

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-027

KEARSARGE TELEPHONE COMPANY, WILTON TELEPHONE COMPANY, INC.,
HOLLIS TELEPHONE COMPANY, INC. AND MERRIMACK COUNTY TELEPHONE
COMPANY
PETITION FOR ALTERNATIVE FORM OF REGULATION

Rebuttal Testimony of Thomas E. Murray
on Behalf of
Kearsarge Telephone Company and Merrimack County Telephone Company

September 20, 2010

1 **Q. Please state your name and occupation.**

2 A. My name is Thomas E. Murray. I am employed by TDS Telecom Service Corporation
3 (TDS) as Manager State Government Affairs in the TDS Government and Regulatory
4 Affairs department. I replaced Michael Reed, who previously testified in this Docket.

5 **Q. Have you testified previously in this Docket?**

6 A. I have not provided live testimony. I did prepare the two affidavits that were submitted
7 in this Docket on June 11 and June 14, 2010 (the "Affidavits"). In those Affidavits, I
8 provided a summary of my background and qualifications. However, to address inquiries
9 from the parties at the September 8, 2010 Technical Session in this proceeding, this
10 rebuttal testimony includes a copy of my resume as Attachment TEM-1.

11 **Q. What is the purpose of your rebuttal testimony?**

12 A. I am providing testimony in response to the testimony submitted on behalf of the Office
13 of Consumer Advocate (Mr. Eckberg) and New Hampshire Legal Assistance representing
14 Daniel Bailey (Dr. Johnson) regarding the Affidavits.

15
16 With regard to Mr. Eckberg's testimony, I will first explain in detail how I obtained the
17 web page information regarding the availability of Comcast's voice service in the
18 relevant exchanges, employing the Google search engine, which I consider to be a very
19 likely vehicle that a customer would use. I will address Mr. Eckberg's preference for
20 going directly to the "comcast.com" website for this information and will demonstrate
21 that, using either approach, the customer would be offered voice service from Comcast. I
22 will address briefly Mr. Eckberg's issue regarding the difference between a screenshot
23 and a web page printout, showing that while they are different, the information relevant

1 to this inquiry is provided either way. My conclusion is unchanged. Comcast is
2 providing voice service in the relevant exchanges.

3
4 With regard to the prefiled testimony of Dr. Johnson, I will respond to the points he raises
5 in light of the issue before the Commission, namely whether Comcast is providing a
6 voice service within the relevant exchanges. Dr. Johnson testifies as to matters already
7 decided by the Commission, such as whether Comcast's voice service is "competitive"
8 with the voice services provided by Kearsarge Telephone Company ("KTC") and
9 Merrimack County Telephone Company ("MCT") and whether the alternative regulation
10 plans provide for universal access to telephone service at reasonable rates. The
11 Commission has already decided that Comcast's voice service is a competitive alternative
12 within the meaning of the applicable statute.¹ Although the issue of the universal access
13 provisions of the plans has already been decided, I do point out that, to the extent that Dr.
14 Johnson is assuming that Comcast only offers its \$99.00 "triple play," Comcast also
15 offers a separate voice service for existing customers with an introductory rate designed
16 to lure customers away from the competitive KTC and MCT services.

17 **Q. Can you review the objective of your Affidavits?**

18 My objective was to present evidence that answers the question of whether voice service
19 is being offered by Comcast in the particular KTC and MCT telephone exchanges. This
20 is in accordance with the Second AFOR Order in which the Commission held that, in
21 regard to KTC:

22 As stated above, we recognize that these are evolving markets and that
23 certification as a CLEC is intended in most cases to lead to offerings of
24 service. Evidence establishing that Comcast is offering service as a CLEC
25 in the exchanges of Andover, Boscawen, Chichester, Meriden and New

¹ See DT 07-027, Order No. 25,103 at 26-28 (May 14, 2010) ("Second AFOR Order").

