

NEW HAMPSHIRE LEGAL ASSISTANCE

Branch Law Office  
117 North State Street  
Concord, NH 03301

Tel: (603) 223-9750 • Fax: (603) 223-9794  
1-800-921-1115 • TTY: 1-800-634-8989

ORIGINAL	
N.H.P.U.C. Case No.	DT07-027
Exhibit No.	#77
Witness	Bailey
DO NOT REMOVE FROM FILE	

September 2, 2010

Debra Howland  
Executive Director and Secretary  
NH Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301

Re: DT 07-027, TDS  
Petition For Alternative Form of Regulation

Dear Ms. Howland:

Please find enclosed original and 7 copies of Direct Testimony of Ben Johnson, Ph.D. Copies are being sent to the Commission and to all parties via email.

Thank you for your attention to this matter.

Sincerely,



Alan Linder  
Attorney for Daniel Bailey

AL:blg  
Enclosures (original & 7 copies)

Cc (w/encl):  
Service List, DT 07-027  
Daniel Bailey  
Dan Feltes

Direct Testimony of Ben Johnson, Ph.D.  
On Behalf of New Hampshire Legal Assistance  
Case No. DT-07-027

**BEFORE THE  
STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**Kearsarge Telephone Co., )  
Wilton Telephone Co., )  
Hollis Telephone Co., and )  
Merrimack County Telephone Co. )  
Petition for Alternative Form of Regulation ) Case No. DT 07-027**

**DIRECT TESTIMONY**

**of  
Ben Johnson, Ph.D.**

**Introduction**

**Q. Would you please state your name and address?**

**A. Ben Johnson, 3854-2 Killlearn Court, Tallahassee, Florida.**

**Q. Are you the same Ben Johnson that testified in this docket on October 12, 2007 and  
July 17, 2009?**

**A. Yes, I am.**

1   **Q.    What is your purpose in making your appearance at this hearing?**

2    A.    Our firm has been retained by the New Hampshire Legal Assistance (NHLA) to provide  
3           an evaluation of the information submitted by TDS on June 11 and June 14, 2010  
4           regarding the availability of alternative services that are competitive with local exchange  
5           service in in TDS' Kearsarge and Merrimack exchanges.

6           On March 1, 2007, MCTC, KTC, WTC and HTC filed petitions with the  
7           Commission for an alternative form of regulation pursuant to RSA 374:3-b. RSA 374:3-b  
8           contemplates a fact finding process, in which the Commission determines whether or not  
9           certain statutory criteria have been met. Upon the culmination of its fact finding process,  
10          the Commission must (among other things) determine whether or not “Competitive  
11          wireline, wireless, or broadband service is available to a majority of the retail customers  
12          in each of the exchanges served by such small incumbent local exchange carrier” [RSA  
13          374:3-b(III)]

14          Following this introduction, my testimony is organized into three sections. In the  
15          first section, I discuss the additional information provided by TDS. In the second section,  
16          I analyze evidence that was NOT provided by TDS, which is needed to more fully  
17          evaluate their request. In the third and final section, I present my conclusions and  
18          recommendations.

19  
20  
21  
22  
23

1   **I.     Analysis of Additional TDS Information**

2  
3   **Q.     From an economic perspective, what factors or evidence is most important in**  
4           **evaluating whether a product or service is or is not competitive with another**  
5           **product or service?**

6   A.     Probably the single most important factor or evidence to consider is the extent to which  
7           consumers are switching back and forth between the two products or services, in response  
8           to marketing promotions, special trial offers, and other price signals. If there is a  
9           significant amount of activity in which consumers are moving back and forth between the  
10          two products or services, that would suggest the two options are close substitutes, and  
11          each is competitive with the other.

12                 The reverse is also true: if relatively few people are switching back and forth  
13                 between two products, they may not in fact be competitive with each other,  
14                 notwithstanding other similarities. For instance, an economist might conclude that  
15                 orange juice and Pepsi are not competitive with each other, because very few people  
16                 decide which one to purchase based on the current price, promotional offerings, and the  
17                 like. If the data shows few people are switching between the two products, they may not  
18                 be competitive with each other, notwithstanding they both serve the same purpose of  
19                 quenching your thirst, and they both share many of the same technical characteristics as  
20                 flavorful liquid refreshments distributed through grocery stores.

