

REDACTED

Before the New Hampshire Public Utilities Commission

Kearsarge Telephone Company)	
Wilton Telephone Company)	
Hollis Telephone Company and)	DT 07-027
Merrimack County Telephone Company)	Phase Three
Petitions for an Alternate Form of Regulation)	

OFFICE OF THE CONSUMER ADVOCATE’S CLOSING ARGUMENT

I. Introduction

RSA 378:3-b, III (a) and Puc 203.25 require Merrimack County Telephone Company, Inc. (MCT) and Kearsarge Telephone Company, Inc. (KTC) (together, TDS) to prove, by a preponderance of the evidence, the following facts:

- 1) That one or more wireline, wireless, or broadband voice service is available within each of its exchanges;
- 2) That the availability of the voice service(s) extends to more than 50% of its retail customers within each of its exchanges; and
- 3) That the voice service(s), which is available to a majority of its retail customers within each exchange, is competitive.

After finding in the Second Phase of this Docket that TDS had again failed to sustain its burden, the Commission allowed TDS a third opportunity to attempt to do so through new evidence concerning Comcast wireline voice service, which TDS filed in June 2010.¹ For the third time since these proceedings began in March 2007, KTC² failed to sustain its burden.

¹ Re Kearsarge Telephone Company, Inc., Order No. 25,103 (May 14, 2010) (Phase Two Order), slip op. at p. 26 (Commission gave KTC 30 days to file evidence “establishing that Comcast is offering service as a [wireline] CLEC in the exchanges of Andover, Boscawen, Chichester, Meriden and New London); and Re Kearsarge Telephone Company, Inc., Order No. 25,130 (July 15, 2010), slip. op. at p. 3 (“a hearing on the new evidence presented by both Kearsarge and Merrimack ... will be limited to the new evidence submitted and whether it fulfills the requirements

In assessing the evidence and making its determinations, the Commission should heed the plain language and plain meaning of the language in, RSA 374:3-b, III (a).³ When the language of a statute is clear on its face, its meaning is not subject to modification.⁴

II. Availability

“[A]vailable” as the term is used in RSA 374:3-b, III (a) denotes a voice service that is “capable of being used; at one’s disposal.”⁵ To be “available” the voice service must be “currently available[.]”⁶ Also, within the context of RSA 374:3-b, III (a), the term “available” is a distinct element from the term “[c]ompetitive.”⁷ TDS concurs.⁸

There is no evidence in the record that a cable wireline or broadband voice service – provided by Comcast as a CLEC or anyone else – is available to more than 50% of the customers

of RSA 374:3-b.”). *See also* Transcript of September 27, 2010 Hearing (Transcript of Phase Three Hearing), p. 51, lines 3-7 (TDS agreed that the Commission’s Phase Two Order allowed it to file evidence about Comcast’s wireline services); and p. 63, line 24, through p. 64, line 8 (section of the Phase Two Order concerning broadband for Voice over Internet Protocol (VoIP) services did not invite TDS to file additional evidence).

² Although the Phase Two Order referred to the filing of additional evidence by MCT, the Commission clarified at the beginning of the September 27, 2010 hearing (Phase Three hearing) that “in this phase of the proceeding we are only dealing with the Kearsarge information . . . We will not be dealing with the Merrimack issues.” Transcript of Phase Three Hearing, at p. 15 lines 19-21. *See also* Transcript of Phase Three Hearing, p. 26, line 22, through p. 27, line 2 (“We will not, in this proceeding, be making any rulings about Merrimack Telephone. To the extent there are subsets of documents that include reference to “Merrimack Telephone”, they’re irrelevant.”).

³ Appeal of Union Telephone Company d/b/a Union Communications, 999 A.2d 336, 344 (2010) (citation omitted).

⁴ In re Appeal of Verizon New England, Inc., 153 N.H. 50, 60, 889 A.2d 1027, 1035 (2005) (citation omitted).

