

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

September 27, 2010 - 9:30 a.m.
Concord, New Hampshire

REDACTED

FOR PUBLIC USE

RE: DT 07-027

NHPUC NOV19'10 PM12:54

KEARSARGE, WILTON, HOLLIS, MERRIMACK
COUNTY TELEPHONE COMPANIES:
Petition for an Alternate Form of
Regulation.

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. Kearsarge Telephone Co. and
Merrimack County Telephone Co.:
Harry N. Malone, Esq. (Devine, Millimet...)
Frederick C. Coolbroth, Esq. (Devine...)

Reptg. Intervenor Daniel Bailey:
Daniel Feltes, Esq. (N.H. Legal Assistance)
Alan Linder, Esq. (N.H. Legal Assistance)

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Rorie E. P. Hollenberg, Esq.
Stephen R. Eckberg
Office of Consumer Advocate

Reptg. PUC Staff:
Matthew J. Fossum, Esq.
Kate Bailey, Director - Telecom Division
Michael Ladam, Telecom Division

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

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OF THOMAS E. MURRAY BY:**

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KTC-MCT 14C	Affidavit of Thomas E. Murray Re: KTC (CONFIDENTIAL)	premarked
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P R O C E E D I N G

1
2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll open the hearing in Docket DT 07-027. I
4 apologize for the delay. I wanted to make sure I had all
5 of the paperwork that's been filed in the last week or so.
6 In terms of procedural background, I'll point out that the
7 Commission issued Order 25,103 on May 14, 2010. That
8 order denied the request for approval of Alternative
9 Regulation Plan for Merrimack County Telephone Company,
10 and allowed additional time for evidence regarding
11 competitive wireline service in the Kearsarge Telephone
12 Company exchanges. Pursuant to that order, on June 11,
13 2010, TDS submitted an affidavit of Thomas Murray. And,
14 we issued an order on July 15 that approved a procedural
15 order setting a hearing on additional evidence.

16 Well, before I go through the motions,
17 let's just get the appearances on the record, and then
18 I'll go through the various motions.

19 MR. MALONE: Good morning, Mr. Chairman.
20 I'm Harry Malone, of Devine, Millimet, on behalf of the
21 Petitioners, Kearsarge Telephone Company and Merrimack
22 County Telephone Company.

23 CHAIRMAN GETZ: Good morning.

24 MR. MALONE: Good morning.

1 MR. FELTES: Good morning, Mr. Chairman,
2 Commissioners. My name is Dan Feltes, a staff attorney
3 with New Hampshire Legal Assistance. I'm here on behalf
4 of Intervenor Daniel Bailey. With me at counsel table is
5 co-counsel Alan Linder, and behind us is Dr. Ben Johnson.
6 Thank you.

7 CHAIRMAN GETZ: Good morning.

8 MS. HOLLENBERG: Good morning. Rorie
9 Hollenberg, Meredith Hatfield, and Stephen Eckberg, here
10 for the Office of Consumer Advocate.

11 CHAIRMAN GETZ: Good morning.

12 MR. FOSSUM: And, good morning. Matthew
13 Fossum, for the Staff of the Public Utilities Commission.
14 And, with me this morning are Kate Bailey and Michael
15 Ladam from Commission Staff.

16 CHAIRMAN GETZ: Okay. Good morning.

17 MR. MALONE: Excuse me, Mr. Chairman. I
18 would also like to mention that with me today is Fred
19 Coolbroth, of Devine, Millimet, also on behalf of
20 Kearsarge and Merrimack; Thomas E. Murray, of TDS Telecom,
21 and Bryan Woltman of TDS Telecom.

22 CHAIRMAN GETZ: Good morning. Well, let
23 me hopefully start with the easiest things first. I think
24 there's four sets of motions that I want to talk to

1 briefly. One begins with the -- it's the Motion to Quash
2 certain data requests that was filed by the Office of
3 Consumer Advocate with respect to data requests made by
4 Staff to Comcast. And, there were some -- a number of
5 exchanges on that issue. And, on September 23, Staff
6 filed a letter withdrawing the requests.

7 Is there -- is it fair for me to
8 conclude that that is a moot issue? That we don't have to
9 speak to that further?

10 MS. HOLLENBERG: Yes.

11 MR. FELTES: Yes.

12 MR. FOSSUM: Yes.

13 CHAIRMAN GETZ: And, Mr. Malone?

14 MR. MALONE: That's correct.

15 CHAIRMAN GETZ: Okay. So, we're in
16 agreement on that. Thank you. We also have, and I just
17 want to -- I don't want to get into the substance of the
18 issues, I just want to make sure we have a command of all
19 the paperwork. We have a Motion for Leave to File
20 Proposed Findings and Rulings that was made by New
21 Hampshire Legal Assistance on September 20, and we have an
22 opposition to that motion that was filed by TDS on
23 September 22nd. And, I believe that's all that we have on
24 that issue. Is there anything that I've missed on that

1 motion?

2 MS. HOLLENBERG: We did not file a
3 response, because we concurred with the request.

4 CHAIRMAN GETZ: Okay. Thank you. And,
5 we also have the TDS Motion to Strike Testimony of
6 Mr. Johnson -- Dr. Johnson that was filed on
7 September 22nd, and we have an objection by New Hampshire
8 Legal Assistance that was filed on September 24. And, I
9 believe that is everything that we've seen so far to that
10 issue?

11 MR. FELTES: Mr. Chairman, New Hampshire
12 Legal Assistance and the Intervenor Bailey did file a
13 Motion in Limine on September 23rd, but that would go to
14 the potential responses to Staff data requests. And,
15 we'll just note that that motion that was filed is also
16 moot as a consequence of the withdrawal of the data
17 requests.

18 CHAIRMAN GETZ: So, you're going back to
19 issue that I raised in the line of arguments about the
20 Motion to Quash?

21 MR. FELTES: Yes. Exactly. But we,
22 yes, we made an additional filing, in the event that
23 Motion to Quash wasn't granted, so the Commissioners could
24 have it in advance of the hearing. But that issue is also

1 moot, that motion is moot, because the data requests have
2 been withdrawn. Just wanted to point out there was an
3 additional filing.

4 CHAIRMAN GETZ: Okay. And, then, I also
5 have the -- so, we have the Motion to Strike the Murray
6 testimony, Motion in Limine that was filed on
7 September 24, and I guess we need to provide an
8 opportunity to the Company to respond to that. Does
9 anybody -- well, let's do that. We have the Motion in
10 Limine to strike portions of the Rebuttal Testimony of
11 Thomas E. Murray that was filed on Friday. Does the Legal
12 Assistance or Staff want to speak to that motion, before I
13 give TDS an opportunity to respond?

14 MR. FOSSUM: Staff has no response to
15 that motion.

16 CHAIRMAN GETZ: Mr. Feltes.

17 MR. FELTES: Chairman Getz, Intervenor
18 Bailey does support the OCA's Motion to Strike. We do
19 think that the cited portions are new testimony, new
20 supplemental testimony, rather than rebuttal testimony.
21 And, specifically, we want to point out Exhibit TEM-15C,
22 which involves number porting information from the
23 exchange of Meriden, which is decidedly new testimony.
24 So, we support the OCA's motion. And, thank you.

1 CHAIRMAN GETZ: Okay. Mr. Malone.

2 MR. MALONE: Thank you, Mr. Chairman.

3 As we summarize it, Mr. Eckberg's testimony criticized Mr.
4 Murray's method of providing printouts of the Comcast
5 authorized dealer websites as evidence that Comcast was
6 offering telephone service in the Kearsarge and Merrimack
7 exchanges. And, he also attacked the credibility of
8 Mr. Murray's results, particularly in regard to the fact
9 that Mr. Murray did not use an address-specific approach
10 when he was looking for these offerings. And, his
11 testimony can pretty well be summed up by his statement on
12 the first -- second page of his testimony where he said
13 "The conclusion I reach is that I cannot replicate this
14 information in a reliable manner." And, the statement can
15 be read two ways: Either Mr. Eckberg is confessing to the
16 technical limitations of the system he was working with.
17 Or, in his opinion, that information is not reliable and
18 cannot be replicated "period". And, I think it's obvious
19 that it's the latter, meaning that he intended,
20 considering that he's testifying not as a private citizen
21 talking about "surfing the Web", but as a utility analyst
22 for a State agency testifying as OCA's expert.

23 And, we can review some of the other
24 things that he said. He said that, on Page 4 of his

1 testimony, he said "A printout of a webpage may produce a
2 hard copy output that is somewhat different than what one
3 actually sees on the computer screen." In response --
4 and, on Page 6 of his testimony, in response to a question
5 as to whether "the information provided on those websites
6 [was] from Comcast?" He said, "I'm not certain." On Page
7 7, he said "There is no way to tell from the Company's
8 filing if the information that is available from this
9 non-Comcast website is as accurate or as up-to-date as the
10 information that is available directly on Comcast's
11 official website." And, finally, on Page 8, you know, he
12 says "I question the reliability" -- or "I...question the
13 reliability of the printouts in Attachment A." And,
14 finally, in regarding to a strawman search that he put
15 together, regarding typing in changes to the address line,
16 he said "The results are nonsensical."

17 So, in summary, we have Mr. Eckberg's
18 testimony that the information that Mr. Murray provided is
19 not as reliable, not as accurate, and not as current as
20 screenshots taken from Comcast's website, and may, in
21 fact, be "nonsensical". And, now, we have a Motion to
22 Strike that essentially states that "TDS should not be
23 permitted to challenge these statements in a practical
24 way."

1 If we were not to produce comparisons,
2 screenshots, the way Mr. Eckberg has suggested, including
3 address-specific screenshots the way he suggested, the
4 only other thing that we could do would be to walk him
5 through in cross-examination.

6 You know, the OCA, in their motion, has
7 said that "rebuttal evidence is given to explain, repel,
8 counteract or disprove facts." And, that's exactly what
9 Mr. Murray did. To establish the reliability of his
10 original evidence within the frame work that Mr. Eckberg
11 himself suggested, using address-specific searches, he
12 produced evidence that demonstrates that what he filed
13 with his affidavits in June is comparable or identical to
14 the information that you could get directly from Comcast's
15 website. And, that's all he's doing, no more, no less,
16 demonstrating the validity of the information that he
17 provided in June. And, even if OCA, I mean, they make
18 reference to the "hundreds of pages" that we've provided,
19 but it's the only way that you're going to produce
20 screenshots, you know, of screens that can run for a
21 number of pages, rather than printouts.

22 OCA had the opportunity to question Mr.
23 Murray about his rebuttal testimony at the technical
24 session following the submission of his testimony. And,

1 it's a technical session that was scheduled specifically
2 for that purpose, and they didn't do that; instead, they
3 filed a Motion to Strike.

4 So, we believe that Exhibits TEM-5
5 through TEM-13 provide, you know, simply a comparison,
6 according to Mr. Eckberg's specifications, that
7 establishes the validity of the exhibits that he filed in
8 June. And, as another matter, they also established that
9 there is a \$19.99 entry rate, and that's responsive to
10 Pages 7 through 9 of Dr. Johnson's testimony.

11 Finally, thank you, regarding the
12 porting info, we believe that that should stay in the
13 record as simply an update, refreshing the record on -- as
14 to the porting information that we provided in the
15 original affidavit in June. Thank you.

16 CHAIRMAN GETZ: Thank you.

17 MS. HOLLENBERG: Excuse me, are we --

18 (Chairman and Commissioners conferring.)

19 CHAIRMAN GETZ: Okay. I think, at this
20 point, what we are going to do is take a brief recess.
21 We've heard both sides of all the motions, and, especially
22 given that we've just heard a response on the Motion to
23 Strike the Murray testimony, we're going to take, I hope,
24 a fairly brief recess, and to see if we can have some

1 findings before we get into the cross-examination of the
2 testimony.

3 So, with that, we're going to take a
4 brief recess.

5 MS. HOLLENBERG: Excuse me. If I might
6 just make, as it is the OCA's motion, if I may just make a
7 couple of points in response to the Company's response,
8 which I've just heard this morning?

9 CHAIRMAN GETZ: Okay. Well, let me stop
10 you right there then. What I want to do is make sure all
11 the motions we're going to have equal number of rounds of
12 opportunity. With that response, everybody has spoken to
13 their motion and everybody has had a chance to respond.
14 If you're going to -- if you need an opportunity to
15 respond there, then we're going to reopen all the other
16 motions for another round of argument.

17 MS. HOLLENBERG: I guess I don't
18 understand. I'm not following you, but --

19 CHAIRMAN GETZ: Well, you had -- you
20 made a motion, opposing party made a response. There's no
21 right to a third round. If we're going to provide a third
22 round to you, then I want to make sure that all the other
23 motions, everybody has had equal opportunity to make an
24 additional round of argument. We've got different parties

1 making different motions in the first instance. So, I
2 guess, --

3 MS. HOLLENBERG: Okay.

4 CHAIRMAN GETZ: -- if you feel a need to
5 make an argument, a third round of argument on this issue,
6 then you may proceed. But, then, I'm just going to reopen
7 the other arguments.

8 MS. HOLLENBERG: Well, then, I guess my
9 response will be that I respectfully disagree that, as a
10 proponent of the motion, that we do not have, at least as
11 far as the Commission's practice goes, the right to
12 respond to the response to our motion. And, I would just
13 object for the record. Thank you.

14 CHAIRMAN GETZ: So, you're objecting on
15 a procedural basis, but you're not going to speak to the
16 substance? Or, you're just saying that you disagree with
17 what Mr. Malone just said?

18 MS. HOLLENBERG: I'm saying that I
19 disagree that my response would entitle them to another
20 response. So, I'm just objecting to that.

21 CHAIRMAN GETZ: No -- well, that's where
22 we've got some confusion here. What I'm saying is, if you
23 want to respond to Mr. Malone on your motion, on the
24 Motion to Strike the Murray testimony, then I'm going to

1 let Mr. Malone respond on the Legal Assistance objection
2 to strike the Johnson testimony.

3 MS. HOLLENBERG: I see. I'm sorry, I
4 misunderstood that. So, I will let the record speak for
5 itself. And, to the extent that we disagree with the
6 ruling on the motion, we'll take appropriate action at
7 that time.

8 CHAIRMAN GETZ: Okay.

9 MS. HOLLENBERG: Thank you.

10 CHAIRMAN GETZ: As will we. Let's take
11 a recess.

12 (Whereupon a recess was taken at 9:47
13 a.m. and the hearing resumed at 10:11
14 a.m.)

15 CHAIRMAN GETZ: Okay. We're back on the
16 record. And, we're going to address the two pending
17 Motions to Strike. Before I do that, let me just make one
18 point clear that I think that comes up in at least one of
19 the motions is, in this phase of the proceeding we are
20 dealing only with the Kearsarge information. We will not
21 be dealing with the Merrimack issues. So, it's going to
22 be strictly with the Kearsarge issues, and that's
23 consistent with our order from May 14.

24 All right. First, with respect to the

1 TDS Motion to Strike portions of the Rebuttal Testimony of
2 Ben Johnson, we deny that motion. So, we will proceed
3 with the cross-examination of Dr. Johnson when we come to
4 that portion of the hearing today.

5 With respect to the Motion to Strike the
6 Murray Rebuttal, we've looked at the rebuttal testimony,
7 we've considered the Motion to Strike and the reply by
8 Mr. Malone this morning, and we're going to deny that
9 Motion to Strike. It appears, on what we've heard, that
10 the rebuttal testimony is truly rebuttal testimony,
11 primarily to what Mr. Eckberg had to say in his testimony,
12 and not new evidence. I'd also point out, in the context
13 of the Motion to Strike, an argument is made that "the
14 Commission should not countenance TDS's attempt to present
15 its case through rebuttal", and it cites a Commission
16 order, "71 NHPUC 547 at 549". And, the language in that
17 order says that "The Commission will not countenance a
18 party's attempt to present its entire case in rebuttal",
19 and that's not the situation we have before us, because
20 there was testimony or affidavits previously filed by Mr.
21 Murray.

22 Having said that, in our deliberations,
23 we will be looking very closely at the issue of what
24 constitutes "fair rebuttal" and what might constitute "new

1 evidence", as we do when we are performing our
2 deliberations on most cases. But, for the purposes of the
3 motion before us, we're denying the motion, and we'll
4 proceed with the opportunity for cross-examination on that
5 testimony.

6 MS. HOLLENBERG: And, if I could just
7 respectfully preserve my objection to the Commission's
8 ruling on our Motion to Strike.

9 CHAIRMAN GETZ: Okay.

10 MS. HOLLENBERG: Thank you.

11 CHAIRMAN GETZ: Your exception is noted.
12 Are there any other procedural issues or other issues we
13 need to address, before we hear from the TDS witness? Mr.
14 Linder?

15 MR. LINDER: I assume then that the
16 Commission will be taking up at the end of the hearing the
17 Motion for Findings and Rulings?

18 CHAIRMAN GETZ: And, by "taking it up",
19 what do you mean? Ruling on the motion?

20 MR. LINDER: Yes. Yes.

21 CHAIRMAN GETZ: Yes. Before we close
22 the hearings, we'll address that motion. I'm assuming we
23 don't need to do that before we proceed with the
24 cross-examination of witnesses, is that fair?

[WITNESS: Murray]

1 MR. LINDER: Yes. Yes, sir.

2 CHAIRMAN GETZ: All right. If there's
3 nothing else, then, Mr. Malone.

4 MR. MALONE: Yes. Thank you. I'd like
5 to call Mr. Murray to the stand please.

6 CHAIRMAN GETZ: And, is the -- well, let
7 me ask this question of the witnesses. Please proceed.
8 Is the plan to have him adopt both rounds of testimony and
9 then to cross on both rounds of testimony?

10 MR. MALONE: Yes, Mr. Chairman.

11 CHAIRMAN GETZ: All right. Please
12 proceed.

13 (Whereupon *Thomas E. Murray* was duly
14 sworn and cautioned by the Court
15 Reporter.)

16 **THOMAS E. MURRAY, SWORN**

17 **DIRECT EXAMINATION**

18 BY MR. MALONE:

19 Q. All right. Would you please state your name and
20 business address.

21 A. My name is Thomas E. Murray. My business address is 24
22 Depot Square, Northfield, Vermont, VT., 05663.

23 Q. And, by whom are you employed and in what capacity?

24 A. TDS Telecom. And, my title is Manager of State

[WITNESS: Murray]

1 Government Affairs. I handle state government affairs
2 for Vermont, Maine, New Hampshire, and Maine -- New
3 York.

4 Q. And, have you testified previously before this
5 Commission?

6 A. Not on the stand.

7 Q. I'm going to show you a copy marked "Exhibit 14P".
8 And, that's entitled the "Affidavit of Thomas E. Murray
9 regarding Kearsarge Telephone Company", consisting of
10 23 pages, including text and attachments that have been
11 premarked as "KTC-MCT 14P". Can you identify that?

12 A. Yes. This is the Exhibit 14P.

13 MR. MALONE: All right. That exhibit
14 has been -- copies have been delivered to the parties, as
15 well as the Court Reporter and the Clerk.

16 BY MR. MALONE:

17 Q. Was this affidavit submitted in response to the
18 Commission's Order Number 25,103 dated May 14th, 2010
19 in this docket?

20 A. Yes.

21 Q. Okay. Directing your attention to Page 26 of that
22 order, let me give you a copy of that order.

23 A. I have a copy here.

24 Q. You have a copy of that order with you?

[WITNESS: Murray]

1 A. Yes.

2 Q. Okay.

3 MS. HOLLENBERG: Excuse me, Mr.
4 Chairman. If I might, just at this moment, ask a
5 procedural question. Typically, there's a summary of
6 testimony, but we don't get into direct of the witnesses.
7 And, I'm wondering if that's something that we're going to
8 do at this hearing? Because it seems as though we're --
9 the Company's attorney is conducting a direct examination.

10 CHAIRMAN GETZ: Well, I guess we always
11 have a direct examination, I guess it's "how does it play
12 out?" And, Mr. Malone, do you have a response on what
13 your intention is?

14 MR. MALONE: Our intention is simply to
15 go through the previously filed testimony of Mr. Murray
16 and get it entered in the record.

17 CHAIRMAN GETZ: Well, I guess, when you
18 say "go through", obviously, we have prefiled affidavits
19 here and rebuttal testimony. I think Ms. Hollenberg is
20 right, we typically will allow for a brief summary,
21 because the whole purpose of prefiled written testimony is
22 that we've read it and are familiar with it. So, I don't
23 think we need to go in much detail, in terms of what he
24 filed both on June 14 and on September 20.

[WITNESS: Murray]

1 MR. MALONE: All right. Well, there are
2 a few corrections that we do need to make to some of his
3 prefiled testimony that we would like to cover.

4 CHAIRMAN GETZ: Well, please do that.

5 MR. MALONE: All right.

6 BY MR. MALONE:

7 Q. Okay. Just there's a confidential version of this
8 testimony that's also been marked as "KTC-MCT
9 Exhibit 14C", correct?

10 A. Yes.

11 Q. All right. Do you have any corrections that you wish
12 to make to Exhibit 14P and 14C?

13 A. Yes.

14 Q. Could you tell me what those are?

15 A. Hang on.

16 Q. Do you have a copy?

17 A. I do, but mine doesn't have the line numbers on it --
18 no, it doesn't. So, I'm just going to have to work
19 through that.

20 CHAIRMAN GETZ: Well, let's, just one
21 moment, because we have to figure out what's going to be
22 on the record and what -- let's go off the record for a
23 second.

24 MR. MALONE: Okay.

[WITNESS: Murray]

1 CHAIRMAN GETZ: Just so Mr. Patnaude
2 isn't struggling to record minor asides.

3 (Brief off-the-record discussion
4 ensued.)

5 CHAIRMAN GETZ: Okay. Let's go back on
6 the record then.

7 MR. MALONE: All right.

8 BY MR. MALONE:

9 Q. Mr. Murray, do you have the -- know the changes you
10 need to make to your affidavits?

11 A. I do.

12 MR. MALONE: Okay. We have marked-up
13 copies.

14 (Documents distributed.)

15 **BY THE WITNESS:**

16 A. On the first page, in the first paragraph, through the
17 course of submitting my resumé as part of the rebuttal
18 per one of the data requests, I was looking at my years
19 of service at TDS and Rural Cellular Corporation and my
20 math was off in the affidavit. So, the sentence that
21 begins with "My background includes twenty years in the
22 telecommunications field including", that number is
23 going to be "seven years of employment with TDS
24 Telecom, four years with Rural Cellular Corp." That's

[WITNESS: Murray]

1 the only change on that page. On Page 2, the third
2 item, in the affidavit we stated that this -- the
3 information was gathered from a "Comcast website", and,
4 after the submission, we recognized that it was
5 actually a Comcast Authorized Dealer. So, there's a
6 couple minor edits to synchronize that with the
7 affidavit.

8 In that third bullet, "The responsive
9 evidence presented to the Commission herein is in three
10 forms:" The sentence should read, after that:
11 "Website marketing materials offering Comcast voice
12 service". So, we've moved "Comcast" over in that
13 sentence.

14 Correspondingly, the next bullet, number
15 4, has been reworded to be more accurate with the --
16 this Comcast authorized dealer webpage. So, number 4
17 reads "KTC obtained webpage printouts from an -- from a
18 Comcast authorized dealer". So, that's the change that
19 you should have before you.

