

Ruth Nettles

From: Ann Bassett [abassett@lawfla.com]
Sent: Monday, November 02, 2009 3:14 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 080731-TP
Attachments: 2009-11-02, 080731-TP Comcast Notice of Supplemental Authority.pdf

The person responsible for this filing is:

Floyd R. Self
Messer, Caparello & Self, P.A.
P.O. Box 15579
Tallahassee, FL 32317
(850) 222-0720
fself@lawfla.com

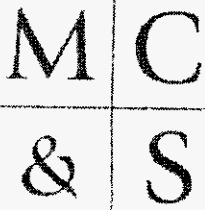
Docket No. 080731-TP - Petition of Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone for Arbitration of an Interconnection Agreement with Quincy Telephone Company d/b/a TDS Telecom Pursuant to Section 252 of the Federal Communications Act of 1934, as amended, and Sections 120.57(1), 120.80(13), 364.012, 364.15, 364.16, 364.161 and 364.162, F.S., and Rule 28-106.201, F.A.C.

This is being filed on behalf of Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone

Total Number of Pages is 13

Comcast Phone's Notice of Supplemental Authority

Ann Bassett
Messer, Caparello & Self, P.A.
2618 Centennial Place (32308)
P.O. Box 15579
Tallahassee, FL 32317
Direct Phone: 850-201-5225
Fax No. 850-224-4359
Email Address: <abassett@lawfla.com>
Web Address: <www.lawfla.com>



MESSER CAPARELLO & SELF, P.A.

Attorneys At Law

www.lawfla.com

November 2, 2009

VIA ELECTRONIC FILING

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") is Comcast Phone's Notice of Supplemental Authority in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosures
cc: Sam Cullari, Esq.
Parties of Record

Regional Center Office Park / 2618 Centennial Place / Tallahassee, Florida 32317
Mailing Address: P.O. Box 15579 / Tallahassee, Florida 32317
Main Telephone: (850) 222-0720 / Fax: (850) 224-4359

DOCUMENT NUMBER-DATE

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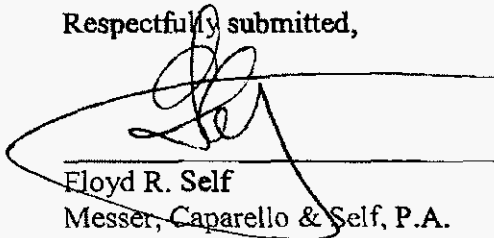
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Comcast Phone of Florida, LLC)
For Arbitration of Rates, Terms and Conditions) Docket No. 080731-TP
of Interconnection with Quincy Telephone)
Company, Inc. d/b/a TDS Telecom Pursuant to) Filed: November 2, 2009
Communications Act of 1934, as Amended.)
_____)

**COMCAST PHONE OF FLORIDA, L.L.C. D/B/A COMCAST DIGITAL PHONE'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone (hereinafter "Comcast"), hereby files notice of the attached Georgia Public Service Commission Order on Disputed Issue issued November 2, 2009 in Docket No. 28670, *Petition of Comcast Phone of Georgia, LLC for Arbitration of Rates, Terms and Conditions of Interconnection with Camden Telephone and Telegraph Company, Inc. d/b/a TDS Telecom Pursuant to the Communications Act of 1934, as amended* requiring TDS to offer interconnection to Comcast under Section 251 of the Telecommunications Act of 1996.

Respectfully submitted,



Floyd R. Self
Messer, Caparello & Self, P.A.
P.O. Box 15579
Tallahassee, FL 32317
Tel: 850-222-0720
Fax: 850-224-4359
fself@lawfla.com

Counsel for Comcast Phone of Florida,
L.L.C. d/b/a Comcast Digital Phone

DOCUMENT NUMBER-DATE

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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 this 2nd day of November, 2009.

