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August 20, 2009

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

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

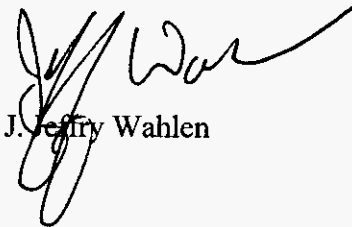
Dear Ms. Cole:

Enclosed for filing in the above docket are the original and fifteen (15) copies of TDS Quincy Telephone's Post-Hearing Brief.

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

Thank you for your assistance in connection with this matter.

Sincerely,



J. Jeffrey Wahlen

JJW/jh
Enclosure

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

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DOCUMENT NUMBER-DATE

08703 AUG 20 09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 080731
Filed: August 20, 2009

TDS QUINCY'S POST-HEARING BRIEF

Quincy Telephone Company, d/b/a TDS Telecom/Quincy Telephone ("TDS Quincy"), in accordance with Order Nos. PSC 09-0183-PCO-TP and PSC 09-0538-PCO-TP, submits the following Post-Hearing Brief:

I.

BASIC POSITION

Comcast Phone is not eligible for interconnection under federal or state law due to the technology it uses, the nature of the services it provides, and how it provisions those services. Its so-called "exchange access" service is not really exchange access. Although its local interconnection service ("LIS") and Schools and Libraries offerings create an illusion that it is operating as a common carrier and requesting interconnection in its own right, the Commission should find that these offerings are not provided to the public indifferently and therefore do not support a conclusion that Comcast Phone is a common carrier entitled to interconnection with TDS Quincy.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

II.

PROCEDURAL HISTORY

This case began on December 29, 2008, when Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone (“Comcast Phone”) filed a petition for arbitration. TDS filed a response to the petition on January 22, 2009 and a final hearing was held before Commissioners Argenziano, Carter and Skop on July 13, 2009. The transcript was filed with the Clerk on July 27, 2009.

During the hearing, Comcast Phone submitted the direct and rebuttal testimony of Beth Choroser, which was admitted into the record at Tr. 23 and 35, respectively. TDS Quincy submitted the direct and rebuttal testimony of Douglas Meredith, which was inserted into the record at Tr. 94 and 129, respectively. The record includes four exhibits: (1) Stipulated Exhibit List [Tr. 8], (2) Choroser Exhibit [Tr. 90], (3) Meredith Exhibit [Tr. 181] and (4) Proposed Interconnection Agreement [Tr. 181]. A fifth exhibit from Comcast was not admitted. See Tr. 177. The Commission officially recognized 6 documents requested by TDS Quincy and 17 documents requested by Comcast Phone by Order Nos. PSC-09-0507-TP and PSC-09-0546-PCO-TP, respectively.

III.

ISSUES AND POSITIONS

ISSUE 1: Is TDS required to offer interconnection to Comcast under Section 251 of the Telecommunications Act of 1996 and/or Sections 364.16, 364.161, and 364.162, Florida Statutes?

POSITION: ** No. Interconnection rights under Section 251 of the federal act are only available to common carriers providing telecommunications services. Comcast Phone

does not offer telecommunications services in its own right, is not a common carrier and has not requested interconnection under state law; therefore, its petition should be denied.

**

IV.

ARGUMENT

A. Introduction

This case takes place against a background of uncertainty regarding the regulation of IP-Enabled services and whether fixed interconnected VoIP providers are providing telecommunications services or information services. Under Florida law, the term “service” does not include broadband or VoIP, so fixed VoIP providers are not considered “telecommunications companies” and need not be certificated by the FPSC. See §§ 364.02(13)-(14), Fla. Stat. (2009). Although it has ruled that nomadic VoIP providers like Vonage are not subject to traditional “telephone company” regulation by the states, the FCC has not addressed the question for fixed VoIP providers. See In re Vonage Holding Corp., Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utl. Comm’n, Memorandum Opinion and Order, 19 F.C.C.R. 22404, (Nov. 12, 2004).

