ever provide any Channelized Exchange Service in TDS Quincy’s territory or otherwise in Florida. In any event, Comcast Phone’s claim that it is offering Channelized Exchange Service in Florida is suspect because the offering of such service would appear to be inconsistent with Comcast’s filings with the FCC that it was discontinuing telecommunications services in the State of Florida. In light of this conflict, TDS Quincy will pursue discovery of Comcast Phone related to the proposed Schools and Libraries Service.

25. Second, Comcast Phone relies on its purported offering of terminating switched access service. However, based on its FCC Discontinuance filing, Comcast Phone has ceased offering its Digital Phone local exchange service in the State of Florida. The discontinuance of exchange service by Comcast Phone would suggest that Comcast Phone does not serve local exchange customers who originate toll calls, or to whom toll calls are terminated. “Access service” enables a provider to originate or terminate telecommunication services within the local exchange. If Comcast Phone does not operate within the local exchange, due to its discontinuance of local exchange service, Comcast Phone has no local exchanges and no local exchange customers that are “accessed” by providers of toll service. As such, Comcast could not be a provider of access service. Instead, it appears that Comcast Phone is an intermediary who facilitates access, not to its customers, but to those of its affiliated VoIP service provider.

EXHIBIT B



Federal Communications Commission
Washington, D.C. 20554

January 18, 2009

VIA FACSIMILE
AND FIRST CLASS MAIL

Kathryn A. Zachem
Vice President, Regulatory Affairs
Comcast Corporation
2001 Pennsylvania Ave. NW, Suite 500
Washington, DC 20006
FAX: (202) 466-7718

Re: In the Matters of Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices: Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management," File No. EB-08-IH-1518, WC Docket No. 07-52.

Dear Ms. Zachem:

The Commission has received your submission of September 19, 2008, detailing Comcast's broadband network management practices, Comcast's planned deployment of protocol-agnostic network management practices, and Comcast's plan for complying with the *Comcast Network Management Practices Order*, and your submission of January 5, 2009, certifying Comcast's fulfillment of the compliance plan.

We seek clarification with respect to an apparent discrepancy between Comcast's filing and its actual or advertised practices. Specifically, in Appendix B of your September 19 submission, Comcast notes that if a consumer uses 70% of his provisioned bandwidth for 15 minutes or more when his neighborhood Cable Modem Termination System (CMTS) node has been near capacity for a period of 15 minutes or more, that consumer loses priority when routing packets through congested portions of the network. See Letter from Kathryn A. Zachem, Vice President of Regulatory Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, App. B at 8-10 (filed Sept. 25, 2008). If such a consumer then places a Voice over Internet Protocol (VoIP) call along a route experiencing actual congestion, Comcast states that consumer may find that his "VoIP call sounds choppy." *Id.* at 13. Critically, the Appendix draws no distinction between Comcast's VoIP offering and those offered by its competitors.

Comcast's website, however, suggests that such a distinction does in fact exist. The website claims that "Comcast Digital Voice is a separate facilities-based IP phone

service that is not affected by this [new network management] technique.” Comcast Help & Support, Frequently Asked Questions about Network Management, at <http://help.comcast.net/content/faq/Frequently-Asked-Questions-about-Network-Management> (last visited Jan. 12, 2009) (“*Frequently Asked Questions*”). It goes on to state, by contrast, that customers of other “VoIP providers that rely on delivering calls over the public Internet . . . may experience a degradation of their call quality at times of network congestion.” *Id.*

We request that Comcast explain why it omitted from its filings with the Commission the distinct effects that Comcast’s new network management technique has on Comcast’s VoIP offering versus those of its competitors. We also ask that you provide a detailed justification for Comcast’s disparate treatment of its own VoIP service as compared to that offered by other VoIP providers on its network. In particular, please explain how Comcast Digital Voice is “facilities-based,” how Comcast Digital Voice uses Comcast’s broadband facilities, and, in particular, whether (and if so, how) Comcast Digital Voice affects network congestion in a different manner than other VoIP services.

