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Ms. Ann Cole, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 080731-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone ("Comcast") are an original and 15 copies of the Rebuttal Testimony of Beth Choroser in the above referenced docket.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

- COM 5
- ECR \_\_\_\_\_
- GCL 2
- OPC \_\_\_\_\_
- RCP \_\_\_\_\_
- SSC \_\_\_\_\_
- SGA \_\_\_\_\_
- ADM \_\_\_\_\_
- CLK \_\_\_\_\_

FRS/amb  
Enclosures

cc: Sam Cullari, Esq.  
Parties of Record

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Electronic Mail and/or U.S. Mail this 5<sup>th</sup> day of June, 2009.

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\_\_\_\_\_  
Floyd R. Self

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF FLORIDA**

In Re: )  
Petition of Comcast Phone of Florida, LLC For )  
Arbitration of Rates, Terms and Conditions of )  
Interconnection with Quincy Telephone Company, ) DOCKET NO. 080731  
Inc. d/b/a TDS Telecom Pursuant to ) Filed: June 5, 2009  
Communications Act of 1934, as Amended. )  
)

**REBUTTAL TESTIMONY OF BETH CHOROSER  
ON BEHALF OF COMCAST PHONE OF FLORIDA, LLC**

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**I. INTRODUCTION & PURPOSE OF TESTIMONY**

**Q. PLEASE IDENTIFY YOURSELF AND THE PURPOSE OF YOUR TESTIMONY.**

A. My name is Beth Choroser. I am the same Beth Choroser who filed direct testimony on behalf of Comcast Phone of Florida, LLC (“Comcast”) on May 1, 2009. I submit this rebuttal testimony to respond to the direct testimony that Douglas Duncan Meredith filed on behalf of the Quincy Telephone Company d/b/a TDS Telecom (“TDS”), on May 1, 2009 (“Meredith Direct”).

**Q. PLEASE SUMMARIZE YOUR THOUGHTS ABOUT MR. MEREDITH’S DIRECT TESTIMONY.**

A. Mr. Meredith makes incorrect assumptions about the nature of Comcast’s service offerings, which leads him to faulty conclusions. First, Mr. Meredith appears to assume that Comcast uses voice over Internet protocol (“VoIP”) technology or is itself an interconnected VoIP service provider. That is incorrect. Comcast provides telecommunications services to customers using the traditional time division multiplexing (“TDM”) protocol used on the public switched telephone network (“PSTN”). Comcast does not provide interconnected VoIP services, as it explained to TDS in its discovery responses.

Because Mr. Meredith conflates the services offered by Comcast and its interconnected VoIP service provider affiliates Comcast IP Phone, LLC, Comcast IP Phone II, LLC and Comcast IP Phone III, LLC (collectively “Comcast IP”), he jumps to the conclusion that Comcast is not seeking interconnection with TDS “in



1 its own right.” That is also incorrect. Comcast is seeking interconnection with  
2 TDS in order to provide telecommunications services to its customers, one of  
3 whom will be Comcast IP. As I explained in my Direct Testimony, Comcast  
4 currently has three separate telecommunications service offerings, which are set  
5 forth in its Florida service guides and price lists: (1) a School and Libraries  
6 service made available on a retail basis to qualifying school and library (“S&L”)   
7 customers that offers local networking and traditional calling services; (2)  
8 exchange access services provided to interexchange carriers seeking to route  
9 traffic to Comcast’s customers; and (3) a Local Interconnection Service (“LIS”)   
10 offering, which offers a comprehensive suite of wholesale services to  
11 interconnected VoIP service providers, including PSTN interconnection, access to  
12 telephone numbers, emergency calling, and related offerings that interconnected  
13 VoIP service providers require to serve their customers (collectively “PSTN  
14 interconnection”). (A copy of Comcast’s offerings is attached as Hearing Exhibit  
15 \_\_\_\_\_ (Beth Choroser Composite Rebuttal Exhibit BAC-1, pages 3-88 (Exhibit  
16 A)).)

17 Mr. Meredith focuses on LIS. He does so because it is the basis for his  
18 faulty argument that Comcast is a VoIP provider. But he misstates the nature of  
19 that offering as well as Comcast’s other telecommunications service offerings.  
20 Both the S&L and exchange access offerings are local exchange carrier service  
21 offerings which qualify Comcast for telecommunications carrier status in their  
22 own rights, as the New Hampshire commission just ruled a few months ago.  
23 (Copies of the relevant New Hampshire commission orders, which involved

1 Comcast's New Hampshire affiliate, are attached as Hearing Exhibit \_\_\_\_\_ (Beth  
2 Choroser Composite Rebuttal Exhibit BAC-1, pages 89-125 (Exhibits B and C)).  
3 But even if LIS was the only service that Comcast offered, Comcast would still be  
4 entitled to interconnection. LIS is a wholesale telecommunications service  
5 offering that Comcast makes available to any and all qualified prospective  
6 customers pursuant to its Florida price list. Mr. Meredith's other criticisms of the  
7 LIS offering are unwarranted. Prospective customers of the service that find the  
8 terms and conditions of the LIS offering unreasonable, unfair, or discriminatory  
9 are free to complain to this Commission.

10  
11 **Q. MR. MEREDITH DEVOTES THE FIRST FEW PAGES OF HIS**  
12 **TESTIMONY TO DISCUSSING THE DISTINCTION BETWEEN**  
13 **INFORMATION AND TELECOMMUNICATIONS SERVICES, THE**  
14 **REGULATORY TREATMENT OF INTERCONNECTED VOIP**  
15 **SERVICES AND WHAT HE CLAIMS ARE THE POLICY**  
16 **IMPLICATIONS OF THIS PROCEEDING. DO YOU HAVE ANY**  
17 **RESPONSE.**

18 **A.** That discussion is not relevant to Comcast's interconnection rights with TDS.  
19 Mr. Meredith is correct that the interconnected VoIP service that Comcast's  
20 affiliates provide -- which is marketed to the public nationally under the trade  
21 name "Comcast Digital Voice" (or CDV) -- is a "fixed" service, as the FCC has  
22 defined it, not an "over-the-top" service like Vonage's. But I do not believe that

1 the regulatory treatment of CDV, in particular, or interconnected VoIP, in general,  
2 is an issue in this proceeding.

3 What is true is that interconnected VoIP service providers such as  
4 Comcast IP cannot serve their customers without PSTN interconnection services  
5 such as Comcast's LIS. As I noted in my Direct Testimony, the FCC has referred  
6 to such arrangements *between VoIP providers and telecommunications carriers* as  
7 a "partnership." And at least ten state commissions around the country have  
8 expressly ruled that the transmission service that Comcast provides when it routes  
9 its interconnected VoIP service provider customers' traffic to and from other  
10 carriers on the PSTN (whether local or long distance providers) qualifies as a  
11 telecommunications service when it is offered to VoIP providers through service  
12 guides or tariffs, such as Comcast does in Florida. Carriers like Comcast provide  
13 the "bridge" between end-users on broadband networks who use VoIP  
14 applications and callers that use traditional PSTN telephone services. LIS  
15 provides for the transmission of telecommunications traffic originated by  
16 Comcast's interconnected VoIP service provider customers to and from carriers  
17 on the PSTN. This traffic is exchanged with other local exchange carriers (LECs)  
18 and interexchange carriers (IXCs) via traditional interconnection arrangements.

19 Comcast provides essential services to interconnected VoIP service  
20 providers, interexchange carriers seeking to route traffic to Comcast's end-users  
21 (including VoIP end-users served by interconnected VoIP service providers) and  
22 offers the S&L service to schools and libraries. The Legislature and the  
23 Commission have for many years promoted the kind of competition that

1 Comcast's presence in the market provides. *See, e.g.*, Fla. Stat. §§ 364.01(3),  
2 364.01(4)(b), (d), (e), and (h). Likewise, in its annual CLEC questionnaire, the  
3 Commission asks CLECs if they "[h]ave ... experienced any significant barriers  
4 in entering Florida's local exchange markets." (2009 Competitive Local  
5 Exchange Carrier (CLEC) Questionnaire (attached as Hearing Exhibit \_\_\_\_\_  
6 (Beth Choroser Composite Rebuttal Exhibit BAC-1, pages 126-130 (Exhibit D),  
7 Question No. 21).) CLECs are asked to "list and describe any major obstacles or  
8 barriers encountered that you believe may be impeding the growth of local  
9 competition in the state, along with any suggestions as to how to remove such  
10 obstacles." *Id.* I can't imagine a greater obstacle to the growth of competition  
11 than preventing competitive carriers from interconnecting.

12  
13 **II. COMCAST HAS REQUESTED INTERCONNECTION IN ITS OWN**  
14 **RIGHT**

15 **Q. MR. MEREDITH CLAIMS THAT COMCAST IS NOT SEEKING**  
16 **INTERCONNECTION IN ITS OWN RIGHT. IS HE CORRECT?**

17 A. No. First, as I have explained, Comcast offers both wholesale and retail  
18 telecommunications services and Comcast requires Section 251 interconnection to  
19 exchange its TDM traffic with TDS. Comcast requires interconnection with TDS  
20 to provide its LIS and S&L service offerings. With respect to the LIS offering in  
21 particular, the Federal Communications Commission's ("FCC") affirmed the right  
22 of carriers like Comcast to obtain Section 251 interconnection to provide such  
23 services in its *Time Warner Declaratory Ruling*. Mr. Meredith devotes several

1 pages of his testimony attempting to explain why *Time Warner* is not applicable  
2 or to otherwise distinguish this case. While I am not a lawyer, to the extent that  
3 Mr. Meredith claims that *Time Warner* is inapplicable because Comcast is  
4 purportedly not seeking interconnection in its own right, he is incorrect. I  
5 explained the relevant facts in my Direct Testimony (at 7-8). LIS provides both  
6 exchange access and telephone exchange services to interconnected VoIP service  
7 providers so that VoIP end-users can place and receive local and long distance  
8 calls. As the LIS offering explains (see Section 3.B), Comcast receives and  
9 transmits traffic in TDM only. Comcast's interconnected VoIP service provider  
10 customers are responsible for converting that traffic into Internet Protocol ("IP")  
11 so that it can be routed on their broadband networks to end-users. Comcast has  
12 interconnection agreements with other ILECs in Florida with whom it exchanges  
13 identical, non-toll (locally rated) telecommunications traffic. (All of Comcast's  
14 interconnection agreements in Florida are bill-and-keep, so no reciprocal  
15 compensation payments are made or received, but that does not negate the fact  
16 that local traffic is exchanged.) The interconnection agreement that Comcast and  
17 TDS have negotiated but not yet executed provides for similar terms.

18 Likewise, Comcast receives interexchange traffic from approximately 35  
19 interexchange carriers ("IXCs") in Florida to whom it provides terminating or  
20 originating access services in Florida. Comcast routes this traffic – again in the  
21 same TDM format in which it is received – to its interconnected VoIP service  
22 provider customers, who are, in turn, responsible for routing it to end-users.

1 Comcast sends these IXC customers carrier access bills (known as “CABS”) for  
2 providing this access service.

3 Thus, there is ample evidence that Comcast provides telecommunications  
4 services and that it “seeks interconnection in its own right for the purpose of  
5 transmitting traffic to or from TDS.” (Meredith Direct at 14:4-5.) There is  
6 simply no basis for Mr. Meredith’s assertions to the contrary.

7 **Q. WHAT DO YOU MAKE OF MR. MEREDITH’S CLAIM (AT 14) THAT**  
8 **COMCAST HAS NOT “DESCRIBE[D] ANY RETAIL LOCAL**  
9 **EXCHANGE SERVICE IT WOULD BE PROVIDING IN THE TDS**  
10 **SERVICE TERRITORY”?**

11 A. I don’t know what to make of it. Comcast explained the relevant facts (related  
12 above) regarding its local service offerings in its answers to TDS’ discovery  
13 requests. The S&L offering is a retail service, as Comcast has explained. This  
14 information was available to Mr. Meredith when he prepared and filed his  
15 testimony. But equally puzzling is his suggestion that Comcast must provide  
16 *retail* local exchange services to be entitled to interconnection in the first place.  
17 Again, I am not a lawyer, but my understanding is that the main holding of *Time*  
18 *Warner* is exactly the opposite.

19  
20 **Q. MR. MEREDITH TESTIFIES (AT 24-25) ABOUT COMCAST’S**  
21 **ANCILLARY SERVICES, CLAIMING THAT THEY DO NOT**  
22 **CONSTITUTE TELECOMMUNICATIONS SERVICES ENTITLING**

1           **COMCAST TO INTERCONNECTION. DO YOU UNDERSTAND WHAT**  
2           **HE IS TALKING ABOUT?**

3           A.    No.

4  
5           **Q.    MR. MEREDITH MAKES SEVERAL REFERENCES TO COMCAST'S**  
6           **DISCONTINUANCE OF CERTAIN LOCAL SERVICE OFFERINGS IN**  
7           **2007. WHAT IS HE REFERRING TO AND WHAT IS THE RELEVANCE**  
8           **HERE?**

9           A.    Comcast and its telecommunications carrier affiliates in approximately a dozen  
10           states around the country, including Florida, used to offer a traditional, retail,  
11           circuit switched telephone service, which was marketed to the public under the  
12           trade name "Comcast Digital Phone" or "CDP." For a variety of business  
13           reasons, Comcast Corporation executives made the business decision to get out of  
14           this line of business. Comcast formally discontinued these offerings in 2007 and  
15           2008. Comcast provided TDS with a copy of its applications to the FCC to  
16           discontinue CDP in Florida as Exhibits 30-1 and 30-2 of its discovery responses,  
17           and Mr. Meredith has appended those filings to his testimony.

18                    In discontinuing CDP, Comcast did not cease providing  
19           telecommunications services. Rather, it simply stopped offering one product.  
20           Comcast did not surrender its authority to provide service in Florida or anywhere  
21           else and it continues to actually provide and offer various wholesale and retail  
22           telecommunications services in Florida, as I have explained. Thus, there is

1 simply no basis to Mr. Meredith's repeated claims that Comcast's services cannot  
2 be considered telecommunications services because Comcast discontinued CDP.

3  
4 **Q. IS COMCAST SEEKING TO EXCHANGE VOIP TRAFFIC WITH TDS?**

5 A. No. This is perhaps the biggest error that Mr. Meredith makes. (*See* Meredith  
6 Direct at 29-34.) Mr. Meredith attempts to blur the distinction between the  
7 telecommunications services that Comcast provides and the interconnected VoIP  
8 services that its affiliates offer to end-users. The fact that interconnected VoIP  
9 service calls are originated or terminated on the VoIP provider's broadband  
10 network in IP format has no bearing on the nature of the service that Comcast  
11 provides. This is the case regardless of whether interconnected VoIP is ultimately  
12 found to be an information service or a telecommunications service. The FCC  
13 specifically found in the *Time Warner Declaratory Ruling* (§ 15) that the  
14 "regulatory classification of the service provided to the ultimate end user *has no*  
15 *bearing*" on Comcast's Section 251 interconnection rights, or its right to provide  
16 the *wholesale* telecommunications services that interconnected VoIP service  
17 providers require in order to serve their end-users.

18 Thus, the regulatory classification of the interconnected VoIP service  
19 offered by Comcast's affiliates is irrelevant. Comcast will route its customers'  
20 VoIP originated calls to TDS in TDM format, with appropriate SS7 signaling,  
21 over appropriate interconnection arrangements. Indeed, much if not all of this  
22 traffic (at least in the early years, until traffic levels exceed certain thresholds)  
23 will be routed indirectly to TDS via Embarq's tandem transport service. Embarq



1 accepts this traffic pursuant to *its* interconnection agreement with Comcast, and  
2 Comcast pays Embarq a tandem transit charge. This is further evidence of the  
3 telecommunications service nature of the local interconnection service that  
4 Comcast provides its VoIP affiliates, and which it is prepared to offer to any  
5 qualified interconnected VoIP service provider that requests the service.  
6

7 **Q. IS SECTION 51.100 OF THE FCC'S RULES RELEVANT TO THIS**  
8 **PROCEEDING, AS MR. MEREDITH CLAIMS?**

9 A. No. That regulation provides that a carrier may exchange information services  
10 traffic over a telecommunications interconnection arrangement. As I explained  
11 above, Comcast provides telecommunications services, not information services.  
12 Thus, the regulation Mr. Meredith cites to is simply not relevant.  
13

14 **Q. IS COMCAST'S SITUATION DIFFERENT FROM SPRINT OR MCI,**  
15 **WHICH THE FCC APPROVED OF IN THE *TIME WARNER***  
16 ***DECLARATORY RULING*?**

17 A. No. In the *Time Warner Declaratory Ruling*, the FCC noted that Time Warner  
18 purchased wholesale telecommunications services from MCI and Sprint to  
19 connect Time Warner's interconnected VoIP service provider customers with the  
20 PSTN. Sprint also provided other necessary services such as numbering, E-911  
21 and related services. These Sprint and MCI PSTN interconnection offerings are  
22 functionally comparable to LIS. The legal right of Sprint (or MCI) to obtain  
23 interconnection to provide *its* PSTN interconnection service has been affirmed in

1 at least eight states, including Texas, Pennsylvania, Nebraska, Illinois, New York,  
2 Washington, Iowa and Ohio. Comcast's right to interconnection to provide LIS  
3 has been approved in Vermont and Michigan. That brings to ten the number of  
4 states that have held that carriers are entitled to Section 251 interconnection to  
5 provide wholesale telecommunications services to interconnected VoIP service  
6 providers.

7 Mr. Meredith makes a variety of arguments attempting to distinguish the  
8 Sprint/MCI line of cases from the current facts. Most of this discussion is best  
9 left to the legal briefs, but I will address one point: While several of the  
10 Sprint/MCI cases noted that Sprint and MCI offered other telecommunications  
11 services to other customers, none of them indicate that either carrier was already  
12 exchanging locally rated telecommunications services traffic in the footprint of  
13 the opposing incumbent carrier. That is not surprising. If a telecommunications  
14 carrier was required to already have traffic before being entitled to an  
15 interconnection agreement, then none could ever enter the market. As the  
16 Michigan commission explained in its recent order (at 3):

17 Comcast Phone is a licensed local exchange carrier (LEC) in  
18 Michigan. Whether it currently provides regulated basic local  
19 exchange service is not dispositive of its right to negotiate an  
20 interconnection agreement with another telecommunications  
21 provider in the state. Many telecommunications providers first  
22 receive a license from the Commission and then negotiate  
23 interconnection agreements. Indeed, it is rarely if ever, that a  
24 provider will negotiate with a company that does not currently hold  
25 a LEC license. To hold that a LEC has no right to negotiation and  
26 arbitration of an interconnection agreement unless it is serving  
27 customers currently would effectively end adding new entrants to  
28 the telecommunications market.  
29

1 (A copy of the Michigan Order is attached as Hearing Exhibit \_\_\_\_\_ (Beth  
2 Choroser Composite Rebuttal Exhibit BAC-1, pages 131-136 (Exhibit E)).) A  
3 new entrant by definition does not have any customers, and therefore does not  
4 have any “traffic” to exchange. Mr. Meredith’s claim that Comcast must first  
5 have traffic to exchange before TDS will enter into an agreement is illogical and  
6 contradictory to the pro-competitive objectives of the Florida legislature and the  
7 federal Communications Act.

8 **III. COMCAST IS A COMMON CARRIER**

9 **Q. MR. MEREDITH CLAIMS THAT COMCAST IS NOT EVEN A**  
10 **COMMON CARRIER. IS HE CORRECT?**

11 **A.** No. Comcast offers its services to those members of the public suited to use  
12 them. That is the purpose and function of the Florida Telecommunications Price  
13 Lists that Comcast has filed with the Commission and the access service guide  
14 that Comcast posts on its web site. By obtaining certification from the  
15 Commission, and thus subjecting itself to Commission oversight, Comcast has  
16 taken upon itself the duty to provide its services on “just, reasonable and  
17 sufficient” rates, terms and conditions. Fla. Stat. § 364.03(1). And that duty is  
18 enforceable by the Commission and in the courts. I think that is what the FCC  
19 was referring to in the *Bright House* decision when it said that carriers “self-  
20 certify” as telecommunications carriers. See *Bright House Networks, LLC v*  
21 *Verizon California, Inc*, Memorandum Opinion and Order, 23 FCC Rcd. 10704, ¶  
22 39 (2008). With rights such as interconnection come duties and obligations that  
23 carriers can not take lightly.

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**Q. MR. MEREDITH ARGUES THAT SOME OF THE TERMS OF THE LIS OFFERING DISQUALIFY IT AS A COMMON CARRIER SERVICE. IS THERE MERIT TO HIS ARGUMENT?**

A. No. Mr. Meredith devotes many pages of his testimony to complaining about Comcast’s LIS offering, which he claims (at 19) is a “tool designed to camouflage the Comcast Phone relationship with its Comcast IP affiliates ...” However, the “facts” about LIS that Mr. Meredith points to are irrelevant, unsupported, and largely erroneous. For example, Mr. Meredith is concerned that Comcast makes LIS available via “*bona fide*” requests only, but complains that LIS does not explain what a “*bona fide*” request entails. This complaint is ridiculous. *Bona fide* is Latin for “in good faith,” and the term appears in many contracts. As used in the LIS price list, it means that Comcast will work with interconnected VoIP service providers who are eligible for the service and make good faith inquiries regarding its availability.

Mr. Meredith’s concern (at 20) about Comcast’s reliance on “applicable” state or federal law is equally misplaced. Applicable state and federal laws are incorporated by reference in contracts of all kinds, including most, if not all, interconnection agreements. Which law applies depends on the facts and circumstances of a given situation. I can’t believe that this supposed “uncertainty” will be an impediment to prospective customers.

Finally, the “draconian financial provisions” that Mr. Meredith describes are actually common contract provisions found in many telecommunications

1 agreements and tariff offerings. Similar terms are found in offerings by other  
2 Florida carriers. AT&T, formerly Bell South, for example, offers what it calls an  
3 “interconnection service.” If a customer cancels before the end of the term,  
4 AT&T imposes an early termination charge equal to the remaining balance of  
5 charges for the service period. *See* Bell South Telecommunications, Inc., General  
6 Subscriber Service Tariff, Interconnection of Mobile Services, Section  
7 A35.1.4(K)(6), Third Revised Page 7. (A copy of this tariff page is attached as  
8 Hearing Exhibit \_\_\_\_\_ (Beth Choroser Composite Rebuttal Exhibit BAC-1, pages  
9 137-138 (Exhibit F)).) Other AT&T services similarly require the payment of the  
10 remaining balance upon early termination of service. *See, e.g.*, Bell South  
11 Telecommunications, Inc., Access Services Tariff, Section E5, Fourth Revised  
12 Page 15 - First Revised Page 17 (requiring all charges for remaining balance of  
13 minimum period upon discontinuance prior to expiration of minimum period)  
14 (Copies of these tariff pages are attached as Hearing Exhibit \_\_\_\_\_ (Beth  
15 Choroser Composite Rebuttal Exhibit BAC-1, pages 139-142 (Exhibit G)).)

