

BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DT 07-027

PUBLIC DIRECT TESTIMONY

OF ROBERT LOUBE, Ph.D.

ON BEHALF OF THE

OFFICE OF CONSUMER ADVOCATE

October 12, 2007

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I. INTRODUCTION

Q: Please state your name and business address.

A: My name is Robert Loube. My business address is 10601 Cavalier Drive, Silver Spring, Maryland 20901.

Q: By whom are you employed and in what capacity?

A: I am Vice President of Rolka, Loube, Saltzer, Associates.

Q: On whose behalf are you testifying?

A: I am testifying on behalf of the Office of Consumer Advocate (OCA).

Q: Please describe your professional qualifications.

A: I received my Ph.D. in economics from Michigan State University in 1983. I have worked for the Federal Communications Commission (FCC) where I helped to establish the criteria for choosing the universal service economic cost model, evaluated and modified telephone cost models, and determined the input values used in the FCC's Synthesis model. I also was on the FCC staff of the Federal-State Joint Board on Separations.

While I worked at the Indiana Utility Regulatory Commission and the Public Service Commission of the District of Columbia, I testified on the validity and usefulness of a number of incremental and embedded cost studies, and on the conditions required for competition in telephone markets. As a private consultant, I have testified on behalf of the Pennsylvania Office of the Consumer Advocate in the Pennsylvania Triennial Review proceeding and filed expert testimony on behalf of the Staff of the South Carolina Public Service Commission. I have also testified on behalf of the Maine Office of Public Advocate in the Maine Verizon-

1 MCI merger, the investigation into line sharing, the Verizon AFOR proceedings,
2 and the ongoing Verizon/FairPoint proceedings. I testified on behalf of the
3 Washington Attorney General in the Qwest AFOR proceeding. I have lectured on
4 cost modeling and pricing in telecommunications at the NARUC Annual
5 Regulatory Studies Program. My vita is attached to this testimony as Exhibit RL-
6 1.

7 **II. PURPOSE OF TESTIMONY**
8

9 **Q: What is the purpose of your testimony?**

10 **A:** The purpose of my testimony is to evaluate the proposed TDS AFOR plan (the
11 “Plan”) on behalf of the OCA, whose statutory charge includes advocacy on
12 behalf of residential customers. I compare the proposed Plan to the criteria for
13 acceptance of an AFOR plan listed in NH RSA 374:3-b.

14 **Q: Please summarize your testimony.**

15 **A:** My testimony will examine the testimony of TDS witnesses, Mr. Reed and Mr.
16 Ulrich. Mr. Reed’s testimony asserts that competitive cable, wireless and
17 broadband service is available to a majority of TDS retail customers. I will
18 demonstrate that his assertion is false. First, there are no cable providers offering
19 telephone services to any customers in the TDS service territories. Second, for
20 approximately 70 percent of customers who subscribe to wireless service, such
21 service does not compete (i.e., is not a substitute) with wireline service. Instead,
22 wireless service complements wireline service. Third, broadband-based telephone
23 providers are not competitors of TDS’ wireline service because there are

1 significant questions regarding the ability of these carriers to sustain their
2 presence in the market. They face patent infringement suits, have closed their
3 operations, face price squeeze strategies by major ILECs, and are not taken
4 seriously by major cable providers. In addition, the Plan includes the authority to
5 increase basic service rates by up to 10 percent per year for each of four years.
6 Only carriers that have market power could sustain such increases. Thus, a carrier
7 that requests such authority must believe that a majority of its customers do not
8 have a competitive alternative available to them.

9

10 With regard to the testimony of Mr. Ulrich, I note that the current regulatory
11 regime allows TDS the flexibility it needs to meet the prices of future potential
12 competitors, while at the same time ensuring that TDS' prices are above price
13 floors necessary to maintain competition. I also point out that if TDS offers
14 Unbundled Network Elements ("UNEs") and adopts the Verizon NH UNE rates,
15 this policy would not increase the level of competition in the TDS service
16 territories because the Verizon UNE rates are above most of the TDS basic
17 service rates.

18

19 **III. THE TESTIMONY OF MR. MICHAEL C. REED**

20

21 **Q: Please summarize the testimony of Mr. Reed.**

22 **A:** The purpose of Mr. Reed's testimony is to demonstrate that each of the four TDS
23 carriers meets the eligibility criteria required by RSA 374:3-b, III for approval of
24 an alternative form of regulation ("AFOR"). He focuses on the first criterion, the

1 availability of competitive wireline, wireless and broadband service to a majority
2 of retail customers in each exchange.