21                 As I will explain later, although TDS provided some information concerning  
22                 Comcast's "Triple Play" bundled offering, it has provide little or no information regarding  
23                 the extent to which consumers are actually switching back and forth between TDS' local

1 exchange service and the "Triple Play" offering or any other service provided by  
2 Comcast (or any other firms, for that matter).

3 In the absence of this sort of data, the next best option is to focus on evidence  
4 concerning the prices being charged by Comcast, in comparison with those being charged  
5 by TDS. Unless the prices charged by Comcast are reasonably similar to those being  
6 charged by TDS, their respective offerings are unlikely to actually be "competitive" with  
7 each other. Two services may share some technical characteristics, or perform similar  
8 functions, yet be priced in a very dissimilar manner, and thus the services may not, in  
9 fact, be "competitive" with each other – and thus very few people may be switching back  
10 and forth between the two offerings.

11

12 **Q. Did TDS file additional information in response to this order?**

13 A. Yes. On June 11, 2010, TDS submitted an affidavit of Thomas E. Murray which attached  
14 and discussed printouts from Comcast's website indicating that voice service is available  
15 in the 5 KCT exchanges mentioned by the Commission. The affidavit also attached a list  
16 of numbers ported from TDS to Comcast for 4 of the 5 exchanges, and, a copy of a  
17 service order obtained from Comcast for voice service in the 5th exchange.

18 On June 14, 2010, TDS submitted an additional affidavit of Thomas E. Murray  
19 describing advertisements by Comcast for voice service in 4 of the 5 MCTC exchanges  
20 mentioned by the Commission. The affidavit also attached a list of numbers ported from  
21 TDS to Comcast for 4 of the 5 exchanges, and, a copy of a an email from Time Warner  
22 indicating voice service is available at 1 particular address in the 5th exchange.

23

1    **Q.     Can you describe the Comcast information submitted by TDS in more detail?**

2    A.     Yes. TDS primarily relies upon printouts from Comcast's website which imply that the  
3           Comcast service "Triple Play" is available in individual KTC and MCTC exchanges.  
4           Triple Play is a bundled service that includes cable television, internet broadband and  
5           phone service. According to the information submitted by TDS, the price for this bundled  
6           package of services starts at \$99 per month. [See, Murray Affidavit, Attachment A]

7  
8    **Q.     Why do you say that the information provided by TDS merely implies that the**  
9           **Triple Play service is available in TDS exchanges?**

10   A.     Each printout for each exchange includes the following caveat: "Use our Check  
11           Availability link to verify that you are in the Comcast Cable Service area". Therefore, the  
12           printouts attached to Mr. Murray's affidavits merely show that Triple Play is available to  
13           some customers in those exchanges. Mr. Murray did not go the extra step of testing  
14           addresses of actual customers within each exchange to determine what fraction of its  
15           customers are actually able to obtain Triple Play service from Comcast. Hence, the actual  
16           information provided in this proceeding does not show how many customers have this  
17           service available, nor is there any data which could be used to conclude that Comcast's  
18           Triple Play service is available to a majority of the customers in each exchange.

19  
20   **Q.     Why do the Comcast printouts characterize the price of Triple Play as "starting" at**  
21           **\$99 per month?**

22   A.     This is an introductory "teaser" rate; the amount paid by customers increases after a  
23           limited period of time. The printouts state: "Comcast's current monthly service charges

1 for the advertised services may vary depending on your area. After the 6 or 12 month  
2 Promotional Period, Comcast's regular charges apply unless service is canceled."  
3 Additional information accessed through a link provided in the printouts indicates that  
4 this rate only applies for the first 12 months. For months 13-24, the introductory rate  
5 increases to \$114.99 per month, and after that, customers begin paying Comcast's  
6 standard rate for the bundle, which currently is \$129.99 per month. [See,  
7 <http://snltranscripts.jt.org/comcast-cable/comcast-cable-special-promotion-terms.html>]  
8

9 **Q. How do the Comcast rates submitted by TDS compare to rates for KCT and MCTC**  
10 **services?**

11 A. The table below compares the Comcast bundled rate to local exchange rates for MCTC  
12 and KTC. The Comcast rates include the \$99 Triple Rate which applies during the first 12  
13 months, plus the \$5 modem rental fee. In the first row, the MCTC and KTC rates include  
14 the local exchange rate, plus the \$6.50 End User Common Line Charge assessed by  
15 NECA tariff 5, 17.1.2(A). Since KTC rates vary by exchange, I have included the lowest  
16 and highest exchange rates.