20 MS. HOLLENBERG: Excuse me please. I
21 would just like to note at this time that we object to the
22 correction of an affidavit with information that is more
23 properly provided in rebuttal. And, that this was his
24 affidavit at the time that he filed it. These statements

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[WITNESS: Murray]

1 were reflecting what his -- my understanding is that these
2 statements reflected his belief that these were Comcast
3 websites. And that, to change it now is not an accurate
4 reflection of what his understanding was at the time that
5 he filed the affidavit. Thank you.

6 CHAIRMAN GETZ: Do you have a response,
7 Mr. Malone?

8 MR. MALONE: One of our questions is
9 going to be "whether this is true and accurate today?"

10 BY MR. MALONE:

11 Q. Mr. Murray, is this information that you're providing
12 true and accurate today?

13 A. It is.

14 Q. Thank you. Have you completed all -- are you done with
15 the changes to your affidavit?

16 CMSR. IGNATIUS: Hold on one moment
17 please.

18 MR. MALONE: Sure.

19 CMSR. IGNATIUS: Thank you.

20 (Chairman and Commissioners conferring.)

21 CHAIRMAN GETZ: Mr. Malone, I'm trying
22 to get straight here on what's what, in terms of the
23 affidavit. So, you've premarked -- earlier you talked
24 about "14P" and "14C".

[WITNESS: Murray]

1 MR. MALONE: That's correct.

2 CHAIRMAN GETZ: And, this is "14A". Is
3 that intended to --

4 MR. MALONE: Yes. That's intended to be
5 the marked-up version, for the convenience of the --

6 CHAIRMAN GETZ: So, the intention is to
7 put into the record the original 14P and 14C as filed back
8 in June, and then to also have a 14A entered into the
9 record today that includes as well these changes?

10 MR. MALONE: That's correct, Mr.
11 Chairman.

12 CHAIRMAN GETZ: Okay. All right. I
13 think we understand where we are. So, let's proceed.

14 MR. MALONE: All right.

15 BY MR. MALONE:

16 Q. Mr. Murray, does that complete the changes to your
17 affidavit?

18 A. Yes, it does.

19 Q. Okay. With those changes, which are shown on
20 Exhibit 14A, is the information contained in
21 Exhibits 14P and 14C, as modified in Exhibit 14A, true
22 and accurate to the best of your knowledge, information
23 and belief?

24 A. Yes, it is.

[WITNESS: Murray]

1 Q. Okay. All right. I'm going to show you an exhibit
2 marked "15P". And, that's entitled the "Affidavit of
3 Thomas E. Murray regarding Merrimack County Telephone
4 Company", consisting of 23 pages, including text and
5 attachments. And, that's been premarked as "KTC-MCT
6 Exhibit 15P". Can you please identify it?

7 A. 15P for the record. This is Exhibit 15P for the
8 record.

9 Q. Pardon?

10 A. This is it here.

11 Q. Okay.

12 A. 15P.

13 Q. And, is there a confidential version of that document
14 that's been premarked as "KTC-MCT 15C", which I'm
15 showing you now?

16 A. Yes.

17 MR. FELTES: Mr. Chairman, earlier I
18 think that we had heard that we were going to address KTC
19 today and not MCT. And, some of these exhibits go to MCT.
20 And, just as a clarification, just to see the scope of
21 where we're going.

22 CHAIRMAN GETZ: We will not, in this
23 proceeding, be making any rulings about Merrimack
24 Telephone. To the extent there are subsets of documents

[WITNESS: Murray]

1 that include reference to "Merrimack Telephone", they're
2 irrelevant.

3 MR. FELTES: Okay. Thank you.

4 CMSR. IGNATIUS: And, if I could just
5 ask one question to clarify the exhibits, because they may
6 be sorted differently than how you put them in. 14C, the
7 confidential version that you've premarked this morning,
8 is the testimony -- excuse me, the Affidavit of Mr.
9 Murray, and an Attachment B that's confidential, correct?

10 MR. MALONE: That's correct.

11 CMSR. IGNATIUS: Is there anything in
12 the testimony itself, before you get to that Attachment B,
13 that's confidential?

14 MR. MALONE: No.

15 CMSR. IGNATIUS: In our files, they were
16 separated. So, I just wanted to make sure we weren't
17 missing a separate set of testimony that had protected
18 information. Thank you.

19 MR. MALONE: Okay. Mr. Chairman, based
20 on the previous discussion, we are going to be withdrawing
21 Exhibit 15P, C, and A, and they will not be moved into
22 evidence.

23 CHAIRMAN GETZ: Okay. Very well.

24 (Exhibits KTC-MCT 15P, 15C, and 15A were

[WITNESS: Murray]

1 withdrawn by the Petitioner.)

2 MR. MALONE: Okay.

3 BY MR. MALONE:

4 Q. Mr. Murray, I'm going to show you a document marked
5 "KTC-MCT Exhibit 16P". Consists of 214 pages of text
6 and attachments. It's entitled the "Rebuttal Testimony
7 of Thomas E. Murray on behalf of Kearsarge Telephone
8 Company and Merrimack County Telephone Company". Can
9 you identify it please?

10 A. This is it, Exhibit 16P.

11 Q. Okay. Is it your rebuttal testimony?

12 A. Yes, it is.

13 Q. And, is there a confidential version of this document
14 that's been premarked as "KTC-MCT Exhibit 16C"?

15 A. Yes.

16 Q. Okay. What is the difference between the versions?

17 A. The confidential version contains porting information
18 of TDS customers that have ported their numbers or
19 taken their landline numbers to Comcast.

20 Q. Okay. Do you have any changes or corrections that you
21 wish to make in your rebuttal testimony?

22 A. A couple, a couple themes, if you will. It was brought
23 up in the --

24 Q. Excuse me, I'll show you a copy of Exhibit 16A.

[WITNESS: Murray]

1 A. It was brought up in one of the technical sessions that
2 I use "we" a lot, and I guess that's a writing habit,
3 I'm on a part of a company and a team, and so I
4 referred to "we" a lot. And, more correctly, I should
5 be using the word "I", and so it will be a little more
6 specific in that regard. So, those are the
7 corrections, one theme of corrections. So, if folks
8 don't mind, I'll quickly go through those. I am on
9 Page 3, Line 18, I have replaced the "we" with an "I".
10 In the interest of speed, I'm not going to read each
11 one these, unless folks want me to. On that same page,
12 Line 28, the last -- beginning in that last sentence,
13 another "we" to an "I". The Page 4, the following
14 page, Line 6, there again a "we" to an "I".

15 CHAIRMAN GETZ: I think that's
16 sufficient --

17 WITNESS MURRAY: Okay.

18 CHAIRMAN GETZ: -- to show where we're
19 headed.

20 WITNESS MURRAY: Okay.

21 CHAIRMAN GETZ: And, there don't appear
22 to be any other changes, other than first person plural to
23 first person singular?

24 WITNESS MURRAY: Just one other note, in

[WITNESS: Murray]

1 the -- when we refer to the "KTC exchanges", we're
2 referring to the KTC exchanges that are served by Comcast.
3 That wasn't spelled out as clearly, but that's the intent,
4 when we're talking about the "KTC exchanges".

5 MS. HOLLENBERG: Excuse me. Could you
6 -- I'm sorry I didn't get that. Could you say that again
7 please?

8 WITNESS MURRAY: You know, throughout
9 the document we talk about the "KTC exchanges", and the
10 point being that just to clarify that we're talking about
11 the KTC exchanges that are served by Comcast.

12 BY MR. MALONE:

13 Q. All right. Mr. Murray, with those changes, which are
14 shown in Exhibit 16A, is the information contained in
15 Exhibit 16P and 16C true and accurate to the best of
16 your knowledge, information and belief?

17 A. Yes.

18 Q. And, with those changes, do you adopt the statements
19 made in Exhibit 16P and 16C as your testimony in this
20 proceeding as though it were read into the record?

21 A. I do.

22 MR. MALONE: Thank you. The witness is
23 available for cross-examination.

24 CMSR. IGNATIUS: And, may I ask one

[WITNESS: Murray]

1 clarification again, just on document identification. On
2 the version of the confidential page in 16C, it's actually
3 marked at the top as "TEM Exhibit 15C" in a couple of
4 places. Is that just at the time assumed that would be
5 the numbering, but the numbering we should apply is "16C"?

6 CHAIRMAN GETZ: Off the record.

7 (Brief off-the-record discussion
8 ensued.)

9 CHAIRMAN GETZ: Okay. Let's get back on
10 the record.

11 MR. MALONE: All right. Going back to
12 what I was saying, Mr. Murray is available for
13 cross-examination.

14 CHAIRMAN GETZ: Mr. Feltes.

15 MR. FELTES: Mr. Chairman, Mr. Linder
16 will be conducting the cross-examination. Thank you.

17 MR. LINDER: Good morning, Mr. Murray.

18 WITNESS MURRAY: Good morning.

19 **CROSS-EXAMINATION**

20 BY MR. LINDER:

21 Q. I have a question about, to start off, about your
22 affidavit regarding Kearsarge, it's with a cover letter
23 dated June 11th. And, I want to make sure I'm
24 referring to the right number. It would be "14P".

[WITNESS: Murray]

1 Tell me if I'm not referring to the correct number.

2 It's "Affidavit of Thomas E. Murray regarding Kearsarge
3 Telephone Company", and that was filed with -- under a
4 cover letter of June 11th.

5 A. Yes. I don't have the cover letter, but I think I have
6 the document in front of me.

7 Q. Okay. All right. And, I wanted to refer to one of the
8 attachments to that, to your affidavit. And, on the
9 bottom right-hand of the pages there are Bate stamped
10 numbers, and I'm looking at 005. Can you tell me if
11 you have that in front of you?

12 A. Yes, I think I do.

13 Q. Okay. On the top of the page, it says "Comcast Triple
14 Play Andover New Hampshire Deals-Starting at \$99 a
15 month." Do you see that, on Page 005, at the top?

16 A. Yes.

17 Q. Okay. And, then it says there's a number to call, an
18 "888" number, do you see that?

19 A. Yes.

20 Q. And, then, below that it says "Mention Comcast Promo
21 Code", do you see that?

22 A. Yes.

23 Q. Is this \$99 figure a promotional price? Is that what
24 that's referring to?

[WITNESS: Murray]

1 A. You know, I'd have to go back and cross reference other
2 information. But I do believe that's what it is.

3 Q. Okay. Then, if you go to the next page, which would be
4 006, which would be the second page of this "Comcast
5 Triple Play Andover-starting at \$99 a month". Do you
6 have that page?

7 A. It's 006 that you're referring to?

8 Q. Yes.

9 A. Yes. I have it in front of me.

10 Q. Okay. You see in the middle of the page it says "Call
11 Toll Free 888"?

12 A. Yes.

13 Q. Okay.

14 A. Yes.

15 Q. Right above that, there's a paragraph right above that
16 that begins "You might not realize it, but", do you see
17 that paragraph?

18 A. (Witness nodding in the affirmative).

19 Q. And, then, the last sentence, I'm just going to read it
20 to you to make sure we're looking at the same item, it
21 says "Please use our "Check Availability" tool to
22 verify that you are in a Comcast Cable service area,
23 and to retrieve our exclusive Comcast Andover New
24 Hampshire Deals." Can you see that?

[WITNESS: Murray]

1 A. I do.

2 Q. Okay. When the term "Check Availability tool" is used,
3 is it your understanding that that means that, if you
4 were -- if you were a customer, and you were interested
5 in this deal, you would have to, and you were using the
6 web, you would have to punch in your address in order
7 to determine if you -- if that offering was, in fact,
8 available to you at that particular address?

9 A. That's what the website suggests.

10 Q. Okay. Thank you. And, I'd like to ask you, your
11 rebuttal testimony is Exhibit 16. You had attached to
12 it a number of exhibits, and I wanted to direct your
13 attention to a couple of those exhibits. This would be
14 in Exhibit 5, I believe. And, on the bottom of the
15 pages, the bottom right, there are page numbers "TEM"
16 and then a page number. Do you see that?

17 A. I do.

18 Q. You see where the page numbers are? I'm looking at
19 Page TEM 059. And, I believe that's in Exhibit 5. Can
20 you tell me when you're there?

21 A. 059, I'm looking at it now.

22 Q. You're looking at it. Okay. The print is a little bit
23 small. So, this appears to be a page with respect to
24 -- well, there's actually a note at the bottom of the

[WITNESS: Murray]

1 box, and I imagine that note is yours. It says "Note:
2 The \$19.99 voice service offer in 03216 zip code." Do
3 you see that?

4 A. Yes.

5 Q. Would that be your note?

6 A. It is a note that I drafted.

7 Q. Okay. And, can you see, in the middle of the box,
8 where it says "19.99 per month", "\$19.99 per month"?

9 A. Yes.

10 Q. Okay. Now, right under that, tell me if I'm reading
11 this correctly, it says, I think, "for the first 6
12 months". Do you see that?

13 A. I see it.

14 Q. And, then, right under that, it appears to say "\$39.95
15 per month after promotional period(s)". Do you see
16 that?

17 A. Yes.

18 Q. So, would it be fair to assume that the "19.99" is a
19 promotional rate?

20 A. Yes.

21 Q. Okay. And, at the very bottom of the box, do you see a
22 "\$24.95 per month"?

23 A. I do.

24 Q. And, that appears to be under the heading of "Local

[WITNESS: Murray]

1 with More", do you see that?

2 A. Yes.

3 Q. The very last line, at the bottom of the box, appears
4 to say "The starting price is for customers that
5 currently subscribe to Comcast Cable and/or Comcast
6 High Speed Internet." Do you see that?

7 A. That's what the sentence says.

8 Q. Okay. Would it be fair to surmise that that price is
9 for customers who are currently Comcast customers,
10 either cable or Internet, or both?

11 A. Let me just read it real quickly. (Witness reading
12 document). That appears to be accurate.

13 Q. Thank you. And, if I can direct your attention to the
14 following page, which at the bottom is "TEM 060". Do
15 you see that?

16 A. I do.

17 Q. Okay. Near the bottom of the box there's a dollar
18 figure "\$39.95 per month", do you see that?

19 A. The large bolded number there, yes, I do.

20 Q. Yes. You see that? Immediately to the left of that
21 dollar number, there is a sentence, if I can direct
22 your attention to it. Tell me if I'm reading it
23 correctly, the print is small: "This starting price is
24 for customers that currently subscribe to Comcast Cable

[WITNESS: Murray]

1 and Comcast High-Speed Internet." Did I read that
2 correctly, as far as you can tell?

3 A. Yes.

4 Q. Okay. So, it would be fair to assume that that is for
5 existing Comcast customers?

6 A. That's the way it reads.

7 Q. Okay. And, then, I'd like to finally direct your
8 attention to Page TEM 068 on the bottom of the page.
9 Tell me when you're there. I think we're in Exhibit 6.

10 A. Exhibit 6.

11 Q. TEM Exhibit 6.

12 A. Yes. I'm at that page. You're talking "067" you said?

13 Q. Actually, "068".

14 A. Okay.

15 Q. And, there is a -- there are four dollar figures on
16 that page in the right-hand column. Do you see that?

17 A. I do.

18 Q. The last one is "\$44.95 per month", do you see that?

19 A. The "unlimited local and long distance calling plan",
20 is that what you're referring to?

21 Q. Yes.

22 A. With "Caller ID" and calling features and the like,
23 that one there?

24 Q. It says, actually, this is what I wanted to --

[WITNESS: Murray]

1 immediately to the left of the "44.95" figure are the
2 words "Comcast Digital Voice-w/no", which I take to be
3 "with no other Comcast services", do you see that?

4 A. I do.

5 Q. Okay. I'd like to next direct your attention to
6 Exhibit 9, and the number at the bottom of the page
7 that I'm looking at is "TEM 130".

8 A. I'm looking at TEM 130.

9 Q. Okay. And, on my page, it has the "\$19.99 per month"?

10 A. Yes.

11 Q. And, then, that is "for the first 6 months", is that
12 your understanding?

13 A. That's the way it reads.

14 Q. And, then, after that, it's "\$39.95" a month, you see
15 that?

16 A. Yes.

17 Q. Okay. And, that 39.95 per month is after the
18 promotional periods. Is that your understanding?

19 A. That's the way it reads, yes.

20 Q. Would you agree with me that that Comcast Digital rate
21 is not necessarily available to all TDS customers?

22 They would have to actually contact Comcast by phone or
23 use the Web and punch in their address to see if that
24 service was actually available to them at their

[WITNESS: Murray]

1 particular location, is that correct?

2 A. Or be approached by Comcast.

3 Q. Or be approached by Comcast. Do you know what
4 percentage of TDS customers in each exchange have
5 Comcast Digital Voice available to them?

6 A. Well, we've provided, you know, porting information on
7 that. But we don't feel that represents the full
8 number of customers that are using the service. And,
9 we don't have Comcast's, you know, records, if you
10 will.

11 Q. So, you actually don't know what percentage have that
12 service available?

13 A. Can you rephrase the question, to just refresh my
14 memory to actually what you said?

15 Q. Let's just take the Antrim exchange for example. Do
16 you know what percentage of the TDS customers actually
17 have available to them the Comcast Digital Phone
18 service offering without actually verifying whether
19 that service is available at their particular address?

20 A. Well, I think, earlier in the proceedings, we provided
21 maps that show where the Comcast footprint is.

22 Q. That isn't quite what I asked. I'm asking you that you
23 don't really know the percentage of TDS customers who
24 have available to them the Comcast Digital Voice?

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[WITNESS: Murray]

1 A. I don't have the percentage handy.

2 MR. LINDER: Okay. Thank you very much.
3 That's all I have. Thank you.

4 CHAIRMAN GETZ: Well, let me just follow
5 up on that last part. You said you "don't have the
6 percentage handy".

7 WITNESS MURRAY: Well, we have --

8 CHAIRMAN GETZ: I think he's asking "do
9 you have that information available to you?"

10 WITNESS MURRAY: Oh. To my knowledge,
11 we provided the maps which we feel are compelling, that
12 they show over the 50 percent. But, to my knowledge, we
13 haven't calculated the percentage. And, the way we read
14 the order was that the Commission felt like the maps
15 showed strong availability. And, that the question was
16 just verifying that voice is available to kind of close
17 out that question.

18 CHAIRMAN GETZ: Okay. Let's --
19 Mr. Linder.

20 BY MR. FELTES:

21 Q. Well, without actually punching in addresses, you
22 really don't know, do you, which customers have that
23 service available to them?

24 A. You know, it's our understanding that Comcast is

[WITNESS: Murray]

1 offering service throughout the cable plant. The
2 nature of cable plants, you know, cable TV plant, if
3 you will, is -- it's a bus technology. So, when a
4 service is available, it's -- what I mean by "bus
5 technology" is the services are spread throughout that
6 network. It's a little different than the phone
7 company network, circuit switch network.

8 MR. LINDER: Mr. Chairman, I don't want
9 to appear to be arguing with the witness, so I won't
10 pursue this further.

11 BY MR. LINDER:

12 Q. But it appears to me your answer is that, without
13 punching in the addresses, no one really knows if that
14 service is available to them at their address?

15 CHAIRMAN GETZ: Would you agree?

16 BY MR. LINDER:

17 Q. Would you agree with that?

18 MR. LINDER: Thank you very much, Mr.
19 Chairman.

20 **BY THE WITNESS:**

21 A. I take a different view of it, essentially. I think
22 there's two ways. You've bounced back in terms of
23 different ways of looking at this. I think we -- the
24 maps speak to the general availability, which we think

[WITNESS: Murray]

1 meets the context of the order. At an individual
2 customer level, certainly, that customer would need to
3 punch in their address or call that, you know.

4 MR. LINDER: Okay. Thank you very much.
5 No further questions.

6 CHAIRMAN GETZ: Thank you, Mr. Linder.
7 Ms. Hollenberg.

8 MS. HOLLENBERG: Thank you. Good
9 morning, Mr. Murray.

10 BY MS. HOLLENBERG:

11 Q. I believe that, in following up in some questionings
12 that just occurred, you were referencing the MC-2 --
13 MCR-2 exhibit that was provided in Mr. Reed's rebuttal
14 in the first phase of this case, is that correct?

15 A. I don't have the exhibit numbers handy, but I know
16 there's been a couple different iterations of mappings
17 that have been provided.

18 Q. Did you not refer to MCR-2 in your testimony, your
19 rebuttal testimony?

20 A. Let me go back and just verify the numbers on that.

21 CHAIRMAN GETZ: If we can, Mr. Murray,
22 to the extent you can, Mr. Patnaude is going to try to
23 record everything you say. So, any asides --

24 WITNESS MURRAY: Yes, I've got you.

[WITNESS: Murray]

1 I've got it.

2 BY MS. HOLLENBERG:

3 Q. If it's helpful, I'll direct you to Page 11 of your
4 rebuttal, the Footnote Number 6.

5 A. I see it.

6 Q. So, would you agree then that the maps you're
7 discussing with Mr. Linder are the maps that were
8 provided in MCR-2 in the first phase of this
9 proceeding?

10 A. The only clarification I would have is there's a couple
11 different versions of those maps. And, I can't recall
12 if we -- one of them had customer locations on them and
13 then earlier iterations did not. So, I'm not sure if
14 this one had customer locations on it or not. So, as
15 it relates to the discussion around where a customer
16 might have service or not, obviously, the ones that had
17 customer locations, those would have been confidential.
18 So, there's a clarification there. But, I think, in
19 general, the context is accurate.

20 Q. And, just to clarify, you do agree that the question
21 that this footnote refers to is "what fraction of
22 customers are able to obtain Triple Play from Comcast?"

23 A. When you say --

24 Q. Page 11, question at the top. Do you agree that --

[WITNESS: Murray]

1 A. Oh, okay.

2 Q. -- that question relates to the percentage of customers
3 that are able to -- actually able to obtain Triple Play
4 from Comcast?

5 A. That's what the question says.

6 Q. Your question in your rebuttal testimony, correct?

7 A. Yes.

8 Q. Okay. And, so, at Lines 19 through 21, you say "TDS
9 has already provided coverage maps that establish that
10 Comcast has facilities in place that allow Comcast to
11 offer its services to a majority of TDS' customers in
12 the KTC Exchanges and the MCT Exchanges "Coverage
13 Maps"." Did I read that correctly?

14 A. Yes, you did.

15 Q. And, you reference there "Confidential Exhibit MCR-2 to
16 the rebuttal testimony of Michael C. Reed, submitted on
17 November 15, 2007." Correct?

18 A. Correct.

19 Q. Okay. Thank you. Would you agree that MCR-2 are
20 smaller copies of maps filed in discovery in the first
21 phase of this case?

22 A. Again, I'm not -- I'm new to this docket, so I'll take
23 your word for it.

24 Q. Well, you don't have to do that, actually, because I

[WITNESS: Murray]

1 can show you Reed's rebuttal, if you'd like. I have --
2 I presume you don't have a copy of that, but -- I'm
3 referring to Mr. Reed's rebuttal, which is a
4 confidential version dated November 15th, 2007, Page
5 29. If you could just tell me if I'm reading this
6 correctly: "I have provided updated exchange maps as
7 Exhibit MCR-2 Confidential. Please note that these are
8 -- these exchange maps are a scaled down version of the
9 exchange maps previously provided as attachments to our
10 second supplemental response to Staff Data Response --
11 Request 2-36."

12 A. Okay.

13 Q. Did I read that correctly?

14 A. I think you did.

15 Q. You think I did or did I?

16 A. You did.

17 Q. Thank you. And, Mr. Murray, isn't it also true that
18 Staff Witness Josie Gage criticized the accuracy of the
19 underlying maps that are the basis of MCR-2?