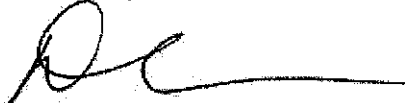
To the extent that Comcast maintains that its VoIP offering is a telephone service offering transmission facilities for VoIP calls distinct from Comcast’s broadband offering, then it would appear that the fee Comcast assesses its customers for VoIP service pays in part for the privileged transmission of information of the customer’s choosing across Comcast’s network. As we have stated before, the “heart of ‘telecommunications’ [under the Act] is transmission.” *Pulver.com Order*, 19 FCC Rcd 3307, 3312, para. 9 (2004) (holding that the Internet-based service at issue was not “telecommunications” because the provider “neither offers nor provides transmission to its members”); see 47 U.S.C. § 153(43) (defining “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received”). And offering “telecommunications for a fee directly to the public” is the statutory definition of a telecommunications service. 47 U.S.C. § 153(46); cf. *Cable Modem Order*, 17 FCC Rcd 4798, 4823, para. 40 (2002) (classifying cable modem service as an information service only because the “telecommunications component is not . . . separable from the data-processing capabilities of the service” and because no cable modem service provider made a “stand-alone offering of transmission for a fee directly to the public”). Given that Comcast apparently is maintaining that its VoIP service is a “separate facilities-based” telephone service that is distinct from its broadband service and differs from the service offered by “VoIP providers that rely on delivering calls over the public Internet,” *Frequently Asked Questions*, it would appear that Comcast’s VoIP service is a telecommunications service subject to regulation under Title II of the Communications Act of 1934, as amended.

We thus request that Comcast explain any reason the Commission should not treat Comcast’s VoIP offering as a telecommunications service under Title II — a service subject, among other things, to the same intercarrier compensation obligations applicable to other facilities-based telecommunications carriers. See *IP-in-the-Middle Order*, 19 FCC Rcd 7457, 7466–67, para. 15 (2004) (holding that access charges apply to AT&T’s IP-in-the-middle telephony, given that “[e]nd users place calls using the same method” as

they would otherwise, that the service provides no “enhanced functionality,” and that the service “imposes the same burdens on the local exchange as do circuit-switched interexchange calls”). We understand that Comcast’s VoIP service is not yet complying with such intercarrier compensation obligations.

Please submit your response by the close of business on Friday, January 30, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dana R. Shaffer', with a long horizontal flourish extending to the right.

Dana R. Shaffer
Chief
Wireline Competition Bureau

A handwritten signature in black ink, appearing to read 'Matthew Berry', with a stylized flourish at the end.

Matthew Berry
General Counsel
Federal Communications Commission

EXHIBIT C



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 07-3815
August 31, 2007

COMMENTS INVITED ON APPLICATION OF COMCAST PHONE OF FLORIDA, LLC D/B/A COMCAST DIGITAL PHONE TO DISCONTINUE DOMESTIC TELECOMMUNICATIONS SERVICES

WC Docket No. 07-189
Comp. Pol. File No. 822

Comments Due: September 17, 2007

Section 214 Application

Applicant: Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone

On August 20, 2007, Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone (Comcast or Applicant), located at 1500 Market Street, Philadelphia, PA 19102, filed an application with the Federal Communications Commission (FCC or Commission) requesting authority, under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue the provision of certain domestic telecommunications services in Florida.

Comcast indicates that it currently provides interstate and intrastate telecommunications service throughout Florida. Comcast states, however, that it now intends to discontinue its provision of residential facilities-based and resold local exchange, interexchange, and international telephone services in the Florida communities of Miami Dade County and Broward County (collectively, the Service Areas).¹ According to Comcast, the anticipated date for the proposed discontinuance is October 3, 2007, or as soon thereafter as the necessary state and federal approvals can be obtained. Comcast explains that the proposed October 3, 2007 disconnection will be a "soft disconnect" and that end-user customers in the affected location will continue to be able to call emergency services by dialing 911, and to call the Comcast Phone call center until November 3, 2007, or one month after the authorized disconnection date. Comcast also states that it is offering Comcast Digital Voice, and that it will assist affected customers that do not select this service during their transition to new carriers. Comcast indicates that it informed all affected customers of the proposed discontinuance by letters sent via first class U.S. Mail on August 17, 2007. Finally, Comcast asserts that it is non-dominant in the local exchange, interstate, and interexchange services markets.