3 **Q: How did Mr. Reed establish that a majority of retail customers have**
4 **competitive alternatives available to them?**

5 **A:** Mr. Reed used a two-step approach for determining the amount of competition in
6 each carrier's study area. First, he determined whether a cable, wireless or
7 broadband alternative was available.¹ Second, he determined whether TDS
8 customers were using those alternatives by measuring decreases in TDS access
9 lines, state access minutes and revenue.

10 **Q: How did Mr. Reed demonstrate the availability of competition from cable**
11 **providers?**

12 **A:** In Attachments A through D of his testimony, Mr. Reed provides an estimate of
13 the percentage of customers that are served by a cable provider. For each carrier,
14 his estimate is greater than 50 percent. However, for Merrimack County
15 Telephone ("MCT"), he does not provide this percentage by cable provider. This
16 failure is important due to the fact that one of the providers, MCT Cable, is a
17 subsidiary of TDS and therefore simply cannot be considered a competitor. By
18 combining information from several data responses, I am able to confirm that
19 Comcast serves greater than 50 percent of the customer base even though that

¹ <<Begin Confidential

End Confidential>>

1 coverage is at a lower level than Mr. Reed's estimate.² However, as I discuss
2 below, there are issues with considering access to cable service as a competitive
3 alternative to telephone service.

4 **Q: Are there any exchanges that do not have cable services?**

5 **A:** Yes. According to Mr. Reed's Attachment E, there is no cable service in
6 Kearsarge Telephone Company's ("KTC") Andover and Salisbury exchanges.
7 Thus, on the basis of cable service, KTC does not meet the first criterion that each
8 exchange must have an alternative available in order for the service territory's
9 AFOR Plan to be approved. RSA 374:3-b, III (a).

10 **Q: Is the existence of cable service proof of the existence of the provision of cable**
11 **telephone service?**

12 **A:** No. Cable service can exist as the provision of video services or video and data
13 services without the provision of telephone service.

14 **Q: Is there any evidence that verifies that a cable company provides telephone**
15 **service in any of the four TDS carrier's service territory?**

16 **A:** No. Even TDS states that it "is not aware of any communities within TDS study
17 area where a cable provider is offering telephone service at this time, although the
18 website of Comcast indicates digital phone is available in some exchanges."³ In
19 its petition to become party to this proceeding, Comcast rejects the TDS
20 insinuation that it may be offering service in any of the four study areas. Comcast
21 clearly states that "Comcast Phone does not possess any certificate of authority in
22 TDS Telecom territory...neither Comcast nor any of its affiliates offers any voice

² See Confidential Exhibit RL-2.

³ Company Response to OCA 1-46.

1 services whatsoever in the exchanges served by the TDS Petitioners, let alone
2 unlimited calling plans...[thus] Comcast is unable to offer telecommunications
3 services there.”⁴

4 **Q: Are there any other competitive cable providers serving TDS providers that**
5 **may be offering telephone service?**

6 **A:** No. There are two other providers, MCT Cable and Charter. MCT Cable is a
7 TDS affiliate and therefore should not be considered a competitor of TDS
8 telephone companies. Charter’s web page does not show any telephone offerings
9 for its New Hampshire territories, which only coincides with the service area of
10 Hollis Telephone company.⁵

11 **Q: Is there any other evidence that suggests that cable providers are not offering**
12 **telephone service in the TDS service territories?**

13 **A:** Yes. First, the Petitioners have not ported any numbers to cable providers, even
14 though TDS is capable of porting numbers. Thus, no TDS customer has asked
15 TDS to move his current number to a cable provider.⁶ Second, there are no cable
16 customers listed in the Petitioners’ white pages.⁷

17 **Q: How does Mr. Reed assert that customers can obtain telephone service**
18 **through broadband services?**

19 **A:** Mr. Reed asserts that customers can reach independent Voice over Internet
20 Protocol (VoIP) providers by purchasing either DSL from a TDS carrier or cable
21 modem service from a cable provider. The VoIP provider will provide the

⁴ Petition to Intervene of Comcast Phone of New Hampshire, LLC, Docket DT07-027, September 27, 2007, at 6. Comcast filed testimony on October 11, 2007 affirming these statements.

⁵ <http://www.charter.com/vistors/products.aspx?productitem=3>

⁶ Company Response to OCA 1-53.