20 A. I have not read through all of that, those criticisms.

21 MS. HOLLENBERG: Give me one moment
22 please.

23 (Short pause.)

24 CHAIRMAN GETZ: Ms. Hollenberg, are you

[WITNESS: Murray]

1 intending to read into the record Ms. Gage's testimony?

2 MS. HOLLENBERG: No, sir. Thank you.

3 BY MS. HOLLENBERG:

4 Q. I'm referencing Mr. Reed's rebuttal dated
5 November 15th, 2007, the confidential version, Page 19.
6 And, if you can tell me if I'm reading this correctly.
7 At Line 1, "Ms. Gage was quite critical of the data
8 provided by TDS maps stating that there were incorrect
9 keys/legends, some information was incorrect". Did I
10 read that correctly?

11 A. Yes.

12 Q. And, at Line 3, "Staff found it increasingly difficult
13 to reply on the information provided by TDS on their
14 exchange maps." Did I read that correctly?

15 A. Yes.

16 Q. Thank you. Now, because I imagine your astute counsel
17 will address this in redirect, if I don't now, TDS made
18 changes to those maps, as I think you referenced
19 earlier, after Ms. Gage filed her testimony, is that
20 correct?

21 A. I'm not sure of the timing of that, but I think we made
22 a few updates to those maps.

23 Q. Would you accept that subject to check, that she --
24 that you made -- you provided a revised map after

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[WITNESS: Murray]

1 Ms. Gage filed her testimony --

2 A. Sure. Subject to verification.

3 Q. -- I'm sorry, in October 2007?

4 A. Yes. That sounds correct.

5 Q. Thank you. Would you agree that the maps upon which
6 MCR-2 are based do not show exact location of
7 facilities?

8 A. I guess, when you say "exact", I mean, it's my
9 understanding that these are maps that were prepared,
10 and their guide -- I haven't read every supporting
11 document that goes along with those. But it's my
12 understanding that those are, you know, cable plant
13 maps that have been prepared. So, I guess the
14 questioning of "exact", you know, it all depends on
15 what granularity you look at it, you know.

16 Q. Thank you. I'd like to refer you now to Mr. Reed's
17 rebuttal testimony dated November 15th, 2007, at Page
18 19. And, starting at Line 10, ask you if I'm reading
19 this correctly. This is Mr. Reed saying "I in no way
20 indicated or would want to indicate that the maps were
21 to be utilized as an exact measure of competition for
22 every road, and every pole." Did I read that
23 correctly?

24 A. Yes.

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[WITNESS: Murray]

1 Q. Thank you. These maps rather were intended as visual
2 aids, is that correct?

3 A. I don't know if that's specifically the case.

4 Q. I'd like to refer you to a document, which is "MCR-1",
5 which was attached to Mr. Reed's November 15th, 2007
6 rebuttal testimony. And, therein is the response, the
7 Company's response to Staff 2-36. Actually, there are
8 several iterations of the response. And, I'd like to
9 specifically direct you to the first supplemental
10 response, which is dated October 5th, 2007. And, in
11 fact, I would like you to just confirm -- one moment
12 please. It says "The maps in Staff 1-37 and 2-36 can
13 be utilized by the parties as intended by the
14 Petitioners as visual aids." Did I read that
15 correctly?

16 A. There was an ending to that sentence -- okay. Yes, you
17 did read it correctly.

18 Q. Thank you. You mentioned at the beginning of your
19 testimony this morning that you had some corrections,
20 and I'd like to ask you some questions about that. You
21 corrected your affidavit, which you filed as "Exhibit
22 14P", "C", and "A" this morning, is that correct?

23 A. Correct.

24 Q. Okay. And, in particular, you made a change to

[WITNESS: Murray]

1 Paragraphs 3 and 4 on Page 2 of that exhibit, is that
2 correct?

3 A. Yes.

4 Q. You believed at the time that you filed this affidavit
5 that your searches were from a Comcast website, is that
6 correct?

7 A. When it was originally prepared, yes, and submitted.

8 Q. You also made a correction about your rebuttal to the
9 effect that the "KTC exchanges" that were referenced
10 therein were the exchanges where Comcast is a certified
11 CLEC, is that correct?

12 A. The correction was, you know, to the -- when we refer
13 to the "KTC exchanges", we're talking about the ones
14 that are served by Comcast.

15 Q. Okay. You used the word "certified", though, or
16 "certificated" or something. No?

17 A. I'm not sure I used the word "certificate".

18 Q. Okay.

19 A. I think it was -- I thought I used the word "served",
20 essentially.

21 Q. So, the KTC exchanges are where Comcast is -- the KTC
22 exchanges referred to in your rebuttal, could you
23 repeat that?

24 A. The --

[WITNESS: Murray]

1 Q. The correction?

2 A. When -- as we referred to the "KTC exchanges", we're
3 referring to the ones that are served by Comcast. And,
4 obviously, you know, offering voice and things like
5 that.

6 Q. So, offering voice as a CLEC, a competitive local
7 exchange carrier, is that correct?

8 A. It's my understanding that they are certified for that.
9 I think it's in an order.

10 Q. It's not your position that Comcast is offering
11 services to provide VoIP services today, is it?

12 A. I'm not sure that's relevant. I mean, it's my
13 understanding that Comcast considers their technology
14 to be a VoIP -- a VoIP service. But that's their
15 technology, if you will, how they route the calls and
16 what have you.

17 Q. Yes, I should be more clear. I meant, and thank you,
18 VoIP services by a third party other than Comcast.
19 It's not your position that Comcast, the exchanges
20 you're talking about for Kearsarge are exchanges where
21 Comcast is offering broadband for a third party VoIP
22 service?

23 A. Well, I think there's two questions. Obviously, the --
24 I think the order was intimating the Comcast voice

[WITNESS: Murray]

1 service, but we know that there are customers that use
2 Vonage and things like that on their Comcast broadband.

3 Q. The Commission's order in Phase III -- in Phase II, I'm
4 sorry, dated May 14th, 2010, referred to and invited
5 TDS to file evidence about Comcast's wireline services,
6 is that correct?

7 A. I believe that's how we interpret it.

8 Q. Okay. So, Meriden Village is not in consideration at
9 this time, is that correct?

10 A. Excuse me?

11 Q. Is that -- is Meriden --

12 MS. HOLLENBERG: Excuse me, if we could
13 off the record?

14 CHAIRMAN GETZ: Let's go off the record.
15 (Off the record.)

16 CHAIRMAN GETZ: Back on the record.

17 MS. HOLLENBERG: Thank you. If I could
18 just strike that question. Thank you.

19 BY MS. HOLLENBERG:

20 Q. Mr. Murray, if you could refer to your rebuttal
21 testimony please, at Page 3, Lines 4 to 6. That's
22 Exhibit 16P. If they're paginated the same, you can
23 refer to the public version.

24 A. Excuse me. What line were you referring to?

{DT 07-027} [REDACTED - FOR PUBLIC USE] {09-27-10}

[WITNESS: Murray]

1 Q. Lines 4 to 6. Are you there?

2 A. I am.

3 Q. You state here "This search resulted in a list of
4 website matches" --

5 A. Hold it. I think I might have the wrong document. You
6 said my "rebuttal testimony"?

7 Q. Yes.

8 A. Pages?

9 Q. Page 4.

10 A. Oh, okay. I'm on Page 3. I'm sorry, I was on Page 3.
11 And, you said "4 through 6"?

12 Q. Yes, please.

13 A. I'm there. Go ahead.

14 Q. "This search resulted in a list of website "matches".
15 Do you see that?

16 A. Yes.

17 Q. Now, when you're talking about "this search", you're
18 talking about the search that you conducted in
19 September of 2010, is that correct?

20 A. Yes.

21 Q. And, when you did your original work in preparation for
22 the affidavits that you filed in June 2010, you chose a
23 website that from a list -- you also chose a website
24 from the list of website matches, is that correct?

{DT 07-027} [REDACTED - FOR PUBLIC USE] {09-27-10}

[WITNESS: Murray]

1 A. Yes.

2 Q. And, you chose a website for Saturday Night Live
3 transcripts to search for website information about
4 Comcast, is that correct?

5 A. Well, if you notice, the -- in fact, in this search
6 that was submitted in the rebuttal, you'll notice that
7 the snippet that comes up mentions nothing about that.
8 And, yes, that is -- we now know that's an SNL
9 transcript website. But, nonetheless, Comcast markets
10 on that, and I frankly don't find it unusual that a
11 large cable company is advertising on that. So...

12 I wasn't aware it was that Saturday
13 Night Live website until we truncated the address after
14 Mr. Eckberg's testimony. So, at the time, we saw a
15 Comcast website. And, we were under the impression
16 that it was a Comcast website. The URL has "Comcast"
17 several times in it. So...

18 Q. You were not aware that it was -- you were not aware of
19 the URL at the bottom of your exhibits to your
20 affidavit, that it says "SaturdayNightLivetranscripts"
21 before the "Comcast", if you look at the bottom?

22 A. I don't recall it saying that.

23 Q. I'm referring to --

24 A. Oh, the affidavit.

[WITNESS: Murray]

1 Q. -- Exhibit KTC-MCT 14C. And, if you look, just for
2 example, at the bottom of Bates Page 005, to the left
3 of that Bates number, could you tell me what that says?

4 A. Just hang on a second. I'm trying to get to that here.
5 What page were you referring to again?

6 Q. I'm referring to KTC-MCT Exhibit 14C, Bates Page 005.
7 And, I asked you to confirm that the URL to the left of
8 that starts with "snltranscripts"?

9 A. Oh. Okay. But you had said "Saturday Night Live".
10 "Snltranscripts", yes.

11 Q. Thank you.

12 A. Also note that it has "Comcast" listed in it several
13 times.

14 Q. Thank you. On Page 5 of your rebuttal, at Line 9 --
15 I'm sorry, strike that, at Lines 16 through 17. Let me
16 know when you're there.

17 A. Sixteen through seventeen. Yes. I'm there.

18 Q. At that point, you reference "Attachment TEM-4", which
19 is an attachment to your rebuttal, Exhibit 16C. Do you
20 see that?

21 A. Yes.

22 Q. Would you agree that that attachment does not depict
23 the searches you conducted before filing your
24 affidavits in June?

[WITNESS: Murray]

1 A. I think the intent was to be just to --

2 Q. Excuse me. Could you just answer "yes" or "no", and
3 then you can explain it.

4 A. Could you repeat the question?

5 Q. Absolutely. Do you agree that Attachment TEM-4 does
6 not depict the searches you conducted before filing
7 your affidavits in June?

8 A. Yes. If I may, I'd like to explain that?

9 Q. Absolutely.

10 A. So, essentially, what -- Mr. Eckberg had criticized our
11 methods and how we approached this. And, talked about
12 how we used a Google search engine, and so -- and
13 questioned how we had arrived at the evidence that we
14 submitted. So, in our rebuttal, we wanted to walk
15 through that, you know, piece-by-piece. And, so,
16 that's what that was. It was indicative to searches
17 that I did that were very similar to that, as we've
18 talked about.

19 Q. You didn't walk through that search in such a detailed
20 manner at the first tech session in this phase of the
21 proceeding, though, did you?

22 A. I'm trying to recall the first tech session. We had a
23 few of them. (Short pause) I'm trying to remember the
24 exact dialogue that went on in that particular tech

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[WITNESS: Murray]

- 1 session. Not in the level of detail that we did here.
- 2 And, as I recall, there wasn't a whole lot of questions
- 3 from OCA at that tech session. But, in any case, I
- 4 didn't walk through that level of detail.
- 5 Q. Thank you. The search that you conducted to produce
- 6 Attachment TEM-4 was done after September 7, 2010, do
- 7 you agree?
- 8 A. Yes.
- 9 Q. After the OCA and New Hampshire Legal Assistance filed
- 10 testimony in this case, is that correct?
- 11 A. Yes.
- 12 Q. And, you did not provide as an attachment to your June
- 13 affidavits a document like Attachment TEM-4, did you?
- 14 A. No. As we've certainly put into the record, you know,
- 15 we really didn't think it was relevant, in terms of the
- 16 evidentiary burden that we had before us, to --
- 17 Q. Thank you.
- 18 A. -- to walk through that process.
- 19 Q. Thank you. If I could direct your attention to the
- 20 same Page 5, Line 19, starting at Line 19, and through
- 21 the next page to Line 3, ending at the word "Antrim".
- 22 Here you provide information about your creation of
- 23 Attachment TEM-4, is that correct?
- 24 A. Yes. Yes.

[WITNESS: Murray]

1 Q. Thank you. If you could look at Page 6 of your
2 rebuttal, Exhibit KTC-MCT 16C. Page 6, starting at
3 Line 21, and going through to Page 8, Line 5. Is it
4 correct that this is your -- it starts out "to address
5 Mr. Eckberg's concern in this regard, I have provided
6 specific address searches." Do you see that? At Line
7 21 to 22, --

8 A. Yes.

9 Q. -- on Page 6?

10 A. Yes.

11 Q. And, these specific address searches were conducted
12 after the OCA filed its testimony in early
13 September 2010?

14 A. Yes.

15 Q. Okay. And, you checked one address for each exchange,
16 is that correct?

17 A. We checked a couple. But, yes, in general, we
18 submitted one for each.

19 Q. You submitted one?

20 A. Yes.

21 Q. Thank you.

22 A. I mean, I think the purpose there was to -- Mr. Eckberg
23 brought up a concern about, you know, how do you know
24 that the Comcast authorized dealer site and Comcast

[WITNESS: Murray]

1 will get you similar results. And, so, that was the --
2 it was to show that you do get similar results.

3 Q. You don't reference "checking a couple" in your
4 rebuttal, do you?

5 A. Yes, we -- I don't, I don't mention that.

6 Q. Okay. And, this information was not in your June 2010
7 affidavits, was it?

8 A. The address-specific searches?

9 Q. Yes.

10 A. No, not in its current form.

11 Q. Okay. Thank you. If I could have you look at Page 9
12 of your rebuttal, Exhibit 16C, at Lines 14 through 16.

13 A. Page 9, 14 through 16?

14 Q. Yes, please. Do you agree it states "In any event, as
15 shown in Attachments TEM-5 through TEM-13, Comcast is
16 offering both separate voice service and the bundles
17 that include voice service"? Did I read that
18 correctly?

19 A. Yes.

20 Q. The Attachments TEM-5 through TEM-13, those were
21 created after September 7th, 2010, is that correct?

22 A. Yes.

23 Q. And, there's no similar information provided by you in
24 your June affidavits that include this information?

[WITNESS: Murray]

1 A. Not in that format. I think we provided the service
2 order for Meriden, and we have porting information from
3 other -- the other exchanges in KTC. So, we did not
4 feel that we had to go to this extra burden of doing
5 address-specific searches, and that's not how we
6 interpreted the order.

7 Q. Thank you. When you mentioned your "interpretation of
8 the order", I just want to clarify, you're not an
9 attorney, is that correct?

10 A. No, I'm not an attorney.

11 Q. And, you're not offering a legal opinion about that, is
12 that correct?

13 A. That's my opinion of how I interpreted the order.

14 Q. Okay. If I could have you look at Page 9, Lines 21
15 through 23. It states, "as of the date of those
16 Affidavits," meaning the original affidavits filed in
17 June, TDS [has] not experienced customer ports in KTC's
18 Meriden and in MCT's Melvin Village exchanges." Did I
19 read that correctly?

20 A. Yes, you did.

21 Q. Okay. And, you go on to reference specific
22 address-specific results, and these address-specific
23 results that you're referring to here, those are the
24 one -- those are the one e-mail for Melvin Village and

[WITNESS: Murray]

1 the one order summary from Meriden that were attached
2 to your affidavits in June?

3 A. Let me just read the whole thing in context, make sure
4 I get it accurate. (Short pause) So, if you would
5 just repeat it, rephrase the question, I've had a
6 chance to read it.

7 Q. Sure. I was mentioning that at -- starting at 22, on
8 Page 9, you say that you haven't "experienced [any]
9 customer ports", and I'll direct you just specifically
10 to KTC's Meriden exchange. And, then, it says "and
11 thus we instead provided address specific results to
12 further support the advertising material." And, my
13 question was, are the address-specific results, to
14 which you refer on Line 23, the one e-mail from Melvin
15 Village and the one order summary from Meriden that are
16 attached to your June 2010 affidavits?

17 A. Yes.

18 Q. Thank you. And, the reference on Page 10, Line 3, to
19 "Confidential Attachment TEM-15C", do you agree that
20 you created this attachment after September 7th, 2010?

21 A. Yes.

22 Q. You did not create this attachment in preparation for
23 your June 2010 affidavits, is that correct?

24 A. No. Again, that was to -- Mr. Eckberg had brought up

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[WITNESS: Murray]

1 the concerns about "valid/invalid address searches".
2 And, that was an example to show that the sites
3 generate valid and invalid, I believe that was the
4 invalid address search.

5 Q. Actually, if you look above, if you look above, at --
6 or, I guess I would direct you --

7 A. Am I clear on that?

8 Q. -- to your testimony.

9 CHAIRMAN GETZ: Excuse me. One person
10 at a time.

11 BY MS. HOLLENBERG:

12 Q. Is it your testimony today that that exhibit --

13 A. Oh. I apologize. I was misspoken on it, on the
14 numbering. That exhibit is our porting information,
15 excuse me, from Meriden. And, yes, that was prepared
16 after the 7th of September.

17 Q. Thank you. If you could look at Page 12 of your
18 rebuttal please, Exhibit 16C. And, specifically, I'd
19 like to talk to you about Lines 8 to 10. Do you have a
20 copy of the Commission's order dated May 14th, 2010?

21 A. I do.

22 Q. I'd also like to cross reference that. So, if you have
23 that handy, that would be helpful. Okay. So, Lines 8
24 to 10, you state "The Commission ruled on Pages 24 and

[WITNESS: Murray]

1 27 of the Second AFOR Order that TDS presented evidence
2 that cable broadband (high-speed data) service is
3 available in the KTC exchanges and the MCT exchanges."
4 Did I read that correctly?

5 A. Yes.

6 Q. Could you turn to Page 24 of the Second AFOR Order,
7 which is the May 14th, 2010 order of the Commission,
8 Order Number 25,103.

9 A. Yes.

10 Q. Page 24 deals with "Broadband Service", does it not?

11 A. That's what the title of the number 3 is on Line 3,
12 yes.

13 Q. And, Section 3 is not the section of the Second AFOR
14 Order that allowed MCT or KTC to file -- or, I'm sorry,
15 that allowed MCT to file its June 2010 affidavit, is
16 it?

17 A. I don't believe this was the section that put that out
18 there.

19 Q. Thank you.

20 A. This was used to reference what we understood was the
21 Commission's interpretation of the availability of
22 broadband service.

23 Q. Do you agree, though, that if you look to Page 21 of
24 the Commission's -- of that same Commission order, that

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1 there is a different section related to "Wireline
2 Service in Merrimack", is that correct?

3 A. Yes.

4 Q. Okay. And, this is a separate section entitled
5 "Broadband Service". So, they're being treated
6 differently, is that correct?

7 A. I think, for the -- yes, in terms of the way you're
8 reading it. I think that the -- I think our
9 interpretation was, obviously, the broadband service is
10 a foundational service for cable, you know, voice
11 services, obviously. So, that was the -- how we
12 interpreted that.

13 Q. If you look to Section 4 of Page 20 -- on Page 24, do
14 you see the chart there? Do you agree that, underneath
15 the column "Competitive Broadband", it states "Cable
16 broadband", for Antrim, "Cable broadband available
17 though not proven to be competitive alternative." Did
18 I read that correctly?

19 A. You did.

20 Q. And, does it say the same thing for Contoocook,
21 Henniker, and, if you turn the page, Hillsboro, Melvin
22 Village, is that correct?

23 A. Yes.

24 Q. Thank you. And, you also referenced, taking you back

[WITNESS: Murray]

1 to your Page 12 of 16C, in support of your statement
2 about a "Commission ruling", you referenced "Page 27 of
3 the Second AFOR Order". And, if you could look at Page
4 27 of Order 25,103, you would agree that Section 3 is
5 not the section in that order that invited Kearsarge to
6 file additional evidence for this phase of the
7 proceeding, is that correct?

8 A. That is correct. But, as I stated earlier, I think, as
9 we recognize, the Comcast voice rides on a broadband
10 pipe, if you will, the Commission's understanding that
11 broadband was available, to us, you know, met the
12 availability threshold.

13 Q. And, if you look at Section 4 in the "Competitive
14 Broadband" column, do you see, for Andover, Boscawen,
15 Chichester, Meriden, and New London, the words "Cable
16 broadband available though not proven to be competitive
17 alternative"? I'm not --

18 A. I see that.

19 Q. Okay. Do you also see that, at Page 25 of that order,
20 there is a section dealing with "Wireline Service in
21 Kearsarge", Section 1?

22 A. Yes.

23 Q. Which is a separate section in the Broadband Service in
24 Kearsarge's section on Page 27, is that correct?

[WITNESS: Murray]

1 A. Yes.

2 Q. Thank you.

3 MS. HOLLENBERG: One moment please.

4 (Short pause)

5 BY MS. HOLLENBERG:

6 Q. Could you please look at Page 14 of your -- of
7 Exhibit 16C please. At Line 33, you reference "a year
8 and a half of favorable AFOR experience with HTC and
9 WTC." Do you see that?

10 A. Yes.

11 Q. And, you're referencing "Hollis Telephone Company" and
12 "Wilton Telephone Company" there, correct?

13 A. Yes.

14 Q. And, are you aware that Hollis Telephone Company
15 executed a Settlement Agreement in this docket in
16 November of 2007?

17 A. I'll take your word for the timing of that. I don't
18 have that right handy. But, yes.

19 Q. And, are you aware that the Commission approved this
20 agreement, subject to check, April 2008?

21 A. Okay. Yes.

22 Q. And, the agreement that these -- that Hollis Telephone
23 Company executed incorporated an alternative regulation
24 plan, is that correct?

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[WITNESS: Murray]

1 A. Yes.

2 Q. Okay. And, do you have a copy of that plan?

3 A. I was going to bring it up here, but I don't think I
4 did. If you have a copy of it, that would be great.
5 Otherwise, I can dig it out of my -- dig it out of my
6 book.

7 (Atty. Hollenberg handing document to
8 the witness.)

9 BY MS. HOLLENBERG:

10 Q. I'd like to show you a document, which it has on the
11 cover "March 6th, 2008", cover letter from Attorney
12 Coolbroth. And, it encloses to Ms. Howland "an
13 original and seven copies of a motion by Petitioners to
14 reopen record for submission of amended plans
15 reflecting Settlement Agreement." Did I identify that
16 correctly?

17 A. Yes.

18 Q. Okay. Could you please turn to Page 5 of the attached
19 Hollis Telephone Company plan please. Do you see
20 Section 4.1.4.1?

21 A. 4.1.4.1. Yes.

22 Q. Am I reading this correctly, "The Company will work
23 with the Office of Consumer Advocate, New Hampshire
24 Legal Assistance and the Commission Staff to improve

[WITNESS: Murray]

1 the dissemination of information regarding Lifeline and
2 Link-Up Programs to eligible persons to increase
3 participation in the programs"?