17 The first row assumes that the TDS customer is only paying for local exchange  
18 service, and does not purchase any additional features. The second row assumes the TDS  
19 customer is purchasing local exchange service plus Caller ID and Call Waiting, the two  
20 most popular vertical features.  
21

Direct Testimony of Ben Johnson, Ph.D.  
On Behalf of New Hampshire Legal Assistance  
Case No. DT-07-027

**Total Cost**

TDS Scenario	Comcast Teaser Rate	MTC	KTC Low	KTC High
Local exchange only, no features	104.00	\$17.70	\$16.57	\$20.89
Local Exchange, plus Caller ID and Call Waiting	104.00	\$22.40	\$23.82	\$28.14

**Total Cost - Percent Differences**

TDS Scenario	Comcast vs. MTC	Comcast vs. KTC Low	Comcast vs. KTC High
Local exchange only, no features	487.6%	527.6%	397.8%
Local Exchange, plus Caller ID and Call Waiting	364.3%	336.6%	269.6%

**Notes**

Comcast prices include the \$5 modem rental fee.

TDS prices include the \$6.50 End User Common Line charge, per NECA Tariff 5, 17.1.2(A)

2 Although the extent of the discrepancy varies depending on the exchange where the  
3 customer is located, and the features included in the comparison, it is clear that even its  
4 discounted “teaser” rate is higher than the TDS rates. Given the extreme magnitude of the  
5 discrepancies involved, it is hard to see why TDS even bothered to provide these rates as  
6 purported evidence for its claim that Comcast offers a “competitive” service as an  
7 alternative” to TDS phone service.

8 From an economic perspective, by describing an alternative service as being  
9 “competitive” with the phone company's service, the statutory language suggests the  
10 service in question provides customers with a viable, cost effective alternative to the  
11 service offered by the rural phone company – one which many customers would readily  
12 switch to, if the telephone company were to increase its prices, or do something else to  
13 motivate the customer to want to switch to a competitor. To the extent a “competitive”  
14 service is available, that alternative may constrain the utility's monopoly power, and



1           reduce or eliminate the need for traditional regulation.

2                       However, it is hard to see how the \$99 teaser rate in any way supports the TDS  
3           contention that it should be freed from traditional regulatory price controls. At least from  
4           an economic perspective, the statutory language concerning a “competitive” service  
5           suggests a situation in which competition exists, and thus competitive pressures will  
6           provide a substitute for direct regulatory control over monopoly power. A \$99 teaser rate  
7           is hardly persuasive evidence in support of the contention that Comcast is offering a  
8           service that is “competitive” with the voice grade telephone service provided by TDS.

9

10   **Q.   The comparison offered by TDS involves a Comcast bundle which includes voice,**  
11       **internet and video service. But, the focus of this proceeding is ordinary voice grade**  
12       **telephone service. Does Comcast allow customers to purchase voice service by**  
13       **itself?**

14   A.   Yes. Although Comcast is not aggressively promoting these offerings in the market, it  
15       apparently is willing to provide voice service on a stand-alone basis (where available) to  
16       those who request it.