⁵ The Oxford American Desk Dictionary, Oxford University Press (1998), at p. 37 (definition 1).

⁶ Re Kearsarge Telephone Company, 93 NH PUC 205, 220 (2008) (emphasis added).

⁷ *See Re Kearsarge Telephone Company*, 93 NH PUC at 219 (Commission separately evaluated the availability and competitiveness of Hollis Telephone Company, Inc. (HTC) and Wilton Telephone Company, Inc. (WTC)); and at 220 (Commission did not reach an analysis of whether the alternatives in MCT and KTC exchanges were competitive “because [it] do not find sufficient availability”). *See also*, Direct Testimony of Pradip K. Chattopadhyay, Assistant Director, NH PUC Telecom Division, dated October 12, 2007 (Exhibit 9), at p. 3, lines 3-4 (“Wireless or broadband services may be available in an exchange, but their availability does not necessarily mean they are competitive with basic local service”); and Johnson Testimony dated October 15, 2007 (Exhibit 7P), at p. 32, line 22, through p. 33, line 1 (“the mere existence of more than one provider in a market is not sufficient to confirm that competition exists”).

⁸ *See* Direct Testimony of Michael C. Reed on behalf of KTC, dated March 1, 2007 (Exhibit KTC 2P), at p. 3, lines 17-20 (“In accordance with the statutory language,” Reed “reviewed whether wireline service from other providers or wireless or broadband services is available to a majority of the customers in each of each the exchanges” and “also reviewed the evidence available to us showing that those alternatives are competitive”).

in the KTC exchanges of Antrim, Contoocook, Henniker, Hillsborough and Melvin Village. In fact, KTC does not know the number of its retail customers who are using cable voice services.⁹

Nearly all of the evidence filed by KTC since June 2010 shows, at best, that KTC customers in these exchanges have the ability to inquire about whether a Comcast voice service is available at their address.¹⁰ The handful of address-specific searches, which were provided inappropriately in rebuttal testimony, and only one for each exchange,¹¹ is insufficient to prove that Comcast voice service is available to more than 50% of KTC customers.

The evidence from the earlier phases of this proceeding also does not include the exact locations of cable facilities, or of KTC's customers.¹² Rather than precise data, KTC offered

⁹ Transcript of Phase Three Hearing, at p. 39, line 3, through p. 40, line 13.

¹⁰ *See, e.g.*, Reed Confidential Rebuttal dated November 15, 2007 (Exhibit KTC 2C), at p. 8, line 23, through p. 9, line 5 (<<<BEGIN CONFIDENTIAL>>>)

<<<END CONFIDENTIAL>>>); and Affidavit of Thomas E. Murray Regarding KTC dated June 10, 2010 (Exhibit KTC-MCT 14P), Bates p. 006 ("Please use our 'Check Availability' tool to verify that you are in a Comcast Cable service area, and to retrieve our exclusive Comcast Andover New Hampshire Deals"); and Rebuttal Testimony of Thomas E. Murray on Behalf of KTC and MCT dated September 20, 2010 (Exhibit KTC-MCT 16P), TEM Exhibit 5, Bates p. 044 ("*Comcast is not available in all markets. Please Call for Details."). *See also* Transcript of Phase Three Hearing, at p. 34, lines 2-9 (Check Availability tool means that a customer using the internet to shop for Comcast voice service "would have to punch in [their] address in order to determine...if that offering was, in fact, available to [them] at [their] particular address); and p. 41, line 12, through p. 42, line 3 ("At an individual customer level, certainly, [a TDS] customer would need to punch in their address or call [to determine if Comcast voice service is available at their address].")