Timisha Brooks, Esq.
Charles Murphy, Esq.
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Samuel F. Cullari, Counsel
Comcast Cable
1701 John F. Kennedy Boulevard
Philadelphia, PA 19103

Mr. Thomas M. McCabe
Suite 3, Box 329
1400 Village Square Boulevard
Tallahassee, FL 32312-1231

David A. Konuch, Esq.
Florida Cable Telecommunications Association
246 E. 6th Avenue
Tallahassee, FL 32303

Jeffry Wahlen, Esq.
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302



Floyd R. Self



COMMISSIONERS:

**H. DOUG EVERETT, CHAIRMAN
LAUREN "BUBBA" McDONALD, JR.
ROBERT B. BAKER, JR.
CHUCK EATON
STAN WISE**

(404) 656-4501
(800) 282-5813

FILED

NOV 02 2009

**DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR**

**REECE McALISTER
EXECUTIVE SECRETARY**

Georgia Public Service Commission

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

DOCKET #
Docket No. 28670
DOCUMENT # 124000

In Re: Petition of Comcast Phone of Georgia, LLC for Arbitration of Rates, Terms and Conditions of Interconnection with Camden Telephone and Telegraph Company, Inc. d/b/a TDS Telecom Pursuant to the Communications Act of 1934, as amended

ORDER ON DISPUTED ISSUE

I. Procedural and Factual Background

On November 18, 2008, Comcast Phone of Georgia, LLC ("Comcast") petitioned the Georgia Public Service Commission to arbitrate an interconnection agreement pursuant to Section 252(b) of the Communications Act of 1934, as amended, with Camden Telephone and Telegraph Company, Inc. d/b/a TDS Telecom (collectively, "the parties"). TDS Telecom filed its Answer on December 18, 2008.

The March 18, 2009 Joint Issue Statement submitted by the parties identified the following as the sole issue to be resolved by the Commission:

Is TDS required to offer interconnection to Comcast under Section 251 of the Telecommunications Act of 1996?

The Commission held a hearing on the pre-filed testimony on June 30, 2009. Comcast sponsored the testimony of Beth Choroser, who is the Executive Director of Regulatory Compliance for Comcast Cable Communications, LLC. TDS presented Douglas Duncan Meredith, who is the Director of Economics and Policy for John Staurulakis, Inc. On August 7, and August 18, 2009, respectively, the parties filed post-hearing briefs and reply briefs.

The parties dispute whether Comcast provides telecommunications services in Georgia. Comcast is a certified local exchange company in Georgia that offers a Schools and Libraries Network Service, which is a high-speed T1 voice and data service to primary and secondary schools, municipal libraries, and other "e-rate" eligible institutions. (Choroser Direct, p. 3). Comcast also offers Local Interconnection Service ("LIS"), which is a two-way interconnection with the Public Switched Telephone Network for the exchange of voice traffic, and

administration of numbering resources, local number portability, operator services, 911 emergency calling services, and directory listing and directory assistance services. *Id.* at 4. Comcast also provides exchange access services pursuant to its federal and state tariffs to interexchange carriers that request the service. *Id.* at 10.

For the reasons set forth herein, the Commission concludes that Comcast provides telecommunications services in Georgia, and has a right to interconnect with TDS. This conclusion is based on its findings that the Schools and Libraries Network Service, the LIS, and the exchange access service Comcast offers in Georgia are telecommunications services, and that Comcast offers these services on a common carrier basis.

II. Jurisdiction

Under the Federal Telecommunications Act of 1996 (the Federal Act), state commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (State Act), O.C.G.A. §§ 46-5-160 through 174, and generally O.C.G.A. §§ 46-1-1 through 5, 46-2-20, 46-2-21 and 46-2-23.

III. Positions of the Parties

A. Comcast

Comcast argues that it is authorized to provide telecommunications services in Georgia, and offers such services; and that therefore, TDS is required to offer interconnection to Comcast under Section 251 of the Federal Act. (Comcast Brief, pp. 5-6). Specifically, Comcast points to the LIS, Schools and Libraries Network Service, and exchange access service it offers in Georgia. Comcast argues that each of these services is a telecommunications service. *Id.* Comcast states that these services meet the definition of "telecommunications service" under the Act because they involve the transmission of customer information. *Id.* Comcast also argues that it offers these services on a common carrier basis. *Id.* at 8. Comcast argues that the fact that LIS may be tailored to a specific type of customer is not dispositive of whether it is sufficient to bestow telecommunications carrier status on Comcast. (Comcast Reply Brief, p. 13). Similarly, Comcast argues that ICB pricing arrangements are standard in the industry, and not inconsistent with common carriage. *Id.* at 14.