16 Mr. Meredith also misrepresents the early termination penalty provision in  
17 the LIS Guide. As Section 5.C.7 of LIS explains, Comcast “*may*” require early  
18 termination payments equal to “all future monthly and other charges which would  
19 have been payable.” They are not required in all cases. As a business matter, the  
20 purpose of such charges is to recover “stranded investment,” as the LIS Guide  
21 explains in Section 12.A.  
22

1       **Q.     WHAT ABOUT MR. MEREDITH'S CLAIM THAT COMCAST'S LIS**  
2       **TARIFF IS ONLY AN "OVERVIEW," WITHOUT SPECIFIC**  
3       **PROVISIONS GOVERNING THE TERMS AND CONDITIONS OF LIS?**

4       A.     The fact that Comcast does not have "standard" contract terms for LIS does not  
5       disqualify LIS as a common carrier offering. Individual case basis ("ICB")  
6       offerings are common in the industry. Tariffs offering service on an "individual  
7       case basis" ("ICB"), with material terms left open for negotiations, are not only  
8       well accepted, they are the *norm* for offerings such as LIS. By way of example,  
9       several high capacity access services offered by ILECs institute ICB rates and  
10      charges. *See, e.g.*, Bell South Telecommunications, Inc., Access Services Tariff,  
11      Section E7, Second Revised Page 60; cf. Bell South Telecommunications, Inc.,  
12      Access Services Tariff, Section E7, Fifth Revised Page 39 (determining minimum  
13      service period for high capacity services on ICB basis); Frontier Communications  
14      of the South, Inc., Intrastate Access Tariff (adopting Florida Uniform Statewide  
15      Access Service Tariff (Bell South Tariff)). (Copies of these tariff pages are  
16      attached as Hearing Exhibit \_\_\_\_\_ (Beth Choroser Composite Rebuttal Exhibit  
17      BAC-1, pages 143-146 (Exhibit H).)

18             The FCC's rules also provide carriers with significant latitude to change  
19      rates. *See* 47 C.F.R. § 61.58(b) ("Tariffs for new services filed by price cap local  
20      exchange carriers shall be filed on at least one day's notice"); 47 C.F.R. § 61.58(c)  
21      ("Contract-based tariffs filed by price cap local exchange carriers pursuant to §  
22      69.727(a) of this chapter shall be filed on at least one day's notice"); 47 C.F.R. §

1 61.23(c) (“All tariff filings of domestic and international non-dominant carriers  
2 must be made on at least one day's notice”).

3 In his testimony, Mr. Meredith contends that because the LIS Tariff is an  
4 “overview” (according to Mr. Meredith), there is no regulatory compulsion for  
5 Comcast to serve all indifferently. That is simply not true. Mr. Meredith ignores  
6 the fact that Comcast has represented to the Commission (and the public) that it is  
7 a common carrier, has sought and obtained proper authorization from the  
8 Commission to provide telecommunications services, and has accepted the  
9 benefits and burdens of being a regulated telecommunications provider in Florida,  
10 including customer complaints being subject to the Commission’s jurisdiction.

11  
12 **Q. WHAT OF MR. MEREDITH’S CRITICISM THAT COMCAST’S ONLY**  
13 **LIS CUSTOMERS ARE AFFILIATED ENTITIES?**

14 A. It is irrelevant because there is no requirement that an entity secure a certain  
15 number of customers before it can gain status as a common carrier, as the United  
16 States Court of Appeals for the District of Columbia Circuit recently recognized.  
17 In the *Bright House* case I referred to in my Direct Testimony, the court explained  
18 that, “[l]ike the [FCC], we are not troubled by the fact that Bright House and  
19 Comcast-affiliated carriers are currently serving only their affiliates.” The Eighth  
20 Circuit court of appeals recently made the same finding. In order to qualify as a  
21 telecommunications carrier, all a carrier must do is offer its services  
22 indiscriminately to the clientele it is suited to serve. Comcast does exactly that.

1       **Q.   MR. MEREDITH ALSO CRITICIZED COMCAST’S NETWORK**  
2       **SERVICE FOR SCHOOLS AND LIBRARIES, AND ITS EXCHANGE**  
3       **ACCESS SERVICE OFFERINGS.           ARE THESE**  
4       **TELECOMMUNICATIONS SERVICES, AND DO THEY QUALIFY**  
5       **COMCAST AS A COMMON CARRIER?**

6       A.   Yes, and yes. In addition to LIS, Comcast also qualifies as a telecommunications  
7       carrier and as a LEC by virtue of its exchange access service offerings to  
8       interexchange carriers (“IXCs”) that purchase access from Comcast pursuant to its  
9       Access Service Guide. “Exchange access” is defined as offering access to  
10      “telephone exchange services or facilities for the purpose of the origination or  
11      termination of telephone toll services.” 47 U.S.C. § 153(16). This is the function  
12      that Comcast performs when it receives an incoming toll call and then routes it to  
13      the interconnected VoIP service provider customer for delivery to the end user, or  
14      vice-versa. In that case, it is using its “telephone exchange facilities” to transport  
15      a toll call.

16               Comcast also provides “telephone exchange service,” which, under the  
17      Act, is effectively the ability to make and receive local calls. 47 U.S.C.  
18      § 153(47). This is exactly what Comcast provides when it makes its services  
19      available to interconnected VoIP service providers and exchanges traffic with  
20      third-party carriers, pursuant to interconnection agreements with other ILECs  
21      *already* approved by the Commission.

22               Comcast’s qualified *retail* telecommunications offering in Florida is its  
23      network service offering to eligible school and library customers. As described



1 in my Direct Testimony, this network service can include channelized exchange  
2 service that provides local and long distance calling capability through the PSTN.  
3 Mr. Meredith argues that this service is provided to a “very limited, select group.”  
4 But as discussed above, Comcast is not required to offer its services to the entire  
5 public, and can limit its offering to clientele that Comcast is best suited to serve.  
6 Accordingly, Comcast’s network service offering is intended for eligible schools  
7 and library customers. So long as it offers this service indiscriminately to any  
8 eligible school or library in the state – which it does – then Comcast qualifies as a  
9 common carrier. Further, Mr. Meredith’s conjecture that Comcast network service  
10 offering is likely a VoIP service is wholly unfounded. Mr. Meredith does not  
11 even attempt to provide a basis for his inaccurate speculation.

12  
13 **Q. MR. MEREDITH CLAIMS (AT 26-28) THAT COMCAST DOES NOT**  
14 **QUALIFY AS A TELECOMMUNICATIONS CARRIER UNDER**  
15 **FLORIDA LAW. DO YOU AGREE?**

16 A. Obviously not. The claim is based on Mr. Meredith’s mistaken “understanding  
17 that Comcast Phone uses VoIP technology for its offering in Florida.” (Meredith  
18 Direct at 26:19-20.) Comcast does not use VoIP to provide its services, as I  
19 explain above. There is thus no basis for his argument,

20  
21 **Q. IS THERE ANY TRUTH TO MR. MEREDITH’S CONTENTION (AT**  
22 **27:18) THAT COMCAST IS “TRYING TO HAVE ITS CAKE AND EAT IT**  
23 **TOO” BY OFFERING VOIP SERVICES THROUGH AN AFFILIATE?**

1 A. No. Comcast IP's interconnected VoIP service offering is subject to numerous  
2 federal regulatory obligations, including universal service fund contributions, law  
3 enforcement wire-tapping obligations ("CALEA"), number portability, disability  
4 access, emergency calling ("911"), service discontinuance notification and other  
5 obligations. Thus, interconnected VoIP service are regulated in many ways. And  
6 while Mr. Meredith claims that the lack of state commission oversight provides  
7 Comcast IP with "a substantial business advantage over incumbent local exchange  
8 companies like TDS," he does not even bother to identify a single one of those so-  
9 called advantages.

10  
11 **Q. DOES THE COMMISSION'S DECISION DENYING SECTION 251**  
12 **INTERCONNECTION TO INTRADO HAVE ANY BEARING ON**  
13 **COMCAST'S INTERCONNECTION RIGHTS?**

14 A. No. The Commission's decision in Docket No. 070699-TP has no bearing on  
15 Comcast's interconnection rights. Intrado is a competitive provider of E-911  
16 services that sought Section 251(c) interconnection in order to provide E-911  
17 service to public safety answering points ("PSAPs"), the public safety agencies  
18 that receive E911 calls. In denying the Petition, the Commission found that  
19 Intrado's E-911 service does not qualify as "telephone exchange service" because  
20 it does not "provide the ability both to originate and terminate calls." Comcast's  
21 services, by contrast, clearly do.

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**Q. DO YOU AGREE WITH MR. MEREDITH THAT COMCAST'S STATUS AS A COMMON CARRIER IN OTHER PARTS OF FLORIDA HAS NO BEARING ON ITS STATUS AS A COMMON CARRIER IN TDS' SERVICE TERRITORIES?**

A. No. While Comcast's common carrier status in other parts of Florida may not necessarily make Comcast a common carrier in TDS' service territory, it certainly provides strong evidence that it is because Comcast offers the very same services in those territories that it intends to offer in the TDS territory.

**Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

A. Yes.

**June 5, 2009**

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF FLORIDA**

In Re: )  
Petition of Comcast Phone of Florida, LLC For )  
Arbitration of Rates, Terms and Conditions of )  
Interconnection with Quincy Telephone Company, ) DOCKET NO. 080731  
Inc. d/b/a TDS Telecom Pursuant to ) Filed:  
Communications Act of 1934, as Amended. )  
)

**EXHIBITS TO  
REBUTTAL TESTIMONY OF BETH CHOROSER**

**Exhibit No. Exhibit Description**

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- A Comcast Phone of Florida, LLC Access Service Guide; Exchange Services Price List Section 6 (Schools and Libraries Network Service) and Section 7 (Local Interconnection Service).
- B *In re Comcast Phone of New Hampshire Application for Authority to Serve Customers in the TDS Service Territories*, Order Granting Authority No. 24,938 (NH PUC, Feb. 6, 2009).
- C *In re Comcast Phone of New Hampshire Application for Authority to Serve Customers in the TDS Service Territories*, Order Denying Motion for Rehearing No. 24,958 (NH PUC, April 21, 2009).
- D Florida Public Service Commission 2009 Competitive Local Exchange Carrier (CLEC) Questionnaire.
- E *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), *aff'g 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).
- F Bell South Telecommunications, Inc., General Subscriber Service Tariff, Interconnection of Mobile Services, Section A35.1.4(K)(6), Third Revised Page 7.
- G Bell South Telecommunications, Inc., Access Services Tariff, Section E5.2, Fourth Revised Page 15 - First Revised Page 17;

- H Bell South Telecommunications, Inc., Access Services Tariff, Section E7.5.6, Second Revised Page 60; Bell South Telecommunications, Inc., Access Services Tariff, Section E7.4.4, Fifth Revised Page 39; Frontier Communications of the South, Inc., Intrastate Access Tariff (adopting Florida Uniform Statewide Access Service Tariff (Bell South Tariff),

**EXHIBIT A**

**Comcast Phone of Florida, LLC**

**Access Service**

Issued July 5, 2007

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**ACCESS SERVICE GUIDE**

**REGULATIONS AND SCHEDULES OF RATES**

**FOR SERVICE**

**WITHIN THE STATE OF FLORIDA**

## Comcast Phone of Florida, LLC

### Access Service

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#### 1. APPLICATION OF SERVICE GUIDE

##### 1.1. GENERAL

This Service Guide applies to intrastate Access Service supplied to customers for origination and termination of traffic to and from Central Office codes assigned to the Company.

BY USING OR PAYING FOR THE SERVICES IN THIS DOCUMENT, YOU AGREE TO THE PRICES, CHARGES, TERMS AND CONDITIONS CONTAINED HEREIN. IF YOU DO NOT AGREE TO THESE PRICES, CHARGES, TERMS AND CONDITIONS, DO NOT USE THE SERVICES, AND CANCEL THE SERVICES IMMEDIATELY BY CALLING THE CUSTOMER SERVICE NUMBER REFERENCED ON YOUR BILL.

The provision of Access Service is subject to existing regulations and terms and conditions specified in this Service Guide as well as in the Company's other current Service Guides, and may be revised, added to, or supplemented by superseding issues.

In addition to the regulations and charges herein, this Service Guide is subject to applicable regulations as may be prescribed by the Florida Public Utilities Commission.

##### 1.2. REVISION SYMBOLS

Revisions to this Service Guide are coded through the use of symbols. These symbols appear in the right hand margin of the page. The symbols and their meanings are as follows:

- (C) To signify changed term or condition
- (D) To signify discontinued material
- (I) To signify rate increase
- (M) To signify material moved from or to another part of the Service Guide with no change, unless there is another change symbol present
- (N) To signify new material
- (R) To signify rate reduction
- (T) To signify a change in text but no change in rate, term or condition

## Comcast Phone of Florida, LLC

### Access Service

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#### 1. APPLICATION OF SERVICE GUIDE

##### 1.3. DEFINITIONS

###### Access Code

A uniform code assigned by the Company to an individual customer. The code has the form 10XXX, 10XXXXX, 950-0XXX, or 950-1XXX.

###### Access Minutes

The usage of exchange facilities in intrastate service for the purpose of calculating chargeable usage.

###### Access Tandem

A switching system that provides a traffic concentration and distribution function for originating or terminating traffic between end offices and a customer's premises.

###### Answer Supervision

The transmission of the switch trunk equipment supervisory signal (off-hook or on-hook) to the customer's point of termination as an indication that the called party has answered or disconnected.

###### Call

A customer attempt for which the complete address code is provided to the service end office.

###### Carrier or Common Carrier

Any individual, partnership, association, corporation or other entity engaged in intrastate communication for hire by wire or radio between two or more exchanges.

###### Central Office

A local Company switching system where exchange service customer station loops are terminated for purposes of interconnection to each other and to trunks.

## Comcast Phone of Florida, LLC

### Access Service

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#### 1. APPLICATION OF SERVICE GUIDE

##### 1.3. DEFINITIONS (CONT'D)

###### Channel

A communications path between two or more points of termination.

###### Common Carrier

Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate communication by wire or radio, between two or more exchanges.

###### Communications System

Denotes channels and other facilities which are capable of communications between terminal equipment provided by other than the Company.

###### Company

Comcast Phone of Florida, LLC

###### Customer

The person or legal entity that subscribes to service under this Service Guide and is responsible for payment of charges for services furnished to the customer.

###### Customer Premises

The customer premises is all space in the same building occupied by a customer and all space occupied by the same customer in different buildings on contiguous property.

###### End Office Switch

A Company switching system where exchange service customer station loops are terminated for purposes of interconnection to each other and to trunks.



## Comcast Phone of Florida, LLC

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#### 1. APPLICATION OF SERVICE GUIDE

##### 1.3. DEFINITIONS (CONT'D)

###### End User

Any customer of an intrastate telecommunications service that is not a Carrier or Common Carrier, except that a Carrier shall be deemed to be an End User when such Carrier uses a telecommunications service for administrative purposes. A person or entity that offers telecommunications service exclusively as a reseller shall be deemed to be an End User if all resale transmissions offered by such reseller originate on the premises of such reseller when making such service available to others, directly or indirectly.

###### Exchange

A group of lines in a unit generally smaller than a LATA established by the Company for the administration of communications service in a specified area. An Exchange may consist of one or more central offices together with the associated facilities used in furnishing communications service within that area.

###### Facilities

Denotes any cable, poles, conduit, carrier equipment, wire center distribution frames, central office switching equipment, etc., utilized to provide the service offered under this Service Guide.

###### Local Access and Transport Area (LATA)

A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes.

###### Local Calling Area

A geographical area, as defined in the Company's local or general exchange service Tariff in which an End User may complete a call without incurring toll usage charges.

###### Message

A Message is a Call as defined above.

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### Access Service

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#### 1. APPLICATION OF SERVICE GUIDE

##### 1.3. DEFINITIONS (CONT'D)

###### Point of Termination

The point of demarcation within a customer-designated premises at which the Company's responsibility for the provision of access service ends. The point of demarcation is the point of interconnection between Company communications facilities and customer-provided facilities as defined in Part 68 of the Federal Communications Commission's Rules and Regulations.

###### Presubscription

An arrangement whereby an End User may select and designate to the Company an Interexchange Carrier (IXC) it wishes to access, without an Access Code, for completing long distance calls. The selected IXC is referred as the End User's Primary Interexchange Carrier (PIC).

###### "Public Utilities Commission" or Commission"

The Florida Public Utilities Commission.

###### Serving Wire Center

The wire center from which the customer-designated premises normally obtains dial tone from the Company.

###### Trunk

A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

###### Trunk Group

A set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communications paths are interchangeable.

###### Wire Center

A physical location in which one or more central offices, used for the provision of exchange services, are located.

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#### 1. APPLICATION OF SERVICE GUIDE

##### 1.4. EXPLANATION OF ABBREVIATIONS

ANI	-	Automatic Number Identification
BHMC	-	Busy Hour Minutes of Capacity
BP	-	Billing Percentage
CCSA	-	Common Channel Signaling Access
DTT	-	Direct-Trunked Transport
EF	-	Entrance Facility
FCC	-	Federal Communications Commission
FGB	-	Feature Group B
FGD	-	Feature Group D
IC	-	Interexchange Carrier
ICB	-	Individual Case Basis
Mbps	-	Megabits per second
MOU	-	Minutes of Use
LATA	-	Local Access and Transport Area
NECA	-	National Exchange Carrier Association
NPA	-	Numbering Plan Area
PIC	-	Primary Interexchange Carrier
PIU	-	Percentage of Interstate Usage

## Comcast Phone of Florida, LLC

### Access Service

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#### 2. GENERAL REGULATIONS

##### 2.1. UNDERTAKING OF THE COMPANY

###### 2.1.1. SCOPE

The Company undertakes to furnish Access Service in accordance with the terms and conditions set forth in this Service Guide.

###### 2.1.2. SHORTAGE OF FACILITIES

All service is subject to the availability of suitable facilities. The Company reserves the right to limit the length of communications or to discontinue furnishing services when necessary because of the lack of transmission medium capacity or because of any causes beyond its control.

The furnishing of service under this Service Guide is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

###### 2.1.3. TERMS AND CONDITIONS

- A. Service is provided on the basis of a minimum period of three months for Switched Access. For the purpose of computing charges in this tariff, a month is considered to have 30 days.
- B. Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this Service Guide. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C. In any action between the parties to enforce any provision of this Service Guide, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.
- D. The Company shall comply with all rules and regulations issued by the Commission. In addition, the regulations set forth herein apply to all services offered throughout this Service Guide unless otherwise specified in the service specific section of this Service Guide.

## Comcast Phone of Florida, LLC

### Access Service

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## 2. GENERAL REGULATIONS

### 2.1. UNDERTAKING OF THE COMPANY (CONT'D)

#### 2.1.3. TERMS AND CONDITIONS (CONT'D)

##### E. Assignment or Transfer

All services provided under this Service Guide are controlled by the Company and the customer may not transfer or assign the use of service without the express prior written consent of the Company. Such transfer or assignment only shall apply where there is no interruption of the use or location of service. All terms and conditions shall apply to all such permitted transferees or assignees, as well as all conditions of service.

##### F. Use of Service

The services the Company offers shall not be used for any unlawful purpose or for any use for which the customer has not obtained all required governmental approvals, authorization, licenses, consents and permits.

The Company may require applicants for service who intend to use the Company's offering for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and regulations, policies, orders and decisions.

The Company may require a customer to immediately shut down its transmission if such transmission is causing interference to others.

A customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the express prior written consent of the Company. The Company will only permit a customer to transfer its existing service to another entity if the existing customer has paid all charges owed to the Company for regulated access services. All terms and conditions shall apply to all such permitted transferees or assignees, as well as all conditions of service.

Recording of telephone conversations of service provided by the Company is prohibited except as authorized by applicable federal, state and local laws.

##### G. Ownership of Facilities

The customer obtains no property right or interest in the use of any specific type of facility, service, equipment, number, process, or code. All right, title and interest to such items remain, at all times, solely with the Company.

## Comcast Phone of Florida, LLC

### Access Service

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#### 2. GENERAL REGULATIONS

##### 2.1. UNDERTAKING OF THE COMPANY (CONT'D)

##### 2.1.3. TERMS AND CONDITIONS (CONT'D)

###### H. Interconnection

The Company will provide for interconnection with other carriers in accordance with the rules and regulations promulgated by the Commission.

###### I. Service may be terminated upon written notice to the customer if:

1. The customer is using the service in violation of this Service Guide; or
2. The customer is using the service in violation of the law.

###### J. This Service Guide shall be interpreted and governed by the laws of the state of Florida without regard for its choice of laws provision.

## Comcast Phone of Florida, LLC

### Access Service

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#### 2. GENERAL REGULATIONS

##### 2.1. UNDERTAKING OF THE COMPANY (CONT'D)

##### 2.1.4. PROVISION OF EQUIPMENT AND FACILITIES

- A. The Company shall use reasonable efforts to make available services to a customer on or before a particular date, subject to the provisions of and compliance by the customer with the regulations contained in this Service Guide. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any customer.
- B. The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the customer. The customer may not, nor may customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the customer, without the prior consent of the customer, which shall not be unreasonably withheld.
- D. Equipment the Company provides or installs at the customer premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- E. The customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the customer.

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### Access Service

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#### 2. GENERAL REGULATIONS

##### 2.1. UNDERTAKING OF THE COMPANY (CONT'D)

##### 2.1.4. PROVISION OF EQUIPMENT AND FACILITIES (CONT'D)

- F. The Company shall not be responsible for the installation, operation, or maintenance of any customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this Service Guide, the responsibility of the Company shall be limited to the furnishing of facilities offered under this Service Guide and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:
1. The transmission of signals by customer provided equipment or for the quality of, or defects in, such transmission; or
  2. The reception of signals by customer-provided equipment.
- G. Service is offered subject to the availability of facilities and provision of this Service Guide. The Company's obligation to furnish facilities and service is dependent upon its ability to secure and retain, without unreasonable expense, suitable facilities from the underlying carrier, if an underlying carrier is involved.
- H. The Company shall not be required to furnish, or continue to furnish, facilities or service where the circumstances are such that the proposed use of the facilities or service would tend to adversely affect the Company's property, service or economic conditions.



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#### 2. GENERAL REGULATIONS

##### 2.1. UNDERTAKING OF THE COMPANY (CONT'D)

##### 2.1.5. LIABILITY OF THE COMPANY

- A. The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in Section 2.5. The extension of such allowances for interruption shall be the sole remedy of the customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B. The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lockouts, work stoppages, or other labor difficulties.
- C. The Company shall not be liable for (a) any act or omission of any entity furnishing to the Company or to the Company's customer facilities or equipment used for interconnection with Access and Interconnection Services; or (b) for the acts or omissions of common carriers or warehousemen
- D. The Company shall not be liable for any damages or losses due to the fault or negligence of the customer or due to the failure or malfunction of customer-provided equipment or facilities.

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#### 2. GENERAL REGULATIONS

##### 2.1. UNDERTAKING OF THE COMPANY (CONT'D)

##### 2.1.5. LIABILITY OF THE COMPANY (CONT'D)

- E. The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.1.5.E as a condition precedent to such installations.
- F. The Company is not liable for any defacement of or damage to customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G. The Company shall be indemnified, defended, and held harmless by the customer against any claim, loss or damage arising from the customer's use of services involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the customer's own communications.
- H. The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to the Company by the customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- I. 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, except those expressly set forth herein.

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#### 2. GENERAL REGULATIONS

##### 2.1. UNDERTAKING OF THE COMPANY (CONT'D)

##### 2.1.6. DISCONTINUANCE OF SERVICE FOR CAUSE

- A. 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.
- B. Upon 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.
- C. 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.
- D. 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.
- E. 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.
- F. In the event of fraudulent use of the Company's network, the Company may without notice 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.
- G. Upon the Company's discontinuance of service to the customer under 2.1.6.A. or 2.1.6.B., 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 Service 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.