¹¹ *See, e.g.*, Exhibit KTC-MCT 16P, at p. 7, lines 7-24 (Murray describes the process followed for address specific searches for each exchange); and Transcript of Phase Three Hearing, p. 57, line 11-20 (specific address searches provided after OCA and NHLA testimony and only one address search submitted for each exchange); and p. 58, line 6-10 (specific address searches provided in rebuttal not in June 2010 filing). *See also* OCA Motion in Limine to Strike portions of TDS' Rebuttal Testimony of Thomas E. Murray dated September 24, 2010 (arguing that specific address searches included in Murray's rebuttal were actually supplemental direct and not appropriately filed in rebuttal).

¹² *See, e.g.*, Rebuttal Testimony of Michael C. Reed dated November 15, 2007 (Exhibit KTC 4P), at p. 19, lines 8-12 ("maps were an internal tool," and "I in no way indicated or would want to indicate that the maps were to be utilized as an exact measure of competition for every road, and every pole"); and Reed Confidential Rebuttal dated November 15, 2007 (Exhibit KTC 4C), MCR-1, TDS First Supplemental Response to Staff 2-36 dated October 5, 2007 (<<<BEGIN CONFIDENTIAL>>>)

<<<END CONFIDENTIAL>>>). *See also* Transcript of Phase Three Hearing, p. 47, lines 5-24 (confirming Reed's testimony that maps do not provide exact locations); and p. 48, line 1-17 (confirming Reed's testimony that maps intended as a visual aid).

estimates of the availability of cable broadband for television and data services.¹³ It is critical to recall that, at the time the broadband estimates were filed, Comcast was not a certified wireline voice provider. Thus, cable “broadband” and “cable modem” service, as those terms are used in the evidence from the earlier phases of this proceeding, denoted a technology necessary for cable television services, or third-party Voice over Internet Protocol (VoIP) service.¹⁴ This earlier evidence does not denote or relate to wireline voice service provided by a cable company as a Certified Competitive Exchange Carrier (CLEC), as one did not exist at the time.¹⁵ In addition, cable TV service is not the same service as cable voice service.¹⁶ It is undisputed in the record that cable voice service requires “additional hardware and software.”¹⁷ However, despite the Commission’s directive that KTC provide evidence of Comcast offering services as a CLEC within each of its exchanges,¹⁸ KTC provided no such evidence.

¹³ See, e.g., Exhibit KTC 2P, at p. 3, line 27, through p. 4, line 1 (attachments include “best estimate of the extent of competition, broadband availability...”); Exhibit KTC 4P, at p. 13, line 20, through p. 14, line 1 (maps with DSL coverage included with Reed’s “estimates of cable and cable modem availability,” “best estimates of ... cable television and cable modem service”); Exhibit KTC 4C, MCR-1, TDS First Supplemental Response to Staff 2-36 (reference to <<<BEGIN CONFIDENTIAL>>> <<<END CONFIDENTIAL>>>).

¹⁴ See, e.g., Exhibit KTC 4C, MCR-1, TDS’s Response to Staff 1-37 (Redacted) dated September 4, 2007 (“Wherever broadband service is available using DSL, cable modem or satellite, VoIP service such as Vonage is available.”); and Transcript of Phase Three Hearing, p. 70, line 7, through p. 71, line 4 (TDS estimates concern cable television and cable modem service in each exchange). See also Testimony of Josie A.M. Gage, dated October 12, 2007 (Exhibit 10), at p. 1, lines 16-18 (Staff’s determination of availability was limited to “cable television coverage areas” and “broadband cable modem service” and did not concern cable voice); and p. 2, lines 13-22 (similar).

¹⁵ See, e.g., Exhibit KTC 4P, at p. 7, lines 7-8 (“DSL and Cable modem services are considered broadband service and customers who have broadband can utilize VoIP providers”); and p. 8, line 23, through p. 9, line 2 (“If MCT Communications, Inc. did offer a broadband service option to customers, those customers could easily purchase VoIP service from companies with no affiliation with [TDS]”).

¹⁶ See Johnson testimony dated September 2, 2010 (Exhibit Bailey 77), at p. 14, lines 17-18.