4 A. Yes.

5 Q. Has Hollis Telephone Company undertaken these efforts
6 yet?

7 A. Yes. I've been working, and I've had a discussion with
8 OCA and the Commission Staff. And, we met just last
9 week. And, one of the things was "we've got to set up
10 a larger meeting", in fact, it was OCA's recommendation
11 that "let's have a larger statewide meeting." At the
12 time, I did put on the table that we should -- TDS
13 could do a bill -- an additional bill message as a
14 quick additional step to increase Lifeline. Obviously,
15 we're meeting the mandatory requirements that come up
16 every year, I guess, an annual notice and what have
17 you. But I'm not well-versed in all the different
18 steps of that, but --

19 Q. And, your efforts began last week?

20 A. No. It actually began several months ago. I reached
21 out to talk to -- to try to set up some meetings to
22 talk about this. And, I've talked to Amanda Noonan at
23 the Staff on it a little bit. But, in terms of, you
24 know, getting more formal meetings together, you know,

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[WITNESS: Murray]

1 I think it's -- we need more work on that.

2 Q. Do you recall answering oral data requests earlier in
3 this proceeding?

4 A. On a couple different occasions.

5 Q. Okay. I'd like to show you Oral Data Request 4. And,
6 Section (c) asks you "Have these companies addressed
7 the Lifeline provisions in Section 4.1.4.1 of the
8 Plans?" Meaning the Wilton and Hollis Telephone
9 Company Plans. And, your answer to that question is,
10 "the Companies" -- you can read that.

11 A. I can read it. Okay. "The Companies have complied
12 with the standard Lifeline procedures, which consist of
13 initial and reminder letters. For participation to
14 recertify Lifeline, newspaper advertisements and
15 Lifeline bill messages, representatives of the
16 Company", meaning me, "intend to meet with the
17 Commission and OCA Staff and New Hampshire Legal Aid in
18 the weeks to come, to discuss how the dissemination of
19 information could be further improved."

20 Q. So, at this time, you had not yet met with the OCA and
21 New Hampshire Legal Assistance and Commission Staff to
22 improve the dissemination of information regarding
23 Lifeline and Link-Up, is that correct?

24 A. At that time, we had not.

[WITNESS: Murray]

1 Q. Thank you.

2 A. And, obviously, I'm new to this. And, my predecessor
3 had left and it's one of those things that hadn't been
4 completed.

5 Q. And, the same would be true for Wilton Telephone
6 Company as well?

7 A. Yeah, the discussion has been a commingled discussion.

8 Q. I guess, if you could answer "yes" or "no"?

9 A. Oh, yes. I'm sorry. Yes. Yes.

10 Q. Thank you. Mr. Murray, I realize that you're new to
11 the Company, but I have a question, has -- in the last
12 several years, has TDS filed new tariffs for bundles?

13 A. I'm not aware of that, but that's not to say we haven't
14 done them.

15 Q. Are you aware of any instances where the Commission has
16 ever rejected any such tariffs for bundles that the
17 Company has filed?

18 A. I don't know.

19 Q. You don't know?

20 A. I don't know.

21 Q. Are you aware of any adjudicatory proceedings that the
22 Commission has ever opened in response to tariff
23 bundled filings?

24 A. I don't know.

[WITNESS: Murray]

1 Q. So, you're not aware of them though?

2 A. I'm not aware, one way or the other.

3 MS. HOLLENBERG: If I could just have a
4 moment please.

5 (Short pause)

6 BY MS. HOLLENBERG:

7 Q. I just have one other question for you. I'd like to
8 refer to Mr. Reed's rebuttal dated November 15th, 2007.
9 At Page 13 of this testimony, I would just like to ask
10 you if I'm reading this correctly. Starting at Line
11 20, "In the data you provided you included maps of each
12 exchange with DSL coverage included with your estimates
13 of cable and cable modem availability." Did I read
14 that correctly?

15 A. You did.

16 Q. Lines 20 to 21?

17 A. Yes.

18 Q. And, then, Mr. Reed states, 23 -- well, he's asked "why
19 did you use this technique? Did you consider
20 alternative techniques?" And, then, he says in his
21 answer "The maps were used in my analysis and included
22 in the petition for two reasons. First, I had to
23 understand and see for myself our best estimates of
24 where the cable television and cable modem service was

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1 in each exchange." Do you see that?

2 A. Yes.

3 Q. And, did I read that correctly?

4 A. Yes.

5 Q. Thank you.

6 MS. HOLLENBERG: I don't have any other
7 questions. Thank you.

8 CHAIRMAN GETZ: Thank you. Mr. Fossum.

9 MR. FOSSUM: Nothing from Staff.

10 CHAIRMAN GETZ: Commissioner Below?

11 CMSR. BELOW: No.

12 CHAIRMAN GETZ: Commissioner Ignatius?

13 CMSR. IGNATIUS: Thank you. Good
14 morning, Mr. Murray.

15 WITNESS MURRAY: Good morning.

16 BY CMSR. IGNATIUS:

17 Q. In your affidavit regarding Meriden, you listed a
18 service request order --

19 A. Yes.

20 Q. -- for one location. And, you noted in your testimony
21 that you had "redacted [your] personal e-mail". Is
22 that because the service location is your -- is owned
23 by you?

24 A. No, it's not. I think we just deemed that that was my

[WITNESS: Murray]

1 personal e-mail, was personal information. Is that
2 your question?

3 Q. Yes. I guess, tell me why there was any mention of
4 your e-mail or is there in describing that service
5 request?

6 A. Just that my e-mail -- that e-mail flowed -- that
7 service order flowed through the Web, if you will, and,
8 so, my e-mail was attached to that.

9 Q. So, it was just through your personal e-mail that you
10 received the service request?

11 A. Right. Yes.

12 Q. You're not affiliated in any way with the owner of that
13 address in Meriden then?

14 A. No. That was a house that was for sale that, you know,
15 we were, you know, it was kind of a -- in order to, we
16 felt, meet the Commission's burden in Meriden, we felt
17 we wanted to, because at that time we hadn't had a port
18 yet, we wanted to absolutely verify that they were
19 marketing that. And, so, you know, so that's how we
20 approach it, as kind of a "secret shopper" strategy, if
21 you will.

22 Q. I'm sorry, I don't understand.

23 A. Oh, you know, in industry, for example, you know, and
24 companies even do it to themselves, essentially, you

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[WITNESS: Murray]

1 know, basically shopping, to see, you know, what the
2 offerings are and things like that, from competitors as
3 well.

4 Q. So, was that identification of the Meriden service
5 request in the affidavit a genuine request from a
6 customer?

7 A. No. It was an order that I had placed to validate that
8 you could, in fact, order a voice service in Meriden.
9 And, I subsequently canceled that, canceled that order.

10 Q. So, you put in a request using someone you weren't
11 related to, an address that wasn't you in any way,
12 requesting service from Comcast?

13 A. Yes. It was a house that was for sale, and as much as
14 it was an empty house.

15 Q. Okay. The rebuttal testimony has a confidential
16 exhibit regarding porting.

17 CMSR. IGNATIUS: And, before you answer,
18 I guess I'd look to Mr. Malone, because we don't have a
19 redacted version, I'm not sure which aspect of that
20 Exhibit 15C is -- you're seeking confidentiality of.
21 Whether it's the number of ports listed? Whether it's the
22 exchange? I think we know it's the exchange that we're
23 talking about. I'm not going to ask about a particular
24 phone number or a particular street address, but --

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[WITNESS: Murray]

1 MR. MALONE: We were seeking to have the
2 entire exhibit confidential, because we felt like the
3 number of ports and the exchange were all sensitive
4 information.

5 CMSR. IGNATIUS: All right.

6 BY CMSR. IGNATIUS:

7 Q. I want to ask you some questions then about that
8 exhibit, it's that Attachment 15C to your rebuttal
9 testimony.

10 A. Yes.

11 Q. And, to the extent it is going to run afoul of
12 confidentiality, I guess I'd give your counsel time to
13 jump in before you answer. And, if we need to go to a
14 sealed transcript, we will.

15 CHAIRMAN GETZ: Well, before we do that,
16 though, I take it that there's nobody here in the room
17 that's not privy to confidential information? Is that a
18 correct assumption on my part?

19 MR. MALONE: That's our take on it, Mr.
20 Chairman.

21 CHAIRMAN GETZ: Okay. And, then, I
22 guess, to the extent there are answers or parts of
23 questions or whatever that needs to -- that you would seek
24 to have deemed "confidential", then I would just suggest

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[WITNESS: Murray]

1 that we deal with that after the fact.

2 CMSR. IGNATIUS: Thank you.

3 BY CMSR. IGNATIUS:

4 Q. So, Mr. Murray, looking at your confidential 15C that
5 was attached to your rebuttal testimony, you identified
6 _____ number portability transactions in Meriden,
7 correct?

8 A. Correct.

9 Q. And, are _____ of them completed, unlike the other
10 information in the affidavit that was a request, this
11 is an actual done deal, porting of _____ numbers that has
12 occurred?

13 A. It's my understanding that these have been, they have
14 been ported, yes.

15 Q. They are showing _____, is that
16 correct?

17 A. _____
18 _____
19 _____
20 _____
21 _____.

22 Q. _____ So, it's _____
23 _____, in Plainfield?

24 A. Yes. Meriden.

[WITNESS: Murray]

1 Q. And, Plainfield is within the Meriden exchange?

2 A. Yes. Basically, I believe Meriden is a village in the
3 larger town of Plainfield, if I understand it
4 correctly. And, so, that's why often it comes up as
5 "Plainfield".

6 Q. So, you have _____
7 _____ ported those
8 lines to Comcast?

9 A. In Meriden, at this point, yes.

10 Q. Yes.

11 A. It's a very small exchange. I want to say it's like
12 400 lines or something like that. It's a small
13 sampling size. And, we've also been made aware that
14 Comcast has been going door-to-door in Meriden, which I
15 was somewhat surprised by, but they're out there on the
16 streets.

17 CMSR. IGNATIUS: All right. Thank you.
18 Nothing else.

19 CHAIRMAN GETZ: Mr. Malone, are you
20 going to have redirect?

21 MR. MALONE: We are, Mr. Chairman.
22 Could we have a few minutes to compare notes?

23 CHAIRMAN GETZ: Well, at this point, I
24 would suggest we take the -- if you're going to have

[WITNESS: Murray]

1 redirect, that we take the lunch recess. Let me try to
2 scope out, so I understand how you want to proceed in the
3 afternoon. Would the next witness be Dr. Johnson?

4 MR. FELTES: That's correct.

5 CHAIRMAN GETZ: And, then followed by
6 Mr. Eckberg?

7 MS. HOLLENBERG:

8 (Atty. Hollenberg nodding in the
9 affirmative.)

10 (Chairman and Commissioners conferring.)

11 CHAIRMAN GETZ: Okay. We'll take the
12 lunch recess. We'll resume at 1:00. Give the opportunity
13 for redirect of Mr. Murray, and then turn to Dr. Johnson.
14 Thank you.

15 (Whereupon the lunch recess was taken at
16 11:57 a.m. and the hearing resumed at
17 1:09 p.m.)

18 CHAIRMAN GETZ: Okay. Good afternoon,
19 everyone. We're back on the record in Docket DT 07-027.
20 And, turning to Mr. Malone for redirect for Mr. Murray.

21 MR. MALONE: Thank you, Mr. Chairman.

22 **REDIRECT EXAMINATION**

23 BY MR. MALONE:

24 Q. Mr. Murray, throughout your testimony earlier this

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[WITNESS: Murray]

1 morning, you often referred to the broad term "KTC
2 exchanges". Can you just clarify for the record what
3 you mean when you say "KTC exchanges"?

4 A. For the record, the "KTC exchanges" that we're talking
5 about, Kearsarge Telephone Company exchanges, are the
6 exchanges of Andover, Boscawen, Chichester, Meriden,
7 and New London.

8 Q. Thank you. I'm going to refer back to Mr. -- some of
9 Mr. Linder's questions. He asked you to take a look at
10 Page 006 on the KTC-MCT Exhibit 14P. And, had you read
11 from the last line of the last paragraph before the
12 toll free number. Would you mind reading the first two
13 sentences of that paragraph.

14 A. Yes. I'm looking at Page 006. And, it's the last
15 sentence, in the middle of the page it says "You [may]
16 not realize it, but Andover, New Hampshire Comcast even
17 offers home telephone service, called Digital Voice.
18 This really makes Comcast a full-service company and
19 the best choice if you are looking for the best
20 entertainment and communications in your home. Please
21 [check] our availability tool to verify that you are in
22 a Comcast Cable service area, and to [review] [your]
23 exclusive Comcast Andover New Hampshire deals."

24 Q. Thank you. Also, Mr. Linder had you look at a number

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[WITNESS: Murray]

1 of other pages. One of them was TEM 130. Would you
2 take a look at that.

3 A. I'm looking at TEM 130 now.

4 Q. All right. And, he had you -- he asked you some
5 questions about the \$19.99 rate and the length of time
6 during which that rate was available. Could you tell
7 me, is that rate just for basic local telephone
8 service?

9 A. No. It appears to have a number of other features to
10 it. I can read those off, if you'd like?

11 Q. Please.

12 A. "Comcast Unlimited - Special Offer: Unlimited local
13 and long-distance calling for one low rate; easy to
14 switch/keep your phone number; unlimited local and
15 long-distance nationwide calling to the U.S., Canada,
16 and Puerto Rico; rated #1 in call clarity thanks to our
17 advanced fiber-optic network; visual voice mail let's
18 you see who calls so you can listen to the most
19 important messages first; 2 popular calling features
20 including" -- or, excuse me, "12 popular calling
21 features including Caller ID, Call Waiting, and more;
22 low international calling rates." And, there's a
23 footnote: "Based on an independent study performed by
24 Keynote dated November 2008 Wave Study" -- "Wave 6

[WITNESS: Murray]

1 Study."

2 Q. Thank you. That should be enough. Going to some of
3 the questions that Ms. Hollenberg asked you. In
4 particular, she asked you to direct your attention to
5 Page 19 of Mr. Reed's November 15th, 2007 prefiled
6 testimony, in which he made some reference to some
7 criticisms that Ms. Gage had of the data that he
8 provided in the TDS maps. Do you have that in front of
9 you? I can show you.

10 (Atty. Malone showing document to the
11 witness.)

12 BY MR. MALONE:

13 Q. That was Page 19, the one that she asked you to read
14 from, is that correct?

15 A. I don't believe so, yes.

16 Q. Could you read from Page 17, starting on Line 22, and
17 going through Line 3 on Page 18.

18 A. This is a "Q", question: "Ms. Gage included in her
19 testimony that Kearsarge Telephone Company exchanges"
20 -- excuse me, "that the Kearsarge Telephone Company
21 exchanges of Andover, Boscawen, Chichester, Meriden,
22 and New London have broadband or cable television
23 service to a majority of the customers (Gage Direct at
24 Page 2). Do you agree?" And, the answer is "Yes. Her

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[WITNESS: Murray]

1 analysis concurs with the information filed in our
2 petition."

3 Q. All right. Thank you. Also, in the questioning with
4 Ms. Hollenberg this morning, you testified that
5 "Comcast is certified in KTC exchanges." Can you
6 clarify as to which Comcast entity you're referring to?

7 A. Yes. Comcast Phone is the CLEC certified in those
8 exchanges, and they provide the numbering and the back
9 haul services for Comcast IP, which is the entity
10 within Comcast that provides the Comcast Digital Voice,
11 which is an interconnected VoIP service.

12 Q. Thank you. Also, at the technical session following
13 the submission of your affidavits, were you expressly
14 asked by anyone to walk through the steps that you took
15 to reach the webpages that you submitted with your
16 affidavits?

17 MS. HOLLENBERG: Objection. He
18 absolutely was asked to walk through that at the technical
19 -- the first technical session. And, to the extent --

20 CHAIRMAN GETZ: Well, wait, you're --
21 are you objecting to the question or testifying as to what
22 occurred at that time?

23 MS. HOLLENBERG: I'm objecting to the
24 question, if the witness is going to make a statement that

[WITNESS: Murray]

1 we didn't ask questions about his filing.

2 MR. MALONE: That wasn't my question,
3 Mr. Chairman.

4 MS. HOLLENBERG: Okay.

5 MR. MALONE: My question was "whether he
6 was expressly asked to step through the process at the
7 recent tech session?"

8 MS. HOLLENBERG: Okay. At the rebuttal
9 tech session?

10 MR. MALONE: I'm sorry. I'm sorry.

11 MS. HOLLENBERG: Thank you.

12 MR. MALONE: I'm sorry. Rebuttal tech
13 session.

14 MS. HOLLENBERG: All set.

15 CHAIRMAN GETZ: Are we clear?

16 MS. HOLLENBERG: Yes. Thank you.

17 CHAIRMAN GETZ: Mr. Murray.

18 MR. MALONE: I'm sorry.

19 **BY THE WITNESS:**

20 A. No, I was not expressly asked to go through that
21 process.

22 BY MR. MALONE:

23 Q. All right. Thank you. I'm going to ask you about
24 Exhibit 15C that we've been talking about today. That

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[WITNESS: Murray]

1 was the exhibit that had the updated number porting
2 information. Do you have that in front of you? I'm
3 sorry. It's the -- right. The same confusion we had
4 this morning. Attachment 15C, in Exhibit 16C, the
5 number porting information.

6 A. Yes.

7 Q. Was that information available to you in June when you
8 submitted your affidavits?

9 A. No, it was not.

10 MR. MALONE: All right. Thank you.

11 That's all my questions, Mr. Chairman.

12 CHAIRMAN GETZ: Okay. Thank you. Then,
13 the witness is excused. Thank you, Mr. Murray.

14 WITNESS MURRAY: Thank you.

15 CHAIRMAN GETZ: Mr. Feltes.

16 MR. FELTES: Thank you, Mr. Chairman.

17 Mr. Bailey calls Dr. Ben Johnson.

18 (Whereupon **Ben Johnson** was duly sworn
19 and cautioned by the Court Reporter.)

20 **BEN JOHNSON, SWORN**

21 **DIRECT EXAMINATION**

22 BY MR. FELTES:

23 Q. Dr. Johnson, can you please state your full name and
24 address for the record?

[WITNESS: Johnson]

1 A. Ben Johnson. And, my address is 3854-2 Killearn Court,
2 Tallahassee, Florida.

3 Q. And, for whom do you work and what do you do?

4 A. I have a consulting firm, Ben Johnson Associates, Inc.
5 And, I serve as a consulting economist in various
6 consulting engagements. In this case, I've been hired
7 by New Hampshire Legal Assistance.

8 Q. And, have you testified before the Commission before?

9 A. Yes, I have.

10 Q. And in this docket?

11 A. Yes.

12 Q. Did you prepare what has been premarked as "Bailey
13 Exhibit 77", September 2nd, 2010, "Testimony of Ben
14 Johnson"?

15 A. Yes.

16 Q. Is that in front of you?

17 A. Yes.

18 Q. Do you have any corrections to that testimony?

19 A. I do have a few. If you turn first to Page 10, if I am
20 permitted, I would like to correct, make two changes or
21 corrections to that page. Starting on Line 5, I'd like
22 to change the example from an "MCTC customer" to a "KTC
23 customer". So, the word "MCTC" would be changed to
24 "KTC". Then, on Line 6, consistent with that change, I

[WITNESS: Johnson]

1 would add the word "who" right after "ID", and before
2 the word "pays". And, I would change the dollar number
3 of the example to "\$23.82". And, then, finally, on Line
4 11, consistent with those changes, I would change the
5 percentage to "26 percent", to be consistent with this
6 example of a KTC customer.

7 Now that I've corrected and understand
8 that the scope of the proceeding is more narrowly
9 limited to Kearsarge, and I was interchangeably giving
10 examples. In this one particular paragraph, I felt it
11 was important to correct it to make it a KTC example.

12 Then, on Page 15, I would like to add,
13 at Line 18, in the middle, after the word "no", and
14 before the word "maps", add the word "new", to clarify
15 that, and to avoid giving an incorrect impression. So,
16 "no new maps or other evidence had been offered."

17 Those are the only corrections.

18 Q. With those corrections in mind, do you adopt in full
19 your September 2nd, 2010 testimony?

20 A. Yes.

21 Q. Have you reviewed testimony filed by OCA, Mr. Stephen
22 Eckberg?

23 A. Yes.

24 Q. Have you also seen the rebuttal testimony of Mr. Murray

[WITNESS: Johnson]

1 in this docket?

2 A. Yes.

3 Q. And, after reviewing Mr. Eckberg's testimony and Mr.
4 Murray's testimony, do you adopt in full on this date,
5 September 22nd -- September 27th, 2010, your
6 September 2nd, 2010 testimony?

7 A. As corrected, yes.

8 Q. As corrected. Thank you.

9 MR. FELTES: Witness is available for
10 cross-examination.

11 CHAIRMAN GETZ: Okay. Thank you. In
12 terms of order of cross, I was thinking to go to the
13 Consumer Advocate, then the Staff, and then to TDS. Is
14 there any problems with that order of cross?

15 (No verbal response)

16 CHAIRMAN GETZ: Okay. Then, let's start
17 with Ms. Hatfield.

18 MS. HATFIELD: Thank you. I have no
19 questions for the witness.

20 CHAIRMAN GETZ: And, Mr. Fossum?

21 MR. FOSSUM: Just a few.

22 **CROSS-EXAMINATION**

23 BY MR. FOSSUM:

24 Q. Dr. Johnson, if you could turn to Page 19 of your

[WITNESS: Johnson]

1 testimony please, of your September 2nd testimony
2 please.

3 A. Okay.

4 Q. And, there's a sentence that begins on Line 15 and runs
5 down to line 17. And, in the middle of the sentence,
6 you note that the "competitive alternative...must be a
7 relevant, competitive alternative". Could you please
8 explain what you meant by a "relevant alternative"?

9 A. Sure. I was probably adding the word "relevant" to try
10 to better distinguish the way I'm viewing the issue
11 before the Commission from the way the Company is.
12 But, to give you one example, if Comcast offers Digital
13 Voice service within an exchange, but, when you look at
14 a map, you see that some of the roads within that
15 exchange don't have Comcast facilities. And, so, some
16 of the customers, if they type in their address, will
17 find out that the offer isn't available to them. Then,
18 that makes it not a relevant competitive alternative
19 for that particular customer who's on a street that
20 doesn't have Comcast. Similarly, the same principle
21 holds, if the customer is just a basic voice customer
22 only, they have no interest in Caller ID and Call
23 Waiting, they have -- they can't afford to purchase or
24 no interest in purchasing video service or Internet

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[WITNESS: Johnson]

1 service, then, again, the Comcast offering, to the
2 extent it might be available, is not relevant to them
3 in their situation. It's very clear that the Comcast
4 offerings are being targeted at the upper end of the
5 market. Those people who do purchase video services or
6 do purchase Call Waiting and the like. So, their
7 pricing, their advertising, everything is targeted at
8 those -- that subset of the total market. So, again,
9 the problem is one of numbers under the statute. It
10 has to be a majority of the customers. And, if you
11 keep walling off, well, one group, it's not relevant to
12 them, because they don't have any availability, Comcast
13 isn't available. Another group might technically have
14 Comcast cable facilities running down their street, but
15 they don't purchase video services. And, the only
16 prices that are reasonable in a Comcast range, the only
17 things that are really you could see as competitive,
18 from an economist's perspective, are those that are
19 bundled together with these other offerings. And,
20 again, it doesn't qualify. So, the numbers, in terms
21 of actual relevant alternatives in terms of a majority,
22 you have to be very careful about what you're doing.
23 You can't have the attitude to say "well, Comcast is
24 operating in the exchange, therefore, we'll just assume

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[WITNESS: Johnson]

1 there is a majority of the customers for which an
2 alternative is available."