In light of this uncertainty, fixed VoIP providers have resorted to interconnecting to the public switched telephone network through wholesale telecommunications carriers. See generally, In re Time Warner Cable Request for Declaratory Ruling that Competitive Local Exch. Carriers May Obtain Interconnection under Section 251 of the Comm. Act of 1934 as Amended to Provide Wholesale Telecommunications Telecommns. Serv. to VoIP Providers, Memorandum Opinion and Order, 22 F.C.C.R. 3513 (Mar. 1, 2007) (“Time Warner”). The FCC has approved this practice and held that the wholesale carriers are entitled to interconnection on

two conditions: (1) the wholesale carrier must provide services on a “common carrier basis” and (2) the carrier must seek interconnection “in its own right.” *Id.* at 3517, ¶ 11; 3521, ¶ 16.

Against this uncertain background, Comcast Phone requested interconnection with TDS Quincy pursuant to the Federal Telecommunications Act of 1996 on July 23, 2008 and negotiations ensued. *Petition* at 5, ¶ 8. Shortly thereafter, TDS Quincy discovered that in 2007 Comcast Phone notified the Federal Communications Commission (“FCC”) that it would discontinue “local exchange” services in Florida. [Ex. 3, DDM-01, pages 37 and 47 of 56] Copies of the notices were sent to the FPSC. [Ex. 3, DDM-01, pages 38 and 48 of 56]

The negotiations between TDS Quincy and Comcast Phone yielded an interconnection agreement that TDS Quincy will execute if it is determined that Comcast Phone is entitled to interconnection under Section 251 of the Act. During the negotiations and in this proceeding, Comcast Phone asserted that it is entitled to interconnection under Section 251 of the Act, because it is a certificated CLEC in Florida, has entered into interconnection agreements with other incumbent local exchange companies, offers telecommunications services, and operates as a common carrier. TDS Quincy asserts that Comcast Phone does not seek interconnection in its own right and does not operate as a common carrier, and therefore is not entitled to interconnection. TDS Quincy is correct for the reasons explained below.

B. Comcast Phone Must Operate as a Common Carrier in Florida

Under the Telecommunications Act of 1996, a “telecommunications carrier” is defined as “any provider of telecommunications services ” and “shall be treated as a common carrier under this chapter only to an extent that it is engaged in providing telecommunications services.” 47 U.S.C. § 153(44) (2009). “Telecommunications service” is defined as the “offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively

available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(46) (2009). The Act defines a common carrier as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign transmission of energy . . . but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.” 47 U.S.C. § 153(10) (2009). Whether or not an entity is a telecommunications carrier, as defined, depends on whether an entity operates as a common carrier. The FCC’s Time Warner decision makes operating as a common carrier a prerequisite to interconnection.

The U.S. Court of Appeals for the District of Columbia has articulated a two-part test for determining common carrier status in two cases: National Association of Regulatory Utility Commissioners v. Federal Communications Commission, 525 F.2d 630 (DC Cir. 1976) (“NARUC I”) and National Association of Regulatory Utility Commissioners v. Federal Communications Commission, 533 F.2d 601 (DC Cir. 1976) (“NARUC II”). These cases hold that a common carrier must: (1) allow customers to “transmit intelligence of their own design and choosing” and (2) serve the public indifferently. See NARUC II, 533 F.2d at 608. This test has been broadly applied by the FCC and was quoted approvingly by the United States Supreme Court in FCC v. Midwest Video Corporation, 440 U.S. 689 (1979). Only the second part of the common carrier test is at issue in this case.

The second part of the test requires that a common carrier “serve indifferently.” NARUC I, 525 F.2d at 641-2. This creates a distinction between common and private carriers, both of which may offer their services for a profit. Under the NARUC test, that the nature of the services rendered is specialized and therefore, useful to only a fraction of the population, does not prohibit the carrier’s categorization as a common carrier; it is not necessary that a common

carrier be required, by order, statute, or regulation to serve all indiscriminately; it is sufficient enough for the carrier to, in fact, do so. *Id.* However, a common carrier cannot make decisions individually, on a case-by-case basis, whether or not to deal and on what terms. NARUC I, 525 F.2d at 641, *citing Semon v. Royal Indemnity Co.*, 279 F.2d 737, 739 (5th Cir. 1960).