¹⁷ *Id.* at p. 14, lines 22-23. See also Transcript of Phase Three Hearing, at p. 157, lines 9-11. (TDS maps show that cable voice service is “potentially” available).

¹⁸ Re Kearsarge Telephone Company, Inc., Order No. 25,103 (May 14, 2010), slip op. at p. 26 (Commission gave KTC 30 days to file evidence “establishing that Comcast is offering service as a CLEC in the exchanges of Andover, Boscawen, Chichester, Meriden and New London”).

It is also important that the Commission not overlook the repeated qualifications offered by TDS about its own cable “broadband” and “cable modem” service estimates.¹⁹ Also, recall that the original maps depicting these estimates contained errors.²⁰ Although revised versions of these maps were later provided, there is no testimony in the record from the Commission’s Staff confirming that the errors they observed were corrected or that the subsequent changes to TDS’s estimates were not material.²¹

Finally, regarding the statutory requirement of availability, the Commission should be mindful of the fact that there is no evidence in the record directly from Comcast, a regulated Competitive Local Exchange Carrier (CLEC), about the location of its facilities within the KTC exchanges, about the functionality of these facilities – in terms of whether the facilities, if any, are equipped for cable voice, or about the number of customers within the KTC exchanges who are presently purchasing Comcast voice services. The burden of providing this evidence rests solely with KTC, and it simply has not been met.

¹⁹ See, e.g., Exhibit KTC 4P, at p. 19, lines 8-12 (“maps were an internal tool,” and “I in no way indicated or would want to indicate that the maps were to be utilized as an exact measure of competition for every road, and every pole”); and Exhibit KTC 4C, MCR-1, TDS First Supplemental Response to Staff 2-36 dated October 5, 2007 (<<<BEGIN CONFIDENTIAL>>> <<<END CONFIDENTIAL>>>). See also Transcript of Phase Three Hearing, p. 47, lines 5-24 (confirming Reed’s testimony that maps do not provide exact locations); and p. 48, line 1-17 (confirming Reed’s testimony that maps intended as a visual aid).

²⁰ See, e.g., Exhibit 10, at p. 2, lines 1-2 (Staff witness Gage testified, “the maps had been prepared with incorrect keys, and that some of the information depicted on the maps was incorrect”), and lines 4-6 (“Ultimately, Staff found it increasingly difficult to rely on the information provided by TDS on their exchange maps”); and Exhibit 4P, at p. 19, lines 1-5 (TDS witness Reed references Ms. Gage’s testimony). See also Transcript of Phase Three Hearing, p. 46, lines 4-14 (confirming Reed’s observations of Ms. Gage’s criticism of exchange maps).

²¹ See Transcript of Phase Three Hearing, p. 46, line 16, through p. 47, line 4 (TDS revised maps after Staff, including Ms. Gage, filed testimony).

III. Competitiveness

“Competitive” generally means “of or involving competition,” “(of prices, etc.) comparing favorably.”²² Within the context of RSA 374:3-b, III (a), “[c]ompetitive” means that an alternative voice service has the same functional characteristics as KTC’s basic service.²³ Also, to be “[c]ompetitive,” the price of an alternative voice service must be reasonably similar to the price of KTC’s basic service.²⁴

In addition, as with the element of availability, RSA 374:3-b, III (a) requires the Commission “to consider the state of competitiveness at the time of [its] decision and not as it may develop in the future.”²⁵ Stated simply, the competitive voice service must exist today.

Lastly, on the element of competitiveness, the Commission has defined “competitive” as used in RSA 374:3-b, III (a) as more than “mere availability of alternatives” but less than “a fully

²² The Oxford American Desk Dictionary, Oxford University Press (1998), at p. 115 (definitions 1 and 2).