3 Q. Could you explain a little further what you meant by
4 "competitive, from an economics' perspective"?

5 A. Well, I think it goes to the heart of this case is some
6 language in the statute, and I was using that phrase to
7 try to avoid a complaint that I was interpreting the
8 law. Ultimately, that's a question for this Commission
9 or the courts as to what was meant. But it seems to me
10 clear that the statute requires something more than
11 just the availability of an alternative, it has to be a
12 competitive alternative.

13 I gave the example of air service to
14 Miami from Manchester as being an alternative to
15 placing a long distance call, but it's not a
16 competitive alternative. No economists in their right
17 mind would do a study and assume that air service is
18 competing with phone service.

19 This is a closer call, but it's the same
20 principle. That I think you clearly have segments in
21 the market, and, depending on the segment you look at,
22 one might argue that Comcast is competing for some
23 customers for their interest and their offering. But,
24 for other customers, it clearly is not. And, I believe

[WITNESS: Johnson]

1 what Comcast is actually focusing on is primarily their
2 competition with the satellite providers. But,
3 incidental to that, they are offering voice telephone
4 service to those who are sort of the high end of the
5 market. The people who are buying video service and
6 Internet service, and tend to buy Caller ID and the
7 like. And, within that segment, there's no doubt that
8 Comcast is part of the markets. But the problem is
9 that's only a subset. And, under the statute, it says
10 it has to be a "competitive alternative for a
11 majority". And, that's the problem.

12 So, again, it wasn't so much that I'm
13 trying to use some special terminology of
14 "competitive". But, just by saying "from an
15 economist's perspective", I'm saying I'm -- I'm looking
16 at those words, and I'm thinking that means the same
17 concept that economists normally think of about
18 "competitive".

19 Q. Thank you. I'd like to return very briefly to your
20 description of what it means to be "relevant", just so
21 that I'm clear. And, if I understood sort of the
22 second part of your definition, you indicated that
23 "relevance is determined based on the availability of
24 voice service, and not necessarily that of cable

[WITNESS: Johnson]

1 television or Internet service." Do I state that
2 accurately or have I misstated what you were
3 explaining?

4 A. I don't think that was the thrust of what I was saying.

5 Q. Oh. Well, then, please clarify.

6 A. Okay. Well, let's visualize we have an area with 1,000
7 households. TDS is serving 980 of those households,
8 currently 98 percent of the market. Under the statute,
9 what we have to look at is the 980, and then say "what
10 fraction of those 980 have a competitive alternative
11 available to them?" Now, let's assume that, out of
12 those 980, it turns out that, say, 400 of them, or 300,
13 doesn't matter for the example, let's say 400 of them
14 don't have cable TV service even going down their
15 street. So, we're now down to a subset of the 980; 580
16 have cable service running down the street. That's
17 important, because, if the cable isn't available, then
18 the fact that Comcast is advertising in the market,
19 *etcetera*, it really doesn't meet the statutory
20 requirement. But I'm saying that you have to go beyond
21 that. It's not just physical availability, you also
22 have to look at whether it's a competitive alternative.

23 We know, based on national statistics,
24 that only about 60 percent of that, in this example,

[WITNESS: Johnson]

1 580, 60 percent of those are even buying cable TV
2 service. So, now we're down to a few hundred of the
3 people in the market are currently Comcast customers,
4 and those are the ones that Comcast is primarily
5 targeting. Their promotional offerings are targeted at
6 trying to keep their existing customers and avoid them
7 going over to satellite providers. They're trying to
8 lock them in by making them sort of, by buying a
9 bundle, they're less likely to change and switch to
10 DirectTV or Dish Network down the road.

11 So, yes. As you start analyzing it,
12 which ones actually have any physical available --
13 availability, and then which ones are an existing
14 Comcast customer for video purposes, that's the real
15 target market, where the greatest level of
16 competitiveness is taking place.

17 So, that's the process I was trying to
18 describe. And, I just don't think we have the kind of
19 data we need to reach a conclusion that the "majority"
20 criteria has been met.

21 Q. And, is that why you have recommended that TDS include
22 information about Internet and cable subscriptions?

23 A. Yes. Again, the principle in the statute seems to be
24 that you don't have to have a competitive alternative

[WITNESS: Johnson]

1 to everyone. As long as you get enough competitive
2 pressure, then the Commission can reach the conclusion
3 that the deregulatory provisions are appropriate. But
4 the criteria seems fairly clear; you have to at least
5 have a majority with a competitive alternative, not
6 just an alternative, but a competitive one.

7 And, I believe, in this situation, given
8 the focus on Comcast, given the realities of the part
9 of the market they're targeting, you have to figure out
10 how much of the market, and it will vary. In an area
11 like Concord, it will be a much higher percentage than
12 in a lower income or rural area. Lower income, because
13 those folks are not, again, the target market. An
14 advertisement for a \$99 bundle may not be very
15 appealing to someone who can barely afford phone
16 service and is living with over-the-air TV. Much as
17 they would like to get ESPN and all that, they can't
18 afford it.

19 The same principle holds in a rural
20 area, where we know, historically, in terms of the
21 video market, that the buy-up rate for cable tends to
22 be lower there, because people switch -- they -- the
23 over-the-air services started -- people started
24 switching over and getting satellite in an earlier

[WITNESS: Johnson]

1 stage. So, the kind of pattern we're seeing in those
2 maps, where the amount and extent to which Comcast is
3 even wiring up an area will vary; inside town they tend
4 to have a lot more coverage than out in the rural
5 sections. Again, the segments of the market matter,
6 and you can't make the assumption that a pattern that
7 would hold for Concord or Manchester will also hold for
8 these rural areas outside of town that TDS is serving.

9 Q. So, just one last question on this point then, and just
10 so that I can understand. You point out, on Page 21 of
11 your testimony, that TDS "has not provided any
12 estimates of the customers who purchase video and
13 Internet services within [their] exchanges." So, I'm
14 just -- all I'm trying to understand is how that
15 information would be useful in conducting your
16 analysis?

17 A. Well, they were focusing on bundled offerings that
18 included those two other elements. So, even if you
19 accept that their evidence in the affidavit about the
20 "\$99 bundle" is evidence of competitiveness within the
21 bundled market or the part of the market where people
22 are buying video and Internet and telephone, even if
23 you accept that premise that that's a sign of
24 competitive activity, you have to figure out what part

[WITNESS: Johnson]

1 of the market is that? What fraction of the market is
2 that relevant to? And, we know it's not 100 percent,
3 we just don't know how large a percentage it is, based
4 on the evidence in this docket.

5 Q. Right. And, I guess what I'm trying to understand is,
6 how knowledge of a customer base that has signed up
7 for, say, cable television service is somehow going to
8 inform the understanding of what is available for
9 telephone service?

10 A. Okay. Let's give you a simple example. If Comcast
11 would charge someone, who doesn't purchase Comcast
12 video service, they're charging them \$39. I don't
13 believe this Commission would agree that that was a
14 competitive alternative to a \$16 or \$18 TDS service.
15 It's just too big a price gap. That's not an
16 indication that Comcast is attempting to compete in
17 that market.

18 Now, we have some evidence that
19 discounted promotional rates are being offered. But,
20 again, those promotional rates and the discounted rates
21 are targeted at people who are already a Comcast
22 customer. So, the degree to which the discounted rates
23 are relevant is a function of how many people are
24 already Comcast customers or are capable of being a

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[WITNESS: Johnson]

1 Comcast customer. That's the point. So, if you have
2 to take all your evidence and slash it by 40 percent,
3 then you start being a very close call or you're well
4 below the majority criteria.

5 Q. I have just one more question on your testimony at the
6 moment, turning to Page 8, at Line 14.

7 A. Yes.

8 Q. You note that "Comcast is not aggressively promoting
9 these offerings", which I suppose refers back to its
10 voice, Internet, and video services?

11 A. No, it's the opposite.

12 Q. Oh, I'm sorry. It refers only to its telephone
13 services?

14 A. Yes. I'm sorry for interpreting you. But, yes. The
15 last part of the question that leads into that is, "do
16 they at least allow customers to purchase stand-alone
17 voice service?"

18 Q. Okay. So that "these offerings" is just to the voice
19 service?

20 A. Yes.

21 Q. On what do you base your belief that they're not
22 "aggressively promoting"? What is the basis for that
23 conclusion on their "aggressiveness of promotion"?

24 A. Well, first of all, the price. I mean, they're pricing

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1 it at higher than the incumbent. So, they would expect
2 to have almost no one sign up for it. Presumably, the
3 only people that would go to the effort of changing
4 their phone service in order to pay a higher rate is
5 somebody who is so disgruntled with TDS for some reason
6 that they're willing to pay extra. And, again, just
7 given the level of effort required to change your phone
8 service, if the price is higher, that seems pretty
9 clear.

10 But, beyond that, the advertisements
11 that have been put forward, the emphasis on the
12 website, the other evidence that's available to me,
13 suggests that the thrust of their focus or their foray
14 into the telephone market is as ancillary to the video
15 market and the Internet market, and the -- all the
16 promotional offerings tend to focus on that, even the
17 one we heard a moment ago, with the scripts or whatever
18 as being read, it talked about they're a "full-service
19 provider of entertainment and voice service". So, it's
20 -- that combination is the part of the market that
21 they're targeting.

22 Q. You had mentioned during your response the "level of
23 effort to change". How great an effort is it to
24 actually change one's phone number from one carrier to

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[WITNESS: Johnson]

1 another?

2 A. It's more significant of an effort than it is for, say,
3 long distance service. You have to spend time on the
4 phone, clarifying the address, you have to make sure
5 they get the order right. It takes a proactive effort
6 on the part of the customer.

7 Q. But you wouldn't say that it's a "difficult thing to
8 do"?

9 A. No. Not necessarily. It really depends on the
10 individual on both ends of the process; the customer
11 and the degree to which the Comcast Service Rep., you
12 know, understands what they're doing and walking them
13 through it correctly. I don't want to give you the
14 impression that it's a tremendous amount of effort, but
15 there is a distinction. And, let me make it clear.
16 The amount of effort it takes to experiment with, and
17 I'm not sure of the name of your local grocery chains,
18 but, if you want to experiment with the grocery chain's
19 version of Campbell's soup or the grocery chain's
20 version of frozen peas, it really takes very little
21 effort. You're there, and, on the impulse, you say
22 "You know, the local grocery company's version of peas
23 is ten cents less. Let me try it this week and see if
24 it tastes the same as the Birdseye brand that I'm used

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[WITNESS: Johnson]

1 to buying." That's virtually effortless. It's just
2 this moment's impulse you try it out.

3 Whereas, to experiment with Comcast
4 phone service and see how it goes, and whether it
5 sounds good, *etcetera*, it's more of an effort. You've
6 got to get on the phone. You probably could easily
7 invest 10 or 15 minutes, making sure the order is
8 correctly filled out, you've answered all their
9 questions, everything's done right. And, then,
10 ultimately, you know, you're going to have to deal
11 with, you know, that whole process is more mental and
12 emotional effort. And, to then reverse course back
13 out, it's going to start all over again, you're going
14 to re-go through the process.

15 It's simply not as easy a process to
16 taste test or experiment as it is with many of the
17 products we think of, whereas, you're in the store, you
18 buy it on a regular basis, every week or two you're
19 buying it, why not try somebody else.

20 Q. Now, you had mentioned that part of your basis for
21 concluding that "Comcast is not aggressively marketing"
22 -- or, "aggressively promoting its voice service" is
23 the "price". Do you have any evidence that the -- or,
24 do you know of any instance where Comcast's prices is,

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1 say, higher in TDS's territory than in any other
2 territories it might serve?

3 A. No. The impression I have is that they are not
4 specifically targeting the TDS's territory. They're
5 more generically targeting Dish Network and DirectTV
6 and the Internet market. And, so, in an area like New
7 Hampshire, the thrust of their planning and their
8 strategy is probably focused on New England Telephone,
9 the Bell area. And, TDS is sort of just along for the
10 ride or the flip-side of that. To the extent that TDS
11 is feeling some competitive pressure in some smaller
12 portions of market, I think that's almost incidental to
13 what's happening in the other parts of the state.

14 Q. Getting back very quickly to your -- the example that
15 you just gave about the grocery store and the impulse
16 purchase, is that, from, I guess, from an economics' or
17 an economist's point of view, is that sort of a general
18 way of thinking about competition and competitive
19 pricing?

20 A. I'm not sure what you're asking.

21 Q. Well, you had mentioned earlier about -- I'm sorry, I'm
22 blanking at the moment, about an economist's -- from an
23 economics' perspective, you were looking at
24 competition. Is your peas example also a view of

[WITNESS: Johnson]

1 competition from an economist's perspective?

2 A. I think economists -- an economist's perspective of
3 competition is pretty much the common sense
4 perspective. There are subtle -- subtleties available,
5 depending on the context. There's other terminology
6 that can be used. For example, you can talk about
7 "perfect competition" or "pure competition", you can
8 talk about "rivalry". That economists, sort of like,
9 with Eskimos, they might have, I don't know if it's
10 true, but they have a saying or I've heard a saying
11 that, you know, they have "ten words for "snow";
12 whereas you and I it's just "snow".

13 It's a little bit like that. Economists
14 are capable of distinguishing subtle differences. But,
15 when I just see the plain word "competitive", it seems
16 to me that what I see as an economist is pretty much
17 the same as what the Legislature probably was thinking
18 about, and, ultimately, what this Commission has to
19 decide.

20 The key point, I think, is that we have
21 a criteria of a "majority of the customers". So, it
22 seems to me the very fact that it's a "majority" is
23 suggesting that there's a thoughtful, factual process
24 that we have to go through here. It's not merely the

[WITNESS: Johnson]

1 fact that Comcast is authorized to operate and is now
2 providing phone service. We have to go a step further
3 and determine how significant a competitive pressure is
4 that? How actively are they in the market actually
5 trying to compete? And, I think the answer is, "well,
6 it varies depending on subsets of the market." That
7 the high end of the market, people who are buying
8 Internet and are buying video and, of course, have
9 phone service, that's the portion of the market where
10 they're competing. And, as you go away from that, you
11 start getting to the end of the market where it is
12 absolutely clear-cut they're not competing.

13 MR. FOSSUM: I have nothing further.

14 Thank you.

15 CHAIRMAN GETZ: Thank you. Mr. Malone.

16 MR. MALONE: Mr. Coolbroth will be
17 conducting the cross-examination.

18 CHAIRMAN GETZ: Thank you.

19 MR. COOLBROTH: Thank you, Mr. Chairman.

20 BY MR. COOLBROTH:

21 Q. Dr. Johnson, you mentioned before the statutory test
22 related to whether "competitive wireline, wireless, or
23 broadband service is available to the majority of
24 retail customers." Do I see "airplane service" on that

[WITNESS: Johnson]

1 list? I'm just curious as to whether the Legislature
2 really contemplated anything about "airplane service"
3 in the statute?

4 A. No. But, again, they added the word "competitive".
5 They knew that "wireline service", what that means,
6 they know what "broadband" means, they know what
7 "wireless" means. The fact that they inserted the word
8 "competitive" to me implies that they were concerned
9 about the impact of that availability, and was that
10 impact sufficient to protect customers from monopoly
11 power? Was it going to serve the purpose that this
12 Commission has historically served? And, given that
13 structure and the insertion of that word, I think the
14 -- some sort of analysis of what's really going on
15 becomes important. And, that's the trust of my
16 testimony.

17 Q. And, on Page 17 of your prefiled testimony, right at
18 the top, you make reference to an "FCC Annual Report
19 assessing the Status of Competition in the Market for
20 [the] delivery of Video Programming." Do you see that?

21 A. Yes.

22 Q. Now, the FCC also prepares similar studies for local
23 telephone competition, do they not?

24 A. Yes.

[WITNESS: Johnson]

1 Q. And, you didn't make any reference to any of those
2 recent reports in your testimony, did you?

3 A. No.

4 Q. Okay. I'd like to show you a document.

5 (Atty. Coolbroth handing document to the
6 witness. And, Atty. Malone distributing
7 documents to the Parties, Staff, and the
8 Commission.)

9 BY MR. COOLBROTH:

10 Q. This bears a heading "FCC News", is that correct?

11 A. Yes.

12 Q. And, it's marked "For Immediate Release June 25, 2010"?

13 A. Yes.

14 Q. So, this would have been available when you prepared
15 your testimony, is that right?

16 A. I suppose so.

17 Q. And, it's entitled "FCC Releases New Local Telephone
18 Competition Data." Did I read that correctly?

19 MR. FELTES: Attorney Coolbroth, can we
20 -- would it be possible to allow the witness a chance to
21 review it for just a minute?

22 MR. COOLBROTH: Tell me when you're set.

23 WITNESS JOHNSON: Okay.

24 BY MR. COOLBROTH:

[WITNESS: Johnson]

1 Q. And, does it say "First Collection to Comprehensively
2 Include Interconnected VoIP"? Did I read that
3 correctly?

4 A. Yes.

5 Q. And, does it say "The Federal Communications Commission
6 for the first time has released comprehensive
7 information about subscribership to interconnected
8 Voice over Internet Protocol (VoIP) service." Did I
9 read that correctly?

10 A. Yes.

11 Q. And, it says that "Interconnected VoIP service
12 represents an important and rapidly growing part of the
13 U.S. voice service market and the new data will provide
14 the Commission with a comprehensive picture of that
15 market going forward." Did I read that correctly?

16 A. Yes.

17 Q. And, does it say "Interconnected VoIP Service enables
18 voice communications over a broadband connection and
19 allows users both to receive calls from, and place
20 calls to, the public switched telephone network, like
21 traditional phone service." Did I read that correctly?

22 A. Yes.

23 Q. And, it says "Providers of the service include
24 companies like Vonage as well as cable and telephone

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[WITNESS: Johnson]

1 companies that own their own networks." Is that
2 correct?

3 A. Yes.

4 Q. And, Comcast treats its Digital Voice service as an
5 interconnected VoIP service, isn't that right?

6 A. I think so, yes.

7 Q. And, looking down further, in the first bullet point
8 there, does it say "At year-end 2008, there were 141
9 million traditional switched access lines in service
10 and 21 million interconnected VoIP subscriptions [in
11 service] in the United States, or about 162 million
12 wireline retail local telephone service connections in
13 total." Did I read that right?

14 A. Pretty close. Missed a word or so, that's all.

15 Q. And, so, in a universe that the FCC characterizes as
16 "wireline retail local service connections", it counts
17 both traditional switched access lines and
18 interconnected VoIP subscriptions, is that right?

19 A. The key part of your question is -- let me hear that
20 question again. It focuses on some sort of terminology
21 of the FCC, and I want to make sure I understand the
22 terminology correctly. Could you read it to me or ask
23 me the question again.

24 MR. COOLBROTH: Could I have it read

[WITNESS: Johnson]

1 back.

2 (Whereupon the court reporter read back
3 the last question asked by Mr.
4 Coolbroth.)

5 BY MR. COOLBROTH:

6 Q. And, of course, I was referring to "wireline", and not
7 "wireless".

8 A. The thrust seems to be something about how the FCC is
9 characterizing things, and I'm not sure which. I want
10 to either know precisely what you're asking me or if
11 you could point me again to where that characterization
12 is, so I can study it carefully.

13 Q. Okay. In the first bullet point, over on the -- on the
14 second line, starting on the right, the FCC is talking
15 about "162 million wireline retail local service
16 connections in total."

17 A. Okay. So, they're basically characterizing the
18 terminology "wireline encompasses VoIP" is your point.

19 Q. Do you agree that's what it says?

20 A. I mean, it does use wires. So, that seems reasonable.
21 Yes, that seems to be the thrust. They're using the
22 terminology "wireline" and "retail" to encompass both
23 traditional switched access lines and VoIP
24 subscriptions, which utilize some form of wire,

[WITNESS: Johnson]

1 presumably, broadband, from either the phone company or
2 the cable company.

3 Q. And, in the second bullet, does it say "Of the
4 162 million total connections, 48 percent were
5 residential switched access lines", and skipping down
6 here a bit, "12 percent were residential VoIP
7 subscriptions", is that correct?

8 A. That's what the numbers say, yes. So, that's
9 suggesting, nationwide, we have about a 80 percent
10 switched access and 20 percent VoIP, as opposed to, you
11 know, 2 percent or 3 percent or something of the
12 numbers we might be seeing in this case. But,
13 nationwide, it is a much more significant penetration.

14 Q. Well, actually, you may have jumped ahead. If you just
15 look at the top of the next page and look at the bullet
16 point there, the Commission says "Of the 97 million
17 wireline residential connections, 74.5 percent were
18 ILEC switched access lines, 19.5 percent were non-ILEC
19 interconnected VoIP subscriptions, [and] 5.8 percent
20 non-ILEC switched access lines", is that right?

21 A. That's what it says. So, you didn't read, but, if I
22 understand correctly, the "0.3 percent" is the final
23 percent.

24 Q. Yes. Certainly. So, that's -- and those were

[WITNESS: Johnson]

1 Q. Well, --

2 MR. COOLBROTH: And, actually, I haven't
3 marked these. I should mark these. Could I have the
4 press release that's dated 6 --

5 **CONTINUED BY THE WITNESS:**

6 A. Oh, no. Yes, six months. I'm sorry, I misstated that,
7 six months later. So, that's June 2009, the second
8 document you handed me; the first document was
9 December 2008. So, it's six months later, released
10 three months later. So, I guess they're kind of
11 catching up.

12 MR. COOLBROTH: And, I neglected to have
13 these marked, Mr. Chairman. If I could have them marked
14 as the next exhibits for KTC.

15 CHAIRMAN GETZ: So, the "June 25, 2010
16 First Collection FCC Release" would be?

17 MS. DENO: Seventeen.

18 CHAIRMAN GETZ: Okay, "Exhibit 17".
19 And, the subsequent FCC release from September 3, 2010
20 would be marked for identification as Exhibit --
21 "Applicant's Exhibit Number 18".

22 (The documents, as described, were
23 herewith marked as **Exhibit KTC-MCT 17**
24 and **Exhibit KTC-MCT 18**, respectively,

[WITNESS: Johnson]

1 for identification.)

2 BY MR. COOLBROTH:

3 Q. And, so, similarly, in the first bullet, it says "In
4 June 2009, there were 133 million traditional switched
5 access lines in service and 23 million interconnected
6 VoIP subscriptions [in service] in the United States,
7 or about 157 million wireline retail local telephone
8 service connections in total." Did I read that
9 correctly?

10 A. Yes. Yes.

11 Q. And, looking at the next bullet in this press release,
12 it says, does it not, "Interconnected VoIP
13 subscriptions increased by 10 percent during the first
14 six months of 2009 (from 21 million to 23 million
15 subscriptions) and switched access lines decreased by
16 5 percent (from 141 million to 133 million lines) for a
17 combined decrease of 3 percent (from 162 million to
18 about 157 million total wireline retail local telephone
19 service connections)." Did I read that right?

20 A. I think so.

21 Q. So, that's saying, in the universe of overall declining
22 local telephone service connections, the VoIP
23 subscriptions are increasing, while the switched access
24 lines are decreasing, is that right?

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[WITNESS: Johnson]

1 A. Yes.

2 Q. And, the last bullet point on that page, does it say
3 "Of the 93 million wireline residential connections,
4 73.1 percent were ILEC switched access lines, [and]
5 20.7 percent were non-ILEC interconnected VoIP
6 subscriptions"? Does it say that?