The facts and reasoning in NARUC I illuminate the test. There, the court looked at whether there was a legal compulsion for the carrier to serve indifferently and whether there were “reasons implicit in the nature of [the carrier’s] operations to expect an indifferent holding out to the eligible user public.” NARUC I, 525 F.2d. at 642. The court concluded that the carrier in dispute, Specialized Mobile Radio Systems (“SMRS”), would not indifferently serve the public because (1) it had neither a statutory nor regulatory compulsion through public interest to serve the public indifferently; and (2) there was no good reason to believe that in SMRS’s operations it would, in fact, serve the public indifferently. NARUC I, 525 F.2d. at 643. The latter conclusion stemmed from the recognition that the SMRS negotiated and selected future clients on a “highly individualized basis” as it was concerned with the operational compatibility of an applicant to its system. *Id.* With method of operation and time demands both being used as a basis for making the decision of whether to accept or reject an applicant, the court believed the public was not being served indifferently. *Id.*

A similar result was reached in Virgin Islands Telephone Corporation. v. Federal Communications Commission, 198 F.3d 921, 924 (D.C. Cir 1999). There, AT&T-Submarine Systems Inc. applied for and received approval from the FCC to operate a submarine cable system between St. Thomas and St. Croix as a non-common carrier, and Virgin Islands appealed. 198 F.3d at 922. There was no dispute over the first prong of the NARUC test; however, under the second prong, the court agreed with the FCC that there was no legal compulsion or public

interest in applying common carrier status to AT&T-SSI because “sufficient alternative facilities” to AT&T-SSI’s new services existed, that the carrier was not required, by law or regulation, to serve the public indifferently, and that AT&T-SSI would have to negotiate with each of its customers on price and other terms depending on each customer’s individual needs and specifications. Id. at 924. As a result, the FCC found and the court agreed that AT&T-SSI would be making individualized decisions whether or not to serve and on what terms and, as a result, would not be acting as a common carrier. Id.

C. About Comcast Phone

The record in this case documents the nature of Comcast Phone’s operations. In general, Comcast Phone is certificated by the FPSC as a competitive local exchange carrier (“CLEC”). Comcast Phone previously provided a voice service to end user customers in Florida called Comcast Digital Phone (“CDP”), but discontinued that service in August 2007 and does not have any CDP customers at this time. [Ex. 3, DDM-01, p 12 of 56, Irr. No. 6] Rather, it has three affiliates in Florida, Comcast IP Phone, LLC, Comcast IP Phone II, LLC and Comcast IP Phone III, LLC (collectively “Comcast IP”), that provide a voice service called Comcast Digital Voice to end users customers in Florida. [Ex. 3, DDM-01, p 20 of 56, Irr. No. 16] The Comcast IP companies are “interconnected VoIP Providers” and are not certificated or regulated by the FPSC. [Tr. 59-60]

End-user customers who subscribe to Comcast Digital Voice do not have a direct *business relationship or contract with Comcast Phone.* [Tr. 60] Rather, their calls are routed across Comcast IP’s network to Comcast Phone and then to the PSTN via interconnection with an incumbent local exchange carrier when an interconnection agreement is in place. [Ex. 3, DDM-01, Answer to IRR Nos. 9, 16, 18, 22-27]

Comcast Phone asserts that it offers three telecommunications services in Florida, namely its local interconnection service (“LIS”), a Schools and Libraries offering, and a service it calls “exchange access.” Comcast Phone has been offering its LIS in Florida for about three years and has no customers for that service other than its affiliates, Comcast IP. [Tr. 81-82] Comcast Phone has been offering its Schools and Libraries service for over a year and has no subscribers. [Tr. 68-69] Sections 6.1 and 7 of Comcast Phone’s Florida Price List addresses its Schools and Libraries and LIS offerings, respectively. [Ex. 2, pages 69 to 88 of 149] Comcast Phone’s so-called “exchange access” services are addressed in its “Access Service Guide.” [Ex. 2, pages 4 to 67 of 149] Each of these three offerings and why they do not support a conclusion that Comcast Phone is entitled to interconnection are explained individually below.

D. Comcast Does Not Offer LIS On a Common Carrier Basis

The evidence in the record supports a finding by the Commission that Comcast Phone’s LIS service offering was created to transit traffic from Comcast IP customers to the PSTN and that Comcast Phone is operating as a private – not common – carrier with respect to this service. This is because virtually all of the terms and conditions of the LIS, except the terms and conditions serving to limit the service, must be negotiated with the customer on a case-by-case basis to meet the individual needs of the customer.