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#### 2. GENERAL REGULATIONS

##### 2.2. OBLIGATIONS OF THE CUSTOMER

###### 2.2.1. CUSTOMER PREMISES PROVISIONS

- A. The customer shall provide the personnel, power and space required to operate all facilities and associated equipment installed on the premises of the customer.
- B. The customer shall be responsible for providing Company personnel access to premises of the customer at any reasonable hour for the purpose of testing the facilities or equipment of the Company.

###### 2.2.2. LIABILITY OF THE CUSTOMER

- A. The customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the customer, its officers, employees, agents, invitees, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B. To the extent caused by any negligent or intentional act of the customer as described in A., preceding, the customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, (2) the death of or injury to persons, including, but not limited to, employees or invitees of either party, and (3) any liability incurred by the Company to any third party pursuant to this or any other price list or tariff of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.
- C. The customer shall not assert any claim against any other customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this Service Guide including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other customer or user and not by any act or omission of the Company. Nothing in this Service Guide is intended either to limit or to expand customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

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#### 2. GENERAL REGULATIONS

##### 2.2. OBLIGATIONS OF THE CUSTOMER (CONT'D)

##### 2.2.3. JURISDICTIONAL REPORTING REQUIREMENTS

- A. For Feature Group B Switched Access Service(s) for both originating and terminating usage, a projected Percentage of Interstate Usage (PIU) must be provided by the customer to the Company. When a customer orders Feature Group B Switched Access Service, the customer shall state, in its order, the projected PIU factor for each Feature Group B Switched Access Service group ordered. The formula for developing PIU is as follows in C., following.
- B. For Feature Group D Switched Access Service(s), the Company, where jurisdiction can be determined from call detail, will determine the PIU as follows:
  1. For originating access minutes, the PIU will be developed on a monthly basis, by end office trunk group, by dividing the measured interstate originating access minutes (the access minutes where the calling number is in one state and the called number is in another state) by the total originating access minutes.
  2. For terminating access minutes, the customer has the option to provide the Company with a projected PIU factor. Customers who provide a PIU factor shall supply the Company with an interstate percentage of the Feature Group D terminating access minutes for each account to which the customer may terminate traffic. Should the customer not supply a terminating PIU factor, the data used by the Company to develop the PIU for originating access minutes will be used to develop the PIU for such terminating access minutes.

When a customer orders Feature Group D Switched Access Service, the customer shall supply a projected PIU for each end office trunk group involved to be used in the event that originating call detail is insufficient to determine the jurisdiction of the usage. For purposes of developing the PIU, the customer shall utilize the same considerations as those set forth in C., following.

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#### 2. GENERAL REGULATIONS

##### 2.2. OBLIGATIONS OF THE CUSTOMER (CONT'D)

##### 2.2.3. JURISDICTIONAL REPORTING REQUIREMENTS (CONT'D)

C. Where the call detail data is insufficient to develop jurisdiction, the customer must provide the Company with a PIU using the following steps:

1. For purposes of developing the PIU, the customer shall consider every call that enters the customer's network at a point within the same state as the state where the called station is located to be intrastate and every call that enters the customer's network at a point in a state different from the state in which the called station is located to be interstate.
2. The Company will designate the number obtained by subtracting the PIU from 100 ( $100 - \text{projected interstate percentage} = \text{intrastate percentage}$ ) as the projected intrastate percentage of use.
3. A whole number percentage will be used by the Company to apportion the usage, monthly recurring, and/or nonrecurring charges between interstate and intrastate until a revised report is received.

D. The projected interstate percentage of use will be used to determine the charges as follows:

The number of access minutes for a trunk group will be multiplied by the projected interstate percentage of use to determine the interstate access minutes; (i.e.,  $\text{number of access minutes} \times \text{projected interstate percentage of use} = \text{interstate access minutes}$ ). The number of interstate access minutes so determined will be subtracted from the total number of access minutes (i.e.,  $\text{number of access minutes} - \text{interstate access minutes} = \text{intrastate access minutes}$ ). The intrastate access minutes for the group will be billed as set forth in Section 3, following.

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#### 2. GENERAL REGULATIONS

##### 2.2. OBLIGATIONS OF THE CUSTOMER (CONT'D)

##### 2.2.3. JURISDICTIONAL REPORTING REQUIREMENTS (CONT'D)

- E. Effective on the first of January, April, July and October of each year, the customer may update the jurisdictional reports that require a projected interstate percentage. The customer shall forward to the Company, to be received no later than 20 calendar days after the first of each such month, a revised report showing the interstate percentage of use for the past three months ending the last day of December, March, June and September, respectively, for each service arranged for interstate and intrastate use. Except as set forth in B., preceding, where jurisdiction can be determined from the recorded message detail, the revised report will serve as the basis for the next three months billing and will be effective on the bill date in the following month (i.e., February, May, August, and November) for that service. No prorating or back billing will be done based on the report. If the customer does not supply the report, the Company will assume the percentage to be the same as that provided in the last quarterly report. For those cases in which a quarterly report has never been received from the customer, the Company will assume the percentage to be the same as that provided in the order for service as set forth in A., preceding.
- F. The customer reported projected interstate percentage of use as set forth in A., above will be used for the apportionment of any monthly rates or nonrecurring charges associated with Feature Groups B or D Switched Access Service until the end of the quarter during which the service was activated. Thereafter, a projected interstate percentage for such apportionment will be developed quarterly by the Company based on the data used to develop the projected interstate percentage of use as set forth in A., preceding. Where call detail is insufficient to make such a determination, the customer will be requested to project an interstate percentage of use to be used by the Company for such apportionment.

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#### 2. GENERAL REGULATIONS

##### 2.2. OBLIGATIONS OF THE CUSTOMER (CONT'D)

##### 2.2.3. JURISDICTIONAL REPORTING REQUIREMENTS (CONT'D)

- G. The customer shall keep sufficient detail from which the percentage of interstate use can be ascertained and upon request of the Company make the records available for inspection. Such a request will be initiated by the Company no more than once per year. The customer shall supply the data within 30 calendar days of the Company request.
- H. The customer may provide an additional percentage of interstate use for Common Transport and End Office/Local Switching subject to the reporting requirements previously listed in this section. The percentage of interstate use may be provided per individual facility or at the billing account level. Should the customer not provide a percentage of interstate use, the Company will use the reported Feature Group B or Feature Group D *aggregated percentage of interstate use*.
- I. In the sole discretion of the Company, all or any portion of the jurisdictional reporting requirements set out above may be waived.



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#### 2. GENERAL REGULATIONS

##### 2.2. OBLIGATIONS OF THE CUSTOMER (CONT'D)

##### 2.2.4. CHANGES IN SERVICE REQUESTED

If the customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the customer's installation fees shall be adjusted according to the terms and conditions set forth in Section 2.8, following.

##### 2.2.5. NOTICE TO COMPANY FOR CANCELLATION OF SERVICE

Customers desiring to terminate service shall provide the Company 30 days written notice of their desire to terminate service.

##### 2.2.6. CLAIMS

With respect to any service or facility provided by the Company, the customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorney fees for:

- A. Any loss, destruction or damage to property of the Company or any third party, or the death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the customer, its employees, agents, representatives or invitees; or
- B. Any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the customer, including, without limitation, use of Company services and facilities in a manner not contemplated by the agreement between the customer and the Company.

##### 2.2.7. TRANSFERS AND ASSIGNMENTS

The customer may not assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the Company.

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#### 2. GENERAL REGULATIONS

##### 2.3. CUSTOMER EQUIPMENT AND CHANNELS

###### 2.3.1. INTERCONNECTION OF FACILITIES

In order to protect the Company's facilities and personnel and the services furnished to other customers by the Company from potentially harmful effects, the signals applied to the Company's service shall be such as not to cause damage to the facilities of the Company. Any special interface equipment necessary to achieve the compatibility between facilities of the Company and the channels or facilities of others shall be provided at the customer's expense.

- A. The Company may, upon notification to the customer, at a reasonable time, make such tests and inspections as may be necessary to determine that the customer is complying with the Company's requirements for the installation, operation and maintenance of customer-provided equipment and for the wiring of the connection of customer equipment to Company-owned facilities.
- B. If the protective requirements in connection with customer-provided equipment are not being complied with, the Company may take such action as necessary to protect its facilities and personnel and will promptly notify the customer by registered mail in writing of the need for protective action. In the event that the customer fails to advise the Company within 10 days after such notice is received or within the time specified in the notice that corrective action has been taken, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities and personnel from harm. The Company will, upon request 24 hours in advance, provide the customer with a statement of technical parameters that the customer's equipment must meet.

###### 2.3.2. INSPECTION AND TESTING

- A. Upon suitable notification to the customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the customer is complying with the requirements set forth in Section 2.3 for the installation, operation, and maintenance of customer-provided facilities, equipment, and wiring in the connection of customer-provided facilities and equipment to Company-owned facilities and equipment.
- B. If the protective requirements for customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the customer must take this corrective action and notify the Company of the action taken. If the customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.

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#### 2. GENERAL REGULATIONS

##### 2.4. ORDERING, RATING AND BILLING OF ACCESS SERVICES WHERE MORE THAN ONE EXCHANGE COMPANY IS INVOLVED

The Company accepts and adheres to the Ordering and Billing Forum guidelines, Multiple Exchange Carrier Access Billing (MECAB) and Multiple Exchange Carrier Ordering and Design (MECOD).

##### 2.5. ALLOWANCE FOR INTERRUPTIONS IN SERVICE

###### 2.5.1. GENERAL

- A. A credit allowance will be given when service is interrupted, except as specified in 2.5.2, following. A service is interrupted when it becomes inoperative to the customer; e.g., the customer is unable to transmit or receive because of a failure of a component furnished by the Company under this tariff.
- B. An interruption period begins when the customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility, or circuit is operative.
- C. If the customer reports a service, facility, or circuit to be interrupted but declines to release it for testing and repair, the service, facility, or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility, or circuit considered by the Company to be impaired.

###### 2.5.2. NOTIFICATION OF SERVICE-AFFECTING ACTIVITIES

The Company will provide the customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual customer but affect many customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the customer may not be possible.

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#### 2. GENERAL REGULATIONS

##### 2.5. ALLOWANCE FOR INTERRUPTIONS IN SERVICE (CONT'D)

##### 2.5.3. LIMITATIONS ON ALLOWANCES

No credit allowance will be made for any interruption in service:

- A. Due to the negligence of or noncompliance with the provisions of this Service Guide by any person or entity other than the Company, including but not limited to the customer or other common carriers connected to the service of the Company;
- B. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C. Due to circumstances or causes beyond the control of the Company;
- D. During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E. During any period in which the customer continues to use the service on an impaired basis;
- F. During any period when the customer has released service to the Company for maintenance purposes or for implementation of a customer order for a change in service arrangements;
- G. That occurs or continues due to the customer's failure to authorize replacement of any element of special construction; and
- H. That was not reported to the Company within thirty (30) days of the date that service was affected.

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#### 2. GENERAL REGULATIONS

##### 2.5. ALLOWANCE FOR INTERRUPTIONS IN SERVICE (CONT'D)

##### 2.5.4. USE OF ANOTHER MEANS OF COMMUNICATIONS

If the customer elects to use another means of communications during the period of interruption, the customer must pay the charges for the alternative service used.

##### 2.5.5. APPLICATION OF CREDITS FOR INTERRUPTIONS IN SERVICE

In case of an interruption to any service, allowance for the period of interruption, if not due to the negligence of the customer, shall be as follows:

- A. For Switched Access Service, no credit shall be allowed for an interruption of less than 24 hours. The customer shall be credited for an interruption of 24 hours or more at the rate of 1/30 of (a) any applicable monthly rates, or (b) the assumed minutes of use charge for each period of 24 hours or major fraction thereof that the interruption continues.
- B. The credit allowance(s) for an interruption or for a series of interruptions shall not exceed (a) any applicable monthly rates, or (b) the assumed minutes of use charge for the service interrupted in any one monthly billing period.

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## 2. GENERAL REGULATIONS

### 2.6. PRIVACY RULES

Automatic Number Identification (ANI) derived information may be used only for billing, routing, screening, ensuring network performance, completing calls or performing services directly related to the telephone caller's original call or transaction. Therefore, should the business that receives ANI information have an established customer relationship with the caller, the business may offer products or services to the caller that are directly related to the products or services previously purchased by the caller. The business that receives ANI information may not establish marketing lists or conduct ongoing market calls for unrelated products or services or sell the information derived from ANI (caller's name, address, telephone billing number, purchasing habits, etc.) to third parties unless it gets the prior written consent of the caller.

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#### 2. GENERAL REGULATIONS

##### 2.7. APPLICATION OF RATES AND CHARGES

The regulations set forth in this section govern the application of rates for services contained in other sections of this Service Guide.

##### 2.7.1. MEASURING ACCESS MINUTES

Customer traffic to End Offices will be measured (i.e., recorded or assumed) by the Company at End Office switches. Originating and terminating calls will be measured (i.e., recorded or assumed) by the Company to determine the basis for computing chargeable access minutes. In the event the customer message detail is not available because the Company lost or damaged tapes or experienced recording system outages, the Company will estimate the volume of lost customer access minutes of use based on previously known values. Access minutes will be recorded to the nearest one second for any particular call. Access minutes or fractions thereof are accumulated over the billing period for each End Office and are then rounded up to the nearest access minute for each end office.

For originating calls over Feature Group B or D, usage measurement begins when the originating Feature Group B or D switch receives the first wink supervisory signal forwarded from the customer's point of termination.

The measurement of originating call usage ends when the originating Feature Group B or D switch receives disconnect supervision from either the originating end user's end office, indicating the originating end user has disconnected, or the customer's point of termination, whichever is recognized first by the switch.

For terminating calls over Feature Group B or D, the measurement of access minutes begins when the terminating Feature Group B or D switch receives answer supervision from the terminating end user's end office, indicating the terminating end user has answered.

The measurement of terminating call usage over Feature Group B or D ends when the terminating Feature Group B or D switch receives disconnect supervision from either the terminating end user's end office, indicating the terminating end user has disconnected, or the customer's point of termination, whichever is recognized first by the switch.

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#### 2. GENERAL REGULATIONS

##### 2.7. APPLICATION OF RATES AND CHARGES (CONT'D)

##### 2.7.2. RATES BASED UPON DISTANCE

Where the charges for service are specified based upon distance, the following rules apply:

- A. Distance between two points is measured as airline distance between the wire centers of the originating and terminating telephone lines. The wire center is a set of geographic coordinates, as referenced in National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4, associated with each NPA-NXX combination (where NPA is the area code and NXX is the first three digits of a seven-digit telephone number). Except that, until the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4 is revised to include certain Company wire centers, the airline distance should be determined utilizing the "V" (vertical) and "H" (horizontal) coordinates as set forth in any applicable Company tariffs on file with the FCC.
- B. The airline distance between any two wire centers is determined as follows:
  1. Obtain the "V" and "H" coordinates for each wire center from the above referenced NECA tariff.
  2. Compute the difference between the "V" coordinates of the two wire centers; and the difference between the two "H" coordinates.
  3. Square each difference obtained in step (2) above.
  4. Add the square of the "V" difference and the square of the "H" difference obtained in step (3).
  5. Divide the sum of the squares by 10. Round to the next higher whole number if any fraction is obtained.
  6. Obtain the square root of the whole number result obtained above. Round to the next higher whole number if any fraction is obtained. This is the airline mileage.
- C. The airline mileage is used to determine the Switched Access Service Common Mileage rates as set forth in Section 3.

Formula:

$$\sqrt{\frac{|v_1 v_2|^2 + |h_1 h_2|^2}{10}}$$



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#### 2. GENERAL REGULATIONS

##### 2.7. APPLICATION OF RATES AND CHARGES (CONT'D)

##### 2.7.3. NONRECURRING CHARGES

Nonrecurring charges are one-time charges that apply for a specific work activity (i.e., installation or service rearrangements).

###### A. Installation of Service

Nonrecurring charges apply to each Access Service installed. For Switched Services ordered on a per trunk basis, the charge is applied per trunk. For Switched Services ordered on a busy hour minutes of capacity basis, the charge is also applied on a per trunk basis but the charge applies only when the capacity ordered requires the installation of an additional trunk(s).

###### B. Service Rearrangements

All changes to existing services other than changes involving administrative activities only will be treated as a discontinuance of the existing service and an installation of a new service. The nonrecurring charge described in A., preceding, will apply for this work activity. Moves that change the physical location of the point of termination are described below.

###### 1. Moves Within the Same Building

When the move is to a new location within the same building, the charge for the move will be an amount equal to one half of the nonrecurring charge for the capacity affected. There will be no change in the minimum period requirements.

###### 2. Moves to a Different Building

Moves to a different building will be treated as a discontinuance and start of service and all associated nonrecurring charges will apply. New minimum period requirements will be established for the new service. The customer will also remain responsible for satisfying all outstanding minimum period charges for the discontinued service.

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#### 2. GENERAL REGULATIONS

##### 2.8. ACCESS SERVICE ORDER

##### 2.8.1. ORDERING REQUIREMENTS

- A. A Switched Access Service Order is used by the Company to provide a customer Switched Access Service. When placing an order for Switched Access Service, the customer shall provide, at a minimum, the following information:
  1. For Feature Group B Switched Access Service, the customer shall specify the number of trunks and the End Office when direct routing to the End Office is desired. When ordering FGB trunks to an End Office, the customer must also provide the Company an estimate of the amount of traffic to be generated to and/or from each End Office subtending an access tandem to assist the Company in the effort to project further facility requirements. In addition, the customer shall also specify for terminating only access, whether the trunks are to be arranged in trunk group arrangements or provided as single trunks.
  2. For Feature Group D Switched Access Service, the customer shall specify the number of busy hour minutes of capacity (BHMC) from the customer's premises to the End Office by Feature Group and by traffic type. This information is used to determine the number of transmission paths. The customer shall also specify the Common Transport and Local Switching options. Customers may, at their option, order FGD by specifying the number of trunks and the End Office when direct routing to the end office is desired and the Common Transport and Local Switching options desired. When a customer orders FGD in trunks, the customer is responsible to assure that sufficient access facilities have been ordered to handle its traffic. When ordering by trunk quantities rather than BHMC quantities to an end office, the customer must also provide the Company an estimate of the amount of traffic it will generate to and/or from each End Office to assist the Company in its own efforts to project further facility requirements.

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#### 2. GENERAL REGULATIONS

##### 2.8. ACCESS SERVICE ORDER (CONT'D)

##### 2.8.2. ACCESS SERVICE ORDER INTERVALS

Switched Access Service is provided with one of the following Service Date Intervals:

- Negotiated Interval
- Advance Order Interval

###### A. Negotiated Interval

The Company will negotiate a service date interval with the customer. The Company will offer a service date based on the type and quantity of Access Services the customer has requested. All services for which rates are applied on an individual case basis are provided with a Negotiated Interval.

The initial establishment of service where the customer is:

	<b>MAXIMUM INTERVAL</b>
1. Not yet provided with any FGB or FGD service in the LATA	6 months
2. Provided FGB or FGD service in the LATA	90 Days

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#### 2. GENERAL REGULATIONS

##### 2.8. ACCESS SERVICE ORDER (CONT'D)

##### 2.8.2. ACCESS SERVICE ORDER INTERVALS (CONT'D)

###### B. Advance Order Interval

1. When placing an Access Order, a customer may request an Advance Order Interval for a service date of 12 to 24 months from the Application Date for the following services:
  - A minimum of 24 voice grade equivalent Access Service lines or trunks or 720 BHMCs
2. Orders for less than the minimum quantities will be accommodated under Negotiated Interval provisions.
3. Advance Order Interval Access Orders are subject to all ordering conditions of Negotiated Interval Access Orders except for the following:
4. A nonrefundable Advance Payment will be calculated as follows:
  - The minimum monthly charge for the minimum period plus the applicable Nonrecurring Charges for the services ordered.
5. This Advance Payment is due 10 working days from the date the Company confirms acceptance of the order, or on the Application Date, whichever date is the later date. If the Advance Payment is not received by such payment date, the order will be canceled.
6. When the Access Services are connected on the service date, the Advance Payment will be applied as a credit to the customer's billed service charges. When there has been a decrease in the number of services originally ordered, as described below, only the portion of the Advance Payment for services actually installed will be credited.
7. Cancellation or Partial Cancellation of an Advance Order Interval Access Order
  - a. When the customer cancels an Access Order, the order will be withdrawn. The Advance Payment will not be credited or refunded.
  - b. Any decrease in the number of ordered Access Services will be treated as a partial cancellation, and the portion of the Advance Payment for the services canceled will not be credited or refunded.

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#### 2. GENERAL REGULATIONS

##### 2.8. ACCESS SERVICE ORDER (CONT'D)

##### 2.8.3. ACCESS ORDER MODIFICATIONS

The customer may request a modification of its Access Order at any time prior to notification by the Company that service is available for the customer's use or prior to the service date, whichever is later.

Any increase in the number of Access Service lines, trunks or busy hour minutes of capacity or CCSA signaling connections will be treated as a new Access Order (for the increased amount only).

###### A. Service Date Change Charge

Access Order service dates for the installation of new services or rearrangements of existing services may be changed, but the new service date may not exceed the original service date by more than 30 calendar days. When, for any reason, the customer indicates that service cannot be accepted for a period not to exceed 30 calendar days, and the Company accordingly delays the start of service, a Service Date Change Charge will apply. If the customer requested service date is more than 30 calendar days after the original service date, the order will be canceled by the Company and reissued with the appropriate cancellation charges applied.

A Service Date Change Charge will apply, on a per order, per occurrence basis, for each service date changed. The applicable charge is found in E., following.

###### B. Partial Cancellation Charge

Any decrease in the number of ordered Access Service lines, trunks or busy hour minutes of capacity ordered with a Negotiated Interval Access Order will be treated as a partial cancellation and the charges as set forth in E., following, will apply. Partial cancellation charges do not apply to Advance Order Interval Access Orders.

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#### 2. GENERAL REGULATIONS

##### 2.8. ACCESS SERVICE ORDER (CONT'D)

##### 2.8.3. ACCESS ORDER MODIFICATIONS (CONT'D)

###### C. Design Change Charge

The customer may request a design change to the service ordered. A design change is any change to an Access Order that requires engineering review. Design changes do not include a change of customer premises, end user premises, end office switch, or Feature Group type except for changes to Feature Group D. Changes of this nature will require the issuance of a new order and the cancellation of the original order with appropriate cancellation charges applied.

The Design Change Charge will apply on a per order, per occurrence basis, for each order requiring a design change. The applicable charge is found in E., following.

If a change of service date is required, the Service Date Change Charge will also apply.

###### D. Expedited Order Charge

When placing an Access Order for service(s), a customer may request a service date that is prior to the service date that has been negotiated by the Company and the customer. A customer may also request an earlier service date on a pending Negotiated or Advance Order Interval Access Order. If the Company agrees to provide service on an expedited basis, an Expedited Order Charge will apply.

If the Company receives a request for an expedited service date at the time an Access Order is placed, the Expedited Order Charge is calculated by summing all the nonrecurring charges associated with the order and then dividing this total by the number of days in the negotiated service period. The charge is then applied on a per day of improvement basis, per order, but in no event shall the charge exceed fifty percent of the total nonrecurring charges associated with the Access Order.