Comcast reasons that the public will benefit from compelling TDS to interconnect because the interconnected VoIP offered by Comcast IP will increase facilities-based, wireline competition in the residential marketplace. (Comcast Brief, p. 9). Because Comcast IP provides retail VoIP service, it needs to "partner" with a wholesale telecommunications carrier in order to use the PSTN.

Comcast next focused on court, Federal Communications Commission and state commission decisions in which Comcast affiliates were determined to be telecommunications

carriers. In *Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C.Cir. 2009), the Court of Appeals for the D.C. Circuit affirmed the FCC's finding that the services provided by Comcast were telecommunications services for the purposes of CPNI. (Comcast Brief, pp. 11-12) State commissions in Vermont and Michigan found that Comcast was a telecommunications provider, and that it had interconnection rights. *Id.* at 12. In Washington, an ALJ Recommendation also found that Comcast was a telecommunications carrier entitled to interconnection. *Id.* at 13. In its September 22, 2009 Notice of Supplemental Authority, Comcast informed the Commission that the Indiana Utility Regulation Commission held that Comcast was a "telecommunications carrier" entitled to interconnection under the Act.

Comcast argues that the Commission does not have the authority to require Comcast IP to obtain a certificate because state law prohibits the Commission from regulating VoIP. (Comcast Reply Brief, p. 5). Comcast disputes that this creates a regulatory disparity because Comcast IP remains subject to FCC regulations. *Id.* at 6.

Comcast also defends the arrangement between Comcast and Comcast IP as being authorized by federal law. *Id.* at 7. Comcast argues that 47 C.F.R. § 51.100(b) permits telecommunications carriers to use interconnection arrangements with ILECs to provide information services so long as they also provide telecommunications services through the same arrangement. *Id.* at 9.

B. TDS

TDS alleges that Comcast will not be providing telephone service in Camden County. Instead, TDS charges that Comcast IP, a non-certificated carrier, will provide VoIP service to consumers. (TDS Brief, p. 3). TDS asks that this Commission require Comcast IP to obtain certification, and commits that, should that occur, it will interconnect with Comcast IP. *Id.*, Tr. 13-14. TDS claims that it is unfair for Comcast IP to compete against TDS without having to comply with the same regulations imposed upon TDS. (Tr. 15). Moreover, because of the arrangement between Comcast and Comcast IP, the Comcast parent company will be able to shield retail revenue margins from Universal Access Fund assessments. (Brief, fn 5).

TDS argues that the only difference between its service and that of Comcast IP is the manner in which the call originates. (TDS Brief, p. 4). Because the service it offers constitutes a "telecommunications service" under O.C.G.A. § 46-5-162(18), TDS claims that Comcast IP must still obtain a certificate of authority. *Id.* at 5. The FCC has not identified fixed VoIP as either an information service or a telecommunications service; therefore TDS argues that the Commission is not preempted from requiring Comcast IP to obtain a certificate. *Id.* at 7.

TDS also argues that Comcast does not provide a telecommunications service. In order to have interconnection rights, TDS argues that Comcast must demonstrate that it is a common carrier and that it provides a telecommunications service in its own right. *Id.* at 11. TDS asserts that Comcast fails the first prong of this test because all it has done is offer one service to an affiliate on individualized terms. *Id.* TDS maintains that the only customer that would derive any use from Comcast's LIS is Comcast IP. *Id.* at 12. TDS asserts that the Schools and Libraries service is a contract offering and not common carriage. *Id.* at 13-14. Finally, TDS

points out that in an FCC filing Comcast stated that it would not provide telecommunications services in Georgia after October 1, 2007. *Id.* at 15. TDS states that neither LIS nor Schools and Libraries service is a telecommunications service. *Id.* at 16-17.

In responding to Comcast's characterization of the public interest, TDS contends that the certification of Comcast IP is in the public interest. (Comcast Reply Brief, p. 2) TDS also states that Senate Bill 120 deregulated IP retail rates, but did not prohibit the Commission from requiring Comcast IP to obtain certification. *Id.* at 4. In support of this statutory interpretation, TDS points to prior Commission decisions, such as in Docket Nos. 21905, 24844 and the consolidated dockets of 22071 and 22120. *Id.* at 5-7.