The plain language of the price list and the testimony of Ms. Choroser compel this conclusion. Although Section 7.1 of the price list consists of 14 pages, it contains only one price (Ex. 2, p. 88, § 7.1.13(B), i.e., local interconnection port T-1, \$1,500), leaving the rest of the prices to be negotiated on an individual case basis (“ICB”). [Tr.83] The language of the price list states that upon receipt of a bona fide request for LIS from a customer, Comcast Phone will negotiate in good faith to establish terms and conditions (prices) for the service. [Ex. 2, p. 75,

§ 7.1.1((B) and (C)] Ms. Choroser testified that the LIS service is not a “cookie cutter” service, but is “meant to be provided with the features and functions that are needed by the particular interconnected VoIP provider who is taking service.” [Tr.85] She confirmed that there is no publicly available document that an interconnected VoIP provider could review to find out what it would cost to receive LIS from Comcast Phone in Florida. [Tr.85]

The fact that Comcast Phone has no customers for LIS other than its affiliates after three years corroborates the notion that Comcast Phone offers LIS on a private carrier basis and that there are “reasons implicit in the nature of [Comcast Phone’s] operations to expect an indifferent holding out to the eligible user public” as discussed in NARUC I. As noted by Mr. Meredith, these provisions “serve as a poison pill for any unaffiliated third party retail VoIP provider.” [Tr. 112] Indeed, an unaffiliated third party retail VoIP provider would likely be deterred from pursuing LIS from Comcast Phone due to the enormous discretion reserved to Comcast Phone and burdensome terms and conditions in Section 7.1 of the price list. *Id.*

For example, the price list requires a three (3) year purchase. [Ex. 2, § 7.1.5(A)] Although Comcast Phone can terminate the LIS service on 24-hours notice under certain circumstances [Ex. 2, § 67.1.5(C)], the price list imposes an early termination fee of 100% of all monthly recurring rates multiplied by the number of months left in the contract. [Ex. 2, § 7.1.5(B)] An LIS customer must have an IP-based broadband network up and running that uses a very specific format and the service is only available where facilities are available. [Ex. 2, § 7.1.3 and 7.1.12(A)] These provisions show that Comcast Phone reserves for itself the discretion to determine where suitable facilities exist, are technologically available and operationally and economically feasible.

Like SMRS in NARUC I and AT&T-SSI in Virgin Islands Telephone, Comcast Phone offers its LIS on a “highly individualized basis” and based on negotiations over price and other terms depending on each customer’s individual needs and specifications. The fact that Comcast Phone has no unaffiliated customers for its LIS service after three years and the unattractive terms and conditions in its price list provide an ample evidentiary basis for a finding that there are “reasons implicit in the nature of [Comcast Phone’s] operations to expect an indifferent holding out to the eligible user public” as discussed in NARUC I. Comcast Phone’s decision to offer LIS as it does in Florida precludes a finding that LIS is offered indifferently to the public; therefore, Comcast Phone fails the second prong of the NARUC common carrier test as it relates to LIS. The direct testimony of Mr. Meredith supports this conclusion. (Meredith, Tr. 107-115)

E. Schools and Libraries

The same is true of Comcast Phone’s schools and library service. [See Meredith, Tr. 115-117] Sections 6.1.1 and 6.1.2 of the price list describe the service as a “high speed data service that uses point to point T1 circuits for interconnection of Local Area networks across the customers physical locations” and a point to point service that allows customers to “connect their physically distributed networks as if they were on the same Local Area Network (LAN),” which is essentially a private line service that would not generate telecommunications traffic that is exchanged pursuant to a Section 251 interconnection arrangement. [Tr. Ex. 2, pp 69-70 of 146] Although the price list contains a section describing a “Channelized Exchange Service” that is “the functional equivalent of 24 voice grade facilities,” that service is subject to facility and system availability and the price list specifically states that the service is “not available on a ubiquitous basis in the Company’s service territory.” [Ex. 2, § 6.1.3(B)1.a.] Comcast Phone has no customers for its Schools and Libraries service, even after a year of offering it and it is

available to a very small subset of the universe of customers. [Meredith, Tr. 115] The nature of the service, the limitations on its availability and the absence of customers for the service show that Comcast Phone does not offer this service to the public indifferently and does not provide the service as a common carrier.