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#### 2. GENERAL REGULATIONS

##### 2.8. ACCESS SERVICE ORDER (CONT'D)

##### 2.8.3. ACCESS ORDER MODIFICATIONS (CONT'D)

###### E. Order Charges

	NONRECURRING CHARGE
1. Partial Cancellation Charge, Per order, per occurrence	ICB
2. Design Change Charge, Per order, per occurrence	ICB
3. Service Date Change Charge, Per order, per occurrence	ICB

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#### 2. GENERAL REGULATIONS

##### 2.8. ACCESS SERVICE ORDER (CONT'D)

##### 2.8.4. CANCELLATION OF AN ACCESS ORDER

A. A customer may cancel an Access Order for the installation of service at any time prior to notification by the Company that service is available for the customer's use or prior to the service date, whichever is later. The cancellation date is the date the Company receives written or verbal notice from the customer that the order is to be canceled. The verbal notice must be followed by written confirmation within 10 days. If a customer or end user is unable to accept Access Service within 30 calendar days after the original service date, the customer has the choice of the following options:

1. The Access Order shall be canceled and charges set forth in B., following will apply, or
2. Billing for the service will commence.

If no cancellation request is received within the specified 30 calendar days, billing for the service will commence. In any event, the cancellation date or the date billing is to commence, as applicable, shall be the 31st day beyond the original service date of the Access Order.

B. When a customer cancels a Negotiated Interval Access Order for the installation of service, a Cancellation Charge will apply as follows:

1. When the customer cancels an Access Order, a charge equal to the estimated provisioning costs incurred at a particular date for the service ordered by the Company shall apply.
2. If the Company misses a service date for a Negotiated Interval Access Order by more than 30 days, due to circumstances such as acts of God, governmental requirements, work stoppages and civil commotions, the customer may cancel the Access Order without incurring cancellation charges.



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#### 2. GENERAL REGULATIONS

##### 2.8. ACCESS SERVICE ORDER (CONT'D)

##### 2.8.5. MINIMUM PERIOD

- A. The minimum period for which Switched Access Service is provided and for which charges are applicable is three months.
- B. The following changes will be treated as a discontinuance of the existing service and an installation of a new service. A new minimum period will be established. All associated nonrecurring charges will apply for the new service.
  - A move to a different building.
  - A change in type of service.
  - A change in Switched Access Service Interface Group.
  - Change in Switched Access Service traffic type.

##### 2.8.6. MINIMUM PERIOD CHARGE

When Access Service is disconnected prior to the expiration of the minimum period, charges are applicable for the balance of the minimum period.

The Minimum Period Charge for monthly billed services will be determined as follows:

- A. All unpaid Nonrecurring Charges reasonably expended by Company to establish service to customer, plus;
- B. Any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of customer, plus;
- C. All Recurring Charges specified in the applicable Service Order for the balance of the then current minimum period;
- D. Minus a reasonable allowance for costs avoided by the Company as a direct result of customer's cancellation.

In addition to the Minimum Period Charge, Termination Liabilities may apply, as set forth elsewhere, for those services ordered under Term Agreements.

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## 2. GENERAL REGULATIONS

### 2.9. BILLING AND PAYMENT

The Company shall bill on a current basis all charges incurred by and credits due to the customer. The customer shall receive its bill in a paper format. Such bills are due upon receipt. The Company will, upon request and if available, furnish such detailed information as may reasonably be required for verification of the customer's bill.

All bills for service provided to the customer by the Company are due (payment date) within 21 calendar days of the bill being sent and are payable in immediately available funds. If such payment due date would cause payment to be due on a Saturday, Sunday or Legal Holiday, payment for such bills shall be due from the customer as follows:

If such payment due date falls on a Sunday or on a Legal Holiday, the payment due date shall be the first non-Holiday date following such Sunday or Legal Holiday. If such payment due date falls on a Saturday or on a Legal Holiday that is observed on Tuesday, Wednesday, Thursday or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Legal Holiday.

The customer will be assessed a charge of twenty-five dollars (\$25.00) for each check submitted by the customer to the Company which a financial institution refuses to honor.

If any portion of the payment is received by the Company after the due date, or if any portion of the payment is received by the Company in funds that are not immediately available upon presentment, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the due date, multiplied by a late factor. The late factor shall be 1.5% per month.

#### 2.9.1. TAXES

The customer is responsible for payment of any sales, use, gross receipts, excise, access, franchise or other local, state and federal taxes, charges, fees or surcharges (however designated) (excluding taxes on the Company's net income) imposed on or based upon the provision, sale or use of network services. Where applicable, such taxes will be billed by the Company to the customer and will be separately stated on the customer's invoice; provided, however, that the Company will not bill to the customer such taxes as may be exempted by a tax exemption or resale certificate for operation in any jurisdiction in which the customer obtains such a certificate.

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#### 2. GENERAL REGULATIONS

##### 2.9. BILLING AND PAYMENT (CONT'D)

##### 2.9.2. CLAIMS AND DISPUTES

In the event that a billing dispute occurs concerning any charge billed to the customer by the Company, the customer must submit a documented claim for the disputed amount. The customer will submit all documentation as may reasonably be required to support the claim. All claims must be submitted to the Company within 120 days of receipt of billing for that service. If the customer does not submit a claim as stated above, the customer waives all rights to filing a claim thereafter. All disputes between the Company and the customer that cannot be settled through negotiation may be resolved by arbitration upon written demand of either party. Arbitration shall be referred to the American Arbitration Association (AAA) and conducted pursuant to its Commercial Arbitration Rules. The arbitrator shall have the authority to award compensatory damages solely; such award shall be final and binding and may be entered in any court having jurisdiction thereof. The provisions of the Federal Arbitration Act shall govern such arbitration. This dispute process does not preclude the customer from filing a complaint with the Commission.

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#### 2. GENERAL REGULATIONS

##### 2.9. BILLING AND PAYMENT (CONT'D)

##### 2.9.3. PAYMENT OF DEPOSITS

To safeguard its interests, the Company may require a customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:

- two month's charges for a service or facility which has a minimum payment period of one month; or
- the charges that would apply for the minimum payment period for a service or facility which has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.

A deposit may be required in addition to an Advance Payment.

When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the company may, at its option, return the deposit or credit it to the customer's account. If the amount of the deposit is insufficient to cover the balance due to the customer's account, the Company retains the right to collect any amounts owing after the deposit has been applied plus any costs related to the collection of any remaining balance.

Deposits held will accrue interest at a simple interest rate equal to the rate applicable for the late payment charge set forth in 2.9, preceding. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the customer.

##### 2.9.4. ADVANCE PAYMENTS

To safeguard its interests, the Company may require a customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the customer. The advance payment will be credited to the customer's initial bill. An advance payment may be required in addition to a deposit.

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## 2. GENERAL REGULATIONS

### 2.10. SPECIAL CONSTRUCTION

All rates and charges quoted herein provide for the furnishing of facilities when suitable facilities are available or where the design or construction of the necessary facilities does not involve unusual costs.

When, at the request of the customer, the Company designs and/or constructs facilities that it would otherwise not construct, or the construction of such facilities involves a greater expense than would otherwise be incurred, Special Construction nonrecurring charges may apply.

### 2.11. NON-ROUTINE INSTALLATION

At the customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but at the customer's request extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

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### 3. SWITCHED ACCESS SERVICE

#### 3.1. GENERAL

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point communications path between a customer's premises and an end user's premises. It provides for the use of common terminating, switching and trunking facilities. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises in the LATA where it is provided. Switched Access Service must be ordered separately for each LATA in which the customer desires to originate or terminate calls.

#### 3.2. PROVISION AND DESCRIPTION

Switched Access Service is provided in two service categories of standard and optional features called Feature Groups. The Company provides Feature Group B and Feature Group D originating and terminating Switched Access. The service categories are differentiated by their technical characteristics and the manner in which an end user accesses them when originating calls.

##### 3.2.1. FEATURE GROUP B

FGB Access, which is available to all customers, provides trunk side access to Company End Office switches with an associated uniform 950-XXXX access code for the customer's use in originating and terminating communications.

##### 3.2.2. FEATURE GROUP D

FGD Access, which is available to all customers, provides trunk side access to Company End Office switches with an associated uniform 10XX-XXX access code for the customer's use in originating and terminating communications. No access code is required for calls to a customer over FGD if the end user's telephone exchange service is arranged for presubscription to that customer.

##### 3.2.3. 8XX TOLL-FREE ACCESS SERVICE

8XX Toll-Free Access Service is a service offering utilizing originating trunk side Switched Access Service. The service provides for the forwarding of end user dialed 8XX calls to a Company Service Switching Point, which will initiate a query to the database to perform the customer identification and delivery function. The call is forwarded to the appropriate customer based on the dialed 8XX number.

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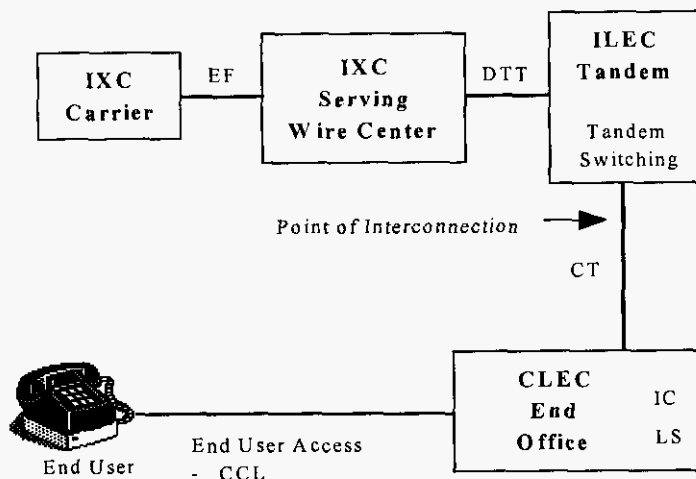
### 3. SWITCHED ACCESS SERVICE

#### 3.3. SWITCHED ACCESS RATE CATEGORIES

The rate categories that apply to Switched Access Service are as follows:

- Carrier Common Line
- Transport (includes Common Transport, Direct-Trunked Transport and Local Channel/Entrance Facilities)
- Local Switching
- 8XX Toll-Free Access Service

The following diagram depicts a generic view of the components of Switched Access Service and the manner in which the components are combined to provide a complete access service.



ILEC bills:

EF - Entrance Facility  
DTT - Direct Trunk Transport  
Tandem Switching

Company bills:

CT - Common Transport  
IC - Interconnection Charge  
LS - End Office/Local Switching  
CCL - Carrier Common Line

Switched Access rates are as set forth in Section 3.4, following.

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### 3. SWITCHED ACCESS SERVICE

#### 3.3. SWITCHED ACCESS RATE CATEGORIES (CONT'D)

##### 3.3.1. CARRIER COMMON LINE

The *Carrier Common Line* rate category provides for the use of Company common lines by customers for access to end users to furnish customer intrastate communications.

#### A. Limitations

1. A telephone number is not provided with *Carrier Common Line*.
2. Detail billing is not provided for *Carrier Common Line*.
3. Directory listings are not included in the rates and charges for *Carrier Common Line*.
4. Intercept arrangements are not included in the rates and charges for *Carrier Common Line*.
5. All trunk side connections provided in the same combined access group will be limited to the same features and operating characteristics.

#### B. Rate Regulations

Where the customer is provided with *Switched Access Service* under this Service Guide, the Company will provide the use of Company common lines by a customer for access to end users.

1. The *Carrier Common Line* charges will be billed per access minute to each *Switched Access Service* customer.
2. When the customer reports interstate and intrastate use of *Switched Access Service*, the *Carrier Common Line* charges will be billed only to intrastate.
3. All *Switched Access Service* provided to the customer will be subject to *Carrier Common Line* charges.



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### 3. SWITCHED ACCESS SERVICE

#### 3.3. SWITCHED ACCESS RATE CATEGORIES (CONT'D)

##### 3.3.2. TRANSPORT

The *Transport* rate category provides for transmission facilities between the customer's premises and the End Office or Access Tandem switch(es) where the customer's traffic is switched to originate or terminate its communications.

Switched Transport is a two-way voice-frequency transmission path which may consist of an Entrance Facility (EF), Direct-Trunked Transport (DTT) Facility, or Common Transport.

##### A. Common Transport

The Common Transport rate category provides for transmission facilities between the Company's End Office and an alternate tandem provider's network.

##### 1. Transport Termination

The Transport Termination element includes the non-distance sensitive portion of Switched Transport and is assessed on a per-access-minute-of-use basis.

##### 2. Transport Mileage

The Transport Mileage element includes the distance sensitive portion of Switched Transport and is assessed on a per-access-minute-of-use-per-mile basis.

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### 3. SWITCHED ACCESS SERVICE

#### 3.3. SWITCHED ACCESS RATE CATEGORIES (CONT'D)

##### 3.3.2. TRANSPORT (CONT'D)

##### B. Direct-Trunked Transport

##### 1. Voice Grade/DSO Facility

A Voice Grade facility is an electrical communications path which provides voice-frequency transmission in the nominal frequency range of 300 to 3000 HZ and may be terminated two-wire or four-wire.

##### 2. DS1 Facility

A DS1 facility is capable of transmitting electrical signals at a nominal 1.544 Mbps, with the capability to channelize up to 24 voice-frequency transmission paths.

##### 3. DS3 Facility

A DS3 facility is capable of transmitting electrical signals at a nominal 44.736 Mbps, with the capability to channelize up to 672 voice-frequency transmission paths.

##### C. Local Channel/Entrance Facility

The Local Channel/Entrance Facility provides a communications path between the customer's premises and the serving wire center of that premises. The Local Channel/Entrance Facility rate is assessed a monthly fixed charge based on the capacity (e.g., Voice Grade/DS0, DS1, or DS3) ordered.

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### 3. SWITCHED ACCESS SERVICE

#### 3.3. SWITCHED ACCESS RATE CATEGORIES (CONT'D)

##### 3.3.3. LOCAL SWITCHING

The Local Switching rate category provides the local end office switching and end user termination functions necessary to complete the transmission of Switched Access communications to and from the end users served by the Company's End Office.

##### A. Local Switching Rate Element

The Local Switching rate element provides local dial switching for Feature Groups B and D.

##### B. Common Trunk Port

The end office Common Trunk Port rate provides for the termination of common transport trunks in shared end office ports. The end office Common Trunk Port rate is assessed on a per-MOU basis to all trunkside originating and terminating access minutes utilizing tandem routing to an end office.

##### C. Dedicated Trunk Port

The end office Dedicated Trunk Port rate provides for the termination of a trunk to a dedicated trunk port in an end office. The rate is assessed per month for each FG trunk in service directly routed (via DTT) between the SWC and the end office.

##### D. Interconnection Charge

The Interconnection Charge shall be assessed upon all customers interconnecting with the Company's switched access network. Interconnection is applicable to all switched access originating and terminating minutes of use.

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#### 3. SWITCHED ACCESS SERVICE

##### 3.3. SWITCHED ACCESS RATE CATEGORIES

##### 3.3.4. 8XX TOLL-FREE ACCESS SERVICE

8XX Toll-Free Access Service is a service offering originating trunk side Switched Access Service. The service provides for the forwarding of end user dialed 8XX calls to a Company Service Switching Point, which will initiate a query to the database to perform the customer identification and delivery functions. The call is forwarded to the appropriate customer based on the dialed 8XX number.

##### A. Customer Identification Charge

The 8XX Toll-Free Access Service Customer Identification Charge applies for the identification and delivery of the appropriate customer. The charge is assessed to the customer on a per query basis and may include an area of service which may range from a single NPA-NXX to an area consisting of all LATAs and NPAs within the state. The 8XX Customer Identification Charge is set forth in Section 3.4.5.

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**3. SWITCHED ACCESS SERVICE**

**3.4. SWITCHED ACCESS RATES AND CHARGES**

**3.4.1. SERVICE IMPLEMENTATION**

	<b>NONRECURRING CHARGE</b>
A. Installation Charge, Per Location, Per Order	
1. First Trunk	ICB
2. Each Subsequent Trunk	ICB

**3.4.2. CARRIER COMMON LINE**

	<b>MONTHLY RECURRING RATE PER MOU</b>	
A. Originating		
• AT&T (former Bell South) Territory	\$0.0000000	(T, R)
• Embarq Territory	0.0032720	(R)
• Verizon Territory	0.0159409	
B. Terminating		
• AT&T (former Bell South) Territory	0.0058580	(T, R)
• Embarq Territory	0.0032720	(R)
• Verizon Territory	0.0246950	

**3.4.3. TRANSPORT**

A. Common Transport		
1. Transport Termination		
• AT&T (former Bell South) Territory	0.0003600	(T)
• Embarq Territory	0.0002000	
• Verizon Territory	0.0001344	
2. Transport Mileage, per mile		
• AT&T (former Bell South) Territory	0.0000400	(T)
• Embarq Territory	0.0000400	
• Verizon Territory	0.0000141	

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### 3. SWITCHED ACCESS SERVICE

#### 3.4. SWITCHED ACCESS RATES AND CHARGES (CONT'D)

##### 3.4.3. TRANSPORT (CONT'D)

###### B. Local Channel/Entrance Facility

	NONRECURRING CHARGE		MONTHLY RATE
	FIRST	ADD'L	
1. Voice Grade	ICB	ICB	ICB

###### C. Direct Trunked Transport

	NONRECURRING CHARGE	MONTHLY RATE
	1. Voice Grade	
• Per Mile	-	ICB
• Termination	ICB	ICB

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**3. SWITCHED ACCESS SERVICE**

**3.4. SWITCHED ACCESS RATES AND CHARGES (CONT'D)**

**3.4.4. LOCAL SWITCHING**

A. Local Switching

**MONTHLY RECURRING  
 RATE PER MOU**

1. Originating Access			
• AT&T (former BellSouth) Territory	\$0.0081310		(T, R)
• Embarq Territory	0.0177000		
• Verizon Territory	0.0088785		
2. Terminating Access			
• AT&T (former BellSouth) Territory	\$0.0081310		(T, R)
• Embarq Territory	0.0177000		
• Verizon Territory	0.0088785		
3. Common Trunk Port			
• AT&T (former BellSouth) Territory	\$0.0008000		(T)
• Embarq Territory	0.0000000		
• Verizon Territory	0.0000000		
4. Interconnection Charge			
• AT&T (former BellSouth) Territory	\$0.0000000		(T)
• Embarq Territory	0.0000000		
• Verizon Territory	0.0011421		(R)
5. Dedicated Trunk Port		<b>MONTHLY RATE</b>	
a. DS0/VG, per trunk		ICB	
b. DS1, per trunk		ICB	

**3.4.5. 8XX TOLL-FREE ACCESS**

A. 8XX Toll-Free Access Service

**RECURRING RATE  
 PER QUERY**

1. Customer Identification Charge			
• AT&T (former BellSouth) Territory	\$0.004000		(T)
• Embarq Territory	0.008037		
• Verizon Territory	0.010000		

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#### **4. SPECIAL ACCESS SERVICE**

##### **4.1. GENERAL**

Special Access Services are not generally available but may be provided subject to the terms, conditions, and limitations as set forth in Section 5.3, following, for Special Assemblies and Individual Case Basis Arrangements.



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#### 5. MISCELLANEOUS SERVICES

##### 5.1. PRESUBSCRIPTION

The Company will provide 1+ presubscription or 10XXX equal access consistent with the equal access rules of the Commission and of the Federal Communications Commission to enable end users to access an interexchange carrier (IC) for intrastate toll calling.

Presubscription is an arrangement whereby an end user may select and designate to the Company an *Interexchange Carrier (IC)* to access interexchange calls without the use of an access code. This IC is referred to as the end user's *Primary Interexchange Carrier (PIC)*. The end user may select as its PIC any IC that orders originating FGD Switched Access Service at the end office that serves the end user.

New end users who are served by end offices equipped with FGD will be asked to presubscribe to an IC at the time they place an order with the Company for Exchange Access Service. They may select either of the following options. There will be no charge for this initial selection:

- Designate an IC as a PIC and dial 10XXX to reach other ICs.
- Designate that they do not want to be presubscribed to any IC and choose to dial 10XXX for all calls to all ICs.

After the end user's initial selection of a predesignated IC, a nonrecurring charge, as set forth in Section 5.4, will apply for any additional change in selection

When an end user switches both their intraLATA and interLATA carrier at the same time, and when the end user selects the same carrier for both interLATA and intraLATA service, the Company will waive the intraLATA presubscription charge.

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#### 5. MISCELLANEOUS SERVICES

##### 5.2. UNAUTHORIZED PRIMARY INTEREXCHANGE CARRIER CHANGE

An unauthorized Primary Interexchange Carrier (PIC) change is a PIC change that is requested by an interexchange carrier (IC) when the Local Exchange Service customer, or their authorized agent, denies authorizing the PIC change and the IC is unable to produce a valid letter of authorization for the change from the customer or the customer's authorized agent.

The interval during which a customer may submit a claim for an unauthorized PIC change will be twelve months from the date of the original PIC change.

An unauthorized PIC change is subject to the charge specified in Section 5.4, following.

##### 5.3. SPECIAL ASSEMBLIES AND INDIVIDUAL CASE BASIS ARRANGEMENTS

Arrangements will be developed on an Individual Case Basis (ICB) in response to a bona fide request from a customer or prospective customer to develop a bid for any switched or special access service that the Company is technically capable of providing but which is not offered under this Service Guide (special assembly), or to develop a competitive bid for a service that the Company offers under this Service Guide (ICB). Rates quoted in response to such competitive requests may be different than those specified for such services in this Service Guide. ICB and special assembly rates will be offered to the customer in writing and on a nondiscriminatory basis. Customers served on a non-tariffed basis for services offered under this Service Guide as of the effective date hereof shall be entitled to continue their existing serving arrangements under the same terms and conditions as "special assemblies," but those terms and conditions will not necessarily be available to new customers when the same service is available under this Service Guide. In addition, the Company may from time to time offer promotional or other special discounts to customers who initiate service within the time contemplated by the promotional or other special discount offer.

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#### 5. MISCELLANEOUS SERVICES

##### 5.4. RATES AND CHARGES

	NONRECURRING CHARGE
A. Presubscription Change Charge, per occurrence	\$ 5.00
B. Unauthorized PIC Change Charge, per occurrence	21.50

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#### 5. MISCELLANEOUS SERVICES

##### 5.1. PRESUBSCRIPTION

The Company will provide 1+ presubscription or 10XXX equal access consistent with the equal access rules of the Commission and of the Federal Communications Commission to enable end users to access an interexchange carrier (IC) for intrastate toll calling.

Presubscription is an arrangement whereby an end user may select and designate to the Company an Interexchange Carrier (IC) to access interexchange calls without the use of an access code. This IC is referred to as the end user's Primary Interexchange Carrier (PIC). The end user may select as its PIC any IC that orders originating FGD Switched Access Service at the end office that serves the end user.

New end users who are served by end offices equipped with FGD will be asked to presubscribe to an IC at the time they place an order with the Company for Exchange Access Service. They may select either of the following options. There will be no charge for this initial selection:

- Designate an IC as a PIC and dial 10XXX to reach other ICs.
- Designate that they do not want to be presubscribed to any IC and choose to dial 10XXX for all calls to all ICs.

After the end user's initial selection of a predesignated IC, a nonrecurring charge, as set forth in Section 5.4, will apply for any additional change in selection

When an end user switches both their intraLATA and interLATA carrier at the same time, and when the end user selects the same carrier for both interLATA and intraLATA service, the Company will waive the intraLATA presubscription charge.

## Comcast Phone of Florida, LLC

### Access Service

Issued July 5, 2007

Effective July 5, 2007

#### 5. MISCELLANEOUS SERVICES

##### 5.2. UNAUTHORIZED PRIMARY INTEREXCHANGE CARRIER CHANGE

An unauthorized Primary Interexchange Carrier (PIC) change is a PIC change that is requested by an interexchange carrier (IC) when the Local Exchange Service customer, or their authorized agent, denies authorizing the PIC change and the IC is unable to produce a valid letter of authorization for the change from the customer or the customer's authorized agent.