17

18   **Q.   Have you compared the Comcast voice rates to the rates charged by KCT and**  
19       **MCTC?**

20   A.   Yes. According to Comcast's website, it offers a voice service in New Hampshire called  
21       "Local with More" which is priced at \$34.95 per month (where available). [See,  
22       [http://www.comcast.com/MediaLibrary/1/1/About/PhoneTermsOfService/PDF/DigitalVo](http://www.comcast.com/MediaLibrary/1/1/About/PhoneTermsOfService/PDF/DigitalVoice/StatePricingLists/NewHampshire/New%20Hampshire%20pricing%20list.pdf)  
23       [ice/StatePricingLists/NewHampshire/New%20Hampshire%20pricing%20list.pdf](http://www.comcast.com/MediaLibrary/1/1/About/PhoneTermsOfService/PDF/DigitalVoice/StatePricingLists/NewHampshire/New%20Hampshire%20pricing%20list.pdf)] This

1 offering includes unlimited local calling, Caller ID, Call Waiting, and various other, less  
2 popular, vertical features. The table below compares the rate for this service to the  
3 analogous rates charged by MCTC and KTC. As shown, the Comcast rate is 42% to  
4 141% greater than the TDS rates, depending on the exchange and the number of features  
5 used by customers. The Comcast rates are substantially higher than the analogous rates  
6 charged by TDS, which calls into question the extent to which any of these Comcast  
7 offerings can be legitimately interpreted as being "competitive" with TDS phone service.  
8

**Total Cost**

Scenario	Comcast	MTC	KTC Low	KTC High
Voice only, no features	39.95	\$17.70	\$16.57	\$20.89
Voice only, plus Caller ID and Call Waiting	39.95	\$22.40	\$23.82	\$28.14

**Total Cost - Percent Differences**

Scenario	Comcast vs. MTC	Comcast vs. KTC Low	Comcast vs. KTC High
Voice only, no features	125.7%	141.1%	91.2%
Voice only, plus Caller ID and Call Waiting	78.3%	67.7%	42.0%

**Notes**

Comcast prices include the \$5 modem rental fee.

TDS prices include the \$6.50 End User Common Line charge, per NECA Tariff 5, 17.1.2(A)

10 **Q. What about customers who are already purchasing another service from Comcast?**  
11 **Do they pay \$34.95 for voice service?**  
12 **A.** Not necessarily. Customers who are already purchasing internet or video service from  
13 Comcast can add voice service to their existing account for as little as \$24.95 per month.  
14 However, these customers will also have to pay a \$5.00 modem rental fee if they do not

1 already have a modem. While these rates are closer to what customers pay TDS, they  
2 still generally exceed the TDS rates by a wide margin, although the extent of the  
3 discrepancy will vary depending on the exchange, the extent to which the customer uses  
4 vertical features, and whether or not the customer has to pay the \$5.00 modem rental fee.

5 Consider one example: a MCTC customer who uses both Call Waiting and Caller  
6 ID pays \$17.70 per month for phone service from TDS. If they are already using  
7 Comcast video service (rather than relying on over the air or satellite service), they will  
8 qualify for Comcast's discounted \$29.95 rate for add on phone service. But, even with  
9 this discount, they wouldn't actually save any money by switching from TDS. After  
10 taking into account the \$5 modem rental charge, the amount they spend on phone service  
11 would actually increase by roughly 69% if they go through the effort of switching to  
12 Comcast.

13 For customers who currently use various other combinations of video, internet  
14 and phone service, the calculations are more complicated but they aren't necessarily any  
15 more favorable to the proposition that Comcast is offering a service which is  
16 "competitive" with TDS phone service.

17  
18 **Q. What is the significance of the fact that Comcast is charging so much more than**  
19 **TDS?**

20 **A.** The large discrepancies that exist between the rates charged by TDS and Comcast for  
21 phone service are very significant to the issues in dispute in this proceeding. For one  
22 thing, it is obvious that relatively few TDS customers will go to the time and effort  
23 required to make the change to Comcast if they will end up spending more money each

1 month after making the change. For another thing, since even Comcast's discounted  
2 prices are higher than the non-discounted, standard rates charged by the dominant firm  
3 (TDS) strongly suggests that Comcast is not offering a service which is "competitive"  
4 with TDS in this part of the state.

5 Rather than attempting to aggressively compete in the market for telephone  
6 service, Comcast appears instead to be treating phone service as an ancillary element in  
7 its competitive efforts in the video and broadband internet markets. Stated another way,  
8 Comcast is not attempting to compete head-to-head with TDS in the market for basic  
9 voice grade phone service. Instead, it is primarily offering phone service as part of a  
10 discounted "bundle" that cannot be readily matched by the satellite television providers  
11 (DirectTV and Dish Network), who are its primary competitors. This strategy is designed  
12 to be particularly appealing to customers at the upper end of the market, for whom a \$99  
13 teaser rate is more likely to be attractive relative to the amount they are currently  
14 spending on these services.