In accordance with section 63.71(c) of the Commission's rules, Comcast's application will be deemed to be granted automatically on the thirty-first (31st) day after the release date of this public

¹ Discontinuance of international service is governed by 47 C.F.R. § 63.19.

notice, unless the Commission notifies Comcast that the grant will not be automatically effective. In Comcast's application and notice to its customers, Comcast indicates that it anticipates discontinuing service on or after October 3, 2007. Accordingly, pursuant to section 63.71(c) and the terms of Comcast's application and notice, absent further Commission action, Comcast may terminate service to the affected Service Areas in Florida on **October 3, 2007**. The Commission normally will authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected.

This proceeding is considered a "permit but disclose" proceeding for purposes of the Commission's ex parte rules, 47 C.F.R. §§ 1.1200-1.1216. Comments objecting to this application must be filed with the Commission on or before **September 17 2007**. Such comments should refer to **WC Docket No. 07-189 and Comp. Pol. File No. 822**. Comments should include specific information about the impact of this proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Parties who choose to file by paper must send an original and four (4) copies of the comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

Two (2) copies of the comments should also be sent to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C327, Washington, D.C. 20554, Attention: Carmell Weathers. In addition, comments should be served upon the Applicant. Commenters are also requested to fax their comments to the FCC at (202) 418-1413, Attention: Carmell Weathers.

The application will be available for public inspection and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554, (202) 418-0270. A copy of the application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402,

Washington, D.C. 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

For further information, contact Carmell Weathers, (202) 418-2325 (voice), carmell.weathers@fcc.gov, or John Adams, (202) 418-0394 (voice), john.adams@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau. The TTY number is (202) 418-0484. For further information on procedures regarding section 214 please visit http://www.fcc.gov/wcb/cpd/other_adjud.

-FEDERAL COMMUNICATIONS COMMISSION-

EXHIBIT D



June 18, 2008

Mr. Robert Munoz
Comcast
183 Inverness Dr. W, Suite 300S
Englewood, CO 80112

Re: Status Update- Requests for Interconnection (MI, NH, WA & GA)

Dear Mr. Munoz:

This correspondence provides a status update on the requests for interconnection submitted by various Comcast entities to certain operating company affiliates of TDS Telecommunications Corporation.

Each of the requests mentioned above seeks to utilize the Interconnection Agreement negotiated between Comcast Phone of Vermont, LLC and the TDS Telecom operating companies in Vermont which was executed in April, 2008 as the starting point for negotiations. While TDS Telecom concurs that using this agreement as a starting point would facilitate our discussions, recent activities in various state regulatory dockets have raised some questions within the TDS Telecom organization regarding the interconnection between our companies.

As a result, TDS Telecom needs to perform a comprehensive review of the existing agreement before proceeding to use that agreement in these other states in which you've requested interconnection. In order to facilitate that review, it would be helpful if Comcast could respond to the following questions to help us better understand the relationship between the various Comcast affiliates and services and how they will utilize any interconnection agreement that we ultimately finalize.

- 1) Is Comcast Digital Voice a legal entity, a regulated service offering, an information service or a technology?
- 2) Will the interconnection/services obtained in an interconnection agreement with TDS Telecom be used by Comcast Phone to provide service directly to end-user customers, or will the interconnection/services be provided solely to another Comcast affiliate for use in providing end-user services? If affiliate, what is the legal name of that entity and is that entity certified to provide Telephone Exchange Service in the respective states?
- 3) In Comcast's opinion, does the offering of Comcast Digital Voice change the VT interconnection agreement in any way or require modification to the agreement language? Please explain.

TDS Telecom recognizes that we are working within a statutory timeframe on these requests. By our calculation, the arbitration window for the earliest of the requests mentioned above opens on September 2, 2008. We will work to complete our agreement review as quickly as possible and will forward updated drafts to you as soon as they are available.