In responding to the commission decisions from other states, TDS states that "Georgia is the first state to develop hearing evidence to fully detail the intertwined roles of Comcast IP and Comcast Phone." *Id.* at 8. Finally, TDS argues that Comcast removed its telephone exchange service offering in Georgia; therefore, it cannot rely on this service to demonstrate that it is a telecommunications carrier in Georgia. *Id.* at 9.

IV. Staff Recommendation

Staff recommended that the Commission conclude that Comcast provides telecommunications services in Georgia, and has a right to interconnect with TDS. Staff based its recommendation on its findings that the Schools and Libraries Network Service, the LIS, and the exchange access service Comcast offers in Georgia are telecommunications services, and that Comcast offers these services on a common carrier basis.

V. Findings of Fact and Conclusions of Law

Comcast Phone is a certified to provide telecommunications services in Georgia. The term "telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). The services offered by Comcast include the LIS, Schools and Libraries, and exchange access services. Ms. Choroser testified that "LIS provides a two-way interconnection with the PSTN for the exchange of voice traffic, and administration of numbering resources, local number portability, operator services, 911 emergency calling services, and directory listing and directory assistance services." (Choroser Direct, p. 4). The wholesale LIS offered by Comcast enables qualified providers of interconnected VoIP services "to make and receive calls to and from the PSTN and otherwise serve their customers." *Id.* at 9-10. Comcast's LIS tariff that is on file with the Commission states that traffic is accepted and delivered in time division multiplex ("TDM") protocol. (TDS Exh. 6, § 6.1.3(B). The tariff also states that "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." *Id.* at §6.1.3(D). Based on the testimony of Ms. Choroser and the provisions of Comcast's publicly-available tariff, the Commission finds that the service satisfies the definition of a "telecommunications service."

The Schools and Libraries service offered by Comcast would enable schools on the tariff to transmit data to each other and exchange voice traffic over the PSTN. (Tr. 111-12). This service as well constitutes a telecommunications service. As the Indiana Utility Regulatory Commission reasoned in finding that the Schools and Libraries service is a telecommunications service, the service "includes several telecommunications service components, including point-to-point transport, which is similar to certain types of 'special access' telecommunications services that have been regulated by the states and the FCC."¹ The same point-to-point component is present in Comcast's Georgia tariff. (TDS Exh. 6, § 5.1.2). The testimony and the terms and conditions of Comcast's tariff establish that the Schools and Libraries service is a telecommunications service.

Comcast also stated that both LIS and Schools and Libraries use its tariffed exchange access services. (Comcast Brief, pp. 6-7). TDS disputes both that Comcast provides exchange access service in Georgia, and that the service is a "telecommunications service." (TDS Reply Brief, pp. 9-10). As to the first issue, the evidence reflects that Comcast provides exchange access services. Ms. Choroser testified that "Comcast has approximately 40 exchange access service customers in Georgia who purchase either intrastate or interstate terminating access services from Comcast." (Choroser Direct p. 10). Although TDS presented Ms. Choroser a Section 63.71 Application filed by Comcast with the FCC stating that it planned "to discontinue its provision of telecommunications service in Georgia on or after October 1, 2007," Ms. Choroser explained that Comcast subsequently filed a clarification with the FCC that it was only discontinuing its digital phone service. (Tr. 95-96, TDS Exhibit 5). This testimony was not contradicted. Therefore, the Commission finds that Comcast is providing exchange access services in Georgia.

The next question is whether exchange access constitutes a "telecommunications service." Exchange access services are defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(16). The FCC has found that exchange access services are telecommunications services. *In Re Fiber Techs. Networks, L.L.C.*, 22 FCC Rcd 3392, 3399 n. 48 ("competitive access services are, in fact, 'telecommunications services' under the Act."). The Commission took administrative notice of the exchange access tariffs that Comcast has on file with the Commission. Furthermore, the Commission concludes that Comcast is providing exchange access services and that these services are "telecommunications services."