F. Comcast Phone Does Not Really Provide Exchange Access Service

The term “exchange access” means “offering of access to telephone exchange services or facilities for the purpose of origination or termination of telephone toll services.” 47 U.S.C. § 153 (16). The term “telephone exchange service” means “(A) service within a telephone exchange or within a system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunications service of the character ordinarily furnished by a single exchange and which is covered by an exchange service charge or (B) a comparable service ... by which a subscriber can originate and terminate a telecommunication service.” 47 U.S.C. § 153 (47). The terms of Comcast Phone’s “Access Service Guide” and the way interconnected VoIP providers serve their customers and access the public switched telephone network show that what Comcast Phone refers to as “exchange access” is not really exchange access.

First, Comcast Phone’s Access Service Guide includes a generic definition of an “exchange,” but does not specify the location or boundaries of any of Comcast Phone’s exchanges. For Comcast Phone to say that it is providing exchange access, but not specify where its exchanges (or equivalent) are defies logic.

Second, as shown in Comcast’s answers to interrogatories [Ex. 3, DDM-01, Answer to IRR Nos. 9, 16, 18, 22-27] and demonstrated during the cross-examination of Ms. Choroser, Comcast Phone does not offer access to telephone exchange services, because voice toll calls are not originated or terminated on Comcast Phone’s network. [Tr. 72-77] Unlike TDS Quincy,

Comcast Phone does not have customers that are the originating and terminating points of local and toll calls in the traditional sense of the word customer. Id. All of the voice calls to be handled by Comcast Phone begin and end on the network of some other entity. Id. As noted by Mr. Meredith, access service enables end user customers to make and receive toll calls from their selected interexchange carrier (IXC) and since Comcast Phone has no retail end-user customers due to its withdrawal of its residential and business service tariff in 2007, it cannot be a terminating switched access service provider. [Tr. 116] In this sense, Comcast Phone provides an aggregating or transport function that it calls “exchange access,” but really is not.

G. Comcast Phone Does Not Seek Interconnection In Its Own Right

As noted in the introduction, the FCC has ruled that fixed VoIP providers may interconnect to the public switched telephone network through wholesale telecommunications carriers, provided that: (1) the wholesale carrier provides services on a “common carrier basis” (Id. at 3517, ¶11) and (2) the carrier seeks interconnection “in its own right.” Time Warner, 22 F.C.C.R. at 3517 ¶ 11; 3521 ¶ 16. TDS Quincy asserts that the requirement that a carrier seek interconnection “in its own right” was intended to disqualify wholesale carriers that seek interconnection solely or primarily for the purpose of providing a service like LIS and little or nothing else. For the reasons explained above, TDS Quincy believes that the record supports a conclusion that Comcast Phone does not seek interconnection “in its own right,” but rather, so that it can provide LIS to its affiliates, Comcast IP.

Moreover, the Commission can fairly conclude that Comcast Phone is not entitled to interconnect with TDS because it is not acting as a telecommunications carrier for purposes of the request. To interconnect under Section 251, Comcast Phone must, in fact, provide telecommunications services either on a wholesale or retail basis. Time Warner, ¶ 14. A carrier

may use Section 251 interconnection for information services, provided it also offers telecommunications services through the same arrangement. 47 C.F.R. § 51.100(b) (2009). However, Comcast Phone must provide telecommunications service in its own right (wholesale or retail) in order to be entitled to interconnect with TDS and has not shown that it will do so on the record in this case.

In fact, the evidence in this case shows the contrary. As noted above, Comcast Phone discontinued its voice service (CDP) in 2007 and notified the FCC and FPSC that it would be discontinuing local exchange services in Florida. Its LIS product should not be considered a telecommunications service at this time, because LIS by its terms is restricted to interconnected VoIP providers, involves the transport of VoIP traffic only, and the FCC has not determined fixed interconnect VoIP traffic to be a telecommunications service at this time. The point-to-point portion of its schools and library service is a private line surrogate and to suggest that Comcast Phone seeks an interconnection agreement with TDS Quincy so that it can offer a “Channelized Exchange Service” would test the limits of credibility. Exchange access service requires the provision of telephone exchange service which Comcast Phone does not provide. Furthermore, any so-called exchange access service provided by Comcast Phone would not use the proposed interconnection agreement with TDS. [Tr. 125] The proposed interconnection arrangement is for traffic exchanged between the two carriers within the local calling area. No traffic [Tr. 125, 135-136] classified as exchange access traffic will be routed over the proposed interconnection arrangement. IXC traffic destined to TDS end-user customers is routed through already established arrangements with the IXCs. [Tr. 136] Moreover, exchange access is a service that requires the provision of telephone exchange service. Since Comcast Phone does not provide telephone exchange service—it has no retail end-user customers due to its withdrawal of

its residential and business service tariff in 2007—it cannot be a terminating switched access service provider and is not really providing exchange access. [Tr. 116, 135-136]