⁷ Company Response to OCA 1-56.

1 telephone service over the broadband connection. In Attachment E, Mr. Reed
2 shows that customers have either the ability to use DSL or a cable modem in
3 every New Hampshire TDS exchange. However, Mr. Reed does not provide
4 information that shows that 50 percent or more of the TDS customers in each
5 exchange have access to a broadband provider. Instead, Mr. Reed provides the
6 average across the exchanges in each service territory.⁸

7 **Q: Has Mr. Reed identified any former TDS customers that have migrated to**
8 **VoIP providers.**

9 **A:** No. Even though Mr. Reed asserts that TDS has lost customers to VoIP
10 providers, he does not present any evidence regarding the number of customers
11 that have migrated to VoIP providers. In fact, TDS states that it cannot identify
12 the percent of customers that have become VoIP customers.⁹

13 **Q: Is it necessary to measure the number of VoIP customers in order to claim**
14 **that competitive VoIP service is available to a majority of the Petitioners'**
15 **customers in each exchange?**

16 **A:** No. However, it is easier to claim that customers perceive VoIP as a competitive
17 alternative if a number of those customers are using the service. Without any
18 indication of a number, the assertion that broadband telephony is a competitive
19 alternative is just an assertion without a foundation and should not be used to
20 determine that the Petitioner's service territories meet the strictly defined
21 eligibility standard required for the adoption of AFOR regulation.

⁸ Reed Testimony, Attachments A through D.

⁹ Company Response to Staff 1-11.

1 **Q: What is the basis for determining that broadband telephone service is not a**
2 **competitive alternative to the Petitioner's regulated services?**

3 **A:** There are several reasons why broadband telephone service is not a competitive
4 alternative to the Petitioner's regulated services: (1) recent court decisions that
5 have been unfavorable to Vonage, (2) Vonage's inability to maintain its stock
6 price, (3) the failure of SunRocket, (4) the carriers' dependency on broadband
7 connections, and (5) the pricing strategies of major ILECs and cable providers.

8 **Q: Please discuss the Vonage litigation.**

9 **A:** Vonage has recently lost two patent infringement cases at the federal district court
10 level.¹⁰ These losses have restricted Vonage's ability to market its service,
11 required Vonage to pay royalties to its competitors, and may require Vonage to
12 pay significant penalties. While Vonage's stock price rebounded following the
13 settlement of its patent infringement suit with Sprint, the stock price is still only
14 \$2.57 compared to the initial public offering of \$17.¹¹

15 **Q: How would these losses affect Vonage's operations?**

16 **A:** Royalties and penalties would reduce the profits of a company that has never
17 earned a positive profit. Customers may be scared off, increasing the cost of
18 attracting new customers, when that current cost is estimated to be \$287 per

¹⁰ "Patent Rulings Against Vonage Upheld," by Jeff St. Onge and Susan Decker, Washington Post, September 27, 2007; "Vonage Settles Patent Suit with Sprint," by Peter Svensson, Washington Post, October 8, 2007

¹¹ "Patent Rulings Against Vonage Upheld," by Jeff St. Onge and Susan Decker, Washington Post, September 27, 2007

1 customer.¹² The company has also reduced its workforce by 10 percent and cut
2 its advertising and marketing budget by \$110 million a year.¹³

3 **Q: Please discuss the failure of SunRocket.**

4 **A:** SunRocket was a VoIP provider. It ceased operations July 16, 2007, leaving
5 200,000 customers without service. SunRocket recommended to its customers
6 that they move to other VoIP providers, but SunRocket and Vonage disagree over
7 the use of SunRocket's customer list by Vonage.¹⁴

8 **Q: Please discuss the pricing strategy of the major ILECs.**

9 **A:** The major ILECs, AT&T, QWEST and Verizon, can easily trap the VoIP
10 providers in a price squeeze. These ILECs control the price and the offering of
11 stand-alone DSL and they are major competitors of the VoIP providers.
12 Currently, AT&T and Verizon offer a bundle of unlimited local and long distance
13 telephone service and data service for \$59.99.¹⁵ QWEST offers the same bundle
14 for \$64.98.¹⁶ Given that Vonage charges \$24.99 for an equivalent package, if the
15 ILECs increase the cost of stand-alone DSL service above \$35 to \$40, Vonage
16 will be forced to reduce its rates or leave the market. Given that current estimates
17 of stand-alone DSL rates range between \$36 and \$49, Vonage's prospects do not
18 look promising.¹⁷ In addition, AT&T and Verizon are required by the recent
19 mergers to sell stand-alone DSL for only a limited number of years. When the

¹² "Vonage Settles Patent Suit with Sprint," by Peter Svensson, Washington Post, October 8, 2007.