²³ *See, e.g., Re Kearsarge Telephone Company*, 93 NH PUC at 219 (“We find that the level of competition between those third party alternatives and the local services provided by Wilton and Hollis, is sufficient to permit regulation under the amended alternative regulation plans filed by Wilton and Hollis”); and p. 29 (“We do not find the TDS Companies’ offering of DSL to be an alternative under the statute to the TDS Companies’ basic service because DSL can only be purchased in combination with TDS basic service”); Transcript of Hearing on December 5, 2007, at p. 40, lines 9-14 (Mr. Timothy W. Ulrich, Manager in TDS Telecom’s Government and Regulatory Affairs department, confirmed that “basic local exchange service as well as technologies that compete with local exchange service” is the “market at issue in this docket”); and Exhibit 9, at p. 2, lines 17-20 (Dr. Chattopadhyay recommended to the Commission that basic local service provided by TDS “should be the subject of competition analysis”). *See also* Prefiled Direct Testimony of Ben Johnson dated October 15, 2007 (Exhibit 7), p. 36, lines 7-17 (“Effective competition is present when a market is free of substantial barriers to entry and exit and when no firm or consortium of firms has enough market power to set or strongly influence market prices. This implies that there are multiple firms operating in the market, selling essentially the same product for prices that are determined by market forces.”); and p. 55 (under RSA 374:3-b, III (a) an alternative wireline, wireless or broadband services would not be viewed as ‘competitive’ except to the extent the Commission finds these alternative offerings are reasonably close substitutes for TDS’ services, offered at prices that are relatively similar”).

²⁴ *See, e.g., Exhibit Bailey 77*, at p. 7, lines 8-13 (“From an economic perspective, by describing an alternative service as being ‘competitive’ with the phone company’s service, the statutory language suggests that the service in question provides customers with a viable, cost effective alternative to the service offered by the rural phone company – one which many customers would readily switch to, if the telephone company were to increase its prices, or do something else to motivate the customer to want to switch to a competitor”); and Exhibit 7, p. 36, lines 7-17 (when effective competition exists, each firm “is largely unable to set its own prices; rather, it must take as a given the level of prices determined in the market place. (If the firm attempts to charge significantly more than this market-determined price level, it knows it could lose most of its customers, and thus it feels constrained to set prices in the same vicinity as other providers.”).

²⁵ Re Kearsarge Telephone Company, 93 NH PUC at 218-219.

functioning competitive market.”²⁶ While a full price elasticity analysis may not be required to prove that an alternative voice service is “competitive,”²⁷ only an alternative voice service that constrains KTC’s monopoly power (*i.e.*, reduces KTC’s market share) meets the requirement of “competitive.”²⁸ In other words, the presence or absence of competition within the KTC exchanges is important because competition can potentially serve as a substitute for traditional regulation, effectively protecting customers from excessively high prices and other abuses typically associated with a monopoly.

KTC has filed insufficient evidence about the functionalities of Comcast voice service and KTC has not asserted that it has the same or similar characteristics of KTC’s basic service as defined by Puc 412.01 (b). Thus, there is no basis upon which the Commission can find that Comcast voice service is functionally similar to KTC’s basic service.

²⁶ Re Kearsarge Telephone Company, 93 NH PUC at 218. *See also* Exhibit 7, p. 32, lines 8-9 (Dr. Johnson testified: “I don’t believe the statutory framework applicable to this proceeding requires a finding of pure competition by the Commission”); and p. 38, lines 16-21 (“the mere presence or absence of multiple firms or the mere existence of multiple products that perform somewhat similar functions does not determine whether these products are all being provided in the same market, or whether those services can be characterized as ‘competing’ with each other in a meaningful sense.”).

²⁷ Re Kearsarge Telephone Company, 93 NH PUC at 219.

