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June 5, 2009

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

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

Dear Ms. Cole:

Enclosed for filing in the above docket are the original and 15 copies of the Rebuttal Testimony of Douglas D. Meredith on behalf of TDS/Quincy Telephone Company d/b/a TDS Telecom.

COM 5 Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

ECR _____

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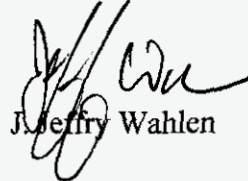
SGA _____

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CLK cf. reporters

Thank you for your assistance in connection with this matter.

Sincerely,


Jeffrey Wahlen

JJW/jh
Enclosure

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

DOCUMENT NUMBER-DATE
05619 JUN-5 8
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 080731
Filed: June 5, 2009

REBUTTAL TESTIMONY OF
DOUGLAS DUNCAN MEREDITH
ON BEHALF OF
QUINCY TELEPHONE COMPANY
D/B/A TDS TELECOM

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

1 **I. Introduction**

2 **Q: ARE YOU THE SAME DOUGLAS MEREDITH WHO FILED**
3 **DIRECT TESTIMONY IN THIS PROCEEDING PREVIOUSLY?**

4 A: Yes.

5 **Q: ON WHOSE BEHALF ARE YOU TESTIFYING?**

6 A: I am testifying on behalf of Quincy Telephone Company d/b/a TDS
7 Telecom (“TDS”).

8 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A: My purpose in providing this testimony to the Florida Public Service
10 (“Commission”) is to respond to the direct testimony of Ms. Beth Choroser
11 filed on behalf of Comcast Phone of Florida, LLC (“Comcast Phone”).
12 There are several erroneous statements and conclusions made by
13 Ms. Choroser for which I recommend corrections. I also refute other
14 misstatements that are made to support Comcast Phone’s advocacy. In
15 summary, I recommend that the Commission conclude that Comcast Phone
16 is not eligible for interconnection with TDS under Section 251 of the Act.

17 **Q: WHAT IN YOUR VIEW IS THE CRITICAL ISSUE RAISED IN THIS**
18 **PROCEEDING?**

19 A: The heart of the dispute in this proceeding is whether the wholesale provider
20 (Comcast Phone) is a carrier that offers telecommunications service in its
21 own right and qualifies to seek interconnection with TDS for the exchange
22 of telecommunications service through a Section 251 interconnection
23 arrangement. As I mentioned above, I recommend the Commission

1 conclude that the evidence in this proceeding shows that Comcast Phone is
2 not eligible for Section 251 interconnection with TDS.

3 **Q: WHAT IS THE FIRST ISSUE RAISED BY COMCAST PHONE YOU**
4 **WISH TO REFUTE.**

5 A: Foremost among the issues raised by Ms. Choroser is the claim that
6 Comcast Phone is a telecommunications carrier eligible for interconnection
7 with TDS under Section 251 of the Act. The major arguments presented by
8 Comcast Phone are: (1) Comcast Phone asserts it is a telecommunications
9 carrier in the TDS service territory; and (2) Comcast Phone suggests that an
10 affirmative determination of its telecommunications carrier status in the
11 TDS service territory will automatically make it eligible for Section 251
12 interconnection with TDS. Comcast Phone's two major arguments are all
13 factually erroneous and do not support Comcast Phone's claim.

14
15 I have already provided direct testimony showing that Comcast Phone's
16 assertion that it is a telecommunications carrier in the TDS service territory
17 is in doubt. (Meredith Direct pp 10-28) There is no additional support for
18 Comcast Phone's position in the testimony of Ms. Choroser. In fact there
19 are several statements in testimony which support a Commission decision in
20 favor of TDS in this proceeding. I will discuss these later in my rebuttal
21 testimony.