¹³ "Patent Rulings Against Vonage Upheld," by Jeff St. Onge and Susan Decker, Washington Post, September 27, 2007;

¹⁴ "SunRocket Sues Vonage Over Use of Customer List," by Kim Hart, Washington Post, August 24, 2007.

¹⁵ <http://www.att.com/gen/general?pid=9147>;

<http://www22.verizon.com/ForYourHome/NationalBundles/NatBundlesHome.aspx>;

¹⁶ <http://pcat.qwest.com/pcat/bundlesCustomize.do?customize=res>

¹⁷ Direct Testimony of Robert Loube on behalf of Public Counsel, In the Matter of the Petition of Qwest Corporation to be Regulated Under An Alternative Form of Regulation Pursuant to RCW 80.36.135, Washington Utilities and Transportation Commission, Docket No. UT-061625, filed February 14, 2007.

1 merger condition expires, customers of VoIP providers may find it very difficult
2 to continue to purchase stand-alone DSL.

3 **Q: Please discuss Comcast's pricing strategy.**

4 **A:** Comcast's pricing strategy indicates that Comcast does not consider VoIP
5 providers to be competitors because Comcast's prices for bundles that include
6 voice service are higher than customers' total cost of using independent VoIP
7 providers' services. For example, where Comcast offers telephone service, its
8 voice and data package is set at \$69.00, while a Vonage customer would have to
9 pay only \$67.94 (the sum of a stand-alone modem charge of \$42.95 and the
10 Vonage rate of \$24.99). Second, the Comcast "triple play" offer (i.e., voice, data
11 and internet) is \$99.00, while a Vonage customer could put together a triple
12 package for \$81.83 (the sum of a data and video Comcast package of \$56.84 and
13 the Vonage rate of \$24.99). Given that Comcast is not regulated and thus is free
14 to change its prices, it is reasonable to conclude that Comcast does not consider
15 the Vonage service a competitive alternative to the services Comcast provides.

16 **Q: Are there any other factors that limit the market for VoIP telephone
17 providers in the Petitioner's service territories?**

18 **A:** Yes. The TDS companies do not sell DSL service on a stand-alone basis.¹⁸ Thus,
19 TDS customers would have to buy local service twice, once from the TDS carrier
20 and a second time from the VoIP provider, if the customer decided to use the
21 VoIP provider as her telephone service provider.

¹⁸ Company Response to OCA 1-2.

1 **Q: Are there any other indicators of the availability of VoIP telephone service in**
2 **the Petitioner's service territories?**

3 **A:** Yes. In order to use a VoIP telephone service, it is first necessary to purchase a
4 broadband connection. Such a connection is either DSL service from a telephone
5 company or cable modem service from a cable company. Currently, only

6 <<**Begin Confidential** **End Confidential**¹⁹ >>

7 subscribe to DSL service. I do not know the number of cable modem subscribers
8 in the TDS service territories, and therefore cannot provide an estimate of the
9 percentage of customers with access to VoIP telephone service in the TDS service
10 territories. However, in the state of New Hampshire, as of June 2006, the
11 percentage of wireline customers subscribing to a broadband connection was only
12 36.9 percent.²⁰

13 **Q: Please summarize your discussion of competitive broadband availability?**

14 **A:** Competitive broadband service is not available to majority of the retail customers
15 in each exchange in every TDS service territory. First, Mr. Reed does not provide
16 evidence at the exchange level to support this claim. Instead, he provides
17 evidence that some service is available in each exchange and that the 50 percent is
18 met on the service territory level. Second, Mr. Reed assumes that if a DSL
19 service or cable modem service is available then competitive broadband service is
20 available to the customers. However, the competitive broadband service is
21 available only if the customer has already purchased the underlying required
22 broadband connection. The best indicators of the purchase of broadband

¹⁹ Company Response to OCA 2-1.

²⁰ FCC, High-Speed Service for Internet Access: Status as of June 30, 2006, Table 13; FCC, Local Telephone Competition: Status as of June 30, 2006, Table 7.