15 Although the specific percentages vary widely depending on the exchange and the  
16 assumed combination of services, it is clear that Comcast is not attempting to compete  
17 head-to-head with TDS in the market for telephone services. In competitive markets,  
18 prices of different alternatives are usually quite close to each other – and new entrants  
19 into a market will generally make an attempt to undercut the price charged by the existing  
20 firms, in an attempt to gain a share of the market. Thus, the fact that even Comcast's  
21 discounted prices are substantially higher than the non-discounted rates charged by TDS  
22 is evidence that strongly undermines the notion that Comcast is offering a service which  
23 is "competitive" with TDS phone service.

1   **Q.     If Comcast isn't making much of an effort to compete in the market for telephone**  
2           **service, why is it including phone service as part of its discounted, bundled**  
3           **offerings?**

4   **A.**    Even if Comcast isn't making much of an effort to compete in the telephone market, it  
5           clearly is making an effort to compete in the internet broadband and video service  
6           markets. As part of its strategy for competing in those markets, it is offering discounts  
7           that are specifically targeted at customers who purchase multiple services. This has the  
8           important advantage of making it difficult, and costly, for competitors to match its  
9           offerings. For example, the technology used by DirecTV and Dish Network is not well  
10          suited to providing two way communication services like broadband internet and voice  
11          telephone service. By combining its video service with these offerings in a bundle,  
12          Comcast is able to provide attractive "teaser" rates which its competitors cannot readily  
13          match.

14               While the focus of this strategy may be on the internet and video markets, the end  
15               result is that customers who purchase multiple services may be able to save money, at  
16               least during the duration of the introductory pricing period. This is somewhat akin to  
17               what happened when banks were giving away free toasters to people who sign up for a  
18               new checking account. While no one would argue that banks were competing in the  
19               market for toasters, their activities may have nevertheless had an adverse impact on  
20               retailers who sell toasters.

21               Consider, for example, a customer who is currently purchasing cable television  
22               service from Comcast, basic telephone service from TDS along with several vertical  
23               features, and broadband internet service from Comcast, who is considering switching to

1       one of the satellite firms, because of the additional channels or other benefits offered by  
2       those providers. Comcast's bundled rate is a carefully calibrated response to that  
3       competitive pressure. Customers who switch their phone service to Comcast qualify for  
4       the \$99 teaser rate – but the satellite providers can't readily match this offer. The end  
5       result is that customers taking advantage of the bundled offer will end up saving money,  
6       at least during the initial duration of the teaser rate. Arguably, the potential savings will  
7       largely be attributable to the discount they receive on their video service, but TDS is  
8       nevertheless adversely affected, since they lose the customer's data business, as well as  
9       their voice business.

10  
11   **II.     Analysis of Necessary Information not Submitted by TDS**

12  
13   **Q.     Is the information submitted by TDS sufficient for the Commission to determine**  
14       **whether Comcast is offering a competitive service to a majority of the customers in**  
15       **each exchange?**

16   **A.**    No. Even if the telephone service is an ancillary element of Comcast's marketing tactics,  
17       the offering has the potential to significantly impact the market for telephone service, so  
18       further examination is clearly necessary. Additional information is needed to determine  
19       how many customers are purchasing video, broadband and voice services, and to  
20       determine the extent to which Comcast could reasonably be interpreted as providing a  
21       service which is "competitive" for these TDS customers (or a subset thereof).

22           It is important to note, however, that TDS has not even begun to put forward the  
23       sort of evidence that will be needed to make this evaluation. It has not provided any

1 testimony concerning the number of customers who purchase broadband and/or video  
2 services, nor has it offered any other data which might potentially be useful in evaluating  
3 the extent to which the Comcast \$99 bundled rate offering could reasonably be  
4 interpreted as being "competitive" for certain TDS customers, or for certain segments of  
5 the market. TDS put forward the \$99 bundled rate as its primary basis for arguing that  
6 Comcast is providing a "competitive" phone service, yet it has not provided any of the  
7 supporting evidence which is needed to meaningfully evaluate this argument.