Sincerely,

Linda Lowrance
Manager-Carrier Relations

PO BOX 22995
KNOXVILLE, TN 37933-0995
10025 INVESTMENT DRIVE, SUITE 200
KNOXVILLE, TN 37932

OFFICE: 865.966.4700
FAX: 865.675.3881

Exhibit D-1

EXHIBIT E



Robert Munoz
Director, Regulatory Compliance
183 Inverness Dr. W, Suite 300S
Englewood, CO 80112
(720) 267-2660

VIA EMAIL

June 24, 2008

Ms. Linda Lowrance
Manager – Interconnection
TDS Telecom – Knoxville
10025 Investment Drive, Suite 200
Knoxville, TN 37932
Linda.Lowrance@tdstelecom.com

RE: TDS Telecom's Status Letter and Request for Information Regarding Comcast Phone of Michigan, LLC, Comcast Phone of New Hampshire, LLC, Comcast Phone of Washington, LLC and Comcast Phone of Georgia, LLC (together "Comcast Phone")

Dear Ms Lowrance:

I am writing in response to your letter dated June 18, 2008. Comcast Phone acknowledges your confirmation that (1) it will use the Vermont agreement as the basis for negotiating interconnection agreements for Michigan, New Hampshire, Washington and Georgia, and (2) the first arbitration window for these negotiations opens on September 2, 2008. In addition, you should know a request to negotiate an interconnection agreement with two of TDS' subsidiaries in Indiana was sent to you on June 19, 2008. It is Comcast Phone's expectation that the parties will use the Vermont agreement as a starting point for negotiations in that state as well.

In your letter, you stated that TDS needs to perform a "comprehensive review" of the Vermont agreement due to various state regulatory dockets that have "raised some questions within TDS Telecom." In response to your various questions, Comcast Phone provides the following:

1. Comcast Phone has requested negotiations on behalf of the above-defined Comcast Phone entities. The entities are certificated local exchange carriers ("CLECs") in the TDS service territories in Michigan, Washington and Georgia. As you know, Comcast Phone is in the process of seeking such certification in NH.
2. The customer base served by Comcast Phone is not germane to the instant negotiations. Comcast Phone is, in its provision of retail or wholesale services, entitled to the rights of a telecommunications carrier under section 251(a) and 251(b) of the Act. As TDS is aware, the FCC last year reaffirmed its prior holding on this matter. See *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

Ms. Lowrance

June 24, 2008

RE: TDS Telecom's Status Letter and Request for Information

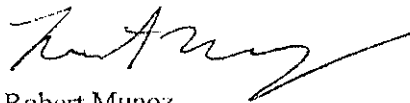
Page 2

Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, Memorandum Opinion and Order, 22 FCC Red 3513, ¶ 1 (WCB 2007). Accordingly, Comcast Phone fully expects TDS to comply with its obligations under the Act and implementing regulations, and negotiate interconnection terms and conditions with Comcast Phone pursuant to Section 251 of the Act.

3. If TDS believes that modifications to the Vermont agreement are necessary, TDS may, only where appropriate, invoke change of law provisions in the agreement.

We look forward to moving forward with TDS on negotiations in the additional states. To that end, we have already reviewed and provided red line edits to TDS' proposed Michigan agreement. Please contact us at your earliest possible time to discuss that agreement.