1 connections support the conclusion that less than 50 percent of retail customers
2 have access to the competitive broadband service. In addition, a competitive
3 alternative is available only if the competitors appear to be able to sustain their
4 position in the market. Because competitors are struggling due to the results of
5 recent court decisions, and there is a price squeeze between the price of stand-
6 alone DSL and ILEC retail prices, it appears that these competitors may not able
7 to sustain their position in the market.

8 **Q: How does Mr. Reed demonstrate that wireless service is available to the**
9 **Petitioner's customers?**

10 **A:** In Attachments A through D to his testimony, Mr. Reed lists the number of
11 wireless carriers that he believes operate in each TDS service territory.

12 **Q: Does the fact that wireless service is available equate to the criterion of**
13 **available competitive wireless service?**

14 **A:** No. For wireless service to be competitive to TDS's service, customers must
15 consider these services to be substitutes. If customers consider wireless and
16 wireline services to be complements instead of substitutes, then wireless
17 availability is not the equivalent of the availability of competitive wireless
18 service.

19 **Q: What is the difference between substitutes and complements for a service?**

20 **A:** When services are substitutes one service would be used instead of the other
21 service. When services are complements one service would be used in
22 conjunction with the other service rather than as a replacement. More formally, if
23 services are substitutes, when the price of the first service increases, the quantity

1 demanded of the second service would increase as consumers replace the usage of
2 the first service with the second. If services are complements, when the price of
3 the first service increases, the demand for the second service decreases as
4 consumers conserve on the usage of both of the services. The classic example of
5 complements is peanut butter and jelly. However, if you are hungry enough these
6 two delicacies can become substitutes. Thus, whether goods and services are
7 substitutes or complements can depend on how individuals use them.

8 **Q: Has Mr. Reed demonstrated that a majority of the customers consider**
9 **wireless service a substitute for wireline service?**

10 **A:** No. Mr. Reed asserts that some customers have cut the cord and use only wireless
11 service,²¹ but he has not provided an estimate of how many customers are
12 wireless only customers.²² He infers from the fact that some number of
13 customers are wireless only customers that wireless is a competitive substitute for
14 wireline service.²³ As with the Petitioners' analysis of cable availability, this
15 inference is not substantiated.

16 **Q: Are wireless and wireline services substitutes or complements?**

17 **A:** For a small minority of customers, these services are substitutes. However, for
18 the overwhelming majority of customers, these services are complements. A
19 major indicator of the percent of customers for whom the services are substitutes
20 is the percent of households that have cut the cord. The latest national estimate of
21 wireless only homes concludes that approximately 12.8 percent of American

²¹ Reed testimony, page 4, lines 14-16.

²² Company Response to Staff 1-10

²³ Company Response to Staff 1-5.

1 households have cut the cord.²⁴ At the same time, approximately 86.2 percent of
2 American households have wireless service, and approximately 84.5 percent of
3 American households have wireline service.²⁵ These data imply that over 70
4 percent of American households purchase both wireless and wireline services,
5 indicating that wireless is not a substitute (i.e., competitive) service for a majority
6 of customers.

7 **Q: Is there another indicator that a competitive alternative is not available to a**
8 **majority of the Petitioners' customers?**

9 **A:** Yes. The fact that the Petitioners' Plan includes the ability to increase local rates
10 by up to ten percent in any year indicates to me that the Petitioners do not believe
11 that competition is available for a majority of its customers, and that the
12 Petitioners are willing and able to exercise market power.

13 **Q: Does NH RSA 374:3-b allow carriers to propose plans that include a 10**
14 **percent increase in basic rates in each of the four years after a plan is**
15 **approved?**

16 **A:** Yes. The law allows a carrier to propose such a plan, but the law does not
17 mandate that the plan include such rate increase authority. A carrier can propose
18 a plan with a more limited rate increase authorization. Carriers that believe that
19 majority of their customers have competitive alternatives would realize that such
20 increases would reduce rather than increase their profits, and therefore realize that
21 it is counter-productive to request the authority to increase rates by up to 10
22 percent per year.

²⁴ <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf>

²⁵ "Cellphone-only Homes Hit a Milestone," By Alex Mindlin, New York Times, August 27, 2007.