8  
9 **Q. Do you know how many TDS customers in each of the KTC and MCTC exchanges**  
10 **have Comcast voice service available to them?**

11 A. No, but it is reasonable to assume that all, or nearly all, of its customers in towns and  
12 cities have cable television available to them. With regard to the rural areas outside of  
13 town, the availability of cable service can vary. Depending on historical circumstances,  
14 and particularly the extent to which cable facilities were already extended before satellite  
15 television became a popular alternative, cable service may or may not be available to  
16 every potential customer within a given rural area.

17 Similarly, even if Comcast serves a particular street or neighborhood, voice  
18 telephone service may still be unavailable to some customers. Thus, in the section of  
19 Comcast's website which promotes the Triple Play offer, it provides a place for customers  
20 to input their street address and zip code, to determine whether the offer is actually  
21 available to them. Comcast has been rolling out voice service in an incremental fashion,  
22 so even if it has cable running down a particular road or street, that doesn't necessarily  
23 mean it has already installed all of the additional hardware and software necessary to

1 provide voice service to every household on that route. The incremental nature of its  
2 system expansion was alluded to by Comcast at an earlier stage of this proceeding:

3 Comcast Phone nor any of its affiliates offers any voice services  
4 whatsoever in the exchanges served by the TDS Petitioners, let  
5 alone unlimited calling plans. As a result, even though Comcast  
6 Phone's cable affiliates offer broadband service within these  
7 exchanges, Comcast Phone is unable to offer telecommunications  
8 services there. [Comcast Phone, Petition to Intervene, p. 3]  
9

10 Obviously, circumstances have changed since that was written, and Comcast is  
11 now providing voice service within the TDS exchanges, although it is apparently not  
12 available to every home. However, Comcast is no longer a party to this proceeding, and  
13 TDS has not provided detailed information about the extent to which Comcast voice  
14 offerings are actually available to every customer within every TDS exchange.  
15 Interestingly, TDS is in a position to provide information concerning availability, since  
16 Comcast's cables share space on poles with TDS, and TDS knows which areas have  
17 recently seen an increase in porting of phone numbers to Comcast. As of the time I  
18 prepared this testimony, no maps or other evidence had been offered concerning the  
19 extent of the Comcast "footprint" within each TDS exchange.  
20

21 **Q. Do you know how many TDS customers in each of the KTC and MCTC exchanges**  
22 **purchase video or internet service from Comcast or another provider?**

23 **A.** No, although this sort of evidence would be highly relevant to this proceeding. In  
24 evaluating the Comcast bundled offering, it is important to realize that it is targeted at  
25 customers who use both video (cable or satellite) and internet services, as well as phone  
26 service. Hence, in order to adequately evaluate the significance of this offering, and the



1 extent to which it can fairly be interpreted as providing, or encompassing, a service which  
2 is "competitive" with TDS phone service, data is needed concerning how many  
3 customers in each exchange are actually purchasing video, internet and phone services.

4 To appreciate why this data is needed, it is important to realize that the cable  
5 television industry has historically followed a very different pricing strategy than the  
6 telephone industry. From the early 1900's forward, the strategy of the Bell System was  
7 largely focused on obtaining as many customers as possible – a philosophy which was  
8 subsequently codified and reinforced by a focus on encouraging "universal service" by  
9 both state and federal public policy makers. As a result of this pricing strategy in  
10 conjunction with public policy efforts, an extremely high percentage of all potential  
11 customers have ended up actually purchasing telephone service.

12

13 **Q. Has the cable industry followed a similar pricing strategy?**

14 **A.** No. In the cable industry corporate strategies and public policy approaches have been  
15 very different. Cable television providers have historically preferred to charge relatively  
16 high rates per month, rather than offering lower prices designed to increase the number of  
17 customers purchasing their service. And, policy makers have given relatively little  
18 attention to encouraging widespread use of cable service, or discouraging high cable  
19 prices. Compared to the telephone industry, this difference in strategies has led to a very  
20 different outcome, resulting in relatively low "buy up" rates for cable service and high  
21 profit margins on a per-customer basis.