Sincerely,



Robert Munoz

EXHIBIT F



Local Interconnection Service Guide

1. GENERAL

- A. Subject to the terms set forth in Section 4.A following, the purpose of this Guide is to provide an overview of Local Interconnection Service (“LIS”) and the terms and conditions under which LIS is offered by the applicable Comcast entity.
- B. Facilities and equipment of a type and/or quantity necessary to provide LIS are not available on a ubiquitous basis in the Company’s service area(s). To limit the real potential for stranded investment, recurring and nonrecurring costs will be developed on a case-by-case basis in response to a bona fide request from a Customer or prospective Customer to develop a competitive bid for service. Charges will be offered to the Customer in writing and on a nondiscriminatory basis.
- C. Upon receipt of a bona fide request for LIS from a Customer, Company will negotiate in good faith with the Customer to enter into an agreement that effectuates the terms and conditions set forth in this Guide.
- D. LIS is available to Customers for resale to retail Subscribers.
- E. The Customer must comply with all applicable FCC regulations governing the provision of interconnected Voice over Internet Protocol (“VoIP”) service. In addition, it is the Customer’s sole responsibility to comply with all applicable laws and regulatory requirements.
- F. LIS does not support “nomadic” VoIP services. As provided elsewhere in this Guide, the Customer must provide its services to Subscribers at a fixed service address.

2. DEFINITIONS

- A. “Company” means an affiliate of Comcast that is a Competitive Local Exchange Carrier (CLEC) certificated by the applicable state regulatory commission to offer telecommunications services in the state in which the Customer requests LIS.
- B. “Customer” means the provider of retail interconnected VoIP service, as defined in 47 C.F.R. § 9.3, that purchases LIS from the Company in order to serve its own customers, which are the Subscribers to the interconnected VoIP service provided by the Customer.
- C. “Subscriber” means the interconnected VoIP end-user customer of the Customer.



Local Interconnection Service Guide

3. DESCRIPTION OF SERVICE

- A. LIS provides a connection between a Customer's facilities and the public switched telephone network, and related services described herein. In order to make use of the Company's LIS, Customer's facilities must consist of an IP-based, broadband network that uses a Cable Modem Termination System (CMTS) employing the Network-based Call Signaling specified by Cable Television Laboratories, Inc. (CableLabs®). LIS does not support Customers providing services to Subscribers that operate using a different format.
- B. The IP-based, broadband connecting facility between Customer and Subscribers, the CMTS, the soft switch, the connecting facilities to the Company's media gateway, and all customer premises equipment must be provided by the Customer or its Subscribers and is not included as part of LIS. The Company will only accept and deliver traffic in time division multiplex ("TDM") protocol.
- C. LIS is available to Customers where suitable facilities exist, are technologically available, and are operationally and economically feasible.
- D. LIS provides standard 10-digit telephone numbers with associated two-way statewide local exchange telecommunications service to permit Customers to provide interconnected VoIP service to Customer's Subscribers. Where available in a service territory, LIS may also include support for the provision of 911 capability, telecommunications relay services (711), Toll, and Directory Listings. Operator Services and Directory Assistance are not included in LIS. LIS does not support calling to 976 or similar exchanges or to calls to the 900 Service access code.



Local Interconnection Service Guide

4. USE OF SERVICE

- A. LIS is provided in accordance with the regulations and rates in this Guide, applicable law, and the Company's agreements with other providers, including but not limited to: applicable state or federal law, applicable state or federal regulations, orders issued by regulatory agencies and/or courts of competent jurisdiction, Incumbent Local Exchange Company ("ILEC") interconnection agreements, or similar requirements (collectively "Company Obligations"). To the extent that changes in Company Obligations affect the terms and conditions under which the Company may provide LIS, including being unable to provide LIS at all, the liability of the Company for any such changes shall be subject to the limitation of liability provisions set forth in Sections 8 and 9 of this Guide.
1. Customer shall, at its sole cost, be responsible for providing all equipment software, facilities and IP connectivity (including connectivity to Subscribers) necessary for the Customer to provide interconnected VoIP service to its Subscribers.
 - a. The Customer must provide the proper signaling information (e.g., originating Calling Party Number (CPN) (a/k/a Automatic Number Identification (ANI), destination called party number, Originating Line Information Parameter ("OLIP") on calls to 8XX telephone numbers, calling party category, charge number, Automatic Location Identification (ALI), etc.) for all calls. To the extent that failure to provide ANI or other signaling information leads to increased charges from third parties to the Company as a result of the Company Obligations, the Company may recover all such increased charges, as well as the Company's reasonable costs associated with defending against and/or administering such increased charges, from the Customer. If for two months in any twelve month period the Customer sends calls to the Company lacking required signaling information in excess of 5% of all calls during such months, the Company may terminate LIS to the Customer immediately with no liability from the Company to the Customer for such termination.
 - b. The Customer shall input, validate and maintain accurate Subscriber information so that the Company can provide such Customer-provided information to applicable national databases, including but not limited to, Automatic Local Identification (ALI) Database, Directory Listing information, Line Information Database (LIDB) and Caller ID with NAME Database (CNAM). The Customer shall deliver to the Company valid postal addresses that can be confirmed against the Master Street Address Guide ("MSAG").