1 **Q: Why does a 10 percent rate increase indicate market power?**

2 **A:** Under the Department of Justice and Federal Trade Commission merger
3 guidelines, if a company can sustain a small but significant price increase then the
4 company has market power.²⁶ The general guideline for determining a small but
5 significant price increase is a one-time five percent increase.²⁷ The Petitioner's
6 Plan would allow for increases much greater than the guideline because the Plan
7 would allow a 10 percent increase for each of four years or as high as 46 percent
8 increase on a cumulative basis. On top of that increase, the Petitioners believe
9 that it can increase rates again in the fifth year of the Plan to a maximum
10 allowable rate of either \$14.39 or \$15.67.²⁸ This additional increase could lead to
11 cumulative increases of 54, 55 and 114 percent in three of the Petitioner's 16
12 exchanges.²⁹

13 **Q: Do you agree with Mr. Reed that the decrease in access lines indicates the**
14 **availability of competitive services to a majority of the Petitioner's retail**
15 **customers?**

16 **A:** No. Mr. Reed has not shown that the decrease in access lines indicates the
17 availability of competitive services to majority of retail customers. The decrease
18 in access could be occurring for several reasons. The decrease could have been
19 directly related to the increase in TDS DSL sales. The increase in DSL sales of
20 <<Begin Confidential End Confidential>> from December 2003 to
21 June 2007 more than offset the decrease of 3,617 access lines over that same

²⁶ http://www.usdoj.gov/atr/public/guidelines/horiz_book/hmg1.html;

²⁷ Gregory J. Werden, "Demand Elasticities in Antitrust Analysis," 66 Antitrust L.J. 363 (1998);

²⁸ Company Response to OCA 2-11.

²⁹ Exhibit RL-6

1 period.³⁰ Customers with multiple lines could have been reducing lines dedicated
2 to Internet dial-up service and replacing them with TDS DSL service. The trend
3 in customers reducing their additional lines has been recorded by the FCC on a
4 national level. Between 2001 and 2005, residential lines decreased by 19.6
5 million.³¹ Non-primary residential decreased by 14.2 million, indicating that 72
6 percent of the reduction in residential lines is associated with a decrease in non-
7 primary lines.³² The decrease in non-primary lines reduced the percentage of
8 non-primary lines of total residential from 21 percent in 2001 to 11 percent in
9 2005.³³

10 In addition, TDS NH business access lines decreased faster than TDS NH
11 residential access lines from December 2004 to August 2007.³⁴ This pattern
12 contradicts Mr. Reed's discussion because he focuses on cable, VoIP and wireless
13 service. These services are generally highlighted in discussions of residential
14 access line losses rather than discussions of business access line losses. On the
15 other hand business line losses are generally associated with CLECs providing
16 services using UNE loops. Because there are no CLECs operating in the TDS
17 service territories and because Mr. Reed's alleged competitors focus on
18 residential service, the expected result is that residential line losses should have
19 been substantially greater than the business line losses.

³⁰ Confidential Exhibit RL-3 and Exhibit RL-4.

³¹ Exhibit RL-5

³² Id.

³³ Id.

³⁴ Company Response to Staff 2-3 and Staff 2-4.

1 **Q: Do you agree with Mr. Reed that the FCC's order granting ETC status to a**
2 **wireless carrier indicates that there is competition in the TDS NH service**
3 **areas?**

4 **A:** No. The order confirms that RCC Minnesota, Inc. and RCC Atlanta, Inc.
5 (collectively, "RCC") provides the nine supported services and is eligible to
6 receive universal service support.³⁵ The order does not limit the total number of
7 lines supported by the federal universal service fund. That is, a customer can
8 purchase a supported line from TDS and a supported line or line equivalent from
9 RCC. In that case, the customer would perceive the services as complements and
10 not as competitive services.

11 **Q: Please summarize your criticisms of Mr. Reed's testimony.**

12 **A:** My major criticism of Mr. Reed's testimony is that the testimony failed to
13 demonstrate that competitive wireline, wireless, and broadband service is
14 available to a majority of the retail customers in each of the exchanges served by
15 the TDS companies. With regard to wireline service, there are no cable
16 companies or CLECs providing telephone service in any TDS company service
17 territory. With regard to wireless service, this service is still considered to be
18 complement to wireline service by over 70 percent of customers nationally, and
19 we do not have data specific to these exchanges. Therefore, wireless service is
20 not a competitive service to a majority of customers. With regard to broadband
21 service, fewer than 50 percent of New Hampshire customers purchase a
22 broadband connection, and therefore, less than a majority of customers have

³⁵ In the Matter of Federal-State Joint Board on Universal Service, RCC Minnesota, Inc., and RCC Atlanta, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire, CC Docket No. 96-45, *Order*, Released October 7, 2005, DA 05-2673, ¶¶ 13-17.