7 A. Yes.

8 Q. So, the share of residential connections of VoIP is
9 increasing on the ILEC switched access lines as well,
10 is that right?

11 A. Yes, but not by the full 10 percent growth rate. So,
12 it appears that the growth in business has been a
13 little faster than the residential. I suppose it's how
14 you look at it, but, yes.

15 Q. But, of course, the TDS -- or, Kearsarge serves
16 business customers, as well as residential customers,
17 does it not?

18 A. Absolutely.

19 Q. And, I'd like to show you a document entitled "Local
20 Telephone Competition: Status as of June 30, 2009
21 Industry Analysis and Technology Division Wireline
22 Competition Bureau September 2010", bearing the seal of
23 the Federal Communications Commission. And, ask you if
24 you can identify what this document is?

[WITNESS: Johnson]

1 A. I've not seen it before, but it looks like a recent
2 version of their Local Competition Reports they have
3 been issuing for years.

4 Q. And, take the time you need, but I'd like to direct
5 your attention to Page 1, the numbered page "1", after
6 the "Table of Contents" of this document.

7 A. Okay.

8 Q. And, again, like the press release, it says, does it
9 not, "This is the second of our reports about local
10 telephone service in the United States that includes
11 comprehensive information about subscribership to
12 interconnected Voice over Internet Protocol
13 (interconnected VoIP) service as well as comprehensive
14 information about the more traditional telephone
15 service lines." Is that correct?

16 A. Yes.

17 Q. And, directing your attention to Page 2 of the report,
18 down under the heading "Wireline retail local telephone
19 service", do you see that heading?

20 MR. FELTES: Mr. Chairman, I object to
21 the context of this cross at this point. The press
22 releases are two pages long. Mr. Johnson has the ability
23 to read two pages in a minute or two, but this is a 32
24 page report from the FCC. And, it appears as though

[WITNESS: Johnson]

1 Attorney Coolbroth is going to take out a sentence or two
2 here or there and cross-examine Dr. Johnson on it. I
3 think it behooves us to allow Dr. Johnson to, you know, at
4 least read the entire report at a minimum, before
5 commenting on a sentence here or there. And,
6 alternatively, --

7 CHAIRMAN GETZ: I think, at this point,
8 he hasn't been asked to comment on anything. All he's
9 been asked is to confirm what the document says. I think
10 before we -- we can go into this document at some length,
11 Mr. Coolbroth, if you just want to confirm what's there.
12 But, to the extent we're going to try to get any opinions
13 out of Dr. Johnson on the substance of this, then,
14 obviously, we'll give him some time to peruse the
15 document.

16 MR. COOLBROTH: Thank you, Mr. Chairman.
17 We'll give him the time that he needs, as appropriate. I
18 do plan largely to kind of take him through the document.
19 On this document -- well, see if I ask him for any
20 opinions, I'm not sure I'm going to.

21 CHAIRMAN GETZ: Okay. Well, let's see
22 where it goes.

23 BY MR. COOLBROTH:

24 Q. So, looking at the heading "Wireline retail local

[WITNESS: Johnson]

1 [competition] service", does it say "Retail local
2 telephone customers are served by two wireline
3 technologies, end-user switched access lines and
4 interconnected VoIP subscriptions." Did I read that
5 right?

6 A. Yes.

7 MR. COOLBROTH: They're two-sided
8 copies, Mr. Chairman.

9 CHAIRMAN GETZ: Well, we encourage that.

10 BY MR. COOLBROTH:

11 Q. Dr. Johnson, I wanted to direct your attention to
12 Page 5 of this document. And, in particular, Figure 3.
13 And, does this report "Wireline Retail Local Telephone
14 Service Connections by Technology, Regulatory Status,
15 and Customer Type as of June 30, 2009, (In Thousands)"?

16 A. Appears to.

17 Q. And, does this appear to be more detail behind the
18 aggregate numbers that were included in the press
19 release?

20 MR. FELTES: Mr. Chairman?

21 **BY THE WITNESS:**

22 A. Yes. It does appear to have some additional detail.
23 I'm sorry.

24 MR. FELTES: Mr. Chairman, if I may?

[WITNESS: Johnson]

1 Can we -- is it possible to provide an offer of proof
2 where Attorney Coolbroth is going with this? At this
3 point, I'm going to have to object to this document. I
4 don't think it is relevant. TDS has had an opportunity to
5 study its own exchanges a provide this type of
6 information. What's relevant in this proceeding is
7 Kearsarge Telephone Company, not FCC nationwide numbers.
8 So, I'm little confused of where we're going with this. I
9 object, based on relevancy, at this time.

10 MR. COOLBROTH: Well, Mr. Chairman,
11 first of all, this witness used such a national report to
12 comment on competition in the video industry. But,
13 secondly, this witness is providing general testimony
14 about what he thinks the word "competitive" means and what
15 competition is generally. If he were only focusing on the
16 statute and what's going on in the Kearsarge exchanges, it
17 would be a different case. But he is the one who is
18 introducing the overall question of competitiveness and
19 what "competitiveness" means under this statute in his
20 testimony. And, we are exploring whether that's
21 consistent with what's going on elsewhere in the market,
22 and impeaching his opinion.

23 (Chairman and Commissioners conferring.)

24 CHAIRMAN GETZ: We're going to permit

[WITNESS: Johnson]

1 the continuing cross-examination on this issue. I think
2 Mr. Coolbroth does make the important point that Dr.
3 Johnson raised the issue of FCC reports in one regard.
4 And, certainly, with these three documents, these two FCC
5 news releases and this FCC report, it addresses issues
6 that are irrelevant -- are relevant and are within the
7 scope of permissible cross-examination.

8 MR. COOLBROTH: Thank you, Mr. Chairman.

9 CHAIRMAN GETZ: Having said that, we may
10 get to a point where the cross-examination becomes
11 repetitive.

12 MR. COOLBROTH: Understood, Mr.
13 Chairman.

14 BY MR. COOLBROTH:

15 Q. Dr. Johnson, I'd like to ask you to look at Page 12 of
16 this document, Table 1, which is "End-User Switched
17 Access Lines and VoIP Subscriptions". And, does it
18 show that, in December 1999, there were 181,203,000
19 ILEC switched access -- ILEC services?

20 A. Switched access lines, yes. End-user switched access
21 lines.

22 Q. And, in June 2009, there were 112,743,000 ILEC switched
23 access lines, end-user switched access?

24 A. Yes.

[WITNESS: Johnson]

1 Q. And, would you accept subject to check that that is a
2 decrease of 37.8 percent?

3 A. Yes.

4 Q. And, for services provided by non-ILECs, in
5 December 1999, was it 8,194,000?

6 A. Yes.

7 Q. And, in June 2009, was it 43,963,000?

8 A. Yes.

9 Q. And, would you accept subject to check that that is an
10 increase of 436.5 percent?

11 A. Yes.

12 Q. Dr. Johnson, I'd like to direct your attention to
13 Page 20 of this document. Specifically, Table 9, which
14 is entitled the "Residential End-User Switched Access
15 Lines and VoIP Subscriptions by State as of June 30
16 2009 (In Thousands)." Do you see that?

17 A. Yes.

18 Q. And, looking down at the total for New Hampshire, over
19 on the right, does it show a total of these items of
20 494,000?

21 A. "494", did you say?

22 Q. Right.

23 A. Yes.

24 Q. And, of that total, 302,000 were provided by ILECs?

[WITNESS: Johnson]

1 A. Yes.

2 Q. And, substantially, all of them were provided over
3 switched access lines, is that right?

4 A. Yes.

5 Q. Because, in the middle, for "VoIP", it either rounds to
6 zero or zero, is that right?

7 A. Yes.

8 Q. And, then, looking at "Non-ILECs", the total is
9 192,000?

10 A. Yes.

11 Q. Of which 6,000 were switched access lines and 33 plus
12 153 were VoIP?

13 A. Yes. The bulk of the non-ILEC lines are from VoIP.
14 And, within that category, the vast majority are
15 bundled with Internet services. So, it's the bundled
16 offerings, with Internet service, is the way they have
17 set up the data collection, and where they expect a lot
18 of those would also be bundled with video, is where the
19 success has been in the penetration into the market.

20 Q. And, just one more page in this document. I'd like to
21 ask you to look at Page 28, Table 17, which reports
22 "Mobile Telephone Facilities-based Carriers and Mobile
23 Telephony Subscribers." Do you see that page?

24 A. Yes. Oh, Table 17. Okay. Yes.

[WITNESS: Johnson]

1 Q. And, down for New Hampshire, looking over to the right,
2 at June 2009, is it correct that there were 1,075,000
3 mobile telephony subscribers in New Hampshire?

4 A. That's the number that's reported here, yes.

5 Q. And, is that more than double the total number of
6 wireline connections in New Hampshire?

7 A. Yes.

8 Q. And, Dr. Johnson, I wanted to direct your attention to
9 -- back to your prefiled testimony, to Page 12. And,
10 at the very top of that page, your counsel appears to
11 characterize your prior testimony as "Comcast isn't
12 making much of an effort to compete in the market for
13 telephone service." Did I read that right?

14 A. Yes. Yes.

15 Q. And, on Page 17 of your testimony, Lines 11 through 14,
16 you say "Comcast's decision not to compete head-to-head
17 with TDS in the voice telephone market, its decision
18 not to aggressively promote stand alone voice service,
19 and its decision not to undercut or at least match
20 TDS's prices for phone service are consistent with the
21 longstanding historical practices of most cable
22 television providers." Did I read that right?

23 A. Yes, you did.

24 Q. Does your testimony cite any marketing reports within

[WITNESS: Johnson]

1 the Kearsarge Telephone Company service territory to
2 support that statement?

3 A. I am referring to my opinion of the earlier evidence I
4 had presented at that point. It's also consistent with
5 data you're just showing me now from this latest FCC
6 report.

7 Q. But your testimony is about Comcast's strategic
8 decisions about how it's going to market its products,
9 is that right?

10 A. Or its attempts to avoid competing head-to-head where
11 it can, and to maximize profits as best it can when it
12 has no choice. So, it has no choice but to compete
13 with the satellite providers. And, it has made the
14 decision to compete in the Internet market. Having
15 made that decision, the telephone is sort of an extra
16 element of that overall plan, but it is not the primary
17 thrust of their efforts. I think that's very clear.
18 You could even see it right here in this document,
19 where the activity is primarily when VoIP is purchased
20 as a bundled with Internet service. But, in general,
21 that's been what I've observed in the marketplace, that
22 what they're advertising are bundles. And, they are
23 strategically trying to counter the efforts of DirectTV
24 and Dish Network, because those two providers are very

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[WITNESS: Johnson]

1 weak in the area of broadband. And, the technology,
2 satellite technology is not a very efficient way of
3 providing broadband. I mean, they can do it, but
4 they're certainly not very successful at it. So,
5 they're trying to parry. And, they're trying to avoid
6 having a head-to-head competition where there's pretty
7 much the same offering, and it's just strictly a
8 question of the service quality and price. That's
9 consistent with the historic pattern, which I referred
10 to, but to remind you very briefly. We had, you know,
11 20 or 30 years of opportunity for Comcast to compete
12 with Time Warner, and for Time Warner to compete with
13 other cable providers, and that's not what they did.
14 They chose to buy each other off and to consolidate.
15 And, if they wanted to grow, they would just keep on
16 buying more and more existing, small mom-and-pop cable
17 companies. They would not compete against each other.
18 You know, we didn't have exclusive service arrangements
19 or franchises. To the extent some cities attempted
20 that, Congress is knocking that down. So, they had the
21 opportunity to compete by expanding into adjacent areas
22 within the metropolitan markets where they were already
23 serving. And, that's not something they chose to do as
24 an industry. Their pattern is very clear. So, I

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[WITNESS: Johnson]

1 believe that tells us something as to how they're going
2 about their competition with the satellite providers
3 and with telephone providers. They're not -- they're
4 trying to avoid head-to-head competition,
5 apple-to-apple competition. They're doing bundles.
6 And, they feel like they have an advantage in the
7 bundle, because they can put all three elements into
8 it, and neither of the other firms can combine all
9 three as effectively, with some limited exceptions,
10 such as the FiOS effort by Verizon, where they're
11 trying to be in a position to offer all three. But, if
12 you look nationwide, in general, that strategy of
13 focusing on bundling all three is an attempt to, again,
14 minimize the penetration from DirectTV and Dish
15 Network.

16 Q. Well, rather than your hypothesis, would it be better
17 to hear from Comcast itself about what its marketing
18 plans are? For instance, with what it tells its
19 investors?

20 A. I think both types of information are useful. I doubt
21 they would be focusing on the fact that they have
22 avoided entering each other's service territory. I've
23 never seen a reference to that sort of thing, except
24 when kind of pressed on it. But, certainly, you know,

[WITNESS: Johnson]

1 more information is fine. If you think you have a
2 quote you want me to look at, I'd be happy to look at
3 it.

4 Q. I would like to ask you to look at this document. Take
5 some time and look it over.

6 MR. COOLBROTH: This is entitled "United
7 States Securities and Exchange Commission Washington, D.C.
8 Form 10-Q", for "Comcast, "For the quarterly period ended
9 June 30, 2010." I'm going to ask that this be marked for
10 identification.

11 CHAIRMAN GETZ: Okay. Let's go back to
12 the previous, I don't think we marked for identification
13 the "September 2010 Wireline Competition Bureau" document,
14 "Local Telephone Competition". We'll mark that for
15 identification as "Exhibit Number 19". And, we'll mark
16 the "Comcast 10-Q" as "Exhibit Number 20".

17 (The documents, as described, were
18 herewith marked as **Exhibit KTC-MCT 19**
19 and **Exhibit KTC-MCT 20**, respectively,
20 for identification.)

21 BY MR. COOLBROTH:

22 Q. And, Dr. Johnson, are you familiar with what Form 10-Qs
23 are?

24 A. Yes.

[WITNESS: Johnson]

1 Q. And, these are reports that are filed quarterly by
2 public companies with the Securities and Exchange
3 Commission, is that right?

4 A. Yes.

5 Q. And, they typically report interim unaudited quarterly
6 financial results, including management's discussion
7 and analysis?

8 A. Yes.

9 Q. And, are there penalties for companies, if they make
10 materially false statements in filings such as this?

11 A. Yes.

12 Q. And, are there also penalties if they omit to include
13 material that's necessary to make the stuff that's in
14 here not misleading, is that right?

15 A. Yes.

16 Q. Okay. I'd like to direct your attention to Item 2 of
17 this Form 10-Q.

18 A. What do you mean by -- okay.

19 Q. And, I'm going to get to that. And, I'm going to refer
20 to page numbers. But the webpage printout prints pages
21 at the top, and the document has page numbers at the
22 bottom. I'm referring to the document page numbers at
23 the bottom when I'm going to refer you to a page. And,
24 on Page 26, do you see that's where it starts "Item 2:

[WITNESS: Johnson]

1 Management's Discussion and Analysis of Financial
2 Condition", so forth?

3 A. Yes.

4 Q. I'd like to direct your attention to Page 28. And,
5 specifically, the section headed "Segment Operating
6 Results". Do you see that?

7 A. Yes.

8 Q. And, it says "Our segment operating results are
9 presented based on how we assess operating performance
10 and internally report financial information. To
11 measure the performance of our operating segments, we
12 use operating income (loss) before depreciation and
13 amortization, excluding impairments related to fixed
14 and intangible assets, and gains or losses from the
15 sale of assets, if any. This measure eliminates the
16 significant level of noncash depreciation and
17 amortization expense that results from the
18 capital-intensive nature of our [business] and from
19 intangible assets recognized in business combinations.
20 Additionally, it is unaffected by our capital structure
21 or investment activities. We use this measure to
22 evaluate our consolidated operating performance and the
23 operating performance of our operating segments and to
24 allocate resources and capital to our operating" -- I'm

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[WITNESS: Johnson]

1 going to have to object again for the record. This is
2 information that I think is well beyond the scope of Mr.
3 Johnson's testimony. He did not testify what he thought
4 would be the revenue increase for a certain product or
5 service from Comcast with respect to KTC. And, TDS
6 certainly did not provide any information about what
7 Comcast is doing in the KTC market. And, this is what
8 this case is all about, KTC; not these generalized reports
9 that we've seen for the first time right here.

10 CHAIRMAN GETZ: Okay. Well, your
11 objection is overruled. To the extent you want to follow
12 up on some of this material on redirect, you'll have the
13 opportunity to do that. And, to the extent you want to
14 argue what weight we should give this information, then,
15 obviously, you'll have the opportunity to do that.

16 MR. FELTES: Thank you.

17 BY MR. COOLBROTH:

18 Q. And, continuing over onto Page 29, Dr. Johnson, under
19 the paragraph headed "Phone", it says, does it not,
20 "Our phone revenue increased during the three and six
21 months ended June 30, 2010 compared to the same periods
22 in 2009 primarily due to an increase in the number of
23 residential and commercial phone customers. During the
24 three and six months ended June 30, 2010, we added

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[WITNESS: Johnson]

1 approximately 230,000 and 503,000 phone customers,
2 respectively." Did I read that right?

3 A. Yes.

4 Q. And, that period January 1, 2010 to June 30, 2010 has
5 been a pretty rough period for the economy, isn't that
6 true?

7 A. I'm not sure what you mean by "rough". I think we're
8 all aware of the fact that the economy is not as robust
9 as we would like it to be, unemployment is much higher
10 than we like it to be, growth in GDP has been slower
11 than was hoped.

12 Q. And, in that climate, Comcast was able to increase its
13 number of phone customers by 503,000, is that right?

14 A. Yes.

15 Q. And, continuing on in the next paragraph, "As
16 previously disclosed, we expect further declines in the
17 number of video customers during the second half of
18 2010. In addition, during June and July, our video,
19 high-speed Internet and phone customer results were
20 weaker than expected due to the expiration of
21 promotions from the [Company's] digital transition last
22 year and the continuing impact of competition and a
23 weaker environment." Did I read that correctly?

24 A. Could you refer me again to where you were reading

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[WITNESS: Johnson]

1 from?

2 Q. Under that, on Page 29, under the heading "Phone".

3 A. Okay.

4 Q. The second paragraph is what I read.

5 A. I see the words, but I'm not quite sure what they mean

6 by it. They say the -- I'm not sure what they mean.

7 Maybe what they mean is the growth in the number of

8 customers hasn't been as robust as they had hoped for,

9 and that they're attributing it to an expiration of

10 promotions. The promotions had been instilling growth.

11 And, as they have cut back on their promotions, they're

12 not able to sustain the growth rate. I'm not sure.

13 Maybe that's what they mean.

14 Q. And, looking over at the next page, "Cable Segment

15 Operating Expenses", do you see that?

16 A. Yes.

17 Q. And, again, for the six months ended, going down to the

18 "Phone" line, we see, for the six months ended June 30,

19 2010, the operating expenses associated with phone were

20 "\$286 million"?

21 A. Yes.

22 Q. And, they were substantially the same for the same

23 period ended June 30, 2009?

24 A. Yes.

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[WITNESS: Johnson]

1 Q. So that, while revenues are going up, expenses are
2 staying pretty much level?

3 A. By this measure, they have a very high margin in the
4 phone business.

5 Q. And, they said at the beginning of this, this is the
6 measure that they use to allocate resources and
7 compensate their people, is that right?

8 A. Right. Bear in mind, it doesn't include the cost of
9 capital, in any sense. I mean, it doesn't include the
10 interest on their investment, it doesn't include
11 depreciation. But, in any event, that's the one
12 they're focusing on. And, by that measure, they have a
13 pretty substantial profit margin on the phone line.

14 Q. So, using this metric, \$286 million of expense produces
15 \$1.93 billion of revenue, is that right?

16 A. Actually, it's 1.79 billion.

17 Q. Thank you.

18 A. Yes.

19 Q. And, subject to check, would you agree that the expense
20 for the "phone" component of the business, using this
21 metric, expenses are about 16 percent of revenues, is
22 that right?

23 A. Yes.

24 Q. And, if you're using this metric, that makes this look

[WITNESS: Johnson]

1 like a pretty lucrative line of business, does it not?

2 A. Yes. But, again, it's partly because they're not
3 focusing on what it costs them to add on phone to the
4 system. But it's partly -- the most significant thing,
5 too, you just have to keep in mind is the fact that
6 they're choosing to look at it with sort of on a cash
7 flow basis, without consideration of depreciation,
8 which they themselves concede is pretty expensive. In
9 the sense that they have invested a lot to move into
10 the Internet business, and that's taken a lot of
11 capital investment. But, having made that decision,
12 they're focusing on the operating results. And, in
13 that context, your statement is, I think, a fair
14 characterization of what they're saying here.

15 Q. So, with a line of business that's producing that cash
16 flow and showing revenue -- a 13.6 percent revenue
17 increase over the period, they still say that these
18 results were "weaker than expected", back on Page 29,
19 do they not?

20 A. Again, it's not clear what was weaker. But I think
21 they were referring to, they haven't been able to grow
22 the business as much as they had hoped, in part,
23 because they were allowing some of their promotional
24 offerings to expire.

[WITNESS: Johnson]

1 Q. And, then, going back to Page 29, that "Phone" segment,
2 just the last sentence in that segment, does it say "We
3 are taking steps to address customer results during the
4 remainder of the third quarter and year"? Does it say
5 that? They tell their investors they "are taking
6 steps"?

7 A. Yes.

8 Q. Do you think those people are out selling phone
9 service?

10 A. Or video service or -- it's not completely clear.
11 Again, the paragraph before is referring to "high-speed
12 Internet and phone" in general. In other words, even
13 though it's under the heading "Phone", this entire
14 paragraph that you've been quoting from is clearly
15 dealing with the overall picture. It's talking about
16 "video customers, high-speed Internet and phone". I
17 think, in general, what you're seeing here is a picture
18 in which the video business has slowed down. They're
19 not getting the growth in video, as a result of
20 penetration by the satellite providers, that is clear.
21 And, the Internet business is not surprisingly
22 continuing to growth, because the country is still
23 becoming more and more enamored of the Internet, it's
24 becoming more and more popular. So, there's an

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[WITNESS: Johnson]

1 inherent growth in that area. They're also obviously
2 growing in the phone business, because they have chosen
3 to tackle that in this statistic you cited earlier do
4 suggest that, in the large metropolitan areas, in
5 particular, they're having some penetration success.
6 Not apparently as much as they had anticipated, but
7 they are succeeding.

8 MR. COOLBROTH: No further questions,
9 Mr. Chairman.

10 CHAIRMAN GETZ: Thank you. Commissioner
11 Below.

12 CMSR. BELOW: Yes. Thank you, Mr.
13 Chairman.

14 BY CMSR. BELOW:

15 Q. Dr. Johnson, on Page -- at the bottom of Page 8 of your
16 testimony, you cite a source in which you try to
17 compare the Comcast voice offering that's on a
18 stand-alone basis. And, then, at the top of Page 9,
19 you characterize what you understood to be included in
20 that, is that correct?

21 A. Yes.

22 Q. And, it says it "includes unlimited local calling,
23 Caller ID, Call Waiting, and various other, less
24 popular, vertical features." Did you look at whether

[WITNESS: Johnson]

1 it included long distance calling, either intrastate or
2 interstate?