22 In any event, the number of customers purchasing video service from cable  
23 companies has never come close to matching the lofty levels achieved by telephone

1 companies. According to the Federal Communications Commission's Thirteenth Annual  
2 Report assessing the Status of Competition in the Market for Delivery of Video  
3 Programming, released January 16, 2009, the number of households subscribing to Basic  
4 Cable was just 60.1% in 2003, declining to just 58.0% in June 2006. [Thirteenth Annual  
5 Report, MB Docket No. 06-189, January 16, 2009, Table 1] Interestingly, this decline in  
6 the “buy up” rate for cable service occurred at a time when these firms were making their  
7 offerings more appealing by adding more and more channels, by adding broadband  
8 internet service, and by expanding their systems to pass more and more households.

9 The relatively low “buy up” rates for cable service, as well as the pricing  
10 strategies underlying these statistics, are significant on several levels. For one thing,  
11 Comcast's decision not to compete head-to-head with TDS in the voice telephone market,  
12 its decision not to aggressively promote stand alone voice service, and its decision not to  
13 undercut or at least match the TDS's prices for phone service are consistent with the  
14 longstanding historical practices of most cable television providers. In general, the firms  
15 in this industry have long made a practice of avoiding head to head competition to the  
16 extent they can. Most tellingly, cable firms have rarely entered each other markets, even  
17 when they are operating in adjacent territories, where expansion into a neighboring area  
18 would be relatively easy and cost effective from a technical perspective, and even if the  
19 adjacent territory is located in the same media market, so that market share could  
20 potentially be gained at relatively little cost. Rather than focusing on the growth and  
21 profit potential from expanding into adjacent markets, these firms have instead focused  
22 on the risks of unleashing a price war. Thus, cable carriers have generally followed a  
23 “live and let live” approach, seeking growth by purchasing other firms in the industry,

1           rather than by competing with them.

2           The relatively low “buy up” rate for cable television is also significant because it  
3           complicates the analysis of the issues in this proceeding, and it reduces the significance  
4           of the Comcast bundled offering cited by TDS in its filing. The Commission cannot  
5           simply assume that this offering is relevant to all TDS customers merely because phone  
6           service is one element of the bundle. To the contrary, no evidence has been provided  
7           concerning how many customers actually use cable service in each KTC and MCTC  
8           exchange, how many purchase satellite video service instead, and how many aren't  
9           purchasing any sort of subscription video service (e.g. they are getting by with DVDs and  
10          over-the-air television).

11          Nor has any data been provided concerning the number of customers who are  
12          purchasing internet service from either TDS or Comcast. However, with more than 40%  
13          of all households nationwide not purchasing cable service, it is self evident that there are  
14          many, many customers in the TDS service area for whom the Comcast bundled offering  
15          is not relevant, and for these customers, it cannot be considered a “competitive” offering  
16          by any stretch of the imagination.

17  
18   **Q.    Has TDS demonstrated that its proposed Plan preserves universal access to**  
19   **affordable basic telephone service?**

20   **A.**   No. TDS has not offered any evidence concerning the impact of the possible rate  
21          increases on universal service. Yet, if approved, its proposal could in some cases lead to  
22          very severe rate increases. TDS’ recent filing focuses instead on Comcast bundled rate  
23          offerings with prices starting at \$99 per month and escalating to \$129 per month after the

1       “teaser” rate expires (excluding the modem rental fee). Senior citizens and low-income  
2       people are not the target audience for bundles priced at \$129 per month. Indeed, TDS  
3       senior citizens and low income customers who will be confronted with sharply increasing  
4       telephone rates may not have the option of switching to Comcast's higher priced bundled  
5       offerings.