1 access to a competitive broadband service. In addition, because the company is
2 requesting the authority to increase rates by a maximum of 10 percent per year for
3 the next four years, this indicates to me that the Petitioner does not believe that
4 competition is available for a majority of its customers, and that the Petitioner is
5 willing and able to exercise market power.

6

7 **IV. THE TESTIMONY OF MR. TIMOTHY W. ULRICH**

8 **Q: Please summarize the testimony of Mr. Timothy W. Ulrich.**

9 **A:** Mr. Ulrich discusses the details of the TDS AFOR Plan. He highlights the need
10 for additional pricing flexibility in the allegedly competitive environment. He
11 notes that the Plan would facilitate a transition to a competitive
12 telecommunications environment. He discusses the pricing provisions of the Plan
13 including the impact of exogenous changes on prices. He describes a list of rules
14 that he believes the TDS companies should adhere to during the course of the
15 Plan. He suggests that the TDS companies are fulfilling their obligations as
16 wholesale providers of telecommunications services and that the TDS carriers will
17 continue to provide universal service at affordable rates.

18 **Q: Do you agree with Mr. Ulrich that the TDS companies need additional**
19 **pricing flexibility at the present time?**

20 **A:** No. I disagree with Mr. Ulrich because, as I discussed above, competitive
21 substitutes (i.e., competition) does not exist for a majority of TDS' retail
22 customers at the present time. However, even if competition existed, Mr. Ulrich's
23 claim is not supported by the TDS companies' conduct or the Commission's

1 oversight of that conduct. The carriers have rolled out three bundled service
2 offerings, Total Talk in 2004, Smart Pack and Smart Pack Lite in 2006. Since the
3 introduction of these services, the TDS companies have not requested any
4 changes in the rates for these bundles.³⁶ The failure to request a change could
5 mean one of several things: the price was set perfectly; the alleged increase in
6 competition has not affected the market conditions since the time the rates were
7 proposed; or the regulatory process for changing the price is so burdensome that
8 TDS prefers to live with an improper price rather than attempt to request a
9 change.

10 **Q: Is there any indication that there is a high regulatory burden associated with**
11 **changing prices for bundles of telephone services?**

12 **A:** No. In the past, the Commission has acted promptly in its review of bundle
13 prices. For example, the TDS carriers filed a petition for Total Talk rates on
14 September 14, 2004 and the Commission issued Order No. 24,383 approving the
15 proposed rates on October 8, 2004.

16 **Q: Are the TDS carriers burdened by the fact that the Commission may**
17 **establish a price floor on bundle services related to the retail rate of**
18 **regulated basic services?**

19 **A:** No. Because TDS is the dominant firm in the market, the Commission must
20 ensure that its rates are not too low. Extremely low rates would create a subsidy
21 from basic service customers to customers purchasing the bundles. At the same
22 time, the extremely low rates would negatively impact the ability of potential

³⁶ Company Response to Staff Data Request No. 1-48.

1 competitors to enter the market. Ensuring that rates are above a certain price
2 means that the Commission cannot rely on the market to establish reasonable
3 rates.

4 **Q: Will the proposed Plan facilitate the transition to a competitive**
5 **telecommunications market?**

6 **A:** No. The proposed Plan will not facilitate the transition to a competitive market.
7 Instead, it will retard the development of that market. This negative impact on
8 competition occurs because the Plan allows the carriers to increase the rates for
9 basic services and decrease rates for bundles. When competition enters formerly
10 monopoly markets, the competitors have generally aimed their services at
11 customers willing to buy a bundle of services. Very few of these competitors
12 provide a service offering that competes with the basic local exchange service
13 rate. Thus, an increase in the TDS basic service rates means that customers, who
14 will have no alternative for that service when competitors enter the market, pay a
15 lot more for their services, while TDS customers interested in purchasing bundles
16 would receive discounts. This shift in relative prices requires basic service
17 customers to provide the cash to support the carrier, while the burden of
18 supporting the carrier is removed from other customers. Because it is one of the
19 tasks of regulation to ensure that basic service rates reflect rates that would exist if
20 there were competition in the basic service market, approval of a plan that allows
21 for a shift in the relative rates not only denies the basic service customers the
22 benefits of competition, but may in the long run deny non-basic service customers

1 the benefits of competition if the granting of price flexibility allows current
2 dominant carriers to prevent potential competitors from entering.