1 London, will be sufficient to demonstrate that a competitive alternative is
2 available. If, within 30 days of the date of this order, TDS files an affidavit
3 establishing that a voice service is *currently being offered in those*
4 *exchanges*, accompanied by print or other record of such advertisements
5 being made public, it will meet its evidentiary burden.”²
6

7 Similarly, in regard to MCT, the Commission reiterated that:

8 [t]he presence of Comcast as a CLEC in the exchanges of Antrim,
9 Contoocook, Henniker, Hillsborough and Melvin Village will be sufficient
10 to demonstrate that a competitive alternative is available, on condition that
11 within 30 days TDS submits evidence, such as through an affidavit with
12 supporting documentation such as advertisements, establishing that a
13 voice service *is currently being offered in those exchanges*.³
14

15 Based on these directives, KTC and MCT have the simple burden of proving that
16 Comcast is offering and marketing voice services in KTC and MCT exchanges that it
17 serves.⁴ The Affidavits address that issue. Since paper marketing materials typically are
18 not exchange-specific, we focused on web based advertising materials, buttressed with
19 information regarding number ports and order placements.

20 **I. Eckberg Testimony**

21 **Q. On pages 3 and 6 of his testimony, Mr. Eckberg questioned the search method you**
22 **used to obtain the information in the Affidavits, suggesting that a direct visit to the**
23 **Comcast website may have produced more accurate or timely results. Do you agree**
24 **with this assessment?**

25 A. No. I believe that either approach is valid. In fact, I believe my approach is more
26 indicative of the broader array of sales channels that Comcast uses to market its services.
27 My goal, consistent with the Commission’s order, was to obtain advertisements about
28 Comcast’s voice offerings in each of these exchanges. Toward that end, we used

² Second AFOR Order at 26 (emphasis original).

³ *Id.* at 21 (emphasis original).

1 Google's search engine to search for keywords, such as "cable," "Comcast, New
2 Hampshire," "telephone," an exchange name, etc., in various combinations (for example,
3 "Chichester New Hampshire Cable") in order to replicate a typical search that a customer
4 might make. This search resulted in a list of website "matches" for these key words,
5 many of which prominently display "Comcast" in their URL or web address and the web
6 page description ("snippet") provided by Google. As an illustration, we have attached
7 the results of a more current Google search as Attachment TEM-2. (It is important to
8 note that the Internet is a dynamic medium and search engines will rarely produce the
9 same results over time.) This approach can be contrasted with Mr. Eckberg's, by which
10 an educated guess as to a company's URL is typed into the browser address bar. At one
11 time, this may have been a reasonable approach, but today's sophisticated search engines
12 have made the task easier with a simple Google search.

13 **Q. Did Comcast's web page appear in the Google search results?**

14 A. It is my experience that it does with some searches, although it is not always the first or
15 most prominent result. For example, many of the links that appeared in my original
16 Google search results were not Comcast sites, although I thought that they were, since
17 they had Comcast's name prominently displayed, creating the impression that they were
18 official Comcast websites.⁵ One of the resulting web pages from my original Google
19 searches, which I submitted with my Affidavits, displayed the Comcast name over
20 twenty-five times, including twice in the URL or address bar.

21 **Q. What was the website from which you obtained your evidence?**

⁴ Please note that Time Warner Cable is the cable company serving Melvin Village. TDS plans to address Melvin Village in a future proceeding.

⁵ Please refer to Attachment TEM-2 for more recent search results.

1 A. The site states that it is “powered by Saveology,” which I believed at the time was a
2 software program, not a separate entity. I learned after the submission of my Affidavits
3 that the website is that of a Comcast Authorized Dealer named Saveology.com LLC, a
4 subsidiary of Elephant Group, Inc. Attached to this testimony as Attachment TEM-3 is a
5 screenshot of a 2006 press release from Elephant Group, Inc. announcing its relationship
6 with Comcast, as well as screenshots of the Saveology.com and Elephant Group Inc.
7 websites. Through our subsequent investigation, it appears that Comcast uses multiple
8 Authorized Dealers that create alternative marketing channels.