22
23 Comcast Phone appears to believe if the Commission determines it is a
24 telecommunications carrier in the TDS service territory that this
25 determination automatically makes Comcast Phone eligible for Section 251

1 interconnection. Comcast Phone is wrong in making this claim. I have
2 already provided direct testimony showing that in order to be eligible for
3 Section 251 interconnection, Comcast Phone must also deliver
4 telecommunications traffic through the Section 251 interconnection
5 arrangement with TDS. (Meredith Direct pp 28-32) This is fully described
6 in FCC regulation 51.100. Comcast Phone clearly omits this primary
7 requirement from its testimony because it cannot make an affirmative
8 declaration that it will be using the proposed interconnection arrangement
9 for telecommunications traffic. Instead, the traffic Comcast Phone proposes
10 to deliver is VoIP traffic – which the FCC has not determined to be
11 telecommunications traffic. Comcast Phone’s silence on this fundamental
12 provision of the FCC regulations is even more striking because regulation
13 51.100 plays a very prominent role in the *Time Warner* decision that
14 Comcast Phone cites in support of its position.

15
16 Lastly, as I explained in my direct testimony, the *Time Warner* decision
17 explicitly directs state commissions to make factual determinations
18 regarding the status of wholesale providers (Comcast Phone) seeking to
19 interconnect with incumbent local exchange carriers (TDS) for the purpose
20 of delivering traffic to and from interconnected VoIP service providers
21 (Comcast IP). (Meredith Direct pp 9-13) There is no bar preventing TDS
22 from questioning Comcast Phone’s request for interconnection and in
23 seeking relief from this Commission.

1 Notwithstanding whether Comcast Phone is a telecommunications carrier in
2 the TDS service area, Comcast Phone has not shown that it will interconnect
3 with TDS for the purpose to transport and terminate telecommunications
4 traffic, thus Comcast Phone is ineligible to seek Section 251 interconnection
5 with TDS in its service territory. It is consistent with federal law and policy
6 for the Commission to rule in favor of TDS in this proceeding.

7 **Q: WHAT IS THE SECOND ITEM YOU WISH TO RAISE**
8 **REGARDING THE TESTIMONY FILED ON BEHALF OF**
9 **COMCAST PHONE?**

10 **A:** The second item relates to Comcast Phone's School and Library Network
11 service. Comcast argues that subject to availability, this service delivers
12 "the functional equivalent of 24 voice grade facilities." (Choroser Direct, p
13 6:5-10)

14
15 Comcast Phone's contention that its School and Library service is eligible
16 for Section 251 interconnection fails for two reasons. First, Comcast Phone
17 never describes this service as a telecommunications service: Its description
18 in testimony and tariff is that this is a "functional equivalent" (*Id.*) of voice
19 grade service. Second, Comcast Phone never claims there are any potential
20 customers in the TDS service territory that meet the "subject to facility and
21 system availability" (*Id.*) condition for this service. Based on its discovery
22 response, Comcast Phone does not represent it has any School and Library
23 Network service customers in the entire state of Florida. (Exhibit DDM-01.
24 *Comcast Interrogatory Response No. 6*) Additionally, Comcast Phone has
25 presented no evidence specifying what these facility and system conditions

1 are. These failures demonstrate that the Schools and Library service does
2 not qualify Comcast Phone for Section 251 interconnection with TDS.

3 **Q: COMCAST PHONE CLAIMS THAT ITS LIS AND SCHOOL AND**
4 **LIBRARY SERVICE “CONSTITUTE LOCAL EXCHANGE**
5 **CARRIER SERVICE” AS CITED IN 47 U.S.C. § 153(26).**
6 **(CHOROSER DIRECT, P. 7:7-8) DO YOU AGREE?**