3 A. They do have an offering that includes long distance
4 calling. But this particular one, I believe, is the
5 one that does not include. The way they set things up,
6 you're going to get some vertical features, whether you
7 care about them or not. They're offering that they
8 market and that they're primarily interested in
9 promoting always includes vertical features. One of
10 those versions includes long distance, the other does
11 not. And, I think there's maybe a \$5.00 a month
12 difference or so between the two versions. So, the
13 local with more, I believe, is the version that
14 includes some popular vertical features. And, they
15 have another version that's even more expensive that
16 includes the unlimited long distance.

17 Q. I was just trying to understand how that compared to
18 some of the rebuttal evidence, the rebuttal to your
19 testimony that was cited earlier. It seems to describe
20 this 39.95 option as including "unlimited long distance
21 calling to the U.S., Canada, and Puerto Rico"?

22 A. Right. I think the difference is, I'm referring to a
23 34.95 nominal list price offering, and they were
24 referring to the 39.95 nominal list price offering.

[WITNESS: Johnson]

1 Where it gets confusing is they also charge a \$5.00 fee
2 for the use of the modem. And, in some of my tables, I
3 adding in the \$5.00. So, the "34.95" became "39.95"
4 for presentation purposes. If you look at, on my Page
5 9, under the little mini-footnotes, this is still the
6 34.95 offering, adding in the \$5.00.

7 Q. I see. That, I think, was part of my confusion is the
8 39.95.

9 A. Sure.

10 Q. Do you know if the KTC offering, which compared it to,
11 does that include unlimited local calling?

12 A. No, it does not. I thought about trying to include the
13 long distance service, and it just seemed more
14 complicated. And, I said, "well, it's complicated
15 enough to try to deal with the various vertical
16 services, Caller ID, Call Waiting." So, I felt like
17 that was sufficient to give you the taste of what's
18 going on. Again, the Company tends to offer sort of
19 the cafeteria-style, individual items. Most of their
20 customers are currently signed up for one or more
21 individual items, however many determines the exact
22 price point they're at. What Comcast will do is say
23 "Well, you know, yeah, we charge a little more, but you
24 get more for your money. You get these extra vertical

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[WITNESS: Johnson]

1 services." And, for a customer who is already paying
2 for one or two of them, and maybe they get a third one
3 that they don't really care about, but it's part of
4 their pitch. The long distance gets more complicated,
5 because it really varies, depending on how much long
6 distance, how many calls they're making. And, that
7 becomes -- I've done that in the past, and it can be
8 done, but it's a very complicated table. You've got to
9 basically have a whole nother dimension, how many calls
10 did they make or what sort of a calling bundle they're
11 on.

12 Q. So, the individual customer's decision to potentially
13 switch is often complicated by these variables, what's
14 included, what's not included, how much long distance?

15 A. Yes.

16 Q. The calling they make in any given month? And, maybe
17 sometimes customers aren't even real clear on what that
18 is and what it's costing them and how they would
19 compare two plans, is that fair to say?

20 A. Yes. And, I've tried to be very fair and clarifying
21 what's going on. I do think it's fair to say that
22 Comcast is targeting the high end of the market.
23 That's just a general way of describing what's
24 happening. The more someone is sort of the middle

[WITNESS: Johnson]

1 class or upper middle class customer, who is buying,
2 you know, at least Caller ID, maybe Caller ID and Call
3 Waiting, and they do place long distance calls, the
4 more they start plausibly saying "well, maybe it
5 wouldn't cost me that much more to switch to Comcast or
6 maybe I can even save some money", assuming they're
7 aware of the fact that the initial rate is going to
8 expire.

9 Again, it's a complex comparison for any
10 one customer and for you folks to try to look at. But
11 the key element to be aware of is the fact that Comcast
12 is targeting only one segment of the market. So, you
13 can't just say "look, Comcast is in the exchange,
14 therefore, the statutory criteria is met." You've got
15 to go at least one or two layers deeper and try to
16 figure out for what fraction of the customers is the
17 Comcast offering a viable offering that would be
18 attractive and could be fairly characterized as a
19 "competitive alternative".

20 Q. Is there any standard or generalization that you could
21 make with regard to at what point of market penetration
22 could an economist conclude that an offering is a
23 "competitive alternative"? I mean, I presume it
24 wouldn't mean that they have to have half the customer

[WITNESS: Johnson]

1 base and --

2 A. No, that's correct.

3 Q. At what point, and I think you also indicated there's a
4 lot of inertia in doing a call port -- phone number
5 porting and things like that. So, I'm just wondering,
6 at what -- what kind of -- how would one look at the
7 threshold of market penetration and say "yes, this is
8 becoming a real alternative and they're gaining market
9 share"?

10 A. Well, I think, depending on the data available, there's
11 any number of ways you could look at it. There's any
12 -- there's multiple ways you could look at it and not
13 have to wait until huge amounts of market share are
14 lost. What I'm trying to suggest is, rural New
15 Hampshire is the last place you're going to see it
16 happening. And, so, that's why it's a tough call.
17 They're asking you to make that decision right now, not
18 waiting a few more years.

19 The kind of numbers they have just been
20 citing out of these national statistics are strongly
21 suggesting that, in the large metropolitan areas, the
22 cable industry is having some success penetrating the
23 market, and they are competing. So, if you were to do
24 the same sort of analysis for Boston or for New York or

[WITNESS: Johnson]

1 for Miami, which is going to dominate these national
2 statistics, I think you'd probably reach a conclusion
3 that the statutory criteria is met. And, I think you
4 might have reached that even before we got to this
5 point of penetration, based on the actual price
6 comparisons, the promotional activities, and the like.
7 Our difficulty here is they're asking you to do this in
8 a rural area, where the cable doesn't even reach all
9 the customers. And, to the extent it does reach the
10 customers, they're clearly not attempting to match the
11 TDS prices.

12 CMSR. BELOW: Okay. Thank you. That's
13 all.

14 CHAIRMAN GETZ: Commissioner Ignatius.

15 CMSR. IGNATIUS: Thank you.

16 BY CMSR. IGNATIUS:

17 Q. Following where you were just discussing and looking at
18 New Hampshire versus national statistics, can you look
19 back again at the Local Telephone Competition Report,
20 Exhibit 19, it has some New Hampshire data in it.
21 Turning to Page 19, and this is Table 8 that breaks out
22 "Total End-User Switched Access Lines and VoIP
23 Subscriptions by State as of June 30th, 2009."

24 A. Yes.

[WITNESS: Johnson]

1 Q. New Hampshire figures are about halfway down that page.
2 And, the "Non-ILEC Percentage of Total" on the far
3 right is "44 percent", correct?

4 A. Yes.

5 Q. And, just as I glance through the page, without doing
6 anything more statistical than that, 44 percent is one
7 of the higher numbers, there are a few that appear
8 higher, but most are lower, and some quite a bit lower
9 than that as a percentage of non-ILEC percentage of the
10 total, correct?

11 A. Yes.

12 Q. So, I'm asking you, without knowing anything about what
13 I'm looking at here, it -- just looking at those
14 numbers, I draw the conclusion that New Hampshire isn't
15 the last place you're going to see these kinds of
16 changes.

17 A. You missed the word "rural".

18 Q. Okay.

19 A. A very important word.

20 Q. Well, fair enough.

21 A. These statistics are telling us that they are having,
22 the "they" being the "cable industry", the cable
23 industry is having some success in New Hampshire. And,
24 in fact, that percentage is higher than in many of

[WITNESS: Johnson]

1 these other states. It might be the highest or one of
2 the highest on the chart. Yet, we have other
3 information like, you know, ported numbers, which
4 suggest there's not yet very much activity for this
5 company, and that's not surprising, because this
6 company is serving the more rural parts of the state.

7 So, to reconcile those two, I'd say
8 "well, the success is predominantly so far in the New
9 England Telephone parts of the state", I suspect,
10 which, as I recall, are a very large fraction of the
11 total population. So, what happens there can dominate
12 the statewide statistics, even if the other parts of
13 the state were quite different.

14 Q. All right. And, so, your expectation is that, if you
15 broke those New Hampshire numbers out, between city
16 centers and rural areas, you would get two very
17 different results?

18 A. Yes. And, in fact, to be fair about it, ideally, at
19 least when your mentally -- your mental picture, you
20 really want to think of it as three categories. You
21 have your metropolitan areas, you have the towns in the
22 rural areas, and you have the actual rural area outside
23 that town. Those maps are consistent with that
24 pattern. That, once you get outside of town, the cable

[WITNESS: Johnson]

1 may not even be out there. But, even inside the town,
2 people may be slower to react to telemarketing or react
3 to TV or to do anything perhaps than inside the cities.
4 It would be ideal, you'd be able to track the data,
5 break it down. It's possible that, if you contacted
6 the FCC, you could get some additional detail for New
7 Hampshire. I don't know whether they would be willing
8 to provide it to you on a confidential basis. But, at
9 some point, if you're curious about it, it would be
10 interesting to know. Unfortunately, I was flipping
11 through quickly, and I didn't see any discussion in
12 here of "rural versus urban" or "rural versus towns
13 versus urban", and that's one of the problems. The FCC
14 has a tendency to think of the country as a whole, and
15 the data is all dominated by the big cities. And, when
16 you get to a place like New Hampshire, where you see
17 that vivid contrast, sometimes you get frustrated that
18 they don't report a little differently than they do.

19 Q. And, when you say that there is this vivid contrast
20 between the two or three different ways of breaking out
21 New Hampshire's customer base, do you have statistics
22 that show that vivid contrast, how different it is from
23 one area to another?

24 A. Historically, working in the industry for many years, I

[WITNESS: Johnson]

1 have often seen that contrast in various data sets. I
2 don't have one specific data set in mind at the moment.
3 But I've seen that. One that comes to mind is the
4 penetration on things like Caller ID or Call Waiting.
5 Historically, or another example would be Yellow Page
6 revenue. I'll use that one just to give you something
7 different to think about. For whatever reason, the
8 advertising revenue per line is much higher in urban
9 areas than in rural areas. It's just a pattern that I
10 saw over and over. As you go around the country, you
11 get down to the smaller exchanges, whether it would be
12 the Verizon or AT&T exchange, whoever's exchange, as
13 you -- if you drill down and ask "well, what's your
14 revenue per line in a rural area?" It wasn't as high.
15 And, the same thing with Caller ID and Call Waiting.
16 For some reason, those services don't seem to be as
17 popular. Maybe they don't know as many people, so
18 they're not as curious who's calling them. I don't
19 know why. Maybe, you know, it's a small town and it's
20 Aunt Mabel that might be calling me; whereas, in a big
21 city, you're wondering who it is. I don't know why.

22 Q. Let me ask you something else. In your testimony, this
23 is your Exhibit 77, September 2nd, 2010 testimony.
24 Page 10, you made a couple of changes to deal

[WITNESS: Johnson]

1 specifically with Kearsarge Telephone Company, and not
2 putting in Merrimack data.

3 A. Yes.

4 Q. Can you give a little more explanation of the source of
5 the numbers that you changed in Lines 5 through 11 on
6 Page 10?

7 A. Yes. The rate for the KTC customer was taken out of
8 the previous table. If you look back at Page 9,
9 between Lines 8 and 10, there's a table of information.
10 And, so, that "23.82" example that's for the "KTC Low",
11 and that is referring to the fact that KTC has
12 different rates, depending on the exchange, maybe the
13 calling scope or whatever the reason is in the tariff.
14 So, we pulled the rate out of the filed tariff for KTC,
15 and then we found the rate for Caller ID and Call
16 Waiting and added those in. And, then, we added in the
17 \$6.50 federally authorized end-user charge to get to a
18 total. It's not the grand total, because there's
19 additional taxes and the like, that both Comcast and
20 TDS charge. But that was the basic process we used.
21 That explains the "23.82".

22 Q. Before you move on from that, --

23 A. Uh-huh.

24 Q. -- let me ask one other question. And, why did you

[WITNESS: Johnson]

1 choose the KTC low number as opposed to the KTC high
2 number?

3 A. I had to pick one or the other to keep my changes
4 simple. And, you could use either one. The 23.82
5 results in the 26 percent difference. At \$28, there
6 would be a smaller difference, clearly. This was
7 calculated -- both are valid. Depends on which
8 exchange they're in, as to which comparison is
9 appropriate or which comparison applies.

10 The key point, as I say, is, again, the
11 critical point is, in this example, we're focusing on
12 somebody who is in the portion of the population that's
13 already using Comcast video service, so they qualify
14 for this discounted rate from Comcast. And, they're
15 already using Call Waiting and Caller ID. So, the bill
16 they're paying to TDS is higher than those folks who
17 aren't. And, they're the ones that are getting closer
18 to being a saving, but they're still not a saving in
19 the case of the low. And, there's really not a saving
20 in either case.

21 Q. All right. That's helpful. Thank you. One other area
22 I wanted to ask you about. And, you alluded to it
23 before with Commissioner Below about some key
24 indicators you'd look at to understand market

[WITNESS: Johnson]

1 penetration. I assume, at some point, there's an
2 analysis that doesn't involve calling every specific
3 address and finding out is something available or not,
4 and looking at the income level of every single
5 customer and deciding "is it within their comfort zone
6 to be purchasing a product at that rate?"

7 A. Right.

8 Q. So, if -- what does one do? I mean, asking, you know,
9 sort of in general, as you look at these problems, and
10 it's sort of a sophisticated analysis, and yet you
11 can't get down to that level of detail in any kind of
12 --

13 A. Right.

14 Q. -- you know, within less than a five year analysis to
15 do so, and everything will have changed again. So,
16 what does one do in that kind of a situation?

17 A. Well, sure. Well, the first thing that needs to happen
18 or I would do, if you choose -- if you ruled that this
19 filing doesn't meet their burden of proof, and you gave
20 them the opportunity to file a future filing, if I were
21 the Company, what I would do is pull a sample of my
22 addresses, a random sample, a legitimately pulled
23 random sample, and then run them through this website,
24 to check what percentage of the actual addresses have

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[WITNESS: Johnson]

1 the service available. And, I would do it
2 exchange-by-exchange. And, I would expect to see a
3 pattern which is varying, depending on the penetration
4 of Comcast, as to how much their facilities are
5 available. So, that's the key step they didn't do.
6 Their approach seemed to be, "as long as Comcast was in
7 the exchange, we're done with that." And, I don't
8 think they are done with that. I think it would be a
9 mistake for you to accept that approach. But I'm not
10 asking them to do something unreasonable. And, a
11 sample is the sort of thing I would do as an economist,
12 it seems obvious, rather than attempt to look up every
13 single phone number, or they could do it, there's only
14 400 of them in one of these exchanges. But you would
15 need to pull a sample, particularly in the larger
16 exchanges, to check how many of the addresses have it
17 available. That's the first step. The second step is
18 I'd offer some data on how popular are Call Waiting and
19 -- Caller ID and Call Waiting, so you get some sense
20 of, is that pretty much everybody or is that just a
21 minority of the customers? How many of the customers
22 are looking at a price point existing, where the
23 Comcast offering is going to be appealing? Some data
24 on that, that's right in their records. You know, they

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[WITNESS: Johnson]

1 have it at their fingertips. Go ahead and offer that
2 exchange-by-exchange. Those are the key things.

3 Then, I think, beyond that, some data
4 about how popular their DSL service is, some data on
5 that. Because, again, these are bundles. And, the
6 more -- lots of people are now using the Internet, the
7 more the bundled evidence starts becoming relevant.
8 And, we just don't know where they are. We know that
9 it varies across the country. I would expect there's
10 been a growth in it. And, again, that's data they have
11 at their own hands, without having to go to Comcast to
12 ask them.

13 Q. And, the Company has said that the maps that were
14 submitted as part of an earlier hearing process in this
15 case, that they already demonstrate the availability
16 and the service to a majority of customers.

17 Mr. Murray's affidavit and testimony today referred to
18 MCR-2, which was part of Attachment E to Mr. Reed's
19 testimony of November 15th, 2007. I don't know if you
20 have any of those maps with you. I guess I'm curious,
21 just picking any of them, what they show or what they
22 failed to show in the questions that we're facing
23 today? Do you have any of those available and could
24 your counsel --

[WITNESS: Johnson]

1 CHAIRMAN GETZ: Mr. Feltes, do you have
2 those?

3 MR. FELTES: Yes, we do.

4 CHAIRMAN GETZ: If you could provide
5 them to the witness please.

6 BY CMSR. IGNATIUS:

7 Q. The first map happens to be a KTC exchange of Andover.
8 Though, we could look at any of them, but that's --

9 A. Do you have the large version? This is the small. It
10 does make a difference, it turns out, because the small
11 ones, which is a nice effort to save paper and make it
12 easier to work with, but they just don't show as much
13 detail as the large ones. And, some of the issues are
14 going to center on detail that I was unable to discern
15 looking at the small ones, but becomes clear when you
16 look at the larger ones.

17 Q. Well, I know we have the large ones in the record, we
18 don't have them at our fingertips right here, --

19 A. That's fine.

20 Q. -- but, if you want to speak to that, and make sure
21 that on the record we get -- we get the details you're
22 describing.

23 MR. FOSSUM: If the Commissioners would
24 like to review a larger map, Staff does have a copy of the

[WITNESS: Johnson]

1 larger size map.

2 CHAIRMAN GETZ: Well, why don't you
3 bring that up here, if that's the first page of the --
4 well, I think the important thing here is, I would guess,
5 Commissioner Ignatius, is you want to have a dialogue with
6 the witness. So, why don't we make sure you're each
7 working from the same document.

8 CMSR. IGNATIUS: And, if you have an
9 easel to put that up, that would be fine.

10 MR. FOSSUM: Are you only interested in
11 the Andover map at the moment?

12 CMSR. IGNATIUS: Why don't we just stay
13 with that, see if that takes care of it. All right, for
14 now we'll -- don't worry about an easel. We'll just look
15 at the map, and then we can, at a break, find an easel, if
16 that would help others.

17 BY CMSR. IGNATIUS:

18 Q. So, the map here that shows in different colors and
19 markings, yellow in DSL, DSL marked in yellow, cable
20 modems marked with green lines, and cable TV marked in
21 orange lines, correct?

22 A. I would call it "purple" maybe.

23 Q. Oh. I'm sorry.

24 A. That's fine.

[WITNESS: Johnson]

1 Q. That's not even close to orange.

2 A. The reddish color, I would call "purple" just for
3 convenience, yes. CTV facilities are apparently being
4 marked with a purplish color. Cable modem availability
5 along those lines is in green. And, in this exchange,
6 they're pretty much the same or are identical. In some
7 of the other exchanges, they might have only been in
8 Merrimack, there was sometimes a discrepancy where you
9 would see purple, but not see any green.

10 The key issue is to look for roads that
11 don't have green and purple, and that would be a road
12 that does not have cable available to it or cable modem
13 available to it. And, there are some of those in this
14 exchange. And, in some of the other exchanges, it's
15 much more extensive, you'll see many roads. Whereas,
16 in this one, there's very few roads.

17 There's little black dots. And, it's
18 not completely clear what those represent, but I don't
19 think those are errors or, you know, spats of ink. I
20 think those might be houses or TDS customers. And, if
21 I'm correct in understanding that, then that gives you
22 an indication of which customers actually can get the
23 cable service. It would be a question of how far away
24 from the road they would have to be and how far Cable

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[WITNESS: Johnson]

1 is willing to extend the drop. But you would assume
2 they would normally go at least a few hundred feet off
3 the road.

4 In this particular map, there's _____
5 roads that _____
6 _____. So, what you're look for, for example, about in
7 the middle to right, there's a road called _____
8 _____. It's hard to describe exactly, but it's near
9 where the -- over on the right, you have a _____
10 _____exchange, and there's kind of like a
11 boundary marker that has a corner there marked with
12 "u". So, you can find your eye there, and then look up
13 from that corner, maybe you'll see the road called
14 _____.

15 Q. Right.

16 A. That seems to be an example, I believe, of a road that,
17 for whatever reason, _____
18 down that route. Another example on this appears to be
19 just a little bit to the north and west of that
20 example, where it says _____, there appears to
21 be a road with _____ customers that _____
22 _____ to them. And, then, if you come over a
23 little bit to the east of that, there's a little road
24 that's winding through. It, again, _____ to

[WITNESS: Johnson]

1 the green or purple on it. So, again, that seems to be
2 an example of where _____
3 _____ road. But, inside town, there tend to be
4 more.

5 There are _____ exchanges -- well, one
6 thing that's a little confusing, makes me question the
7 map a little bit, is -- just show you one example what
8 makes we a little queasy. If you go over to the left,
9 about in the middle, there is a -- what appears to be a
10 subdivision. And, the cable _____
11 subdivision, but there's _____ dots. So, maybe
12 the subdivider, the developer, _____
13 in, but there's _____. It's not
14 clear what's going on there, but I think that's what's
15 happening there.

16 There are some other exchanges where the
17 pattern I just described to you, the same sort of
18 pattern appears, but the proportion shifts. So, let me
19 see if I can find a sample. Well, let's take -- here's
20 another example. We've got a Boscawen exchange. Can
21 we get them a copy of that map? If we don't have that
22 one handy -- you do? Okay.

23 Q. I think, with you describing locations, you actually
24 can make out the distinction even on the small ones.

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So, --
A. Okay. Good. So, this is just one more example of
Boscawen, where you can see _____

_____.
Over on the entire left side of this exchange, there
_____, or the
upper left, you see _____ that I assume
are _____, coming along _____
_____, and _____. And, then, over in
the lower left, we have a road called _____,
appears there's _____. So, I would
assume if you test, you know, a legitimate address on
_____, you can determine
_____, or
if _____. That's presumably why the
caveats are there on the website about "you've got to
check your address", _____
this, this particular exchange, a _____ of the
roads _____. But, down in town, it's

to in my testimony. That you'd expect _____

of the exchange, it's _____. And, until

[WITNESS: Johnson]

1 you check the facts, you don't know what you're going
2 to find.

3 CMSR. IGNATIUS: All right. Thank you.
4 I think that does it for me. Thank you.

5 CHAIRMAN GETZ: Mr. Feltes, how much
6 time do you need to prepare for redirect?

7 MR. FELTES: Prepare or do?

8 CHAIRMAN GETZ: Well, how much of a
9 recess? Fifteen minutes?

10 MR. FELTES: Fifteen minutes would be
11 sufficient. Thank you.

12 CHAIRMAN GETZ: All right. And, we'll
13 recess and resume at 3:00.

14 (Whereupon a recess was taken at 2:56
15 p.m. and the hearing resumed at 3:25
16 p.m.)

17 CHAIRMAN GETZ: Okay. We're back on the
18 record. And, turning to Mr. Feltes for redirect.

19 MR. FELTES: Thank you, Mr. Chairman.

20 **REDIRECT EXAMINATION**

21 BY MR. FELTES:

22 Q. Dr. Johnson, Commissioner Ignatius had asked you some
23 questions about the maps. Is there anything you would
24 like to add about the maps? Specifically, what does

[WITNESS: Johnson]

1 the green line mean?

2 A. Oh, sure. Just to make sure the record is clear, in
3 case I misspoke myself. The green is simply indicating
4 that cable modem facilities are available along the
5 cable plant on that street. So, it basically indicates
6 "this is a street in which cable is available, and then
7 cable has been equipped for cable modem internet
8 service."

9 Q. And, would that mean that voice service is potentially
10 available on the green line?

11 A. That's a reasonable speculation.

12 Q. Now, if a customer was living on a green line, and they
13 punched in their address in the Comcast website, what
14 type of service offerings would or would not appear or
15 is it uncertain?