9 **Q. Please explain how you navigated to the web pages that you provided as evidence in**
10 **your Affidavits.**

11 A. I navigated to the web pages by performing Google searches for numerous “keyword”
12 combinations that often included the name of a KTC or MCT exchange followed by other
13 keywords, such as “cable,” “Comcast,” “New Hampshire,” “telephone,” etc. in various
14 combinations. One of these Google searches returned a link to a page with a list of New
15 Hampshire towns from which I selected the links for the exchanges in question. To
16 recreate this process, I have prepared Attachment TEM-4 which depicts this process for
17 Antrim.

18
19 In the particular case depicted in Attachment TEM-4, I entered the key words “New
20 Hampshire Comcast Telephone Cable” into the Google search engine. On the second
21 web page of the results returned by this search, which I have already introduced as
22 Attachment TEM-2, the third link from the bottom is labeled “Comcast New Hampshire
23 Deals/Comcast Cable NH Bundled Package Deals.” I clicked on this link and was
24 brought to the web page included in Attachment TEM-4 which, along with listing

1 Comcast over twenty-five times, contains a list of New Hampshire towns that can be
2 selected. I then clicked on each town that represented the exchanges in question, for
3 example "Antrim."

4 **Q. In a discussion on pages 8 through 11 of his testimony, Mr. Eckberg testified that**
5 **while he was able to access the web pages you provided with your Affidavits, he was**
6 **not able to navigate to them from the starting page of the Comcast Authorized**
7 **Dealer. Can you explain this?**

8 A. Yes. Mr. Eckberg used a different technique than I did. As he described in his
9 testimony, he used an "Address Specific Approach" in which he typed a specific street
10 address for the target town (in this case, Antrim.) This is not the approach I used. As I
11 explained in the previous answer, I navigated to the results web page by simply clicking
12 on the town listing, rather than entering a specific address. I chose this approach because
13 the Commission's inquiry is directed at the exchange level, not the individual customer,
14 level.

15 **Q. In the same discussion in his testimony, Mr. Eckberg also criticized your search**
16 **method because the information he obtained directly from the Comcast website was**
17 **more specific as to overall service offerings and availability by individual address.**
18 **Can you address this criticism?**

19 A. Yes. First, it is important to recognize that, while displayed differently, both Mr.
20 Eckberg's searches and mine established that Comcast is offering a voice service in the
21 target exchanges. However, to address Mr. Eckberg's concerns in this regard, I have
22 provided specific address searches both from the Comcast Authorized Dealer's website
23 that we included in our Affidavits and also from the Comcast website. We have included

1 these results as Attachments TEM-5 through TEM-13. There is an attachment for each of
2 the TDS exchanges that Comcast serves. Each attachment first displays an address
3 search from the Comcast Authorized Dealer's website, followed by the same address
4 search from Comcast's website. Both searches for addresses in each exchange generate
5 similar results, affirming that voice services are available and that the customer at the
6 submitted address can subscribe to them.

7 **Q. Can you explain in detail how you created the web page screenshots included in**
8 **Attachments TEM-5 through TEM-13?**

9 A. Yes. Each of our address specific searches from the Comcast Authorized Dealer began at
10 the same web page submitted on my Affidavits. Starting from the page designating each
11 of our particular exchanges, I entered a valid address from that exchange. Next, I clicked
12 on the "Get Comcast Now" box below the address fields. This resulted in the Comcast
13 Authorized Dealer's website returning a web page with the message "Congratulations!
14 Offers are available for your address." These web pages have been presented in the
15 attachments as several screenshots which list the multiple services and packages to which
16 a customer could subscribe at that address, including the Triple Play and Digital Voice
17 services with introductory rates of \$99 and \$19.99, respectively.

18 I then sought to replicate these results by going directly to the Comcast website, as Mr.
19 Eckberg had suggested. Each of the address specific searches from the Comcast website
20 began on the Comcast "Looking for Products and Prices?" web page. On this web page
21 we entered a valid address for each exchange and clicked on the "Submit" button for each
22 entry. In each instance, we were brought to web pages listing the services that could be
23 purchased, including the \$99 Triple Play and \$19.99 voice service offerings.
24

1
2 This exercise, using a dual approach, reinforces the fact that Comcast is offering a voice
3 service in these exchanges. Therefore, I am comfortable that the information submitted
4 in the Affidavits regarding Comcast's voice service offerings meets our evidentiary
5 burden.