7 A: No. The definition cited by Comcast Phone (§ 153(26)) is the definition of
8 “local exchange carrier” and not the service offered by this defined entity.
9 There is no definition of “local exchange carrier service” as alluded to by
10 Comcast Phone. Furthermore, the requirement to be eligible for Section 251
11 interconnection is that a “telecommunications carrier” is seeking to
12 interconnect with another telecommunications carrier for the purpose of
13 exchanging “telecommunications service” – nowhere does the term “local
14 exchange carrier” qualify a provider for Section 251 interconnection. All of
15 these terms are specifically defined in the Act and have purpose. Comcast
16 Phone’s LIS offering is designed to provide Comcast Phone’s affiliate
17 exclusive wholesale interconnection service for its retail VoIP service
18 offering. As I discussed in my direct testimony, this retail VoIP service
19 offering is not telecommunications service and is not eligible for Section
20 251 interconnection through Comcast Phone, unless Comcast Phone, in its
21 own right is offering and exchanging telecommunications service with TDS.

22
23 As I also discussed in my direct testimony and earlier in this reply
24 testimony, Comcast Phone has never declared that its School and Library
25 service is a telecommunications service. Instead, Comcast Phone has been

1 careful to describe this service as a “functional equivalent” voice grade
2 service. Comcast Phone’s purposeful and careful parsing of the description
3 of this service evidently shows that it is not confirming (nor willing to
4 confirm) that this service is a telecommunications service.

5
6 As I have expressed before, the FCC has addressed the rights of
7 interconnected VoIP providers, including fixed VoIP service providers.
8 (Meredith Direct pp 9-13) Since interconnected VoIP is not judged to be a
9 Telecommunications Service, these providers must use a wholesale provider
10 who provides Telecommunications Service in its own right to interconnect
11 with local exchange carriers under Section 251 of the Act. Comcast Phone
12 has failed to show it is a carrier that offers telecommunications service in its
13 own right and therefore qualified to seek interconnection with local
14 exchange carriers for the exchange of telecommunications service. Thus,
15 Comcast Phone is not eligible for Section 251 interconnection with TDS.

16
17 **Q: COMCAST PHONE TRUMPETS OTHER INTERCONNECTION**
18 **AGREEMENTS APPROVED BY THIS COMMISSION AS**
19 **PROBATIVE IN MAKING A DETERMINATION IN THIS**
20 **PROCEEDING. (CHOROSER DIRECT, P. 3:19-22-4:1-4) DO YOU**
21 **AGREE THAT THESE OTHER AGREEMENTS ARE PROBATIVE**
22 **IN THIS PROCEEDING?**

23 A: No. While Comcast Phone makes this declaration, it does not demonstrate
24 that any of these interconnection agreements approved by this Commission
25 were established through arbitration of the eligibility issue. As this

1 Commission is aware, interconnection agreements established through
2 voluntary negotiation are not subject to the standards established under
3 Section 251(b) and (c). (47 U.S.C. § 252(a)(1)) Consequently, agreements
4 obtained through negotiation have no value in this proceeding because the
5 issue now before this Commission was not raised and was not examined
6 previously. The agreements cited by Comcast Phone have no value in
7 addressing the duties of TDS, or any other incumbent local exchange carrier,
8 for interconnection with Comcast Phone.

9 **Q: DOES OFFERING A RETAIL NETWORK SERVICE AND**
10 **VARIOUS WHOLESALE TELECOMMUNICATIONS SERVICES**
11 **MAKE COMCAST PHONE ELIGIBLE FOR SECTION 251**
12 **INTERCONNECTION WITH TDS?**

13 **A:** No. I have discussed these claims (cited in Choroser Direct, p. 7) and
14 recommend the Commission reject them. I have already stated in direct
15 testimony that there are good reasons to conclude the LIS service is not a
16 common carrier service. (Meredith Direct, pp 12-28) Furthermore, the
17 proposed Section 251 interconnection arrangement will not be used to
18 exchange “access services” between Comcast Phone and TDS. It is widely
19 understood that exchange access is provided by originating and terminating
20 exchange carriers. (See e.g., Newton’s Telecom Dictionary, 18th Edition
21 (2002)) The Act defines exchange access as the offering of access “for the
22 purpose of origination or termination of telephone toll services.” (47 U.S.C.
23 § 153(16)) What Comcast calls “exchange access” is not what is
24 traditionally understood as exchange access because Comcast Phone does
25 not have any exchange service customers in Florida and therefore cannot