The interval during which a customer may submit a claim for an unauthorized PIC change will be twelve months from the date of the original PIC change.

An unauthorized PIC change is subject to the charge specified in Section 5.4, following.

##### 5.3. SPECIAL ASSEMBLIES AND INDIVIDUAL CASE BASIS ARRANGEMENTS

Arrangements will be developed on an Individual Case Basis (ICB) in response to a bona fide request from a customer or prospective customer to develop a bid for any switched or special access service that the Company is technically capable of providing but which is not offered under this Service Guide (special assembly), or to develop a competitive bid for a service that the Company offers under this Service Guide (ICB). Rates quoted in response to such competitive requests may be different than those specified for such services in this Service Guide. ICB and special assembly rates will be offered to the customer in writing and on a nondiscriminatory basis. Customers served on a non-tariffed basis for services offered under this Service Guide as of the effective date hereof shall be entitled to continue their existing serving arrangements under the same terms and conditions as "special assemblies," but those terms and conditions will not necessarily be available to new customers when the same service is available under this Service Guide. In addition, the Company may from time to time offer promotional or other special discounts to customers who initiate service within the time contemplated by the promotional or other special discount offer.

## Comcast Phone of Florida, LLC

### Access Service

Issued July 5, 2007

Effective July 5, 2007

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#### 5. MISCELLANEOUS SERVICES

##### 5.4. RATES AND CHARGES

	<b>NONRECURRING CHARGE</b>
A. Presubscription Change Charge, per occurrence	\$ 5.00
B. Unauthorized PIC Change Charge, per occurrence	21.50

**TITLE SHEET**

**FLORIDA TELECOMMUNICATIONS PRICE LIST**

**PRICE LIST**

**APPLICABLE TO**

**EXCHANGE SERVICES OF**

**COMCAST PHONE OF FLORIDA, LLC**

(T)

**D/B/A COMCAST DIGITAL PHONE**

(T)

This Price List contains the descriptions, regulations, service standards and rates applicable to the furnishing of service and facilities for basic local telecommunications services provided by Comcast Phone, LLC, a Delaware Corporation, with principal offices at 600 N. Pine Island Road, Plantation, Florida 33324. This Price List applies for services furnished within the state of Florida. This Price List is on file with the Florida Public Service Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

ISSUED: May 28, 2003  
By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: May 29, 2003

## 6. NETWORK SERVICES

### 6.1 SCHOOLS AND LIBRARIES NETWORK SERVICE

#### 6.1.1 NETWORK SERVICE FOR E-RATE ELIGIBLE INSTITUTIONS

##### A. General

1. Schools and Libraries Network Service is a high-speed data service that uses point to point T1 circuits for the interconnection of Local Area networks (LANs) across the customer's physical locations. The service delivers connections between customer locations at a T1 (1.5 Mbps) level. In some locations, a channelized T1 service option (described in 6.1.3, following) may be available.
2. Service availability is subject to the availability of Type I (on-net) facilities, as defined below. The Company shall not be required to provide Type II (off-net) facility arrangements, as defined below; provided, however, that in the event the Company chooses to provide Type II arrangements, additional charges shall apply.
  - a. Type I Facilities – Type I facilities are provided where both endpoints of a connection are served by the Company's network (or the network of its affiliates).
  - b. Type II Facilities – Type II facilities are provided where at least one endpoint of a connection is served by the Company's network and the other end-point is served by an entity other than the Company. Such facilities are provided via a combination of the Company's facilities and those of the interconnecting entity. The Company may apply a service charge or mark-up to the rates charged to the Company by the interconnected entity.
3. Schools and Libraries Network Service is exclusively available to primary and secondary educational institutions, corresponding municipal libraries and other "e-rate eligible" institutions. Visit: <http://www.sl.universalservice.org/> for e-rate eligibility criteria.
4. Schools and Libraries Network Service is not available for resale.
5. The terms and conditions set forth in this Section 6.1 are in addition to the terms and conditions found in the Rules and Regulations section of this Tariff.



## 6. NETWORK SERVICES

### 6.1 SCHOOLS AND LIBRARIES NETWORK SERVICE (CONT'D)

#### 6.1.2 POINT-TO-POINT SERVICE

##### A. Service Description

1. Point-to-Point Schools and Libraries Network Service permits the customer to connect their physically distributed locations as if they were on the same Local Area Network (LAN). This service is provided between designated customer locations within a metropolitan area.

##### B. Rate and Charge Description

###### 1. Nonrecurring Charges

- a. Facilities and equipment of a type and/or quantity necessary to provide Schools and Libraries Network service are not available on a ubiquitous basis in the Company's service area(s). To limit the real potential for stranded investment, 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.

###### 2. Recurring Rates

- a. Schools and Libraries Network service is offered for the contractual periods and at the rates specified below. Requests for different service configurations, alternative speeds, or for a term not specified in this tariff will be considered on a Special Assembly basis.
- b. A termination liability applies to accounts terminated prior to the fulfillment of the initial contract period. The termination liability shall be equal to the monthly rates applicable for the remaining months of the initial period plus outstanding nonrecurring charges (if any).

##### C. Rates and Charges

	MONTHLY RATE
• Point to Point Service	
- 1.5 Mbps Point to Point circuit between two locations, initial 36 month period	\$650.00

ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

## 6. NETWORK SERVICES

### 6.1 SCHOOLS AND LIBRARIES NETWORK SERVICE (CONT'D)

#### 6.1.3 CHANNELIZED EXCHANGE SERVICE

##### A. Service Description

1. Subject to facility and system availability, Channelized Exchange Service delivers the functional equivalent of 24 voice grade facilities (via a channelized T1 facility) providing local and long distance dialing capability through the Public Switched Telephone Network (PSTN). Subscription is limited to e-rate qualifying institutions as defined in 6.1.1, preceding.

##### B. Rate and Charge Description

##### 1. Nonrecurring Charges

- a. Facilities and equipment of a type and/or quantity necessary to provide Schools and Libraries Network service are not available on a ubiquitous basis in the Company's service area(s). To limit the real potential for stranded investment, 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.

##### 2. Recurring Rates

- a. Schools and Libraries Network service is offered for the contractual periods and at the rates specified below. Requests for different service configurations or for a term not specified in this tariff will be considered on a Special Assembly basis.
- b. A termination liability applies to accounts terminated prior to the fulfillment of the initial contract period. The termination liability shall be equal to the monthly rates applicable for the remaining months of the initial period plus outstanding nonrecurring charges (if any).
- c. Usage rates and monthly recurring charges for services subscribed to in connection with Channelized Exchange Service are in addition to the basic monthly rate.

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ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

## 6. NETWORK SERVICES

### 6.1 SCHOOLS AND LIBRARIES NETWORK SERVICE

#### 6.1.3 CHANNELIZED EXCHANGE SERVICE (CONT'D)

##### C. Features

The following features as defined in Section 3, preceding, are available in connection with Channelized Exchange Service at the rates set forth in Section 6.1.3.G:

- Caller ID Blocking
- Caller ID Name and Number
- Prohibit Billed to Third Number Calls
- Prohibit Collect Calls
- Toll Blocking
- 900/976 Blocking

##### D. Directory Listings

The following Directory Listing options as defined in Section 3, preceding, are offered in connection with Channelized Exchange Service at the rates set forth in Section 6.1.3.G:

- Standard Listing
- Additional Listings
- Non-Published Numbers
- Non-Listed Numbers

##### E. Directory Assistance and Call Completion Service

Directory Assistance service, as defined in Section 3, preceding, is available with Channelized Exchange Service at the rate set forth in Section 6.1.3.G.

Directory Assistance Call Completion service, as defined in Section 3, preceding, is available with Channelized Exchange Service at the rate set forth in Section 6.1.3.G.

##### F. Operator Services

Operator Services, as defined in Section 3, preceding, are available with Channelized Exchange Service at the rates set forth in Section 6.1.3.G.

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ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

**6. NETWORK SERVICES**

**6.1 SCHOOLS AND LIBRARIES NETWORK SERVICE**

**6.1.3 CHANNELIZED EXCHANGE SERVICE (CONT'D)**

G. Rates and Charges

	<b>MONTHLY RATE</b>
1. Channelized Exchange Service	
• 24 voice equivalent channels, initial 36 month period <sup>[1]</sup>	\$720.00
2. Features	
• Caller ID Blocking	Included
• Caller ID Name and Number	Included
• Prohibit Billed to Third Number Calls	Included
• Prohibit Collect Calls	Included
• Toll Blocking	Included
• 900/976 Blocking	Included
3. Directory Listings	
• Primary Listing	Included
• Additional Listing, per listing	\$2.40
• Non-Published Service	5.15
• Non-Listed Service	2.60

[1] Channelized Exchange Service includes a statewide local calling area.

**6. NETWORK SERVICES**

**6.1 SCHOOLS AND LIBRARIES NETWORK SERVICE**

**6.1.3 CHANNELIZED EXCHANGE SERVICE**

G. Rates and Charges (Cont'd)

	<b>NONRECURRING CHARGE</b>
4. Directory Assistance	
• Local and Intrastate Directory Assistance With Call Completion <sup>[1]</sup>	\$0.99
5. Operator Services	
• Local and Intrastate Operator Service <sup>[2]</sup>	
- Station to Station	2.99
- Person to Person	2.99
6. Service Charges	
• Change of Billing, per occurrence	10.00
• Number Change, per occurrence	10.00
• Directory Listing Change, per occurrence	10.00
• Feature Change, per occurrence	10.00
	<b>USAGE</b>
7. Operator Services Usage	
• Per minute	\$0.12

[1] Service may not be available in all locations.

[2] Usage charge applies for operator handled calls.

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE

#### 7.1.1 GENERAL

- A. Subject to the terms set forth in Section 7.1.4, following, this Tariff provides an overview of Local Interconnection Service ("LIS") and the terms and conditions under which LIS is offered.
- 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, the Company will negotiate in good faith with the Customer to enter into an agreement that effectuates the terms and conditions set forth in this Tariff.
- 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 Tariff, the Customer must provide its services to Subscribers at a fixed service address.
- G. The terms and conditions set forth in this Section 7.1 are in addition to the terms and conditions found in the General Regulations Section of this Tariff.
- H. Service is offered subject to the availability of suitable facilities within the state. LIS provides unlimited statewide calling.

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE (CONT'D)

#### 7.1.2 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.

#### 7.1.3 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, the 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 the 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.

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE (CONT'D)

#### 7.1.4 USE OF SERVICE

- A. LIS is provided in accordance with the regulations and rates in this Tariff, 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 7.1.8 and 7.1.9 of this Tariff.
1. The 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").



## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE

#### 7.1.4 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 7.1.11. 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 Tariff 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.

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ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE (CONT'D)

#### 7.1.5 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 Tariff, 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 Tariff but are assessed in order for the Company to fully recover costs associated with providing LIS.
- 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.

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ISSUED: August 20, 2008  
By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE

#### 7.1.5 TERM AND TERMINATION

##### C. Discontinuance of Service for Cause (Cont'd)

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 Tariff, 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.

#### 7.1.6 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.

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ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE (CONT'D)

#### 7.1.7 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.

#### 7.1.8 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.

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE

#### 7.1.8 EMERGENCY 911 SERVICE (CONT'D)

- 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 Section 7.1.8.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 7.1.9 OF THIS TARIFF, 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.

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE (CONT'D)

#### 7.1.9 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 7.1.9.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;

ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
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EFFECTIVE: August 21, 2008

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE

#### 7.1.9 LIMITATION OF LIABILITY

##### D. (Cont'd)

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;
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.

ISSUED: August 20, 2008  
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EFFECTIVE: August 21, 2008

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE

#### 7.1.9 LIMITATION OF LIABILITY (CONT'D)

- 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.
- 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 Tariff, including the acts or omission of any subcontractor or any direct or indirect employees of a subcontractor of the Customer.

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ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008



## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE

#### 7.1.9 LIMITATION OF LIABILITY (CONT'D)

- 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.

#### 7.1.10. DIRECTORY LISTINGS

- A. The Company will assist the Customer in the provision of Standard, Non-Published and Non-Listed Directory Services (as those services are defined in Section 3.4.5, preceding).
- B. The Company's liability, if any, for its gross negligence or willful misconduct in the provision of Directory Services is not limited by this Tariff. In the absence of gross negligence or willful misconduct with respect to any claim or suit brought by (or other legal remedies available to) the Customer for damages associated with Directory Services, the Company's liability, if any, shall not exceed the monthly charges, if any, for the impacted Directory Services for the affected period.
- C. The Company is not liable for damages arising from errors or omissions in the making up or printing of directories or in accepting listings as presented by the Customer.

#### 7.1.11 SERVICE TERRITORIES

Service is offered subject to the availability of suitable facilities within the state. LIS provides unlimited statewide calling.

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ISSUED: August 20, 2008  
By:

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Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

## 7. LOCAL INTERCONNECTION SERVICE

### 7.1 LOCAL INTERCONNECTION SERVICE (CONT'D)

#### 7.1.12 DESCRIPTION OF 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. 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.
- C. Rates for Interstate and International services associated with LIS are included in the Company's Service Guides posted on the Company's website at [www.comcast.com/tariffs](http://www.comcast.com/tariffs).
- D. The customer will be assessed a charge for the addition of service(s) to existing equipment and/or service(s) at one location, or for the rearrangement or reclassification of existing service at the same location.

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ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

**7. LOCAL INTERCONNECTION SERVICE**

**7.1 LOCAL INTERCONNECTION SERVICE (CONT'D)**

**7.1.13 RATES AND CHARGES**

	<b>NONRECURRING CHARGE</b>
A. Local Interconnection Service	ICB
	<b>MONTHLY RATE</b>
B. Local Interconnection Port	
· Per-T-1	\$1,200.00
· All Other Bandwidths	ICB
C. 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 7.1.12.A above for additional information.

ISSUED: August 20, 2008

By:

David Lloyd, Director  
183 Inverness Drive, W.  
Englewood, Colorado 80112

EFFECTIVE: August 21, 2008

**EXHIBIT B**

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 08-013**

**COMCAST PHONE OF NEW HAMPSHIRE**

**Application for Authority to Serve Customers**

**in the TDS Service Territories**

**Order Granting Authority**

**ORDER NO. 24,938**

**February 6, 2009**

**APPEARANCES:** Mintz Levin by Cameron F. Kerry, Esq. for Comcast Phone of New Hampshire, LLC; Devine Millimet & Branch by Frederick J. Coolbroth, Esq. and Patrick C. McHugh, Esq. for New Hampshire Telephone Association and the TDS Companies; Rothfelder Stern, LLC by Martin C. Rothfelder, Esq. for Union Telephone Company d/b/a Union Communications; Office of the Consumer Advocate by Meredith A. Hatfield, Esq. on behalf of residential ratepayers; and F. Anne Ross, Esq. of the Staff of the Public Utilities Commission.

**I. PROCEDURAL HISTORY**

On December 12, 2007, Comcast Phone of New Hampshire (“Comcast”) filed an application for authority to provide local exchange telecommunications services pursuant to RSA 374:22 and to do business as a competitive local exchange carrier (“CLEC”) in the service territories of three affiliated incumbent local exchange carriers (ILECs) – Kearsarge Telephone Company (KTC), Merrimack County Telephone Company (MCT) and Wilton Telephone Company (WTC) – all subsidiaries of TDS Telecom (collectively, the TDS Companies or TDS). Comcast completed the required attachments to its CLEC application on January 22, 2008. Comcast is a CLEC currently authorized to provide intrastate telecommunications services in the New Hampshire exchanges formerly served by Verizon and now served by Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (FairPoint).

On April 4, 2008, the Commission issued Order No. 24,843 on a *nisi* basis, granting Comcast's application for authority effective May 5, 2008, unless any interested party filed comments or requested a hearing. On April 16, 2008, the TDS Companies filed a motion to suspend Order No. 24,843 pending resolution of Docket No. DT 07-027,<sup>1</sup> or alternatively for a hearing. On April 21, 2008, the New Hampshire Telephone Association (NHTA) filed an objection to Order No. 24,843 and requested a hearing. Comcast filed an objection to the TDS motion and a response to the NHTA objection on April 30 and May 2, 2008, respectively.

On May 2, 2008, the Commission issued Order No. 24,854 suspending the order *nisi* and scheduling a prehearing conference. Following that order, the TDS Companies, NHTA and Union Telephone Company filed petitions to intervene. On May 20, 2008, the Office of Consumer Advocate entered an appearance on behalf of residential ratepayers pursuant to RSA 363:28. On May 21, 2008, the prehearing conference was held as noticed and the Commission granted all petitions to intervene. Following the prehearing conference, the parties and Staff met in a technical session and agreed to a procedural schedule including discovery, an additional technical session to develop stipulated facts, and written briefs. The Commission approved the proposed schedule on June 11, 2008.

On June 18, 2008, Staff filed a letter attaching stipulated facts, which the parties agreed would provide a basis for briefs. On June 26, 2008, NHTA, MCT and KTC, (Joint ILECs) filed a joint brief; Union also filed a brief. Comcast filed its brief on June 27, 2008. On July 14, 2008, the Joint ILECs filed a reply letter and the OCA filed a response to the Joint ILEC brief. Comcast filed a reply brief on July 15, 2008.

SegTEL, Inc. filed a motion to intervene on July 22, 2008, and stated that it would accept the process where it was and would not delay the proceedings. On August 18, 2008, the

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<sup>1</sup> Docket DT 07-027 involved the TDS Companies' petition for alternative regulation pursuant to RSA 374:3-b.

Commission issued Order No. 24,887 granting segTEL's petition to intervene and scheduling a hearing for September 22, 2008. The Commission also directed the parties to file testimony and briefs regarding the remaining unresolved issue to be decided in this docket: whether granting Comcast Phone's CLEC application is consistent with the public good pursuant to RSA 374:22, RSA 374:22-g and RSA 374:26. The Joint ILECs filed written testimony on September 9, 2008 and Comcast filed testimony on September 10, 2008. By Secretarial Letter dated September 22, 2008, the Commission accepted the parties' recommendation to resolve the matter by briefs, entered the prefiled testimony into the record, and canceled the hearing. NHTA, Union and Comcast filed initial briefs. The Joint ILECs filed a joint reply brief on October 10, 2008, and Union and Comcast filed reply briefs on October 14, 2008.

On January 22, 2009, the NHTA, MCT and KTC filed a joint motion to supplement the record, seeking to introduce a letter from the General Counsel of the Wireline Competition Bureau of the Federal Communications Commission (FCC) to Comcast asking Comcast to explain why its VoIP (Voice over Internet Protocol) offering should not be treated as a telecommunications service. Comcast responded on January 26, 2009 that it does not oppose the motion so long as its answer to the FCC is included in the record as well. On February 4, 2009, Comcast filed its answer to the FCC.

## **II. POSITIONS OF THE PARTIES**

### **1. Comcast Phone**

#### **A. Testimony**

Comcast provided testimony by David Kowolenko, Vice President of Voice Services, and Michael D. Pelcovits, Ph.D., an independent consultant. Mr. Kowolenko testified as to Comcast's managerial, financial and technical ability to provide competitive local exchange

services in the TDS Companies' service territories. Mr. Kowolenko stated that Comcast has operated as a CLEC since 1998 in the FairPoint (formerly Verizon) service territory in New Hampshire. Mr. Kowolenko pointed out that Comcast offers the same business, and schools and libraries network services described in its CLEC application in the FairPoint service territory. Mr. Kowolenko also described the local interconnection service provided by Comcast to an affiliate, Comcast IP Phone II, LLC (Comcast IP), in the FairPoint service territory; a service which will also be offered in the TDS service territories.

According to Mr. Kowolenko, Comcast currently serves as a CLEC in Maine, Vermont, Massachusetts, New York and more than thirty other states and offers services similar to those described in its CLEC application, and already offered in the FairPoint service territory. Comcast will utilize the same experienced management and technical staff to conduct its business in the TDS service territories as it currently uses in the FairPoint service territory.

Mr. Kowolenko referenced the annual report for 2007 for the Comcast parent company, Comcast Corporation, and stated that Comcast Corporation is a publicly held company with \$30 billion in annual revenues and \$2.5 billion in annual net income. In addition, Mr. Kowolenko stated that Comcast has invested \$110 million to upgrade and expand its fiber network in New Hampshire.

Regarding the TDS Companies' ability to recover expenses they incur as a result of Comcast's entry into their service territories, Mr. Kowolenko explained that Comcast does not require the use of TDS's unbundled network elements to provide services. As a result, Comcast needs an interconnection agreement to provide for the mutual exchange of traffic. According to Mr. Kowolenko, the parties are in the process of negotiating an interconnection agreement for New Hampshire. Mr. Kowolenko stated that the New Hampshire interconnection agreement will



be modeled after the one reached between TDS and Comcast in Vermont in 2008 and noted that Comcast is also in the process of negotiating interconnection agreements with TDS in Georgia, Michigan and Washington.

Mr. Kowolenko indicated that Comcast has long offered video services and broadband internet services to customers in the TDS service territory. Mr. Kowolenko stated that TDS already offers video service through Dish Network Satellite TV and broadband access to its customers in competition with Comcast's video and broadband offerings.

Dr. Pelcovits began by observing that New Hampshire explicitly recognizes the benefits of competition, "[c]ompetitive markets generally encourage greater efficiency, lower prices, and more consumer choice. It is the policy of the state of New Hampshire to encourage competition for all telecommunications services, including local exchange services, which will promote lower prices, better service, and broader consumer choice for the residents of New Hampshire." 1995 N.H. Laws 147:1. According to Dr. Pelcovits, competition compels firms to produce goods as efficiently as possible and encourages innovation, new services and new technologies.

Dr. Pelcovits observed that for a number of years following the 1996 Telecom Act<sup>2</sup> unbundled network elements (UNEs) formed the basis of most competitive services, but more recently cable providers have taken the leading competitive role. According to Dr. Pelcovits, over the past ten years cable companies have invested over \$100 billion in infrastructure and are now capable of providing broadband, and in most cases IP-voice service, to over 117.7 million homes in the United States.

Dr. Pelcovitz observed that competition has been slow to develop in the TDS territories because of regulatory and other barriers to entry. With the passage of SB 386 in July, 2008, the legislature removed the barrier posed by RSA 374:22-f and stated a clear preference for

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<sup>2</sup> 47 U.S.C. § 251 et seq.

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competition in the small ILEC service territories in New Hampshire. He claimed that granting Comcast's CLEC application will not only extend competition for businesses, schools and libraries, but will also extend competition to additional markets since Comcast would be free to introduce other forms of local exchange service, exchange access and interexchange services. Finally, Dr. Pelcovitz pointed out that granting Comcast's CLEC application reduces barriers to Comcast IP's participation in the TDS territories and therefore contributes to the public good.

Dr. Pelcovitz claimed, based on a 2007 nationwide study he conducted, in which he attempted to quantify the customer savings, that cable voice competition brings consumer benefits of \$100 billion over a five year period. He explained that approval of Comcast's application would eventually enable Comcast to offer triple play, video, data and phone service as a bundled offering, to compete with the triple play product currently offered by TDS.

As to the effect of competition on TDS, Dr. Pelcovitz explained that competition will force inefficient ILECs to reduce price levels to economic costs and will prevent the recovery of excessive costs. On the other hand, competitors will not price below their own long-run costs and therefore will not drive prices below those of an equally or more efficient ILEC. Thus, to the extent that TDS is currently recovering costs in excess of economic costs, competition could over time reduce TDS's cost recovery to economic costs.