6 **Q. On page 12 of his testimony, Mr. Eckberg suggested that you may not have**
7 **navigated to the specific web pages for each town, but merely edited the URL of the**
8 **first web page result to reflect the town in question. Furthermore, he demonstrated**
9 **that this technique could produce erroneous results, e.g. "Eckberg, NH." Do you**
10 **have any comment on this?**

11 A. Yes. As I explained in a previous answer, this is not how I proceeded. I arrived at the
12 respective web pages by navigating through a series of web pages to arrive at the results
13 page.

14
15 Regarding the matter of fictitious towns, I have determined that regardless of whether the
16 search is conducted through a Comcast Authorized Dealer or Comcast directly, the final
17 search is sensitive to fictitious addresses. Once the customer reaches the point at which a
18 specific address must be submitted, an invalid address will result in a message that the
19 services are not available and, in the case of the Comcast website, will present a list of
20 nearby towns that can be served. An example of such a message is included in
21 Attachment TEM-14. Therefore, even though Mr. Eckberg discovered that a particular
22 website might offer service in a fictitious town like Eckberg, NH, the ordering process
23 would have failed if he had continued further and entered an address into the address
24 search field.

1 **Q. Can you explain why the Comcast Authorized Dealer websites would indicate that**
2 **service is available where it is not?**

3 A. No. I can only assume that the Comcast Authorized Dealer has cast a wide marketing net
4 through the Google search engine, in order to generate as much traffic to its website as
5 possible. However, as I discussed above, entering a valid address produces a
6 confirmation that service is available, whereas an incorrect address will produce a
7 notification that service is not available, *e.g. see* Attachment TEM-14.

8 **Q. In his testimony, Mr. Eckberg distinguishes between web pages that advertise**
9 **“Comcast Digital Voice” as a separate offering and those like the ones you provided**
10 **that advertise “Triple Pay Deals.” Is this distinction significant?**

11 A. No, not for the purposes of this inquiry. The Commission’s Second AFOR Order
12 directed TDS to submit evidence addressing whether “a voice service is being offered,”
13 by Comcast. We have done so. We were not directed to address the way that the voice
14 service is packaged or marketed. In any event, as shown in Attachments TEM-5 through
15 TEM-13, Comcast is offering both separate voice service and the bundles that include
16 voice service.

17 **Q. Can you explain why your original Affidavit provided the results of address**
18 **searches for some exchanges, *e.g.* Meriden, but not others?**

19 A. Yes. It is important not to overlook the fact that my original Affidavits, in addition to
20 providing Comcast advertisements, also provided confidential number porting reports as
21 further validation of Comcast offering voice service. However, as of the date of those
22 Affidavits, TDS had not experienced customer voice ports in KTC’s Meriden and in
23 MCT’s Melvin Village exchanges, and thus we instead provided address specific results

1 to further support the advertising material. Since that time, we have experienced
2 customer ports to Comcast in Meriden. This updated information is displayed in
3 Confidential Attachment TEM-15C to this testimony. With this information, we have
4 established that Comcast is not only marketing in these exchanges, but is capturing KTC
5 and MCT customers and that some of those customers are porting their existing telephone
6 numbers to Comcast.

7 **Q. On pages 3 through 6 of his testimony, Mr. Eckberg distinguishes between “screen**
8 **shots” as opposed to web page “printouts,” and observes that you provided the**
9 **latter. Do you agree with this observation?**

10 A. Mr. Eckberg is technically more accurate in stating that the attachments submitted with
11 my Affidavits are web page printouts rather than screenshots, but I disagree with any
12 implication that there is a substantive difference in the information provided by either for
13 purposes of showing that Comcast is currently offering voice service in these exchanges.
14 The information is virtually identical in each (as Mr. Eckberg admits on page 8 of his
15 testimony) and it appears that the web page printout is only reformatted without the
16 graphics for ease of printing. However, in order to dispel any doubt as to the validity of
17 the website attachments to my Affidavits, I have included with this rebuttal testimony
18 both screenshots and printouts for one of the exchanges in question. Please refer to
19 Attachment TEM-16, which demonstrates that either method shows virtually identical
20 information, and both answer the question that the Commission directed KTC and MCT
21 to address.