16 A. I guess that's why they're supposed to punch it in.
17 You can't be absolutely certain, presumably, at the --
18 one would expect the basic tariff offering were
19 available. And, depending on when they type it in,
20 maybe one of these bundles or one of the promotional
21 rates might also be available to them.

22 Q. Now, turning your attention to an exhibit that Mr.
23 Coolbroth had referred to, that's Exhibit 19. It's a
24 30-page FCC -- or, 30 or thereabouts FCC document.

[WITNESS: Johnson]

1 A. Yes.

2 Q. And, if I can draw your attention to Table 9, on Page
3 20, which had been discussed earlier.

4 A. Yes.

5 Q. Is there anything you would like to add, perhaps, after
6 reviewing this table more thoroughly in the break,
7 about this table?

8 A. Two things, actually. First, I just -- I alluded to
9 the fact that it's been my experience that sometimes
10 averages can be misleading. And that, when you average
11 in rural and urban areas, the numbers sometimes can
12 give one impression. And, if you get a further
13 breakdown, you discover the pattern is different in the
14 rural areas. And, I don't have a whole lot to add on
15 that, but I did want to just suggest that the very
16 heterogeneity of the numbers we're seeing on this table
17 reinforces the importance of that distinction, and
18 limits the amount of weight I suggest you put on this
19 sort of nationwide/statewide data, because we're
20 dealing with a very specific part of New Hampshire
21 specifically. And, to just kind of give some emphasis
22 to that point, that's sort of clear to me when I look
23 at these heterogeneous numbers, is to just cite a
24 couple of examples of states that are somewhat more

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[WITNESS: Johnson]

1 rural than the national average. And, I notice how
2 some of their numbers are quite different than the
3 national average.

4 So, for example, Idaho has a lot of
5 rural areas. Happens to have about a 14 percent
6 non-ILEC penetration. Despite the fact that Idaho is a
7 state that's encouraged competition, and the
8 Legislature has, you know, taken steps to encourage it
9 and so forth, yet, the actual penetration is pretty
10 low. And, perhaps, the reason it's only 14 percent is,
11 if you further drill down in the Idaho data, you might
12 discover what competition there is is pretty much
13 concentrated in Boise, and out in the rural areas there
14 might not be much.

15 Another example would be Mississippi.
16 We know that's a pretty rural state. It tends to have
17 a lot of rural customers. And, it's down at
18 16 percent.

19 Another example is Missouri, which has a
20 mixture of urban and rural areas. And, it's running,
21 it's right next to Mississippi, it's also running
22 16 percent. And, my intuition and my experience
23 suggests that St. Louis is going to be a lot higher
24 percentage than some other parts of the state.

[WITNESS: Johnson]

1 So, all I'm trying to suggest is, don't
2 put too much weight on statewide or nationwide data.
3 You really need to be focusing on the specifics of
4 TDS's service area and exchanges.

5 The only other point from these tables
6 is to make sure that the Commission doesn't
7 misunderstand the column of data that we've been
8 looking at. When we talk about the "non-ILEC"
9 activity, and the extent to which they have won over
10 customers, it's pretty clear right on the surface of
11 the table that the customers they are gaining are in
12 the bundled part of the market or it's the market for
13 people who, you know, buy a bunch of different
14 services, and, by bundling them together, they just get
15 one bill, it's more convenient. And, that is where
16 they have had the most success.

17 It's pretty clear, right on the surface
18 of the document, that's true. If you look at the
19 "nationwide" total at the very bottom, you can see that
20 15 million lines were sold bundled with Internet
21 service, and only 3.6 million were not sold bundled
22 with Internet. So, that alone, it reinforces the point
23 that I've been making, which is that the cable carriers
24 are primarily engaged in a focus on customers for whom

[WITNESS: Johnson]

1 bundles are appealing.

2 But the point I want to point out to
3 you, because I think it could be misleading, if you
4 look at this table, the column that's labeled
5 "Stand-alone" doesn't mean necessarily what we've been
6 calling "stand-alone phone service". You know, it's
7 called "stand-alone". What it is is it's not bundled
8 with Internet service. So, if you swing all the way
9 back to Page 6, at the bottom, they have a narrative
10 explanation of the tables that follow. And, in that
11 narrative explanation, it says "We also note that a
12 retailer's standalone service might be", and I'm going
13 to ellipse out a digression to get to emphasis on a key
14 point, which is that "a standalone service might be...a
15 cable system's bundle of interconnected VoIP and cable
16 TV service." So, there's several examples here, but
17 the critical one they need to understand is, from their
18 point of view, if it's not bundled with Internet, even
19 if it's bundled with video, it's reported as
20 "stand-alone".

21 So, when we go back to the statistics,
22 if 15 million of the lines nationwide are bundled with
23 Internet, the balance include some lines that are
24 bundled with video service. People only just get two

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[WITNESS: Johnson]

1 items in a bundle, video plus phone. And, they're
2 labeling that as "stand-alone", but that's not the way
3 we're using the term "stand-alone", obviously. But
4 they do not report separately how many customers are
5 actually buying phone service without buying either
6 video or Internet. I would assume it's a very small
7 percentage of the total, from my own observation of the
8 market. But there is no way to know what that
9 percentage is.

10 Q. Commissioner Below had -- before I go onto that, the
11 sentence that you were reading from, Dr. Johnson, on
12 Page 6, just to clarify, was that -- what bullet point
13 was that from on Page 6?

14 A. The first bullet point, the last sentence, long,
15 convoluted sentence. But the last sentence of the
16 first bullet point clarifies that what they are
17 including within their terminology of "stand-alone".

18 Q. Okay. And, going to this distinction between
19 "stand-alone" and "stand-alone with video or another
20 bundle", Commissioner Below had asked you a question
21 about, you know, benchmarks, in terms of what segment
22 of "the market". Can you clarify what the market of
23 interest might be here?

24 A. Well, obviously, there can be several different markets

[WITNESS: Johnson]

1 that might interest the Commission. I think the market
2 for basic telephone service is the most important
3 market, and certainly needs to be part of the analysis,
4 because that is the market that has the most relevance
5 to the concern about universal service and
6 affordability and availability.

7 But, to the extent we talk about
8 different segments of the market, there can be the --
9 the segment of the market, you know, people who are
10 interested in bundled services, people who are
11 interested in multiple upgraded services, vertical
12 services and the like. I'm not trying to suggest that
13 the Commission should ignore those other submarkets.
14 But I do believe that it's very important to give
15 adequate consideration to the market for basic
16 telephone service.

17 Q. Given all the documents that have been presented to you
18 by Attorney Coolbroth, have you changed your opinion
19 that TDS is -- excuse me, that Comcast is not competing
20 in the market for basic phone service provided by KTC?

21 A. No. I don't believe those documents change by
22 understanding of the market or their strategy or their
23 status in the industry.

24 Q. Do you have anything further you'd like to add?

[WITNESS: Johnson]

1 A. No.

2 MR. FELTES: Thank you.

3 CHAIRMAN GETZ: Okay. Then, I believe
4 that completes the testimony of Dr. Johnson. Thank you.
5 And, you're excused. Thank you.

6 WITNESS JOHNSON: Thank you.

7 CHAIRMAN GETZ: And, we've marked all of
8 the exhibits, correct, for -- that were put forward in
9 cross-examination? Exhibits 18, 19, and 20?

10 MR. MALONE: Yes. I believe there were
11 17, 18, 19, and 20.

12 CHAIRMAN GETZ: Okay. Thank you. Is
13 Mr. Eckberg ready to take the stand?

14 MS. HATFIELD: Yes. The OCA calls
15 Stephen Eckberg.

16 CHAIRMAN GETZ: And, off the record for
17 a second.

18 (Brief off-the-record discussion
19 ensued.)

20 CHAIRMAN GETZ: All right. Back on the
21 record. Ms. Hatfield.

22 MS. HATFIELD: Thank you.

23 (Whereupon **Stephen R. Eckberg** was duly
24 sworn and cautioned by the Court

[WITNESS: Eckberg]

1 Reporter.)

2 **STEPHEN R. ECKBERG, SWORN**

3 **DIRECT EXAMINATION**

4 BY MS. HATFIELD:

5 Q. Good afternoon. Would you please state your full name
6 for the record.

7 A. My name is Stephen R. Eckberg.

8 Q. And, by whom are you employed?

9 A. I am employed by the Office of Consumer Advocate.

10 Q. And, what position do you hold with the OCA?

11 A. I'm a Utility Analyst.

12 Q. And, how long have you served in that position?

13 A. Since July 2007.

14 Q. Have you testified before the Commission previously as
15 an OCA analyst?

16 A. Yes, I have.

17 Q. Did you file testimony in this third phase of this
18 docket?

19 A. Yes, I did. In this third phase, and I also filed
20 testimony in the second phase of this docket.

21 Q. Do you have your testimony in this phase before you?

22 A. I do have a copy of that, yes.

23 Q. And, was it filed on September 3rd, 2010?

24 A. Yes, it was. That's what the date on the cover letter

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[WITNESS: Eckberg]

1 is.

2 Q. And, was it prepared by you or under your direction?

3 A. Yes, it was.

4 Q. Do you have any corrections to make to that testimony?

5 A. No, I don't.

6 Q. And, do you adopt it today as your own?

7 A. I do.

8 MS. HATFIELD: Mr. Chairman, I'd like to
9 have this marked as I believe "OCA 17".

10 MS. DENO: That's right.

11 CHAIRMAN GETZ: So marked.

12 (The document, as described, was
13 herewith marked as **Exhibit OCA 17** for
14 identification.)

15 MS. HOLLENBERG: The witness is
16 available for cross-examination.

17 CHAIRMAN GETZ: Thank you. Mr. Feltes?

18 MR. FELTES: No cross, Mr. Chairman.

19 CHAIRMAN GETZ: Mr. Fossum?

20 MR. FOSSUM: At the moment, maybe just
21 one question.

22 **CROSS-EXAMINATION**

23 BY MR. FOSSUM:

24 Q. Mr. Eckberg, turning to Page 12 of your testimony, and

[WITNESS: Eckberg]

1 specifically Line 3.

2 A. I have that in front of me.

3 Q. There you state "It is possible that Mr. Murray
4 produced these printouts by manual editing" --
5 "manually editing the URL in the web browser's address
6 bar." Did I read that correctly?

7 A. Yes, you did.

8 Q. And, "these printouts" refers to the printouts attached
9 to Mr. Murray's affidavit, is that accurate?

10 A. Yes. By "these printouts", I meant "his printouts",
11 yes.

12 Q. Is it your belief that Mr. Murray fabricated those
13 printouts or somehow otherwise produced them, other
14 than by essentially searching through the Internet or
15 that he did, in fact, manually manipulate his search to
16 produce those printouts?

17 A. No, not at all. I think that my testimony just merely
18 tries to raise that as a possibility, because I had, as
19 I tried to identify throughout my testimony here in
20 this section, that I had significant difficulty in
21 trying to reproduce those printouts exactly as he had
22 done.

23 Q. Okay. I just wanted to clarify that it was -- it's not
24 your belief that Mr. Murray had somehow invented that

[WITNESS: Eckberg]

1 information?

2 A. No, I don't believe he invented them. I just couldn't
3 reproduce how he had done them, with the methods that I
4 tried to do that.

5 MR. FOSSUM: Thank you. I have nothing
6 further.

7 CHAIRMAN GETZ: Mr. Malone?

8 MR. MALONE: We have no questions, Mr.
9 Chairman.

10 CHAIRMAN GETZ: Okay. And, no questions
11 from the Bench. I take it there's no need for redirect?

12 (No verbal response)

13 CHAIRMAN GETZ: So, you're excused.
14 Thank you, Mr. Eckberg.

15 WITNESS ECKBERG: Thank you very much.

16 CHAIRMAN GETZ: Okay. Then, let's
17 address first the exhibits. Is there any objection to
18 striking the identifications and admitting the exhibits
19 into evidence?

20 MS. HATFIELD: Yes, Mr. Chairman. The
21 OCA continues to object to much of Mr. Murray's rebuttal
22 testimony. I understand the Commission has already ruled
23 on our Motion in Limine, but we did just want to register
24 our objection in this docket. We continue to believe that

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1 much of his rebuttal is new testimony.

2 We also wanted to object to KTC
3 Exhibit 14A. This is the exhibit where Mr. Murray makes
4 several changes to his testimony. And, let me be clear,
5 we do not object to the changes on the first page, where
6 he updates his employment history. But what the Company
7 and Mr. Murray are referring to as "changes" or
8 "corrections" to his testimony are things that Mr. Murray
9 learned were problems with his testimony only after
10 attending the first technical session, and then really
11 after reading Mr. Eckberg's testimony. So, we don't think
12 it's appropriate to go back and change an affidavit
13 after-the-fact. We know now, through his live testimony
14 today and through his rebuttal, that he did realize that
15 what he provided wasn't actually a Comcast website. But
16 this is an affidavit that is signed before a notary public
17 on June 10, 2010. And, we don't think it's appropriate to
18 change it at this time.

19 CHAIRMAN GETZ: It seems to create a
20 quandary then, doesn't it? If he's going to -- you would
21 rather him adopt it as his affidavit at the time, which we
22 have in the record, as we've got now three versions in the
23 record, the confidential, the public, at the time. I
24 mean, isn't, for your purposes, isn't it better to have on

1 the record how this has evolved over time, and 14A
2 indicates that he's erred in the first instance? I just
3 -- I don't know what you want us to do. You don't want
4 14A to be in the record?

5 MS. HATFIELD: The changes that are
6 proposed for Page 2 of 14A we don't think are appropriate.
7 And, we think that Mr. Murray, because he had a chance for
8 rebuttal, he made those points or he had a chance to in
9 the rebuttal that he filed. And, we don't think it's
10 legally appropriate for a party to go back and rewrite
11 their understanding of facts on a certain date. And, it's
12 -- I don't think Mr. Murray said "I realized that on June
13 10th, 2010 that I was wrong." I believe what he said was
14 "I realized later that I was wrong." So, we would rather
15 have his actual true statement in his affidavit stand,
16 what he filed back in June.

17 CHAIRMAN GETZ: Do you have any
18 response, Mr. Malone, on that issue?

19 MR. MALONE: Mr. Chairman, I'm sort of
20 in a quandary myself. Mr. Murray's affidavit reflected
21 his honest understanding of the situation at the time. He
22 reflected on it, and took a look at the evidence, and
23 realized that it was incorrect. I think that the
24 Commission would encourage, you know, the correction of

1 this and the fostering of the correct evidence in the
2 record. I don't understand how there's anything to be
3 accomplished by retaining his misunderstanding in the
4 search to -- you know, or the resolution of this matter.

5 (Chairman and Commissioners conferring.)

6 CHAIRMAN GETZ: Okay. With respect to
7 the underlying motion to strike from the Office of
8 Consumer Advocate, we already ruled on that. So, we're
9 going to strike the identifications and admit into
10 evidence all of the exhibits, with the one proviso that
11 we're going to take under advisement the ruling with
12 respect to 14A and what's the appropriate treatment of
13 that particular affidavit as it's been offered for
14 correction. It may ultimately end up being six of one and
15 half a dozen of another, because I think the record is
16 fully developed, but let's try to be as correct as we can
17 be. So, we'll take some time to consider the arguments
18 with respect to 14A.

19 We had one other outstanding motion, and
20 that's the Motion for Leave to File Proposed Findings and
21 Rulings. Is there anything else that we need to address
22 today, in terms of other motions? Mr. Linder.

23 MR. LINDER: We wanted to ask the
24 Commission about briefs, as well as findings and rulings.

1 CHAIRMAN GETZ: Is there an agreement
2 among the parties as to briefs or a briefing schedule?

3 MR. LINDER: We had discussions, but we
4 didn't come to resolution, if I'm representing this
5 accurately.

6 CHAIRMAN GETZ: Okay. Well, let's --
7 and, then, I assume, if there were briefs, that would be
8 in lieu of closings arguments?

9 MR. LINDER: That would be my
10 understanding.

11 CHAIRMAN GETZ: Is there an argument for
12 no briefs?

13 MS. HATFIELD: Thank you, Mr. Chairman.
14 The parties have filed four briefs in this case since
15 2007. So, we would strongly prefer not to file a fifth
16 brief. So, I would offer, as perhaps a middle ground,
17 that the parties file a written closing. And, we can
18 agree to a very small page limit where we could put
19 forward our closings, which would include legal argument
20 upon which perhaps findings and rulings could be based, if
21 the Commission grants that motion.

22 CHAIRMAN GETZ: Was that where you were
23 headed, Mr. Linder, or were you going in a different
24 direction?

1 MR. LINDER: I think that would be
2 satisfactory, as long as there's room for a short legal
3 argument that would help support the findings.

4 CHAIRMAN GETZ: Mr. Malone?

5 MR. MALONE: Yes. We'd be fine with a
6 short written closing statement.

7 CHAIRMAN GETZ: Mr. Fossum, I'm assuming
8 you agree with that?

9 MR. FOSSUM: Yes, I guess so, in light
10 of the agreement amongst everyone else.

11 CHAIRMAN GETZ: Okay. Thank you. Well,
12 let's get back to the Motion for Findings and Rulings. I
13 just want to make sure I understand, in the first
14 instance, Mr. Feltes, it seems like I was reading this as
15 you were talking about a two-step process, where there
16 would be proposed rulings and findings, we would then set
17 forth our rulings and findings, and then there would be
18 briefs or arguments about that? Or, I'm -- that seemed to
19 be what you were saying in the first, at the beginning, in
20 Paragraph 3 of the filing. But it sounds like we're past
21 that, in any event.

22 MR. FELTES: Mr. Chairman, I apologize
23 for the confusion. What we would do, in lieu of the
24 agreement, is file a brief closing argument and append to

1 that closing argument proposed findings of fact and
2 rulings of law attached to it. So, you know, there would
3 be proposed findings of fact and conclusions of law, the
4 proposed findings of fact and conclusion of law, but there
5 would be a brief written closing, you know, basically in
6 front of it, which helps explain perhaps some of the
7 proposed findings or perhaps it includes a little bit of
8 legal argument, not much, but to support the proposed
9 findings of fact and conclusions of law.

10 CHAIRMAN GETZ: I guess, because when I
11 read 541-A:35 and what the purpose of that is, and it's
12 really to provide an appellate review a meaningful
13 opportunity to understand what the court or the agency did
14 below. And, I think there's been a consistent set of
15 cases, and even most recently with the PUC in the Nashua
16 eminent domain proceeding, where it was found that the
17 form of our order was sufficient to conduct an appellate
18 review, and there was no need for findings and rulings to
19 be what it sounds like you're saying is set out in a
20 numbered way. So, it sounds like what you're really
21 saying is, it sounds to me, it's like how you want to
22 structure your written submissions to the Commission.
23 You've had an opportunity to provide testimony. You're
24 going to have -- you've had opportunity for argument,

1 you're going to have an opportunity to put in a written
2 closing. Whether you want to structure it in a particular
3 way I think is your call, because it doesn't seem that
4 there's -- because we're getting down to "what are the
5 ultimate facts we have to find? What's the ultimate
6 rulings we have to find?"

7 MR. FELTES: That's right.

8 CHAIRMAN GETZ: So, I'm just -- I'm
9 really not getting kind of the thrust of the motion in the
10 first instance.

11 MR. FELTES: You know, the thrust of it
12 really is just to help clarify and allow the parties an
13 ability to put forward specific proposed findings of fact
14 and conclusions of law, that -- which may or may not be
15 granted. It could be, perhaps, an easier, expedited way
16 to make a ruling in the case. We're not suggesting that a
17 ruling in this case would not, you know, potentially set
18 forth findings and rulings. But the fallback position,
19 basically, is, if an administrative agency does not have a
20 specific rule on a procedure, that the gap fillings of a
21 procedure is the Attorney General's Office Justice
22 Department rules. And, so, we just respectfully requested
23 that we would have an ability to present our case in light
24 of that rule, which provides for proposed findings, that

1 there's not a Public Utilities Commission rule on whether
2 or not there's proposed findings.

3 CHAIRMAN GETZ: Well, there's a
4 Commission -- a PUC statute on what should be in an order,
5 363:17-b, which I think is, in some respects, is the PUC
6 comparable statute to 541-A:35.

7 CMSR. BELOW: Right. And, that's the
8 question I would wonder about, is 541-A:35, entitled
9 "Decisions and Orders", discusses, on a generic basis, in
10 adjudicated proceedings, what is supposed to be in a final
11 decision. It states that it "shall include findings of
12 fact and conclusions of law, separately stated." And,
13 then, RSA 363:17-b, "Final Orders", which is specific to
14 the PUC, is structured in a similar manner, but says "A
15 final order shall include, but not be limited to: The
16 identities of all parties; the positions of each party on
17 each issue; a decision on each issue including the
18 reasoning behind the decision; and the concurrence or
19 dissent of each commissioner participating in the
20 decision."

21 And, then, there's additional language
22 in 541-A:35 about how it's served upon the parties, which
23 is actually picked up in our statute under 363:17-c kind
24 of continues and completes that line of thought.

1 So, I think our question or concern is
2 that we seem to have a process in the specific statute
3 that, you know, fills -- addresses the same issue. It
4 fills -- there's not really a void in our rules, because
5 there's a statute that specifically speaks to this in a
6 way that's unique for the Commission.

7 MR. FELTES: Right. We understand that,
8 you know, that that speaks to that general issue. I
9 suppose an alternative proposal could be that we can set
10 forth in our closing statement, in our closing written
11 statement, the proposed -- sort of the proposed findings
12 or the issues that we want or request specific findings
13 on.

14 (Chairman and Commissioners conferring.)

15 CHAIRMAN GETZ: Okay. We're going to
16 deny the Motion for Findings of Facts and Rulings of Law.
17 And, however you want to structure your written closing
18 statement, then that's at your discretion.

19 MR. FELTES: Thank you.

20 CHAIRMAN GETZ: So, is there anything
21 else we need to address this afternoon? Mr. Malone.

22 MR. MALONE: Yes, Mr. Chairman. Can we
23 set a page limit on the closing statements?

24 MS. HOLLENBERG: Please.

1 CHAIRMAN GETZ: I thought I heard a
2 proposal of five pages. Is that significant enough for
3 everyone or do we have to --

4 MR. ECKBERG: Font size, single space,
5 double space --

6 CHAIRMAN GETZ: Well, can we hold it off
7 please, because we've got a court reporter who's trying to
8 capture what's being said. Off the record, Steve.

9 (Brief off-the-record discussion
10 ensued.)

11 CHAIRMAN GETZ: Okay. Let's get back on
12 the record. Okay. We'll have opportunity for briefs, ten
13 pages. Now, I'm assuming -- or, not "briefs", excuse me,
14 it's a written closing statement in lieu of briefs, with
15 no more than ten pages. There's the issue of timing.
16 Does everyone want to see the transcript before this is
17 filed or is that necessary?

18 MR. FELTES: Yes. Yes, we would like to
19 see the transcript.

20 CHAIRMAN GETZ: And, Mr. Patnaude, how
21 long do you -- okay, off the record.

22 (Brief off-the-record discussion ensued
23 regarding receipt of the transcript.)

24 CHAIRMAN GETZ: Let's have the written

1 closing we'll do, be due within one week of receipt of the
2 transcript, and shall be no longer than ten pages.

3 Any other details to address?

4 (No verbal response)

5 CHAIRMAN GETZ: Okay. Hearing nothing
6 else, then we will close this hearing, wait for a filing
7 of written statements, and take the matter under
8 advisement. Thank you, everyone.

9 (Whereupon the hearing ended at 3:59

10 p.m.)

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