The Commission must also address whether in the provisioning of these services Comcast is acting as a common carrier. Courts have established a two prong test for whether a company is a common carrier. The first prong is as follows:

the primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently. This does

¹ Petition of Comcast Phone of Central Indiana LLC for Arbitration of an Interconnection Agreement with Tri-County Telephone Co., Inc. d/b/a TDS Telecom Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended, and Applicable State Laws. Cause No. 43621 INT 01, Final Order, September 3, 2009.

not mean that the particular services offered must practically be available to the entire public; a specialized carrier whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he holds himself out to serve indifferently all potential users.

National Ass'n of Regulatory Util. Comm'rs v. FCC, 533 F.2d 601, 608-09 (D.C.Cir. 1976 ("NARUC II") (internal quotes and footnotes omitted). The second prong of the test is that "the system be such that customers transmit intelligence of their own design and choosing." *Id.* No one has disputed that the services would enable customers to transmit intelligence of their own design and choosing; therefore the second prong is not at issue in this case.

Comcast directs the Commission's attention to the *Bright House*² decision to demonstrate that it has met the first prong of the *NARUC II* test. In *Bright House*, the FCC addressed the charge that Bright House and Comcast were not holding themselves out to the public with regards to the services they offer to their affiliates. (*Bright House*, ¶ 38). The FCC relied upon three findings in reaching its conclusion. First, Comcast "self-certified" that it would operate as a common carrier. *Id.* at ¶ 39. Second, Comcast obtained a certificate of public convenience and necessity or comparable approval. *Id.* Third, Comcast entered into a publicly available interconnection agreement with Verizon, filed with and approved by the relevant state commission pursuant to Sections 251 and 252 of the Telecommunications Act. *Id.* Based on these findings, the FCC found that Comcast was a common carrier for purposes of Section 222(b), which pertains to customer proprietary network information. *Id.* at ¶ 41. The FCC expressly limited this conclusion to Section 222(b) based on its conclusion that the term "telecommunications carrier" is ambiguous under the Federal Act, and that the purpose of Section 222(b) "argues for a broad reading of the provision." *Id.* On appeal, the FCC's conclusion was found to be reasonable. *Verizon California v. FCC*, 555 F.3d 270, 275 (2009).

The criteria relied upon in *Bright House* are present in this case as well. Comcast has self-certified as a common carrier, it has a certificate of authority to provide telecommunications services in Georgia and it has entered into interconnection agreements. (Tr. 70-71). However, the question in this case is whether Comcast is providing telecommunications services for the purposes of Sections 251 and 252. The *Bright House* decision does not resolve the question in this case, but, based on the *Bright House* decision, it is reasonable to give some weight to these considerations. For instance, the FCC noted a carrier's "self-certification" is particularly significant because common carrier status bestows "substantial responsibilities" on the carrier. *Bright House* at ¶ 39. The Commission finds that the presence in this case of the each of the three considerations relied upon in *Bright House* offer support for the conclusion that Comcast is a common carrier in Georgia.

In *Bright House*, the FCC found no credible evidence that Comcast was unwilling to provide telecommunications services to unaffiliated entities on a nondiscriminatory basis. *Bright House* at ¶ 40. In the present case, TDS charges that the demands upon the customer for taking Comcast's Local Interconnection Service indicate that the service

² *In the Matter of Bright House Networks, LLC, v. Verizon California, Inc.*, 23 FCC Rcd 10704 (Rel. June 23, 2008).

was intended solely for use by Comcast's affiliate. (TDS Brief, p. 12). To support this claim, TDS first points out that there are no non-affiliated customers on Comcast's Local Interconnection Service in any state. (Tr. 103). Ms. Choroser responded that the FCC has recognized that this is not unusual and that the service is offered to all similarly situated customers. (Tr. 103-04). In determining whether a carrier is providing "telecommunications service," the FCC has looked to the terms of the offer and not whether the carrier has any customers for a service. In *Fiber Techs.*, the FCC found that the company was offering "telecommunications services," even though it did not have any customers on the service. *Fiber Techs.*, ¶ 20. Therefore, the fact that there are no non-affiliated customers for the Local Interconnection Service does not indicate that the service is not "telecommunications service." Comcast has publicly available tariffs for these services on file with the Commission; therefore, it has held these services out to the public.