Dr. Pelcovitz claimed that there is no reason to think that TDS's ability to offer universal service or serve as carrier of last resort will be harmed by Comcast's entry into the market. He pointed to TDS's testimony in a recent docket in which the TDS witness, Michael Reed, stated that TDS could continue to serve as carrier of last resort despite significant existing and

increasing competition in its service territories.<sup>3</sup> In addition, Dr. Pelcovitz referred to the TDS Companies receipt of \$2.4 million in *Federal high cost support in 2007* and pointed out that such funds are designed to assist the TDS companies in providing universal service by offsetting the embedded cost of local switching and common line plant.

Dr. Pelcovitz stated the costs that the TDS Companies will incur to serve Comcast are limited to interconnection costs. Interconnection costs are the costs of the physical exchange of traffic from one carrier to another. The 1996 Telecom Act requires ILECs to terminate calls to their own customers originating on a competitor's network. According to Dr. Pelcovitz, the cost of terminating traffic consists of the incremental cost of interoffice transport and local switch terminating usage. Under the 1996 Telecom Act, the TDS Companies are entitled to recover the forward looking economic costs of transport and termination provided to interconnecting CLECs.<sup>4</sup> Likewise the CLEC is entitled to recover its own costs of terminating traffic originating on the TDS Companies' network. The interconnection agreement between Comcast and the TDS Companies should include negotiated cost-based interconnection fees.

#### **B. Brief**

Comcast asserts that it is beyond dispute under New Hampshire public policy, as well as basic economic principles, that competition in local telecommunications is for the public good. Comcast claims that its application advances the state policy encouraging competition and meets statutory and regulatory standards. Comcast alleges that the Commission's own rules "provide an appropriate balance between the interests of incumbent telecommunications providers and those of competitive entrants." *See*, N.H. Code of Admin. Rules Puc 431.01 and 431.02.

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<sup>3</sup> Kearsarge Telephone Company, Wilton Telephone Company, Inc., Hollis Telephone Company, Inc., and Merrimack Telephone Company Petition for an Alternative Form of Regulation, DT 07-027, Direct Testimony of Michael C. Reed, at 10 (filed March 1, 2007).

<sup>4</sup> 47 CCR § 51.505

Comcast suggests that Commission rules require that the Commission “shall” issue a CLEC authorization unless the applicant is denied based upon one of the acts or omissions enumerated in Puc 431.02. Comcast argues that the burden is on the ILEC to show evidence why its application should not be granted, and that in this case no such evidence was established.

In addition, Comcast indicates that its entry into the TDS Companies’ territories will benefit New Hampshire consumers by bringing competition to the telecommunications services it proposes to offer, including services to small businesses and schools and libraries. In addition, the wholesale communications services provided by Comcast would enable Comcast IP to serve New Hampshire residential customers with VoIP service, offering consumers another alternative in residential voice communications. Comcast states that approval of its application would promote lower prices, better service and broader consumer choice within the TDS Companies’ service territories.

Finally, Comcast emphasizes that to place conditions on its CLEC application regarding the services it could offer, as the TDS Companies suggest, would be inconsistent with state and federal law and policy, by requiring Comcast to seek further Commission approval in order to offer other competitive services. Moreover, Comcast states, under Puc 431.06 CLECs are free to introduce additional services as the market demands, without prior notice to, or review by, the Commission. Comcast contends that any such conditions would create a troubling precedent and delay or upset the well-established streamlined CLEC entry process contained in Puc 431.01 and 431.02.

Comcast argues that there is no basis in New Hampshire law to treat Comcast differently from any other CLEC and that the Commission has not previously inquired into the business plan of a CLEC applicant beyond the information required on the application. As a matter of

fact, this unprecedented proceeding is the first time on record that the Commission has allowed incumbent carriers to prompt a hearing on entry of a CLEC.

### **C. Reply Brief**

In its reply brief, Comcast reiterates that granting its CLEC application is for the public good. Comcast alleges that it has submitted far more information and evidence to support its application than has ever been required of any other CLEC applicant in New Hampshire, and that such evidence meets its burden of proof. Comcast also reiterates its claim that the burden is on incumbent carriers to present evidence to show why the application should not be approved. Comcast claims that to hold it to a different, higher standard, impose unprecedented conditions, or undertake additional proceedings would further delay competitive entry, to the sole benefit of the incumbent.

Additionally, Comcast argues that questions regarding appropriate regulatory treatment of VoIP services or new rules for “fair and equitable competition” are outside the scope of this proceeding. Comcast maintains that the ILECs are free at any time to petition the appropriate authority to address such issues without holding Comcast’s CLEC application hostage. According to Comcast, there are no bases in statutes or regulations for the Commission to impose conditions and limitations on the services Comcast is allowed to offer. Comcast urged the Commission to find that approval of Comcast’s CLEC-10 petition is for the public good.

## **2. NHTA, MCT and KTC**

### **A. Testimony**

The Joint ILECs submitted the testimony of Ms. Valerie Wimer, an independent consultant on telecommunications issues. Ms. Wimer testified that, absent Commission action to address the regulatory treatment of Comcast’s VoIP service, competition from such VoIP

services would be skewed heavily in Comcast's favor and would not be fair competition. Ms. Wimer also stated that the Commission should not allow Comcast to operate in the TDS service territories without first determining the appropriate regulatory treatment of the Comcast VoIP service. Ms. Wimer took the position that the Commission must determine whether both the retail and the wholesale services to be provided for Comcast VoIP, are in the public good. Further, Ms. Wimer pointed out that pricing rules, reporting rules and consumer protection rules all favor Comcast over the TDS Companies. Although Ms. Wimer acknowledged that alternative regulation provides some improvement over rate of return regulation for the TDS Companies, she asserted that alternative regulation does not match the regulatory freedom provided to Comcast. Ms. Wimer stated that Comcast is not required to offer equal access to all inter-exchange carriers, nor to offer lifeline and link-up services, all of which are required of the TDS Companies.

Ms. Wimer claimed that whenever the TDS Companies lose customers there will be a negative economic impact. Further Ms. Wimer stated that whenever business customers leave a rural telephone carrier's efficiency decreases and the cost per customer increases. Ms. Wimer acknowledged that some costs are saved when a customer leaves a rural ILEC, but she noted that carrier of last resort obligations require carriers to remain available to serve all customers in the franchise area.

According to Ms. Wimer, the VoIP service to be offered by the Comcast affiliate is in regulatory limbo due to the FCC's failure to classify VoIP service as either a telecommunications or an information service. Further, Ms. Wimer claimed that the wholesale interconnection service Comcast proposes to offer to its VoIP affiliate is not classified as either telecommunications or information services.

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Ms. Wimer asserted that the Commission is not preempted by federal statute or the FCC from determining whether intralata services, both retail and wholesale, are telecommunications services. Ms. Wimer claimed that both Missouri and Vermont have undertaken an examination of VoIP services. Ms. Wimer urged the Commission to open a docket to determine whether Comcast's VoIP services are telecommunications or information services.

Ms. Wimer pointed out that only revenue from Comcast's retail service and its wholesale service would be reported and subject to utility assessment, while the revenue from Comcast's VoIP service would escape both regulation and assessment.

Ms. Wimer recommended that the Commission limit its approval of Comcast's CLEC application to those retail services specifically listed, i.e. business local service and schools and libraries exchange service. Ms. Wimer further suggested that the Commission not require the TDS Companies to provide any porting or interconnection services until Comcast wins a schools and libraries customer.

#### **B. Brief**

The Joint ILECs argued that Comcast's CLEC-10 application fails to disclose the actual services it will provide and does not define the terms "access" "exchange access" and "interexchange service." The Joint ILECs contended that Comcast plans to offer "Business Local Service" at a rate of \$66.25 per month per access line, a rate well above rates charged by ILECs operating in New Hampshire. The Joint ILECs stated that Comcast plans to provide resold business local service and schools and libraries network service and that Comcast also intends to provide its digital voice product through Comcast IP Phone II, LLC. The Joint ILECs alleged that testimony shows that Comcast phone provides Comcast IP local interconnection service.

The Joint ILECs asserted that Comcast's request does not meet fairness criteria because the regulatory burden on the TDS Companies does not permit them to compete fairly with an unregulated Comcast. The Joint ILECs claimed that Comcast's CLEC application is intended to facilitate the provisioning of the VoIP products to residential customers who live within the TDS Companies' service territories. The Joint ILECs contended that the Comcast petition is not for the public good. The Joint ILECs suggested that if the Commission grants Comcast's CLEC application it should limit approval to business local service and schools and libraries exchange service.

The Joint ILECs argued that Comcast bears the burden of proving that its application is complete and that the requested relief is for the public good. The Joint ILECs maintained that, in determining the public good, the Commission must consider all of the factors set out in RSA 374:22-g. According to the Joint ILECs, Comcast cannot prove that its entry into the TDS service territory would promote free and fair competition considering each of these conditions. The Joint ILECs contended that Comcast's testimony regarding facts and circumstances in Vermont has no relevance to this proceeding.

The Joint ILECs further asserted that pricing rules, reporting rules and other regulatory requirements disadvantage KTC and MCT when trying to compete with a completely unregulated entity. The Joint ILECs claimed that the regulatory playing field would be skewed under Comcast Phone's plan to provide its VoIP product, while requiring KTC and MCT, but not Comcast Phone, to adhere to all of the regulations which benefit consumers. Meanwhile, universal service and carrier of last resort obligations require that KTC and MCT must continue to provide service to all customer locations. According to the Joint ILECs, Comcast is not required to offer equal access to all inter-exchange carriers (IXCs) for toll service which, even



under alternative regulation, MCT and KTC are required to provide. Also, MCT and KTC are required to provide Lifeline and Link-up services. The Joint ILECs concluded that granting Comcast Phone's CLEC application is not in the public good. The Joint ILECs claimed that absent the Commission providing a level regulatory playing field and allowing fair competition, the Comcast proposal will not be fair, promote efficiency, promote universal service, nor allow the ILEC to obtain a reasonable rate of return.

### **C. Reply Brief**

The Joint ILECs addressed two questions: (1) do the Commission's rules for submission of a CLEC-10 Application lessen Comcast Phone's burden of establishing that its services serve the public good; and (2) is the evidence proffered by Comcast Phone sufficient to meet its burden of proving that approval of its CLEC-10 application is in the public good?

The Joint ILECs contended that Comcast's narrow interpretation of Commission rules that entry of a CLEC into the territory of an incumbent carrier serves the public good, and that the simple registration process adopted by the rules forestalls further adjudicative hearings, would reduce the Commission's broad statutory power to regulate telephone services to merely a rubber-stamping procedure and would undermine the governing statutes. The Joint ILECs argued that the plain language of RSA 374:26 and 374:22-g mandating the fostering of free and fair competition cannot simply be relegated to a rubber-stamping process. Comcast must be held to its burden of establishing that its services are for the public good.

The Joint ILECs also allege that the evidence proffered by Comcast is not sufficient to establish that approval of its application is in the public good. The Joint ILECs maintain that Comcast has not satisfied the six factors identified in RSA 374:22-g. The Joint ILECs argue that RSA 374:26 authorizes the Commission to grant a CLEC-10 application only if it is for the

public good, "and not otherwise" and that the Commission may prescribe such terms and conditions for the exercise of the privilege granted as it deems for the public interest. The Joint ILECs maintained that they proffered reasonable and appropriate conditions for the granting of Comcast's CLEC-10 application; however, the Joint ILECs held that Comcast has failed to meet its burden of proving that expansion into the TDS Companies service territories is for the public good.

### **3. Union Telephone**

#### **A. Brief**

Union contended that Comcast did not provide sufficient evidence regarding the incumbent utilities' opportunity to realize a reasonable return on its investment, carrier of last resort obligations, and universal service. Therefore, Union argues that Comcast's application does not comply with RSA 374:22-g and, as a matter of law, the Commission cannot find such authorization to be in the public good. Union suggests that Comcast failed to provide any facts or evidence specific to the TDS Companies' ability to earn a reasonable return. Union also contends that Comcast's application failed to address statutory requirements showing how universal service and carrier of last resort obligations will be impacted in the TDS Companies' territories. Union concludes that, due to the lack of credible evidence, the Commission must deny Comcast's petition.

#### **B. Reply Brief**

In its reply brief, Union reiterated that the evidence offered by Comcast in its CLEC-10 application is insufficient for the Commission to grant its application inasmuch as New Hampshire law requires the Commission to make findings on whether granting the requested authority is in the public good based on evidence on competition and six additional factors.

Union asserted that Comcast mischaracterized aspects of this case, asked the Commission to grant authority without meeting the basic requirements of the law, and misstated the burden of proof. Although Comcast made statements in its brief regarding the TDS Companies' opportunity to realize a reasonable return on their investment, Union contended that Comcast simply provided no evidence to support such statements. Union asserted that Comcast cannot simply assume facts, and the Commission must reject Comcast's attempt to make an argument regarding the TDS Companies' opportunity to earn. Likewise, according to Union, Comcast's claim that universal service support is "ample" is not supported by evidence or explanation as to how granting the requested authority would actually impact universal service or carrier of last resort obligations.

Union also argued that the requirement of fairness is not supported by the evidence in this case. Both constitutional and statutory requirements regarding competition explicitly require fairness. Comcast is an unregulated utility petitioning the Commission to provide regulated services. The highly disparate regulatory treatment between incumbent utilities and Comcast disadvantages the incumbents when trying to compete. Union alleged that Comcast presented no evidence and made no reasonable argument that this disparate regulatory treatment is fair, but instead claimed it is irrelevant. Union concluded that the Commission must deny Comcast's requested authority.

### **III. COMMISSION ANALYSIS**

#### **A. Statutory Standards for Granting Comcast Authority to Operate**

When Comcast filed its application for authority to operate as a CLEC in the TDS Companies' service territories the legislature had not yet amended RSA 374:22-f and 374:22-g to make clear that telephone franchises are not exclusive in New Hampshire and to bring the New

Hampshire statutes in line with the federal regime. *See*, 47 U.S.C. §§ 251 et seq. (1996 Telecom Act).

The 1996 Telecom Act established a framework of rights and obligations for telecommunications carriers in order to promote competition for local exchange service. Under the 1996 Telecom Act, telecommunications carriers, including both ILECs (TDS Companies) and CLECs (Comcast) have the obligation to interconnect either directly or indirectly with the facilities and equipment of all other carriers. *See*, 47 U.S.C. § 251 (a). Local exchange carriers, including ILECs (TDS Companies) and CLECs (Comcast), also have duties to allow resale of services, to port telephone numbers to other carriers, to provide dialing parity, to afford access to rights of ways and to establish reciprocal compensation arrangements for the transport and termination of telecommunications. *See*, 47 U.S.C. § 251 (b). Finally, ILECs have additional duties, including among others, providing competitors with access to certain unbundled network elements (UNEs) and allowing competitors to collocate within ILEC facilities for the purpose of interconnection. *See*, 47 U.S.C. § 251 (c). Certain rural ILECs, like the TDS Companies, are exempt from 251 (c) obligations, including UNEs and collocation, until their exemption from these requirements is terminated as a result of a bona fide request from a carrier. *See*, 47 U.S.C. § 251 (f).

In addition to allowing the development of competition for local exchange services the 1996 Telecom Act prohibits states from taking any actions which create barriers to competitive entry into the telecommunications markets.

“No State or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253 (a)

By repealing RSA 374:22-f, which prohibited telephone utilities from competing in territories with fewer than 25,000 access lines, the New Hampshire Legislature removed a barrier to entry into those service territories. Further, by amending RSA 374:22-g so that it applies to all telephone service territories, regardless of size, the Legislature made clear that the Commission must consider the same factors whenever additional carriers wish to enter a service territory. RSA 374:22-g begins with the words, “[t]o the extent consistent with federal laws and notwithstanding any other provision of law to the contrary...” Clearly, the Legislature intends that the Commission’s application of RSA 374:22-g be guided by the federal laws and override any conflicting state laws.

Without the statutory amendments of RSA 374:22-f and RSA 374:22-g, which did not exist when Comcast first filed its CLEC application, the Commission considered Comcast’s CLEC application under the more general franchise statutes, RSA 374:22 and RSA 374:26. RSA 374:26 provides for a hearing in cases where any party opposes the franchise application. As a result, requests for a hearing in this case were granted. Given the recent amendments to RSA 374:22-f and 374:22-g, however, our decision in this case will be guided by the standard set out in RSA 374:22-g.

Pursuant to RSA 374:22-g, we must determine whether granting Comcast’s application fulfills the interests of competition together with: (1) fairness; (2) economic efficiency; (3) universal service; (4) carrier of last resort obligations; (5) the incumbent utility’s opportunity to realize a reasonable return on its investment; and (6) the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.

### **B. Burden of Proof**

Before beginning our analysis of Comcast's CLEC application, we address arguments concerning the burden of proof. Our rules require the moving party, in this case Comcast, to "bear the burden of proving the truth of any factual proposition by a preponderance of the evidence." N.H. Code of Admin. Rules Puc 203.25. As fact finder, the Commission must weigh the evidence in the record before it to determine whether factual propositions have been proved. In this case, the factors identified in RSA 374:22-g involve the development of a competitive telecommunications market. We note that certain company specific information concerning the potential impact of a competitive market on ILECs is known only by the ILECs. Comcast bears the burden of producing evidence reasonably available to it and the TDS Companies bear the burden of producing evidence which is in their exclusive control. We will weigh the testimony and briefs submitted by all parties to determine whether the factors outlined in RSA 374:22-g have been satisfied by a preponderance of the evidence, recognizing that the parties agreed to forego a hearing in this matter.

### **C. Competition and Fairness**

Comcast requests permission to offer telephone and other services in competition with the TDS Companies in their service territories. Comcast, through its expert witness, presented evidence of the benefits of competition to consumers. We agree that competitive markets, which are favored by both federal and state statutes, generally encourage greater efficiency, lower prices and more consumer choice.

Although they acknowledge that Comcast will introduce competition, the ILECs argue that Comcast's offering of a VoIP service through an affiliate company is not fair because such a service will compete with local phone service, but will not be regulated. The regulatory

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treatment of VoIP service has not been determined and, as we have stated previously, is beyond the scope of this proceeding. Currently, other competitive providers, including a TDS affiliate, offer unregulated cellular telephone services that compete with local exchange service in the TDS service territory. Such cellular telephone service is not subject to regulation or any of the consumer protections provided by our rules. The TDS Companies also currently offer bundled triple play services which combine unregulated video and high speed data services with telephone service. We do not find TDS offerings of bundled regulated and unregulated services unfair. Nor do we find Comcast's proposal to offer both *regulated and unregulated services* in the TDS service territories unfair. In making this finding, we do not assume that the Comcast VoIP service is either regulated or unregulated. We have authorized CLECs to operate throughout the FairPoint service territory in New Hampshire. Many of those CLECs, either directly or through affiliates, offer a variety of services with varying degrees of regulation, *including cellular phone service, intralata and interlata toll service, video service, high speed data service and VoIP services*. These competitive offerings are consistent with the state and federal policies we are bound to promote and are not unfair to the ILECs.

In this case, the TDS companies maintain that Comcast's VoIP services should be regulated and we have already found that question to be beyond the scope of the Comcast CLEC application. Whether or not those VoIP services are regulated does not impact the fairness of Comcast's entry into the TDS Companies' territories, because we have found that both regulated and unregulated services already contribute to the competitive market in the TDS Companies' service territories. We further note that neither the inquiry from the FCC's Wireline Competition Bureau, nor Comcast's answer, provide a basis for concluding otherwise. We find the

competition proposed by Comcast to be fair and the ILECs have not presented sufficient evidence to rebut that finding.

#### **D. Competition and Economic Efficiency**

As a state and national policy competition in telecommunications services is encouraged. Policy makers have chosen that policy because they believe it leads to economic efficiency. Comcast's expert witness presented evidence, on a national level, of the savings created by competition in telecommunications services. Such customer savings support the conclusion that services are being provided at lower costs and thus more efficiently.

In testimony, the ILECs claimed that if business customers left the TDS Companies there would be a negative economic impact and the carrier's efficiency would be reduced. On the other hand, Comcast's testimony indicated that competition fosters economic efficiency and prevents carriers from charging prices in excess of economic costs. The only thing which distinguishes this CLEC application from the numerous others we have approved is that in this case the ILEC whose service territory is being entered is subject to the rural exemption under the federal statute. *See*, 47 U.S.C. § 251 (f). We find no indication in the 1996 Telecom Act that ILECs subject to the rural exemption are protected from competitive entry. In fact, 47 U.S.C. § 251 (b) makes clear that all LECs must interconnect with other carriers operating in their service territory. The recent amendments to RSA 374:22-f and RSA 374:22-g make New Hampshire law consistent with federal law on this point. As a result, small ILECs in New Hampshire must not erect barriers to competitive entry and the CLEC approval process should not become a barrier to competitive entry.

One of the ways to achieve economic efficiency is by eliminating barriers to entry. In fact, the 1996 Telecom Act specifically prohibits states from creating barriers to the entry of



competition.<sup>5</sup> In an effort to support this important policy goal and to comply with federal statutes, the Commission's rules provide for a streamlined and efficient process for competitors to enter the local telecommunications market. See, N.H. Code of Admin. Rules Puc 431.01.

**E. Competition, Universal Service and Carrier of Last Resort Obligations**

CLECs in New Hampshire are not required to serve all customers in the service territories in which they operate. ILECs, on the other hand, are required to be the carrier of last resort and to provide service to all customers in their service territories. Under the current federal statutory scheme, ILECs are compensated for this service obligation through the universal service fund (USF). See, 47 U.S.C. § 254. Comcast points out in its testimony that the TDS Companies received a total of \$2.5 Million in federal high cost USF support in 2007 and that this support is designed to support TDS's universal service obligations. Although Union argued that Comcast has not presented evidence supporting the TDS Companies' ability to meet universal service obligations, Comcast has produced evidence of the federal universal service fund support of those obligations. The TDS Companies have not presented evidence demonstrating that competition will prevent them from meeting those obligations. Based on the record before us, we find that Comcast's entry into the TDS Companies service territories will not prevent them from meeting universal service and carrier of last resort obligations.

**F. Competition and the ILEC's Opportunity to Realize a Reasonable Return on its Investment**

Whether or not competition from Comcast would adversely impact the TDS Companies' ability to earn a reasonable return can be judged only by monitoring the TDS Companies' performance after Comcast actually begins operating in their territories. At this point, the analysis is, at best, speculative. The TDS Companies have not argued that their return on

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<sup>5</sup> 47 U.S.C. § 253.

investment will be unreasonable as a result of competition. Instead, TDS witness Wimer testified that if business customers leave a small ILEC, the carrier's efficiency is reduced and its cost per customer increases. While acknowledging that loss of a customer saves some costs, Ms. Wimer testified that carrier of last resort obligations require ILECs to remain ready to serve those lost customers. Ms. Wimer's testimony falls short of indicating any impact on TDS Companies' return on investment and such information is in the exclusive control of the TDS Companies. Further, as noted above, federal USF support is designed to support such obligations and should increase investment return. USF support to the ILEC continues even in a competitive market and provides protection against reduced return on investment.

Based on the record before us, we do not find that competition from Comcast will adversely impact the TDS Companies' opportunity to realize a reasonable return on its investment. Accordingly, we find that the interests of competition are not outweighed by the risk that the TDS Companies may not maintain their opportunity to earn a reasonable return on investment.