²⁸ Exhibit Bailey 77, at p. 7, line 14, through p. 8, line 1; and p. 8, lines 3-6 (similar). *See also* Exhibit 7, p. 34, lines 20-22 (“For the public interest to be advanced by deregulation, competition must be strong enough to drastically curtail or eliminate market power.”); p. 35, lines 12-13 (“effective competition not only prevents the exercise of market power, but it also advances the public interest generally”); p. 37, lines 10-16 (“If competition were strong enough to force TDS to charge the going market rate for its services in a particular market-and it is unable to significantly influence or increase that going market rate then regulation is no longer needed to protect the public interest. Stated another way, if competitive pressures are strong enough to effectively regulate TDS’ prices, it makes sense to let the market take over the job of protecting the public from monopoly pricing abuses.”); p. 39, lines 1-4 (“In markets where effective competition exists, the market is free of substantial barriers to entry and exit, and no firm or tacitly cooperating consortium of firms retains enough market power to set or strongly influence market prices.”); p. 40, lines 10-17 (“Market dominance and the ability to exercise market power - not the mere presence of alternative suppliers of other services that serve a somewhat similar purpose - are the key issues to be considered. Unless those key issues are considered, there will be no assurance that the alternatives are sufficiently relevant and competitive to substantially reduce or eliminate the core rationale for regulation - the presence of monopoly power.”); p. 41, lines 6-9 (“Unless and until [TDS’s] market power is greatly eroded, the type of regulatory oversight historically provided by this Commission would continue to provide valuable protection for consumers and the public interest generally.”); and p. 54, line 21, through p. 55, line 2 (“From an economic perspective, a market cannot be meaningfully described as ‘competitive’ if it remains a monopoly - a single firm cannot control the market, or have enough market power to effectively determine the overall level of prices charged in the marketplace.”).

In terms of similar pricing, there is also not enough evidence to support a finding that Comcast voice services are competitively priced to KTC basic service. KTC's June 2010 affidavit refers to "Comcast Triple Play," at an "introductory rate" of \$99.²⁹ This price is not competitive with any TDS basic local rate.³⁰

Other lower-priced Comcast voice services referenced in the record are also not competitive with any KTC basic local rate.³¹ Most of these lower-priced services appear to be limited promotions, limited to existing cable customers and for a limited period of time.³² KTC customers who do not use any Comcast TV or internet service do not qualify for these promotional rates,³³ and existing Comcast cable customers (*i.e.*, customers who are already using Comcast TV and/or internet service) will pay higher rates once the promotional period ends.³⁴

²⁹ See, e.g., Exhibit KTC-MCT 14P, Bates p. 005 ("Comcast Triple Play Andover New Hampshire Deals – Starting at \$99/month*") and Transcript of Phase Three Hearing, p. 32, line 23, through p. 33, line 2 (\$99 is a promotional price for the Comcast Triple Play). See also Exhibit Bailey 77, at p. 3, lines 21-22 ("TDS provided some information concerning Comcast's 'Triple Play' bundled offering"), and p. 5, lines 2-3 (Johnson references TDS printouts regarding Comcast's "Triple Play").

³⁰ Exhibit Bailey 77, at p. 8, lines 6-8. See also Exhibit Bailey 77, at p. 7, lines 8-14 (A rate of \$99 is not a "viable, cost effective alternative" to TDS basic that "constrain[s] [TDS's] monopoly power."); and p. 3, lines 6-8, and p. 3, line 22, through p. 4, line 2 (There is no evidence in the record that demonstrates that TDS customers are switching back and forth between TDS's basic service and Comcast Triple Play voice service).

³¹ See, e.g., Exhibit Bailey 77, at p. 9, lines 3-7 (the rate for Comcast's "Local with More" voice service, \$34.95 per month, is "substantially higher than the analogous rates charged by TDS, which calls into question the extent to which any of these Comcast offerings can be legitimately interpreted as being 'competitive' with TDS phone service."