Local Interconnection Service Guide

4. USE OF SERVICE

A. (Cont'd)

- c. The Customer shall not: (1) re-classify or re-originate traffic or take any other action to make traffic appear as if it: (i) is anything other than the type of traffic delivered to such party (including but not limited to making TDM originated traffic appear to be IP originated) or (ii) originated from a place or on a type of equipment different from the place or type of equipment from where it, in fact, originated; or (2) modify, alter or delete in any manner calling party number information, originating point codes or any other signaling information, or call detail in connection with the transport and termination of traffic to the called party.
- d. Based on the Company Obligations, LIS service is limited to Subscribers physically located in areas served by the Company within the states/locations identified in Section 10. The Customer shall in all cases assign telephone numbers to Subscribers based on the Subscribers' locations and fully in accordance with NANPA guidelines associating NPA-NXX codes with particular exchange areas. LIS under this Guide is not to be used with any "virtual numbering" or foreign-exchange-like arrangements. Any such arrangements must be separately identified and negotiated between the Company and the Customer and will be established, if at all, only on an "individual case basis."
- e. The Company and the Customer will conduct interoperability testing prior to the Customer's implementing any software or call flow upgrade, enhancement or modification thereto. All special configurations are subject to the Company's approval. The Company may terminate (without liability) LIS where proper interoperability testing has not been completed.

5. TERM AND TERMINATION

- A. LIS is available for an initial term ("Term") of three years following execution of a contract or service order between the Company and the Customer effectuating the provisions of this Guide, unless earlier terminated as provided herein. The Customer will provide notice of its intent to renew at least 90 days prior to expiration of the Term.
- B. In the event of early termination of service by the Customer before the expiration of the Term, the Company may assess a termination liability equal to 100% of all monthly recurring rates multiplied by the number of months left in the contract. Such early termination charges do not constitute a penalty under this Guide but are assessed in order for the Company to fully recover costs associated with providing LIS.



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5. TERM AND TERMINATION (CONT'D)

C. Discontinuance of Service for Cause

1. Upon nonpayment of any amounts owing to the Company, the Company may, by giving 24 hours prior written notice to the Customer, discontinue or suspend service without incurring any liability.
2. Upon Customer violation of any of the other material terms or conditions for furnishing service the Company may, by giving 24 hours prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
3. Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
4. Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
5. Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
6. In the event of fraudulent use of the Company's network, the Company may without notice immediately suspend or discontinue service. The Customer will be liable for all related costs. The Customer will also be responsible for payment of any reconnection charges.
7. Upon the Company's discontinuance of service to the Customer under this Section, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this Guide, may declare all future monthly and other charges which would have been payable by the customer during the remainder of the term for which such services would have otherwise been provided to the customer to be immediately due and payable.
8. In the event a Customer's LIS is discontinued for any reason, it is the Customer's responsibility to ensure its affected Subscribers have access to an alternative 911 service.



Local Interconnection Service Guide

6. SUBSCRIBER ORDERS AND USAGE FORECASTS

- A. The Customer must submit customer order(s) to activate a market(s) and request telephone numbers (each a "market order") in a format that will be provided by the Company and that may be updated from time to time. After doing so, the Customer may submit customer orders to activate Subscribers for use of LIS within a market ("subscriber order").
- B. The Customer will provide the Company with a non-binding forecast setting forth the Customer's estimated usage by market or local calling area and anticipated Local Number Portability ("LNP") requests for the next 12 month period, which shall be updated on a calendar quarter basis thereafter.
- C. The Customer may use other common carriers in addition to or in lieu of the Company.