6  
7       **Conclusions and Recommendations**

8  
9       **Q.     Let's turn to the final section of your testimony. Can you begin by succinctly stating**  
10       **your understanding of the key issue before the Commission at this point?**

11       A.     RSA 374:3-b contemplates a fact finding process, in which the Commission must  
12       determine whether competitive services are available to a majority of the retail customers  
13       in each of the exchanges served by TDS. It is not sufficient to show that Comcast is  
14       providing an alternative – that alternative must actually be “competitive” as set forth in  
15       RSA 374:3-b. Also, it is not sufficient for an alternative service to be a competitive  
16       alternative for some of the customers – it must be a relevant, competitive alternative for a  
17       majority of the customers in each exchange. Accordingly, the Commission should focus  
18       on the availability of alternative services, and the extent to which these alternatives are or  
19       are not “competitive” with TDS' basic local exchange service for specific customers or  
20       customer groups. The Commission should focus on similarities and differences in prices,  
21       as well as other complicating factors, including differences in the services actually used  
22       by different customer groups.

1   **Q.     In your opinion, has TDS demonstrated that cable carriers are offering a service**  
2           **which is "competitive" with the voice telephone services used by a majority of the**  
3           **retail customers in each of the MCTC and KTC exchanges?**

4   **A.**   No. TDS has provided information that Comcast (and to a lesser extent, Time Warner) is  
5           offering voice communications in New Hampshire, and that Comcast is marketing this as  
6           part of a bundle with video and internet services. In my opinion, however, this is not  
7           sufficient to meaningfully grapple with the issue of whether or not the statutory  
8           requirements have been met. From my perspective as an economist, it seems obvious  
9           that a \$99 service is not "competitive" with a \$17 service, even if both options allow you  
10          to make phone calls. Even if the Commission were to conclude that the Comcast Triple  
11          Play bundle offers a service which is "competitive" for some customers, it is not a viable  
12          competitive alternative for many customers – particularly customers who don't use, and  
13          have no desire to subscribe to video and broadband service.

14                As I explained in my original direct testimony in this case, purchasing a ticket and  
15                flying from Manchester to Miami provides an “alternative” to picking up the phone and  
16                placing a long distance call to Miami. Both options can achieve – to some degree – the  
17                same basic goal of communicating with someone in Miami. And, one could plausibly  
18                argue that one gets more for your money if you decide to buy a ticket rather than place a  
19                phone call. But, the fact that these options are potential substitutes for one another under  
20                some circumstances doesn't mean that one can appropriately be viewed as a competitive  
21                alternative for the other. There are sharp differences between these services, and thus  
22                most people would readily agree that plane tickets and long distance phone calls are not  
23                appropriately described as being “competitive” with each other, even if they are willing to

1 concede one service could be substituted for the other, at least by some people under  
2 some circumstances.

3

4 **Q. What additional information would be needed for the Commission to determine**  
5 **whether Comcast is offering a service which is "competitive" with TDS phone**  
6 **service for a majority of the customers in each exchange?**

7 A. In this case, TDS has not provided the sort of evidence that would be necessary to  
8 evaluate the extent to which the Comcast Triple Play offering represents a meaningful  
9 economic alternative for various groups of customers, or (more importantly) the number  
10 of customers in each group. For instance, TDS has not provided detailed evidence  
11 concerning the number of TDS customers who have dropped their TDS phone service in  
12 favor of Comcast, what fraction of these customers simultaneously dropped their TDS  
13 internet service, or how this compares to the overall fraction of voice customers receiving  
14 their internet service from TDS. Most glaringly, it has not provided any estimates of the  
15 number of customers who purchase video and internet service within the MCTC and  
16 KTC exchanges. Without this sort of information, it isn't feasible to reach solid  
17 conclusions concerning the number of customers for whom the Comcast offering might  
18 represent a viable service which is "competitive" with TDS basic local exchange service,  
19 or determine whether this group might represent a majority of the customers in each  
20 MCTC and KTC exchange.

21

22

23

Direct Testimony of Ben Johnson, Ph.D.  
On Behalf of New Hampshire Legal Assistance  
Case No. DT-07-027

1   **Q.     What action do you recommend the Commission take in this proceeding?**

2   A.     I recommend the Commission reject the TDS petitions for MCTC and KTC. TDS has  
3           not proven that "competitive" services are available to a majority of the retail customers  
4           in each exchange, nor has it proven that its proposed Plan would preserve universal  
5           access to affordable basic telephone service.

6

7   **Q.     Does this conclude your testimony filed on September 3, 2010?**

8   A.     Yes, it does.