³² See, e.g., Exhibit KTC-MCT 14P, Bates p. TEM 005, and Transcript of Phase Three Hearing, at p. p. 32, line 23, through p. 33, line 2 ("Comcast Triple Play Andover New Hampshire" \$99/month promotion); Exhibit KTC-MCT 16P, at p. 7, line 17 (reference to Comcast voice services with "introductory rates"); Exhibit KTC-MCT 16P, TEM Exhibit 5, Bates p. TEM 059, and Transcript of Phase Three Hearing, at p. 34, line 18, through p. 36, line 12 ("Special Offer \$19.99 per month for first six months" and "\$39.95 per month after promotional period(s)"; "\$24.95 per month "starting price is for customers that currently subscribe to Comcast Cable and/or Comcast High Speed Internet"); and Exhibit KTC-MCT 16P, TEM Exhibit 5, Bates p. TEM 060 (\$39.95 per month "starting price" of \$39.95 per month "is for customers that currently subscribe to Comcast Cable and Comcast High Speed Internet") and Transcript of Phase Three Hearing, at p. 36, line 13, through p. 37, line 6 (\$39.95 starting price available only for existing Comcast cable TV or internet customers).

³³ Exhibit KTC-MCT 16P, TEM Exhibit 6, Bates p. TEM 068, and Transcript of Phase Three Hearing, at p. 37. Line 7, through p. 38, line 4 ("Comcast Digital Voice – w/no other Comcast services" is \$44.95 per month).

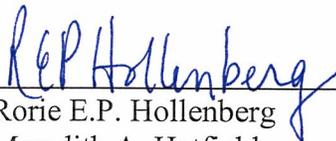
³⁴ See, e.g., Exhibit KTC-MCT 16P, Exhibit TEM 9, Bates p. TEM 130, and Transcript of Phase Three Hearing, at p. 38, lines 5-19 (\$19.99 per month "Special Offer" for Comcast Unlimited "for the first 6 months, \$39.95 per month after promotional period(s)").

Further, the lower-priced Comcast voice services include other features besides basic local exchange service.³⁵ Thus, these services are not functionally similar to KTC basic service to qualify, in non-price terms, as “competitive.”

IV. Conclusion

Since March 2007, KTC has had multiple opportunities to fill in the gaps of its case. KTC has failed to do so despite these multiple opportunities. KTC bears the burden of proof and KTC has failed to sustain its burden. The OCA respectfully requests that the Commission issue a final order to put an end to these proceedings. Based upon the testimony of TDS witness Murray at the Phase Three hearing, it may also be time for the Commission to formally inquire as to the status of the compliance of Hollis Telephone Company, Inc. and Wilton Telephone Company, Inc. with the alternative regulation plans that the Commission approved for these companies earlier in this proceeding.³⁶

Respectfully submitted,

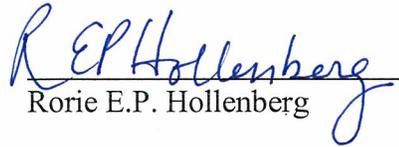

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³⁵ See, e.g., Exhibit Bailey 77, at p. 8, line 20, through p. 9, line 2 (Comcast’s “Local with More” includes “unlimited local calling, Caller ID, Call Waiting, and various other less popular, vertical features”); Exhibit KTC-MCT 16P, TEM Exhibit 5, Bates p. TEM 059 (Comcast’s “Local with More” includes “In-state and out-of-state nationwide long distance,” “unlimited local calling,” and “12 popular calling features including Caller ID, Call Waiting, and more”); and Exhibit KTC-MCT 16P, TEM Exhibit 9, Bates p. TEM 130, and Transcript of Phase Three Hearing, at p. 79, line 3, through p. 80, line 1 (Comcast Unlimited – Special Offer not just basic local service).

³⁶ See Transcript of Phase Three Hearing, at p. 68, lines 5-24, and p. 69, lines 5-9 (Mr. Murray acknowledges that in Response to Oral Data Request 4, provided on August 9, 2010, nearly three years after approval of the WTC and HTC AFOR plans, TDS still had not complied with those plans with respect to the requirements related to Lifeline).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was forwarded this day to the parties by electronic mail.


Rorie E.P. Hollenberg