7. LOCAL NUMBER PORTABILITY

- A. Porting In. As between the Company and the Customer, the Customer may act as the Company's agent in obtaining Subscriber requests to port a telephone number from a third party telecommunications provider to the Company so that the Customer may provide interconnected VoIP service to the Subscriber using that ported number. The Customer represents and warrants that it has all necessary rights and authority necessary for any Port-In it requests, will provide copies of letters of authority authorizing the same (or access to recordings of third-party verification of customer ports) upon request and shall indemnify, defend and hold harmless the Company and its affiliates from any third party claim related to or arising out of any Port-In (or request for Port-In). The Customer shall not request a Port-In in any situation that does not meet the definition of "number portability" contained at 47 C.F.R. § 52.21(m).
- B. Porting Out. The Company shall honor requests received from third-party providers of telephone exchange service to port to such a provider a telephone number currently assigned to a Subscriber ("Port-Out"). Prior notice of Port-Outs will not be provided. The Company will support such third-party Port-Out requests in accordance with the Company's standard operating procedures.



Local Interconnection Service Guide

8. EMERGENCY 911 SERVICE

- A. Subject to technical limitations which may vary from market location to market location, the Company may offer 911 Services as part of LIS, subject to the limitations stated herein.
- B. The Customer shall ensure that a Subscriber does not use LIS from a location different from the Subscriber's address and shall further ensure that telephone numbers are assigned to Subscribers whose primary address is within the rate center (as defined by the incumbent local exchange carrier) associated with such telephone number.
- C. 911 Services may not function, or may not function properly: (i) if a telephone number is assigned to a Subscriber located outside of the ILEC rate center associated with such telephone number; (ii) if a Subscriber attempts a 911 call from a location different from the Subscriber's address provided to the Company by the Customer; (iii) during a disruption of power at the Subscriber location; (iv) during a loss of connectivity to the Subscriber location due to network outages or other degradations of service, whether in the Company's network or an interconnecting network; (v) during any period where service to a Subscriber has been cancelled or suspended for any reason (including suspensions or cancellations for failure to pay or other default); (vi) if incorrect or invalid Subscriber address information is provided, or if such information is not updated in the event of a change in primary location; or (vii) if equipment provided to or used by the Subscriber fails to function or is improperly installed or configured.
- D. 911 Services may not function correctly until correct and valid address information has been input into the appropriate database(s), which may occur after initial service activation.
- E. The Customer's agreements with Subscribers shall contain the following: (i) an explanation of the limitations on the functionality of 911 Services, including those set forth in 8.C, which the Company may supplement from time to time; and (ii) a release in favor of the Customer and the Company relating to claims arising out of the failure of 911 Services to function properly for the reasons set forth in this Section.
- F. **LIMITATION OF LIABILITY. IN ADDITION TO THE GENERAL LIMITATION OF LIABILITY SET FORTH IN SECTION 9 OF THIS GUIDE, NEITHER THE COMPANY, ITS AFFILIATES, SUBSIDIARIES, OFFICERS OR EMPLOYEES SHALL BE LIABLE TO CUSTOMER, SUBSCRIBER OR ANY THIRD PARTY FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, DAMAGES OR LIABILITIES, INCLUDING DAMAGE TO GOOD WILL, ECONOMIC LOSS, LOST PROFITS, OR OTHERWISE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY), WHETHER FORESEEN OR FORESEEABLE, ARISING FROM THE COMPANY'S PROVISION OR FAILURE TO PROVIDE 911 SERVICES.**



Local Interconnection Service Guide

9. LIMITATION OF LIABILITY

- A. Except as otherwise stated in this section, the liability of the Company for damages arising out of either: (1) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, or use of these services or (2) the failure to furnish its service, whether caused by acts or omissions, shall be limited to the extension of allowances to the Customer for the amount of the cost of service during the outage.
- B. Except for the extension of allowances to the Customer for interruptions in service as set forth in Section 9.A, the Company shall not be liable to a Customer or Subscriber or any third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service, except for willful neglect or willful misconduct.
- C. The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.
- D. The Company shall not be liable for any claims for loss or damages involving:
 1. Any act or omission of: (a) the Customer, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen.
 2. Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, fiber cuts, criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;
 3. Any unlawful or unauthorized use of the Company's facilities and services;
 4. Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the transmission of communications by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services with Customer-provided facilities or services;