**G. Competition and the Recovery from Competitive Providers of Expenses  
Incurred by the Incumbent Utility to Benefit CLECs**

The TDS Companies are currently subject to the rural exemption and are therefore not required to unbundle network elements to competitors. The TDS Companies are, however, required to provide interconnection to Comcast. Interconnection consists of the physical exchange of traffic between carriers. TDS will incur the cost of terminating traffic from its customers to Comcast customers and will be reimbursed for terminating calls from Comcast customers to TDS customers. These costs will be negotiated between Comcast and the TDS Companies and included in an interconnection agreement.

Comcast and the TDS Companies are in the process of negotiating an interconnection agreement in New Hampshire and, according to Comcast, are negotiating similar agreements in several other states. It is reasonable to assume that the TDS Companies will set the terms of these agreements to recover their costs. In the event any carrier requests that the rural exemption be lifted in the future, the Commission would have to consider the cost and feasibility of requiring the TDS Companies to lease portions of their networks to other carriers. That case is not before us and we are persuaded that the TDS Companies will recover any costs incurred in interconnecting with Comcast through fees implemented in a negotiated agreement. The TDS Companies have not provided any evidence to the contrary in this proceeding.

**H. Conclusion**

Having considered all of the factors contained in RSA 374:22-g, we find that granting Comcast authorization to operate in the TDS Companies service territories is for the public good.

**Based upon the foregoing, it is hereby**

**ORDERED**, the application to operate as a competitive local exchange carrier by Comcast Phone of New Hampshire in the TDS Companies' franchise area is granted.

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

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary

**EXHIBIT C**

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 08-013**

**COMCAST PHONE OF NEW HAMPSHIRE**

**Application for Authority to Serve Customers**

**in the TDS Service Territories**

**Order Denying Motion for Rehearing**

**ORDER NO. 24,958**

**April 21, 2009**

**I. PROCEDURAL HISTORY**

On December 12, 2007, Comcast Phone of New Hampshire (Comcast) filed an application for authority to provide local exchange telecommunications services pursuant to RSA 374:22 and to do business as a competitive local exchange carrier (CLEC) in the service territories of three affiliated incumbent local exchange carriers (ILECs) – Kearsarge Telephone Company (KTC), Merrimack County Telephone Company (MCT) and Wilton Telephone Company (WTC) – all subsidiaries of TDS Telecom (collectively, the TDS Companies or TDS). Comcast is a CLEC currently authorized to provide intrastate telecommunications services in the New Hampshire exchanges formerly served by Verizon and now served by Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE.

On April 4, 2008, the Commission issued Order No. 24,843, granting Comcast's application for authority effective May 5, 2008, unless any interested party filed comments or requested a hearing. On April 16, 2008, the TDS Companies filed a motion to suspend Order No. 24,843 pending resolution of Docket No. DT 07-027,<sup>1</sup> or alternatively for a hearing. On

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<sup>1</sup> Docket DT 07-027 involved the TDS Companies' petition for alternative regulation pursuant to RSA 374:3-b.

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April 21, 2008, the New Hampshire Telephone Association (NHTA) filed an objection to Order No. 24,843 and requested a hearing. On May 2, 2008, the Commission issued Order No. 24,854 suspending the order *nisi* and scheduling a prehearing conference. Following that order, the TDS Companies, NHTA, Union Telephone Company, segTEL, and the Office of Consumer Advocate were made parties to the docket. The parties and Staff engaged in technical sessions, agreed to stipulated facts, filed written testimony and submitted several rounds of briefs.<sup>2</sup> At the parties' request, the Commission canceled the final hearing scheduled in this matter and decided the issues in controversy based upon pre-filed testimony and briefs.

On February 6, 2009, pursuant to RSA 374-22-g and N.H. Code of Admin. Rules Puc 431.01, the Commission issued Order No. 24,938 granting Comcast authority to operate as a CLEC in the TDS territories. On March 6, 2009, the Joint ILECs and Wilton Telephone Company, Inc., (the rural local exchange carriers or RLEC Representatives) filed a joint motion requesting that the Commission reconsider Order No. 24,938 (Order) or grant a rehearing in this docket. On March 16, 2009, Comcast provided a response to the joint motion of the RLEC Representatives.

## II. POSITIONS OF THE PARTIES

### 1. RLEC Representatives

The RLEC Representatives claimed that the Commission committed reversible error in both the grant of authority allowing Comcast to operate as a CLEC, and in the requirement for the TDS Companies to interconnect with Comcast. The RLEC Representatives argued that Comcast has not demonstrated under New Hampshire law that it will provide telephone service "for the public" as required by RSA 362:2.

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<sup>2</sup> For a more detailed procedural history see Order No. 24,938.

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According to the RLEC Representatives, Comcast did not offer evidence of any customers for its business local exchange services or its specialized “schools and libraries” service. In addition, the RLEC Representatives pointed out that Comcast discontinued Comcast Digital Phone service in the state of New Hampshire (FCC Public Notice DA 08-871, April 14, 2008, p. 2). The RLEC Representatives claimed that the service offerings described by Comcast are “merely a pretext to enable Comcast Phone to obtain interconnection” with the public switched telephone network (PSTN) and thereby enable its affiliate, Comcast IP Phone II, LLC (Comcast IP), to provide internet protocol (IP) voice service on an unregulated basis. The RLEC Representatives maintained that, in accordance with *Appeal of Easton* 125 N.H. 205, 213 (1984), the Commission must not treat the “public good” requirements of RSA 374-22-g and RSA 374:26 as merely a “check the box” analysis, but must demand that Comcast demonstrate that it intends to serve the public. The RLEC Representatives asserted that Comcast has not demonstrated that it intends to serve the public and the Commission must therefore withhold approval.

The RLEC Representatives argued in addition that the Order is “unlawful and unreasonable in that it fails to consider whether the proposed conduct would be contrary to law.” The RLEC Representatives noted that granting authority for Comcast to operate as a CLEC will enable Comcast IP to offer “Comcast Digital Voice” (CDV) in the TDS Companies’ area “free from any regulation.” In this and in previous communications to the Commission, the RLEC Representatives have asked for a determination of whether CDV is a telecommunications service under New Hampshire law and is therefore subject to regulation.<sup>3</sup> The RLEC Representatives noted that, if CDV is indeed a telecommunications service, the offer of CDV to the public

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<sup>3</sup>.CDV is provided using Internet Protocol and has not yet been classified as a telecommunications or information service.

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without prior Commission approval would violate the provisions of RSA 374:22 and RSA 374:22-g. The RLEC Representatives asserted that the “public good” standard includes a requirement that “the proposed action must not be one forbidden by law” and must be “reasonable to be permitted under all the circumstances of the case.” *Grafton County Electric Power and Light Company v. State*, 77 N.H. 539 (1915). The RLEC Representatives asserted that it is unlawful and unreasonable for the Commission to grant Comcast authority to operate as a CLEC without first determining whether CDV is a telecommunications service.

The RLEC Representatives also asserted that the Order is unlawful and unreasonable in that the Commission ruled on matters not in controversy and absent notice and an opportunity to be heard, referring to Subsection G, pp 22-23 which stated:

The TDS Companies are, however, required to provide interconnection to Comcast. Interconnection consists of the physical exchange of traffic between carriers. TDS will incur the cost of terminating traffic from its customers to Comcast customers and will be reimbursed for terminating calls from Comcast customers to TDS customers. These costs will be negotiated between Comcast and the TDS Companies and included in an interconnection agreement.

The RLEC Representatives noted that Comcast had not requested an order concerning interconnection requirements and claimed that applicable law does not include “exchange of traffic” as a necessary component of interconnection. They maintain that the inclusion of these issues in the Order represents a violation of due process, in that interested parties were not forewarned of the potential scope of ruling. The RLEC Representatives suggest that the remedy for this particular concern is a rehearing.

The RLEC Representatives further argued that the Commission has taken too broad a view of the prohibition of “barriers to competitive entry.” They cite Section 253(f) of the Telecommunications Act of 1996 as authorizing more stringent requirements for new entrants.



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They further argue that the Commission, in not acknowledging this authority, has failed to give proper weight to fair and level competition.

Finally, the RLEC Representatives claimed that the Order violates New Hampshire RSA 374:22-g, which requires the Commission to consider specific factors before reaching its decision. Specifically, the RLEC Representatives asserted that:

- a. The Commission's decision not to rule on the question of whether Comcast IP's Digital Voice is a telecommunications service (discussed above) and its allegedly limited acknowledgement of Sections 251 and 253 of the Telecommunications Act (also discussed above) constitute a failure to properly consider the fairness criterion;
- b. The Commission has taken an imprecise view of the term "economic efficiency," applying it only to the market as a whole, and accepting questionable claims of the relationship between economic efficiency and barriers to entry; and
- c. With regard to universal service, carrier of last resort, and rate of return issues, the Commission has "demonstrated a misunderstanding" of current law and has effectively shifted the burden of proof regarding the effect of competition on these criteria from Comcast to the RLEC Representatives.

## **2. Comcast Response**

Comcast asserted that the motion of the RLEC Representatives "fails to meet their burden (1) to introduce new evidence that was unavailable at the original hearing, and (2) to identify matters that were overlooked or mistakenly conceived in the original decision." With regard to the claim that Comcast has not established that it will provide service to the public, Comcast observed that a common carrier can specialize in services aimed at particular segments of the entire public, so long as it offers those services without discrimination. Comcast noted several examples of the Commission granting CLEC certification to companies focused on such segments, including, for example, the offer of T1 services. Comcast also asserted that the

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current status of its service offerings to the public is not relevant to a Commission grant of certification for market entry.

Comcast argued that the regulatory status of VoIP service need not be determined before proceeding with a decision on CLEC certification. Comcast observed that the Commission's certification of CLEC status grants Comcast authority to offer regulated voice service, and is silent on offering unregulated service. In addition, Comcast disputed the claim that the Order required interconnection, noting that the availability and terms of interconnection are instead being arbitrated separately in Docket No. DT 08-162.

With regard to the claim that the Commission misinterpreted the law regarding barriers to entry, Comcast noted that the cited language in 253(f) of the Telecommunications Act of 1996<sup>4</sup> simply permits, and does not require, states to impose additional requirements on CLEC applications. Comcast also emphasized that dilatory tactics can themselves become a barrier to entry and urges the Commission to consider that in rejecting the request for rehearing. Finally, Comcast asserted that the RLEC Representatives' claim that the Order violates RSA 374:22-g is not supported with new facts or legal arguments and therefore provides no basis for a rehearing.

### III. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. The petitioner must explain why new evidence could not have been presented in the underlying proceeding. *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977). Good reason may also be shown by identifying specific matters that were either "overlooked or mistakenly conceived" by the deciding tribunal.

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<sup>4</sup> 47 U.S.C. § 253 (f)

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*Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *See Connecticut Valley Electric Co.*, 88 NH PUC 355, 356 (2003).

The arguments raised in the RLEC Representatives' motion have been previously raised and addressed in the Order and no new previously unavailable evidence has been proffered.

Accordingly, we address the arguments raised only insofar as they are pertinent to demonstrate that matters were not overlooked or mistakenly conceived.

#### **A. Telephone Service for the Public**

Comcast has not identified specific customers or pending installation orders for its proposed services. The RLEC Representatives argue that this suggests Comcast does not intend to serve the public and, instead, is planning to use its CLEC standing solely to enable the offering of unregulated VoIP service through an affiliate.<sup>5</sup> They suggest that the Commission must require a "demonstration through business plans or otherwise" of Comcast's commitment to offering a public service, *see* RLEC Representatives Motion at 3.<sup>6</sup>

The current absence of identified customers for Comcast's proposed services is not a disqualifying factor. In fact, N.H. Code Admin. Rules Puc 431.12(a) provides a 2-year period to obtain customers. We find the presentation of proposed service offerings with applicable rate schedules, pursuant to N.H. Code of Admin. Rules Puc 431.06, and targeted geographical and customer segment markets sufficient to grant Comcast authority to do business as a CLEC. The RLEC Representatives suggestion to evaluate the feasibility of CLEC business plans as an entry

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<sup>5</sup> The Commission considered all evidence presented on this issue, including, but not limited to, the testimony of independent consultant, Ms. Valerie Wimer, submitted by the RLEC Representatives. *See* Order at 9-11.

<sup>6</sup> No such requirement exists, and the testimony provided by Comcast, from independent consultant Michael D. Pelcovitis, Ph.D., specifically addressed the services to be provided to the public by Comcast and further opined that such services would contribute to the public good. *See* Order at 5-6.

criterion for CLEC certification is beyond the scope of existing CLEC registration requirements and inconsistent with our prior grants of CLEC registration.

**B. Effect of Comcast Digital Voice (CDV) Regulatory Status**

The RLEC Representatives argue that the CDV service could be determined to be subject to regulation, which would mean that unregulated CDV offers are a violation of law or that CLEC registration of Comcast in the TDS territories will allow Comcast to expand its unregulated CDV service, and therefore Commission approval of the CLEC application advances a potentially illegal activity. Since the public good standard includes a requirement that “the proposed action must not be one forbidden by law,” the RLEC Representatives claim that the grant of CLEC registration is contrary to law.<sup>7</sup>

We observe that CDV has not been ruled a telecommunications service and therefore offers of CDV service are not currently prohibited. The RLEC Representatives essentially seek to expand a ban against actions forbidden by law to a ban against actions that might, at some future date, and depending on future decisions, be prohibited. We find that such a premonitory ban would be unworkable and is not supported by law.

**C. Interconnection Definition and Mandate**

The RLEC Representatives object that the Order ruled on matters not in controversy and absent notice. They conclude, incorrectly, that the Commission “ordered the TDS companies to interconnect with Comcast Phone.” See RLEC Representatives Motion at 8. The RLEC Representatives appear to interpret the statement that “[t]he TDS Companies are, however, required to provide interconnection to Comcast,” to be a direction. The statement, however, should be read not as a direction but as a description of the general federal statutory requirement

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<sup>7</sup> This argument was the subject of our analysis on pages 18-20 of the Order and presents no new issues for the purposes of rehearing or reconsideration.

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that local exchange carriers (LECs) interconnect with other carriers operating in their territories.<sup>8</sup> TDS subsequently argued in a separate proceeding that Comcast is not a carrier and therefore TDS is not obligated to interconnect with Comcast. The extent of the TDS Companies' interconnection obligations to Comcast will be considered in a separate docket. *See*, Docket No. DT 08-162.

The RLEC Representatives further objected that the language in the Order, namely, “[i]nterconnection consists of the physical exchange of traffic between carriers” (Order at 22) introduces a definition of interconnection that is contrary to FCC rulings. This language appears in connection with our responsibility under RSA 374:22-g to consider “the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses.” As explained above, we did not direct TDS to interconnect and, therefore, a formal definition of interconnection is not at issue in this proceeding.

#### **D. Strictness Regarding Barriers to Competitive Entry**

In the Order, we cited 47 U.S.C. § 253 (a), which reads as follows:

No State or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

In isolation that language might appear to allow no standards that could block authorization of CLEC competitors. The RLEC Representatives object that this reflects too narrow a reading of the statute, which provides exceptions including a grant of explicit authority to the states to require that competitors be qualified as “eligible telecommunications carriers” in order to

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<sup>8</sup> 47 U.S.C. § 251 (a) and (b)

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compete. The sub-section cited by the RLEC Representatives, 253 (f), does not require state commissions to impose universal service obligations on CLECs, it merely allows for such state requirements. The New Hampshire legislature has not required CLECs to satisfy the requirements of an eligible telecommunications carrier, nor have we imposed such a requirement through our rules.

As our subsequent analysis of RSA 374:22-g in the Order shows, we examined and applied standards under RSA 374:22 and 22-g in our consideration of Comcast's entry into the TDS Companies service territories. We reached our decision by balancing the factors identified in applicable state statutes so as not to "have the effect of prohibiting the ability of [Comcast] to provide any interstate or intrastate telecommunications service." *Id.* In light of that analysis, we find that the RLEC argument asserting too narrow a reading of 47 U.S.C. § 253 is without merit.

**E. Fairness, Economic Efficiency and ILEC Competitiveness Criteria**

The RLEC Representatives claim that the Commission erred in ruling on fairness without making a determination of the regulatory status of CDV. In the Order we observed that the New Hampshire telecommunications market is already subject to many forms of regulated and unregulated competition, including unregulated cellular voice service and bundled "triple play" offerings that combine regulated and unregulated services. We concluded:

Whether or not those VoIP services are regulated does not impact the fairness of Comcast's entry into the TDS Companies' territories, because we have found that both regulated and unregulated services already contribute to the competitive market in the TDS Companies' service territories. Order at 19.

The RLEC Representatives have provided no basis to grant rehearing or reconsideration on this point.

The RLEC Representatives also claim that the Commission incorrectly assumed that the term "economic efficiency" applied to the overall market rather than to the ILEC and that

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eliminating barriers to entry inherently advances economic efficiency. They further assert that the Commission failed to examine the specific effect of the Comcast application in terms of economic efficiency.

We find no ambiguity in the language of RSA 374:22-g regarding the scope of “economic efficiency.” It refers to market-wide efficiency, not to the efficiency of individual companies. For support, we note that the statute specifies more limited application where intended (e.g., “the incumbent utility's opportunity to realize a reasonable return on its investment”). Nor is there evidence elsewhere in the statute of a public policy goal to optimize the economic efficiency of individual regulated companies.

RSA 374:22-g also contemplates that competition and economic efficiency are factors relevant to the determination of public good. It begins by declaring that, absent federal prohibition, all telephone franchises shall be non-exclusive; that is, they may be subject to competition. Since barriers to entry by definition limit competition, we find that state law supports Commission efforts to minimize such barriers consistent with the public good, and *within the confines of other governing laws and rules*. We further find that there is no requirement in RSA 374:22-g for analysis of the “specific effect” that new competition might have on economic efficiency.

The RLEC Representatives object that the Commission effectively shifted the burden of proof to them regarding universal service, carrier of last resort, and rate of return issues. As explained in the Order, the burden of proof falls first on the petitioning party: Comcast in this case. Where relevant information is the property of other parties, however, they share the burden of production:

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Comcast bears the burden of producing evidence reasonably available to it and the TDS Companies bear the burden of producing evidence which is in their exclusive control. (Page 18.)

The RLEC Representatives have provided no basis to grant rehearing on this point.

In summary, the arguments raised by the RLEC Representatives have either been previously raised and addressed in the Order or are mere reformulations of previous arguments with no new, previously unavailable evidence proffered. The RLEC Representatives have failed to demonstrate that we overlooked or mistakenly conceived the matters at issue. In the Order, we weighed all the evidence presented and determined that granting Comcast's CLEC registration is for the public good. Therefore, we deny the pending rehearing request.

**Based upon the foregoing, it is hereby**

**ORDERED**, That RLEC Representatives' motion for rehearing and reconsideration is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of April, 2009.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director



**EXHIBIT D**

**2009 Competitive Local Exchange Carrier (CLEC) Questionnaire**  
*(Due by April 15, 2009)<sup>1</sup>*

Legal Company Name: \_\_\_\_\_

D/B/A: \_\_\_\_\_

FPSC Company Code (e.g., TX000)

\_\_\_\_\_

Contact name & title: \_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Stock Symbol (if company is publicly traded): \_\_\_\_\_

**Services Provided in Florida**

1. Do you provide local telephone service in Florida? Please check yes or no.

\_\_\_\_\_ Yes  
\_\_\_\_\_ No

2. Please complete the data tables.

3. How is your local service provisioned? Please mark the appropriate response(s).

\_\_\_\_\_ Resold lines from ILEC  
\_\_\_\_\_ Wholesale platform (formerly known as UNE-P)  
\_\_\_\_\_ UNEs (other than wholesale platform) from ILEC  
\_\_\_\_\_ Elements (e.g., loops, switching) from other than ILEC (e.g., other CLECs)  
\_\_\_\_\_ Completely self-provisioned  
\_\_\_\_\_ Other (please describe) \_\_\_\_\_

<sup>1</sup>The due date is established by Section 364.386(1)(b), Florida Statutes. Failure to comply with this rule may result in the Commission assessing penalties of up to \$25,000 per offense, with each day of noncompliance constituting a separate offense per Section 364.285(1), Florida Statutes.

4. What services, other than local service, does your company currently provide in Florida? Please check all that apply.

<input type="checkbox"/> Private line/special access	<input type="checkbox"/> Wholesale loops
<input type="checkbox"/> VoIP	<input type="checkbox"/> Fiber or copper based video service
<input type="checkbox"/> Wholesale transport	<input type="checkbox"/> Cable television
<input type="checkbox"/> Interexchange service	<input type="checkbox"/> Satellite television
<input type="checkbox"/> Cellular/wireless service	<input type="checkbox"/> Broadband Internet access

5. This question concerns **prepaid** local telephone service in Florida. Please place a check by the response that most accurately reflects whether or not you offer **prepaid** local telephone service.

Company offers ONLY prepaid local telephone service in Florida  
 Company offers prepaid AND non-prepaid local telephone service in Florida  
 Company does NOT offer prepaid local telephone service in Florida

### **Bundled Services**

6. What percentage of your Florida residential and business customers purchase bundled (i.e. voice service packaged with additional services such as internet or video service) offerings? Please provide the percentage below. Do not include bundles of telecom-only services. If you do not offer bundled services, indicate "not applicable."

Residential  
 Business  
 Not applicable

### **VoIP**

7. Indicate below whether you are offering VoIP service to end users in Florida. VoIP service is defined as IP-based voice service provided over a digital connection. Please check any that apply.

Not offering VoIP service to end users  
 Offering VoIP services to business end users  
 Offering VoIP services to residential end users

8. If you are offering VoIP service in Florida, please check all that apply:

- Peer-to-Peer only (no interconnection with PSTN)
- Use of public Internet
- Use of private IP network

**Broadband**

9. Do you offer broadband to residential customers in Florida? Please check the applicable answer.

- Yes
- No

10. If you do offer broadband to residential customers in Florida, please provide your best estimate of the percentage of residential end user premises in your Florida service area for which your broadband services are available.

\_\_\_\_\_

11. How many residential broadband subscribers do you have in Florida?

\_\_\_\_\_

12. Please list the method(s) of broadband provisioning utilized in Florida by your company (i.e. DSL, cable modem, fiber, etc.).

13. What are the typical downstream and upstream speeds for your most popular broadband service?

14. What is the monthly price for your most popular residential broadband service?

**Fiber Deployment**

15. Did you deploy fiber to homes or businesses in Florida between December 31, 2007 and December 31, 2008?

- Yes
- No

16. Please provide the number of new residential and business subscribers served by Fiber to the Home, Fiber to the Premises, and/or Fiber to the Curb technology since the last reporting period.

- \_\_\_\_\_ Residential Subscribers
- \_\_\_\_\_ Business Subscribers
- \_\_\_\_\_ Total

17. Please provide your company's total number of residential and business subscribers currently served by Fiber to the Home, Fiber to the Premises, and/or Fiber to the Curb technology.

\_\_\_\_\_ Residential Subscribers  
\_\_\_\_\_ Business Subscribers  
\_\_\_\_\_ Total

**Miscellaneous**

18. In calendar year 2007, how much money did you invest in your network directly serving Florida's local service customers? Please check the applicable answer.

\_\_\_\_\_ \$1 - \$249,999  
\_\_\_\_\_ \$250,000 - \$999,999  
\_\_\_\_\_ \$1,000,000 - \$9,999,999  
\_\_\_\_\_ \$10,000,000 or more

19. Are you currently operating under Chapter 7 or Chapter 11 protection? Please check yes or no.

\_\_\_\_\_ Yes  
\_\_\_\_\_ No

20. Please provide a copy of the Form 477 you filed with the FCC with data as of **December 31, 2008**

**Comments**

21. Have you experienced any significant barriers in entering Florida's local exchange markets? Please list and describe any major obstacles or barriers encountered that you believe may be impeding the growth of local competition in the state, along with any suggestions as to how to remove such obstacles. Any additional general comments or information you believe will assist staff in evaluating and reporting on the development of local exchange competition in Florida are welcome.