G. State Law Does Not Provide a Basis for Relief in this Case

Although Comcast Phone’s petition also requested interconnection under state law, TDS Quincy asserts that state law does not provide a basis for relief in this case for several reasons.

First, except for the request in the petition, there is nothing in the record showing that Comcast Phone ever requested interconnection with TDS Quincy under Florida state law or that the parties attempted to negotiate an interconnection agreement under Chapter 364, Florida Statutes. Indeed, Section 3 of the interconnection agreement attached to the Petition as Exhibit C [Hrg. Ex. 4] provides that it will become effective if the Commission concludes that Comcast Phone is entitled to interconnection under Section 251 of the Act. It says nothing about state law and the “agreed to” interconnection agreement would not become effective even if the Commission decided that Comcast Phone is entitled to interconnection pursuant to Sections 364.16, 364.161 or 364.162, Florida Statutes. These sections contemplate an attempt to negotiate interconnection, unbundling and resale under state law before filing a petition and all the negotiations reflected in the record took place under the framework of federal law.

Second, TDS Quincy believes that the provisions in Sections 364.16, 364.161 or 364.162, Florida Statutes, have been preempted by the provisions in Sections 251, 252 and 253 of the Telecommunications Act. When Congress enacted the Telecommunications Act of 1996, it created a comprehensive federal regulatory scheme governing the rights of new entrants to interconnect with incumbent carriers like TDS Quincy – a scheme so detailed and pervasive that it occupies the field to the exclusion of state efforts in the area. Since the 1996 Act became effective, this Commission, the FCC and federal courts have conducted painstaking and time

consuming proceedings designed to flesh out the boundaries and rules for interconnection under the Act and little (perhaps no) attention has been given to state laws like Sections 364.16, 364.161 or 364.162, Florida Statutes. The Telecommunications Act of 1996 leaves no room for interconnection agreements negotiated pursuant to state laws.

Third, Section 3 of CS/CS for SB 2626 enacted by the 2009 Legislature is not relevant to the decision in this case. Section 3 became effective July 1, 2009; however, it was not in effect when the petition was filed. The language in Section 3 simply states that interconnection should be made available on a technology neutral basis and the real issue in this case is not technology, but rather, whether Comcast Phone is operating as a common carrier and seeking interconnection “in its own right” as required in Time Warner. Section 3 does not change the federal law that controls this case or the nature of the dispute between the parties and should not be construed to provide a basis for relief in this case.

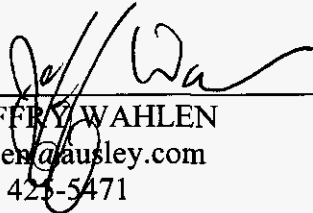
H. Conclusion

Although Comcast Phone will undoubtedly tout decisions from other state commissions in its brief, the Commission is bound to decide this case on the record developed in the final hearing. Ms. Choroser admitted that things are different for Comcast Phone affiliates in other states, when she testified that other states require prices in their LIS tariffs, so decisions from other states should be viewed with caution.

The FCC held in Time Warner that fixed VoIP providers may interconnect to the public switched telephone network through wholesale telecommunications carriers, but that the wholesale carrier is entitled to interconnection on two conditions: (1) the wholesale carrier must provide services on a “common carrier basis” and (2) the carrier must seek interconnection “in its own right.” Time Warner, 22 F.C.C.R. at 3517 ¶ 11; 3521 ¶ 16. The record developed in the

final hearing supports a finding that Comcast Phone does not meet these conditions and that it is not entitled to interconnection under the 1996 Act. State law does not change the result.

Respectfully submitted this 20th day of August, 2009.



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ATTORNEYS FOR TDS QUINCY

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 20th day of August, 2009 to the following:

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