TDS also alleges that LIS is only available to an interconnected VoIP provider. *Id.* At the hearing, it was established that in order to use LIS a customer must have a running broadband network. (Tr. 105). In addition, a customer must have a connection to each house of its end user subscribers. (Tr. 106). The customer would also have to have a cable modem in each subscriber's business or residence. (Tr. 106). Finally, the customer would need to have wiring to each house that would enable the cable modem to get the call out to the network. (Tr. 106). Ms. Choroser disputed that meeting these qualifications dictated that all customers look the same as Comcast IP. (Tr. 106). Instead, she testified that the "thirty or so" cable companies in Georgia would be situated similar to Comcast IP. (Tr. 106). The testimony that there are other cable companies similarly situated to Comcast IP to meet the qualifications for the tariff was not refuted. Furthermore, the NARUC II decision states that a specialized carrier whose service is not practically available to the entire public may still be a common carrier provided that the service is offered to all potential users indifferently. *NARUC II*, 533 F.2d. at 608. The qualifications for becoming a customer of the Local Interconnection Service is not evidence that Comcast IP is the only intended customer of the service.

TDS also argues that Comcast is not a common carrier through its offering of LIS because the tariff provides that components of the service are negotiated on an individual contract basis. (TDS Brief, pp. 12-13). Comcast countered that such arrangements are standard in the industry, and that TDS has ICB arrangements in its tariffs. (Tr. 206, Comcast Exh. 6). TDS witness, Mr. Meredith, acknowledged that ICB arrangements based on *bona fide* offers may exist in other tariffs. (Tr. 206). Courts have rejected the contention that ICB arrangements in tariffs are *per se* discriminatory. See *MCI Telecomms. Corp. v. FCC*, 917 F.2d 30 (D.C. Cir. 1990). Instead, courts have established a three-step inquiry for determining whether a carrier has unlawfully discriminated. The first step is whether the services are "like." *Id.* at 39. If the services are "like," then the next question is whether there is a price difference. *Id.* The final step is whether any such price difference is reasonable. *Id.*

In the present case, there is no evidence that Comcast has discriminated or will discriminate through the use of the ICB provisions in the contract. The reasons for

offering its wholesale service appear rational. (Comcast Reply Brief, p. 14). The Iowa Utilities Board noted that wholesale services have not evolved into a standardized offering, and that different prices for services are to be expected when contracts contain different services. *Sprint Comm. Co LP v. ACE Comm Group*, 2005 Iowa PUC LEXIS 497 at *19. Comcast explains that the price of the services it will offer will depend on whether the customer purchases all of the features from Comcast. (Comcast Reply Brief, p. 14). Should there be a complaint that Comcast is unlawfully discriminating against a customer, then the Commission would have the authority to hear the complaint. O.C.G.A. § 46-5-168(b)(5).

Comcast is a wholesale provider of telecommunications services. The FCC has determined that wholesale providers of telecommunications services have the right to interconnect. *Time Warner*³, at ¶ 8. The FCC found that the Federal Act does not differentiate between retail and wholesale services when defining “telecommunications carrier” or “telecommunications service.” *Id.* Furthermore, the FCC determined that affirming the rights of wholesale carriers to interconnect for the purpose of exchanging traffic with VoIP providers will spur the development of broadband infrastructure. *Id.* at ¶ 13. The FCC further concluded that the regulatory classification of a third party provider’s VoIP as an information service or telecommunications service is irrelevant to the issue of whether a wholesale provider of telecommunications may seek interconnection. *Id.* at ¶ 15. In the case at hand, Comcast IP is the retail provider of a fixed VoIP service. The FCC has not yet defined whether such service is a telecommunications or information service. However, consistent with the *Time Warner* ruling, the regulatory status of the service offered by Comcast IP does not bear on the interconnection rights of Comcast as a provider of wholesale interconnection services. Finally, the FCC rules provide that “[a] telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.” 47 C.F.R. § 51.100(b). TDS relies on this rule to state that Comcast must offer telecommunications services “in its own right.” As discussed above, the Commission finds that Comcast does provide telecommunications services in its own right.