**EXHIBIT E**

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of )  
**COMMUNICATIONS CORPORATION OF** )  
**MICHIGAN, d/b/a TDS TELECOM,** for arbitration )  
of interconnection rates, terms, and conditions with )  
**COMCAST PHONE OF MICHIGAN, LLC, d/b/a** )  
**COMCAST DIGITAL PHONE.** )

Case No. U-15725

In the matter of the petition of )  
**COMCAST PHONE OF MICHIGAN, LLC, d/b/a** )  
**COMCAST DIGITAL PHONE,** for arbitration of )  
interconnection rates, terms, and conditions with )  
**COMMUNICATIONS CORPORATION OF** )  
**MICHIGAN, d/b/a TDS TELECOM.** )

Case No. U-15730

At the March 5, 2009 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman  
Hon. Monica Martinez, Commissioner  
Hon. Steven A. Transeth, Commissioner

**ORDER**

On November 12, 2008, Communications Corporation of Michigan, d/b/a TDS Telecom (TDS), and Comcast Phone of Michigan, LLC, d/b/a Comcast Digital Phone (Comcast Phone), each filed a petition for arbitration of terms and conditions of interconnection under Sections 251 and 252 of the federal Communications Act of 1996, 47 USC 151 *et seq.* (federal Act), the Michigan Telecommunications Act, MCL 484.2101 *et seq.* (Michigan Act), and the Commission's arbitration procedure orders in Case Nos. U-11134 and U-13774. These petitions were docketed

separately in Case Nos. U-15725 and U-15730, respectively, but have proceeded through the arbitration process together. The sole issue in these matters is whether Comcast Phone is a telecommunications carrier entitled to arbitration under the federal Act. The parties have negotiated an agreement for interconnection. TDS proposes language that specifically limits the effectiveness of the agreement to after a Commission determination that Comcast Phone is a telecommunications carrier as that term is used in Sections 251 and 252 of the federal Act. Comcast Phone proposes that if the Commission determines Comcast Phone to be a telecommunications carrier, it should approve the *interconnection agreement as negotiated by the parties without the language requiring a Commission determination that Comcast Phone is a telecommunications carrier in Michigan*. It is undisputed that Comcast Phone withdrew from providing regulated basic local exchange and toll service in Michigan in September 2007.

By letter dated November 25, 2008, the parties received notice that Mark E. Cummins had been assigned to arbitrate these cases. On January 28, 2009, the arbitrator issued his Decision of the Arbitration Panel (DAP), in which he found Comcast Phone's arguments more persuasive than TDS's arguments, and concluded that Comcast Phone is a telecommunications carrier as that term is used in Sections 251 and 252 of the federal Act. On February 9, 2009, the parties filed *objections to the DAP*.

After reviewing the petitions for arbitration, arguments of the parties, and the DAP, the Commission is persuaded that the arbitrator reached the correct conclusion, and that the conclusion should be affirmed, albeit for more reasons than stated in the DAP.

Comcast Phone is a licensed local exchange carrier (LEC) in Michigan. Whether it currently provides regulated basic local exchange service is not dispositive of its right to negotiate an interconnection agreement with another telecommunications provider in the state. Many



telecommunications providers first receive a license from the Commission and then negotiate interconnection agreements. Indeed, it is rarely if ever, that a provider will negotiate with a company that does not currently hold a LEC license. To hold that a LEC has no right to negotiation and arbitration of an interconnection agreement unless it is serving customers currently would effectively end adding new entrants to the telecommunications market. Before a carrier can offer basic local exchange service, it must be licensed and it must have negotiated appropriate interconnection or other commercial agreements. Otherwise, it could hardly market its services as a telecommunications carrier. As noted by Comcast Phone, although it did submit a discontinuance of service for regulated basic local exchange service in Michigan, it did not surrender its license.

TDS argues that if Comcast Phone is not providing regulated toll or basic local exchange service in Michigan, it should no longer retain its license. Therefore, it argues, the Commission should find that Comcast Phone does not have the right to an interconnection agreement under Sections 251 or 252 of the federal Act.

The Commission finds that an arbitration proceeding is not the appropriate forum for attacking the validity of a license to provide basic local exchange service in Michigan. Rather, that challenge could be made in a complaint proceeding, in which Comcast Phone would have notice that its CLEC license is in jeopardy. Moreover, rescission of Comcast Phone's license in this proceeding would violate the state constitution and the Michigan Administrative Procedures Act, which has specific requirements to be met before a license once granted is rescinded. *See, e.g., MCL 24.292.* As a licensee, Comcast Phone has the right to due process before its license is rescinded or revoked.

A review of the applicable statutory provisions does not require the Commission to reach a contrary result. Section 251(a), 47 USC 251, provides in part:

- (a) Each telecommunications carrier has the duty –
  - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . .

\* \* \* \* \*

- (c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS – In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:
  - (1) DUTY TO NEGOTIATE – The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of these subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

Section 3(b), 47 USC 153, provides in part:

(43) TELECOMMUNICATIONS. – The term “telecommunications” means 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.

(44) TELECOMMUNICATIONS CARRIER. – The term “telecommunications carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). . . .

(46) TELECOMMUNICATIONS SERVICE. The term “telecommunications service” means 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.

The arbitrator determined that TDS had read too much into Comcast Phone’s notice of discontinuance filed in Case No. U-15370 and the Section 63.71 application filed with the FCC. Rather, he determined that Comcast Phone is a telecommunications carrier with full rights to interconnection. This finding led the arbitrator to recommend that the Commission adopt the language proposed by Comcast Phone for Section 3.1. For the reasons stated above, we agree with

the arbitrator. However, Comcast Phone's current license to provide basic local exchange service is dispositive of its right to negotiate or arbitrate an interconnection agreement.

Comcast Phone objects to the arbitrator's description of a document in footnote 6 in the DAP. The Commission agrees that footnote 6 is not necessary to the decision reached in this case and forms no part of the basis for the Commission's decision.

THEREFORE, IT IS ORDERED that the arbitrator's recommendation to find in favor of Comcast Phone of Michigan, LLC, d/b/a Comcast Digital Phone, is adopted. The parties shall file an executed copy of their interconnection agreement for Commission approval within 30 days of the date of this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party aggrieved by this order may file an action in the appropriate federal District Court under 47 USC 252(e)(6).

MICHIGAN PUBLIC SERVICE COMMISSION

\_\_\_\_\_  
Orjiakor N. Isiogu, Chairman

By its action of March 5, 2009.

\_\_\_\_\_  
Monica Martinez, Commissioner

\_\_\_\_\_  
Mary Jo Kunkle, Executive Secretary

\_\_\_\_\_  
Steven A. Transeth, Commissioner

**EXHIBIT F**

BELLSOUTH  
TELECOMMUNICATIONS, INC.

GENERAL SUBSCRIBER SERVICE TARIFF

Third Revised Page 7  
Cancels Second Revised Page 7

FLORIDA

ISSUED: February 6, 1998

EFFECTIVE: February 21, 1998

BY: Joseph P. Lacher, President -FL  
Miami, Florida

## A35. INTERCONNECTION OF MOBILE SERVICES

### A35.1 Mobile Services (Cont'd)

#### A35.1.4 BellSouth® CMRS Type 2 Interconnection (Cont'd)

- K. Conversion from BellSouth® CMRS Type 1 Interconnection to BellSouth® CMRS Type 2A-SS7 (Cont'd) (T)
2. If the **CMRS** subscribes to DS1 transport service and converts from BellSouth CMRS® Type 1 interconnection to BellSouth® CMRS Type 2A-SS7 interconnection with a minimum service period of 24 months, the Company will waive 50 percent of the nonrecurring charges associated with re-homing the existing DS1 transport facilities to our tandem office. The Company will also waive 50 percent of the nonrecurring charges associated with the required movement of dedicated NXXs in this conversion. (T)
  3. To receive this waiver of nonrecurring charges, **CMRS's** that are technically able to establish a connection to a Company tandem via BellSouth® CMRS Type 2A-SS7 service must place an order for this conversion within 120 days of August 29, 1995 with implementation completed within six months of the request. (T)
 

**CMRS's** that are not technically able to establish a connection to a Company tandem via BellSouth® CMRS Type 2A-SS7 service, due to the type of equipment they utilize, must provide the Company a Letter of Intent within 120 days of August 29, 1995. The Letter of Intent should state that they will place an order for this connection and should include an explanation of why their equipment is currently not able to interconnect with the Company via BellSouth® CMRS Type 2A-SS7. The **CMRS** must then place a firm order for this conversion within 120 days after the date of the Letter of Intent with implementation completed within six months of the firm order. (T)
  4. The BellSouth® CMRS Type 2A-SS7 service, provisioned in this manner, will be subject to any approved rate adjustments during this minimum service period. (T)
  5. In the event that all or any part of the **CMRS's** BellSouth® CMRS Type 2A-SS7 service converted in this manner is disconnected at the **CMRS's** request prior to expiration of this minimum service period, the **CMRS** will be required to pay a termination charge. (T)
  6. The termination charge is applicable at the date of termination. The charge depends on the minimum service period chosen and will be equal to the number of months remaining in the minimum service period times the **CMRS's** monthly facility rates for this service. (T)
- L. When BellSouth® CMRS Type 2A-SS7 service is in use, all Public Service Commission and/or legislative requirements for blocking of Calling Party Number and/or Automatic Number Identification becomes the responsibility of the subscribing **CMRS**. Any failure of the **CMRS** to implement appropriate blocking measures will be considered cause for the Company to immediately disconnect the BellSouth® CMRS Type 2A-SS7 service. (C)
- M. Type BellSouth® CMRS Type 2A-SS7 service allows the **CMRS** to subscribe to CCSIMT service from Section A35. in order to connect the **CMRS's** signaling network to the Company's signaling network. (T)

**EXHIBIT G**

BELLSOUTH  
TELECOMMUNICATIONS, INC.

ACCESS SERVICES TARIFF

Fourth Revised Page 15  
Cancels Third Revised Page 15

FLORIDA

ISSUED: February 4, 2005

EFFECTIVE: March 7, 2005

BY: Joseph P. Lacher, President -FL  
Miami, Florida

## E5. ORDERING OPTIONS FOR ACCESS SERVICES

### E5.2 Access Order (Cont'd)

#### E5.2.4 Cancellation of an Access Order (Cont'd)

- C. When a customer cancels an order service for BellSouth Dedicated Ring or SMARTRing service (a.k.a. BellSouth Dedicated Ring) prior to the beginning of the selected service period, the customer will be liable for all capital expenses incurred by the Telephone Company in provisioning the BellSouth Dedicated Ring or SMARTRing service (a.k.a. BellSouth SPA Dedicated Ring), as of the date the order is canceled by the customer. The charges billed to the customer will not exceed an amount equal to the minimum period for the service as set forth in E6.1.3 and E7.4 following of this tariff at the month-to-month rates set forth in E6.8 and E7.5 of this tariff. Such charges will be billed in addition to and subsequent to the cancellation charges set forth in E5.2.4.B. preceding. (M)
- D. When an IC or End User cancels an order for the discontinuance of service, no charges apply for the cancellation. (T)
- E. If the company misses a service date by more than 30 days due to circumstances over which it has direct control (excluding e.g., acts of God, government requirements, work stoppages and civil commotions), the IC or End User may cancel the Access Order without incurring cancellation charges.

#### E5.2.5 Selection of Facilities For Access Orders

- A. When an IC or End User places an Access Order, it may choose to utilize facilities it previously purchased as a facility to a Hub. If the IC has a high capacity interface or has a purchased facility, or has a Dedicated Access Service facility purchased to a Hub, the IC or End User must request that specific channels be used to implement the Access Order. If a facility assignment is not provided by the IC or End User, the Company will provide the service from available inventory as discussed in E5.3 following.
- B. For all other Access Orders, the option to request a specific transmission path or channel is not provided, except as provided for under Special Facilities Routing as set forth in Section E11. *of this Tariff*. (T)

#### E5.2.6 Minimum Period

- A. Except as set forth in E2.4.2 *of this Tariff*, B. and C. *following* and E9.4.1 *of this Tariff*, the minimum period for which charges are applicable for Access Service is one month. (T)

Material previously appearing on this page now appears on page(s) 14 of this section.

All BellSouth marks contained herein and as set forth in the trademarks and servicemarks section of this Tariff are owned by BellSouth Intellectual Property Corporation.

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA

ACCESS SERVICES TARIFF

Fifth Revised Page 16  
Cancels Fourth Revised Page 16

ISSUED: August 5, 2005

EFFECTIVE: September 4, 2005

BY: Marshall M. Criser III, President -FL  
Miami, Florida

## E5. ORDERING OPTIONS FOR ACCESS SERVICES

### E5.2 Access Order (Cont'd)

#### E5.2.6 Minimum Period (Cont'd)

- B. The minimum service period for BellSouth Remote Access Service is twelve months. The minimum service period for BellSouth Metro Ethernet service is four months.<sup>1</sup>
- C. Service Rearrangements<sup>1</sup> and Transfer of Service as set forth in E6.7.1 of this Tariff and E7.4.1 following for BellSouth SWA and Dedicated Access Services respectively, may be made without a change in minimum period requirements.
- D. Changes other than those identified in E6.7.1 of this Tariff or E7.4.1<sup>1</sup> following will be treated as a discontinuance of the existing service and an installation of a new service. All associated nonrecurring charges will apply for the new service. A new minimum period will be established for the new service. The IC or End User will also remain responsible for all outstanding minimum period obligations associated with the disconnected service.

The following changes are those which will be treated as a discontinuance and installation of service and for which a new minimum period will be established.

1. A move to a different building as set forth in E6.7.7 or E7.4.4 of this Tariff.
  2. A change in type of service (i.e., BellSouth SWA to Dedicated Access, one type of Dedicated Access to another, or one type of BellSouth SWA service to another except as set forth in E6.7.6 of this Tariff).
  3. A change in the type of Dedicated Access Service Local Channel or Switched Local Channel.
  4. A change in the interface for BellSouth SWA service or BellSouth Directory Assistance service .
  5. Change in BellSouth SWA service traffic type.
  6. Change from two-point to multipoint Dedicated Access Service or from multipoint to two-point Dedicated Access Service.
- E. An IC or End User may request disconnect of an access service at any time after the service has been established. The IC or End User must give the Company at least one business day written or verbal notice prior to the desired disconnect date. The one business day notice period will begin on the date the Company first receives the disconnect notification, either written or verbal. The verbal notice must be followed by written confirmation within 10 days.
  - F. When Access Service is disconnected prior to the expiration of the minimum period, the IC or End User is obligated for payment of the minimum period charge as set forth in E2.4.9 of this Tariff and E5.2.7 following. When Access Service is disconnected after the expiration of the minimum period, billing for the service will be performed in accordance with the provisions set forth in E2.4.1.C. of this Tariff.

#### E5.2.7 Minimum Period Charges

- A. When Access Service is discontinued prior to the expiration of the minimum period, charges are applicable for the balance of the minimum period. The disconnect date is the final date the IC or End User has use of the service.

The Minimum Period Monthly Charge, for services provided with a one month minimum period will be determined as follows:

1. For BellSouth SWA service, usage sensitive rate elements (i.e. Carrier Common Line, Local Switching, Access Tandem Switching, BellSouth SWA Common Transport, and Interconnection), the charge for a month or fraction thereof is equal to the applicable rates for the actual or assumed usage for the month or such fraction thereof. (C)
2. For BellSouth SWA Transport components which are not usage sensitive (i.e., Switched Local Channel and Switched Dedicated Interoffice Channel and Channelization Equipment), the charge for a month or fraction thereof is the applicable monthly rates for the service as set forth in E6.8 of this Tariff.

**Note 1:** Specific regulations for BellSouth Metro Ethernet service minimum period, service rearrangements (reconfigurations) and changes are provided in E7.4.32 of this Tariff.



BELLSOUTH  
TELECOMMUNICATIONS, INC.

ACCESS SERVICES TARIFF

First Revised Page 17  
Cancels Original Page 17

FLORIDA

ISSUED: February 14, 1997

EFFECTIVE: March 1, 1997

BY: Joseph P. Lacher, President -FL  
Miami, Florida

## E5. ORDERING OPTIONS FOR ACCESS SERVICES (T)

### E5.2 Access Order (Cont'd)

#### E5.2.7 Minimum Period Charges (Cont'd)

- A. When Access Service is discontinued prior to the expiration of the minimum period, charges are applicable for the balance of the minimum period. The disconnect date is the final date the IC or End User has use of the service. (Cont'd)
  3. For Dedicated Access Service, the charge for a month or fraction thereof is the applicable monthly rate for the service as set forth in E7.5 following.
  4. For *BellSouth SWA* service Dedicated Access Lines, the charge for each remaining month and/or fraction thereof is the applicable monthly rate for the service as set forth in E6.7.3 following. (T)
  5. For EIS arrangements, the charge for a month or fraction thereof is the applicable monthly rate for the service as set forth in Section E20. following.
  6. The Minimum Period Charges for *BellSouth SWA FGD* or *BellSouth SWA* TSBSA 3 service are set forth in E2.4 preceding. (T)
- B. Extraordinary circumstances may exist under which minimum period charges may be waived with Florida Public Service Commission approval.
- C. All applicable nonrecurring charges for the service will be billed in addition to the Minimum Period Charge.
- D. Should billing for a service which is disconnected prior to the expiration of the Minimum Period cover multiple billing cycles, the bill reflecting the disconnect of service will be adjusted to account for that portion of the Minimum Period Charge previously billed to the IC. In no event shall the total recurring charge billed to the IC for such service exceed the applicable Minimum Period Charge.

All applicable nonrecurring charges associated with the provision of service will be billed in addition to the Minimum Period Charge. Such nonrecurring charges include the nonrecurring charge for the installation of service and/or optional features, Service Order Modification Charges, Additional Engineering and Labor Charges, if any, etc.

#### E5.2.8 Shared Use Facilities

Shared Use occurs when *BellSouth SWA* and Dedicated Access services are provided over the same high capacity facility through a common interface. The facility may be ordered either as digital high capacity *BellSouth SWA* or Dedicated Access. (T)

Billing will commence for the high capacity facility as soon as the facility is turned over to the IC for use (i.e., on the service date). Such billing will include charges for the Local Channel or Switched Local Channel, the Channelization Equipment (i.e., the multiplexer) and the interoffice transport mileage, if any. Nonrecurring installation charges will also apply at this time. (T)

Such billing will continue until such time as the IC requests, by placing an order for service, that one or more of the derived channels be used in the provisioning of an end to end *BellSouth SWA* or Dedicated Access service. When the end to end service is turned over to the IC for use, the existing billing may be modified and billing for the end to end service will commence.

**EXHIBIT H**

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA

ACCESS SERVICES TARIFF

Fifth Revised Page 39  
Cancels Fourth Revised Page 39

ISSUED: February 4, 2005  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

EFFECTIVE: March 7, 2005

## E7. DEDICATED ACCESS SERVICES

### E7.4 Rate Regulations (Cont'd)

#### E7.4.2 Dedicated Access Services Capable of Using the Local Exchange Network (Cont'd)

##### C. Certification Process

The certification will be in the form of a written notification to the Company certifying that calls are not completed into the Local Exchange Network over the Dedicated Access line, intraLATA interexchange private line or Bypass Facility. The notification may be provided (1) on or before February 8, 1986, for service existing on the effective date, (2) at the time new service is ordered or (3) at such time the Dedicated Access service, intraLATA interexchange private line or Bypass Facility is reterminated to a device not capable of interconnecting to the local exchange network. If a written certification is not received at the time an order for service is placed, message/measured exchange service will apply. Exempt status will become effective on the date certification is received by the Company.

##### D. Change of Status

The Company will cease billing message/measured exchange service rates when certification that the service has become exempt as set forth in C., preceding is received.

#### E7.4.3 Reserved for Future Use

#### E7.4.4 Minimum Periods

The minimum service periods are specified in *E5.2.6 of this Tariff*, except for SMARTPath service (a.k.a. BellSouth SPA Shared Ring), *BellSouth Metro Ethernet service* and SmartRing service (a.k.a. BellSouth Dedicated Ring) whose minimum service period is 4 months. (C)

The minimum service period for High Capacity ICB (a.k.a. BellSouth SPA High Capacity) services is specified in the Individual Case Basis Filing.

#### E7.4.5 Moves

A move involves a change in the physical location of one of the following:

- The Point of Termination at the customer's premises
- The customer's premises

The charges for the move are dependent on whether the move is to a new location within the same building or to a different building.

##### A. Moves Within the Same Building

When the move is to a new location within the same building, the charge for the move will be an amount equal to one half of the nonrecurring (i.e., installation) charge for the service termination affected. There will be no change in the minimum period requirements.

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA

ACCESS SERVICES TARIFF

Second Revised Page 60  
Cancels First Revised Page 60

ISSUED: November 16, 2001  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

EFFECTIVE: December 17, 2001

**E7. DEDICATED ACCESS SERVICES**

**E7.5 Rates and Charges (Cont'd)**

**E7.5.6 High Capacity (a.k.a. BellSouth SPA High Capacity) Service**

**A. Local Channel**

**1. Per Point of Termination**

		Monthly Rate			Nonrecurring Charge		USOC	
		Rate Zone 1	Rate Zone 2	Rate Zone 3	First	Additional		
(a)	1.544 Mbps	\$145.00	\$145.00	\$145.00	\$745.00	\$335.00	TMECS	(M)(I)
(b)	3.152 Mbps <sup>1</sup>	-	-	-	-	-	1XA++	(M)(T)
(c)	6.312 Mbps <sup>1</sup>	-	-	-	-	-	1X6++	(T)
(d)	44.736 Mbps <sup>1</sup>	-	-	-	-	-	1X8++	

**2. 1.544 Mbps Contract Rates**

		Nonrecurring Charge		USOC		
		First	Additional			
(a)	Per Point of Termination <sup>2</sup>	\$745.00	\$335.00	-		
		Monthly Rate				
		48	24 to 72	49 to 96	73 to	
		Months	Months	Months	Months	
(b)	Rate Zone 1	\$138.00	\$136.00	\$134.00	TMECS	(R)
(c)	Rate Zone 2	138.00	136.00	134.00	TMECS	(R)
(d)	Rate Zone 3	138.00	136.00	134.00	TMECS	(R)

**Note 1:** ICB rates and charges apply.

**Note 2:** Contract lengths are flexible to allow customer choice of payment period per E2.4.9.

Material previously appearing on this page now appears on page(s) 61 of this section.  
Material appearing on this page previously appeared on page(s) 59 of this section.



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[Feedback](#)

[Tariffs](#)

### Frontier Communications of the South, Inc. - FL

[ILEC/Access Line Map](#)

#### Effective Tariff

[State Site Map](#)

#### Description

#### Tariff (Section)

[Local Tariffs](#)

Intrastate Access Pages

Section A18

[State Access Tariffs](#)

[FCC Tariffs](#)

The Telephone Company assents to, adopts and concurs in the Florida Uniform Statewide Access Service Tariff (Bell South Tariff) filed with the Florida Public Service Commissions, except for the following sections: E.8.1.7, E.8.2.1, E.8.2.2, E.8.3.7, and E.8.4.7.

[CLEC Tariffs](#)

[LD Tariffs](#)

br />

[LD Product Guide](#)

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## BUNDLE YOUR