Local Interconnection Service Guide

9. LIMITATION OF LIABILITY

D. (Cont'd)

5. Breach in the privacy or security of communications transmitted over the Company's facilities;
 6. Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in this section;
 7. Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof;
 8. Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
 9. Any non-completion of calls due to network busy conditions;
 10. Any calls not actually attempted to be completed during any period that service is unavailable.
- E. The Company shall not be liable, for any claims, loss, demands, suits, expense, or other action or any liability whether suffered, made, instituted, or asserted by the Customer or by any other party, for any personal injury to any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any Company or Customer equipment or facilities or service provided by the Company.
- F. The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere. The Company shall not be liable for any claims, loss, demands, suits, or other action, or any liability whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the service.



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9. LIMITATION OF LIABILITY (CONT'D)

- G. The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities, whether or not affiliated with the Company, or for other facilities provided by other entities used for service to the Customer. Such facilities are provided subject to such degree of protection or non-preemptibility as may be provided by the other entities.
- H. The Customer will indemnify and hold harmless the Company against any and all liability, claims, suits, losses, costs and legal fees caused by, arising out of, or resulting from any intentional or negligent act or omission of the Customer with respect to the services purchased under this Guide, including the acts or omission of any subcontractor or any direct or indirect employees of a subcontractor of the Customer.
- I. The Customer will indemnify and hold harmless the Company against any and all liability, claims, suits, losses, costs and legal fees with regard to infringement of patents, trade secrets or copyrights arising from or in connection with Customer-provided facilities or services.
- J. THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.



Local Interconnection Service Guide

10. SERVICE AVAILABILITY

Subject to the terms set forth in this Service Guide including but not limited to the terms of Section 4.A, preceding, LIS is offered subject to the availability of suitable facilities in the following states/locations:

Alabama
Arizona
Arkansas
California
California
Connecticut
Delaware
District of Columbia
Florida
Georgia
Illinois
Indiana
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
New Hampshire
New Jersey
New Mexico
New York
Ohio
Oregon
Pennsylvania
South Carolina
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin

For inquiries regarding availability for a specific community within any of the states listed above, please contact the Company.



Local Interconnection Service Guide

11. RATES AND CHARGES

- A. Facilities and equipment of a type and/or quantity necessary to provide LIS are not available on a ubiquitous basis in the Company's service area(s). To limit the real potential for stranded investment, recurring and nonrecurring charges for Customer-determined service configurations will be developed on a case-by-case basis in response to a bona fide request from a Customer or prospective Customer to develop a competitive bid for service. Charges will be offered to the Customer in writing and on a nondiscriminatory basis.
- B. The charges for LIS may be revised from time-to-time on one month's notice.
- C. Charges for service are exclusive of taxes. Except for taxes that the Company must remit directly based on the Company's income, the Customer will be responsible for all taxes that arise in any jurisdiction, including value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up) excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges imposed on or incident to the provision, sale or use of service (whether imposed on the Company or any affiliate of the Company). Such charges may be shown on invoices as cost recovery fees. The Customer may present the Company a valid exemption certificate and the Company will give effect thereto prospectively.
- D. Rates for Interstate and International services associated with LIS are included in separate Guides posted on the Company's website.

	NONRECURRING CHARGE
1. Local Interconnection Service	ICB
	MONTHLY RATE
2. Local Interconnection Port	
· Per-T-1	\$1,200.00
· All Other Bandwidths	ICB
3. Local Interconnection Service	[1]

[1] The monthly rate for LIS is a function of a combination of market-specific cost considerations as well as customer-determined factors including service capacity, length of contract term, optional features, and maintenance and security considerations. See 11.A, preceding, for additional information.