1 provide exchange access service to its non-existent customers. (Exhibit
2 DDM-01. *Comcast Interrogatory Response No. 32*) Instead, exchange
3 access service will be delivered via interexchange carrier (“IXC”) facilities.
4 Thus, the provision of exchange access service in another part of the state
5 provides no support in determining whether Comcast Phone is a
6 telecommunications carrier in the TDS service territory and eligible for
7 Section 251 interconnection with TDS.

8 **Q: DO YOU AGREE THAT THE FCC HAS RECOGNIZED THAT**
9 **COMCAST PHONE IS ENTITLED TO INTERCONNECTION**
10 **UNDER THE ACT FOR ITS LIS? (CHOROSER DIRECT, P. 9-10)**

11 A: No. Comcast Phone references the FCC decision in *Time Warner* that I
12 discussed in my Direct Testimony. In *Time Warner*, the FCC affirmed the
13 need for a wholesale carrier to provide telecommunications service in its own
14 right and abide by regulation 51.100 while attempting to provide wholesale
15 interconnection services to interconnected VoIP providers. Comcast Phone
16 is not doing so. Thus, I do not agree with its claim that the FCC has given it
17 *carte blanche* authority to receive Section 251 interconnection with TDS.

18 **Q: HAS THE FCC LIMITED THE ABILITY OF WHOLESALE**
19 **PROVIDERS OFFERING LOCAL INTERCONNECTION SERVICE**
20 **TO RETAIL VOIP PROVIDERS?**

21 A: Yes. As I discussed in my direct testimony, the FCC has placed limits for
22 the applicability of interconnection for retail VoIP providers. (Meredith
23 Direct, p 11) Comcast Phone apparently glosses over these limits and
24 conditions found in *Time Warner* and in the Court’s review of *Bright House*
25 *Networks*.

1 **Q: DOES THE DECISION CITIED BY COMCAST PHONE IN**
2 **MICHIGAN PROVIDE ANY SUPPORT TO THE ELIGIBILITY OF**
3 **COMCAST PHONE FOR SECTION 251 INTERCONNECTION**
4 **WITH TDS?**

5 A: No. The decision in Michigan was unique. In my view it focused
6 inappropriately on Comcast Phone's carrier status when the issue is whether
7 Comcast Phone is eligible for Section 251 interconnection under the
8 regulations and policies of the FCC. That inquiry requires a determination
9 of carrier status in the specific service area and the application of FCC
10 regulations regarding the traffic to be exchanged through the Section 251
11 interconnection arrangement. The Michigan Commission did not allow for
12 discovery of the facts and no testimony was offered in the proceeding. As a
13 result of these deficiencies, I recommend this Commission not rely on the
14 Michigan decision in this proceeding. Instead, I recommend the
15 Commission weigh the evidence in this case and conclude that: (1) Comcast
16 Phone is not a telecommunications carrier, (2) is not planning to be a
17 telecommunications carrier in the TDS service territory, and (3) is not
18 offering telecommunications service in its own right that would make it
19 eligible for Section 251 interconnection with TDS.

20 **Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

21 A: Yes.

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Filed: June 5, 2009

CERTIFICATE OF SERVICE

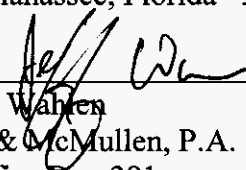
I HEREBY CERTIFY that a true and correct copy of the Rebuttal Testimony of Douglas
D. Meredith has been furnished by United States Mail (*Hand Delivery) this 5th day of June,
2009 to the following:

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