TDS argues that the Commission should require that Comcast IP obtain a certificate of authority to provide telecommunications services in Georgia. (TDS Reply Brief, pp. 4-8). The FCC has not yet classified interconnected VoIP as either a telecommunications or information service. Comcast, however, argues that Senate Bill 120 (the “Competitive Emerging Communications Technologies Act of 2006”) prohibits the Commission from regulating broadband and VoIP services. (Comcast Reply Brief, pp. 5-7). In particular, Comcast cites to O.C.G.A. § 46-5-202(a), which provides as follows:

The Public Service Commission shall not have any jurisdiction, right, power, authority, or duty to impose any requirement or

³ *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, (WC Docket No. 06-55) (Rel. March 1, 2007)

regulation relating to the setting of rates or terms and conditions for the offering of broadband service, VoIP, or wireless service.

TDS counters that the intent of this law was limited to retail VoIP rates. (TDS Reply Brief, pp. 4-5).

The Commission does not need to resolve this question in the context of this arbitration. Under the Staff recommendation that this Commission has adopted, Comcast is providing telecommunications services in its own right. As a result, Comcast is entitled to interconnect with TDS. The question of whether Comcast IP must obtain a certificate of authority is a different question that the Commission may address in a separate docket, if it so chooses.

TDS also criticizes the terms and conditions pursuant to which Comcast offers its services. TDS points out that the tariff for LIS requires a three year purchase, imposes an early termination fee of 100% of all monthly recurring rates multiplied by the number of months left in the contract, permits Comcast to discontinue service on twenty-four hours notice for nonpayment of any amount billed and requires that the LIS purchaser have an IP broadband network that uses a cable modem termination system. (TDS Brief, p. 13). Comcast defends its termination fee by stating that it is common in the industry and necessary for Comcast to recover its costs. (Tr. 109). Staff recommended that to the extent that the Commission has concerns over whether the terms and conditions of Comcast's services are just and reasonable, it may address those concerns in a separate case. The Commission makes no decision in the context of this docket as to whether the rates, terms and conditions of Comcast's services are not just and reasonable. The Commission agrees with Staff's recommendation that any such concern would be more appropriately explored in the context of responding to a consumer complaint, an informal investigation or a formal rule nisi proceeding. These issues do not bear on Comcast's right of interconnection under Sections 251 and 252.

Both parties claim that their proposed outcome of the case is more consistent with the public interest. The Commission's decision is based on the record evidence and applicable law. There is no public policy basis for denying interconnection rights to a party that is offering telecommunications services under the Federal Act. As stated above, in its *Time Warner* decision, the FCC stated that affirming the rights of wholesale carriers to interconnect for the purpose of exchanging traffic with VoIP providers will spur the development of broadband infrastructure. *Time Warner* at ¶ 13. As noted herein, the public policy issues pertaining to whether Comcast IP should be required to obtain a certificate and whether the terms of service are just and reasonable are best addressed separately from the question of whether Comcast has a right to interconnection.

The state commissions that have addressed the issue that is before this Commission have ruled in Comcast's favor. Comcast noted the decisions of the state utility commissions for the states of Michigan, Vermont, New Hampshire and Indiana. (Comcast Brief, p. 10, Reply Brief, p. 2, Notice of Supplemental Authority, September 23, 2009). In addition, Comcast stated that the Arbitrator's Recommendation in Washington supported its position. *Id.* In response to Staff discovery request STF 1-1, Comcast stated that the differences between the services offered in Georgia and the services offered in Michigan, Vermont and New Hampshire were not material to

the question of whether it has the right to interconnect with TDS. (Comcast Exh. 4, Tr. 67-68). TDS agreed that the services offered in Georgia are materially the same as the services offered in other states. (Tr. 170). The Commission is not bound by the decisions from other state commissions, but may consider them in rendering its decision. As noted in the discussion above, the reasoning of some of the other state commissions to address this question has been relevant and instructive in reaching the conclusions set forth in this order.

VI. CONCLUSION AND ORDERING PARAGRAPHS

The Commission finds and concludes that the issues that the parties presented to the Commission for arbitration should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.


WHEREFORE IT IS ORDERED, TDS is required to offer interconnection to Comcast under Section 251 of the Telecommunications Act of 1996.

ORDERED FURTHER, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 20th day of October, 2009.



Reece McAlister
Executive Secretary

11-2-09
Date



H. Doug Everett
Chairman

11-2-09
Date