3 **Q: Do you agree with Mr. Ulrich that the Plan will maintain universal service at**
4 **affordable rates?**

5 **A:** No. The Plan allows the carriers to increase rates substantially, with the potential
6 for harming the provision of universal service at affordable rates. For example,
7 the Plan allows rates to increase by 7 to 8 percent in two exchanges, 28 to 30
8 percent in 8 exchanges, 39 to 42 percent in three exchanges and greater than 50
9 percent in three exchanges.³⁷ The national increase in local rates for the period of
10 2000 to 2005 was only 8 percent.³⁸ Thus, the Plan allows rates to increase
11 substantially faster than the national trend in all but two exchanges.

12 **Q: Do you agree with Mr. Ulrich's assertion that the Plan fulfills the TDS**
13 **companies' obligations as a supplier of wholesale services?**

14 **A:** Based upon the information provided by the Petitioners, I agree that the TDS
15 companies are fulfilling their current obligations. However, those obligations are
16 associated with carriers that provide services to customers who do not have
17 competitive alternatives. If the Plan is designed to facilitate the transition to a
18 competitive telecommunications market, then the Plan is insufficient because it
19 does not remove the exemption from the provision of UNEs that the TDS carriers
20 are operating under (i.e., the "Rural Exemption").³⁹ In particular, the TDS

³⁷ Exhibit RL-6

³⁸ FCC, Trends in Telephone Service, February 2007, Table 13.1 Average Residential Rates for Local Service in Urban Areas, 1986-2005.

³⁹ 47 U.S.C. 251(f)(1)(A).

1 companies do not have the duty to provide UNEs for loops or collocation services
2 to a requesting telecommunications carrier.

3 **Q: Are there any competitive local exchange companies (“CLECs”) operating in**
4 **the Petitioners’ service territories?**

5 **A:** No. TDS admits that “there are no CLECs serving customers in Petitioners’
6 territories.”⁴⁰

7 **Q: Would TDS be able to fulfill its obligations if it offered UNEs and adopted**
8 **the current Verizon NH UNE rates?**

9 **A:** If TDS agreed to offer UNEs and adopt the current Verizon NH UNE rates that
10 would fulfill the duty to provide UNEs to competitors. However, it is important
11 to note that Verizon’s rural UNE line charge is \$25.⁴¹ This rate is above all of the
12 TDS residential rates, and is higher than the business rate in 14 of 16 TDS
13 business exchanges.⁴² Thus, competitors purchasing UNE loop services at the
14 rural rate would not be able to compete with TDS, and thus, the offer would not
15 alter the fact that majority of TDS’ retail customers do not have competitive
16 services available to them. If a goal of the AFOR statute is to facilitate
17 competition, TDS retaining the rural exemption clearly contradicts with that goal
18 and will limit competitive alternatives for retail customers.

⁴⁰ Company Response to OCA 1-20.

⁴¹ Verizon New England Inc., NHPUC Tariff No. 84, Miscellaneous Network Services, Part M, Section 2, Page 5.

⁴² Exhibit RL-6.

1 **V. CONCLUSIONS AND RECOMMENDATIONS**

2 **Q:** Please summarize your conclusions.

3 **A:** I have concluded that:

- 4 • Competitive wireline, wireless or broadband service is not available to
- 5 a majority of TDS retail customers.
- 6 • For the majority of TDS retail customers, wireline and wireless
- 7 services are not substitutes. Instead, these services are complements.
- 8 • Cable telephone service is not available in the NH TDS service
- 9 territories.
- 10 • Independent VoIP providers are not offering a viable competitive
- 11 service to the majority of TDS retail customers.
- 12 • The proposed allowed rate increases are much higher than the national
- 13 rate of increase and are anti-competitive. Such rate increases could
- 14 endanger the provision of universal service at affordable rates.
- 15 • The adoption of Verizon UNE rates by TDS would not support
- 16 competitive entry into the TDS markets.

17 **Q:** **Please summarize your recommendations.**

18 **A:** I recommend that the Commission reject the petition to establish an AFOR Plan
19 for the TDS companies because competitive wireline, wireless or broadband
20 service is not available to a majority of TDS retail customers, and because the
21 Plan endangers the provision of universal service at affordable rates.

22 **Q:** **Does this conclude your testimony?**

23 **A:** Yes.