1 **II. Johnson Testimony**

2 **Q. On page 5 of his testimony, Dr. Johnson implies that TDS should have taken the**
3 **extra step to determine what fraction of its customers are actually able to obtain**
4 **Triple Play service from Comcast. Also, on page 15 of his testimony, Dr. Johnson**
5 **also states “As of the time I prepared this testimony, no maps or other evidence had**
6 **been offered concerning the extent of the Comcast ‘footprint’ within each TDS**
7 **exchange.” Do you agree?**

8 **A.** No. As discussed above, the Commission has ordered that TDS only needed to file “an
9 affidavit establishing that a voice service is *currently being offered in those exchanges*,
10 accompanied by print or other record of such advertisements being made public” in order
11 to meet its final evidentiary burden. Such Affidavits were filed, and even Dr. Johnson,
12 on page 5 of his testimony, confirms that the TDS Affidavits “show that Triple Play is
13 available to some customers in those exchanges.” Dr. Johnson also confirms that “Triple
14 Play is a bundled service that includes cable television, internet broadband and phone
15 service.” (I will also note that I find it surprising that Dr. Johnson, while claiming to be
16 knowledgeable with regard to Comcast’s marketing approach, would not be aware of the
17 \$19.99 Digital Voice Service offering.)

18
19 Furthermore, TDS has already provided coverage maps that establish that Comcast has
20 facilities in place that allow Comcast to offer its services to a majority of TDS’ customers
21 in the KTC Exchanges and the MCT Exchanges (“Coverage Maps”).⁶ In addition, the
22 Commission has certified a Comcast affiliate to provide phone service within the KTC

⁶ See Confidential Exhibit MCR-2 to the rebuttal testimony of Michael C. Reed, submitted on November 15, 2007; *resubmitted in* September 6, 2010 confidential response to Oral Data Request 1 from the July 27, 2010 Technical Session.

1 Exchanges and the MCT Exchanges. It is therefore reasonable for the Commission to
2 determine that since Comcast has begun offering voice service in the KTC Exchanges
3 and the MCT Exchanges, voice service is currently available to a majority of the TDS
4 customers within those exchanges.

5 **Q. Has the Commission previously relied upon the Coverage Maps to determine that a**
6 **cable alternative is available to the majority of TDS' customers within the KTC and**
7 **MCT exchanges?**

8 A. Yes. The Commission ruled on pages 24 and 27 of the Second AFOR Order that TDS
9 presented evidence that cable broadband (high-speed data) service is available in the
10 KTC exchanges and the MCT exchanges. The evidence TDS presented included the
11 coverage maps referenced above.

12 **Q. Please refer to page 3 of Dr. Johnson's testimony where he discusses what factors or**
13 **evidence is most important in evaluating whether a product is or is not competitive**
14 **with another product or service. Do you have any comment?**

15 A. It is irrelevant. It is already clear that Comcast's voice service is a competitive
16 alternative offering. The Commission ruled on page 26 of its Second AFOR Order that
17 "(e)vidence establishing that Comcast is offering service as a CLEC...will be sufficient
18 to demonstrate that a *competitive* alternative is available" (emphasis added) in those
19 exchanges. The Commission goes on to state that "(i)f, within 30 days of the date of this
20 order, TDS files an affidavit establishing that a voice service is *currently being offered in*
21 *those exchanges...*it will meet its evidentiary burden." Such Affidavits were filed,
22 addressing the issue that is the sole focus of this additional phase of the proceeding.
23

1 However, it appears that Dr. Johnson seeks to raise once again the entire question of
2 whether cable telephone service is a competitive alternative to service provided by TDS.
3 Dr. Johnson contradicts and argues against the holding of the Second AFOR Order when
4 he asserts that “it is not sufficient to show that Comcast is providing an alternative
5 [I]t must be a relevant, competitive alternative for a majority of the customers in each
6 exchange.”⁷ Parts of his testimony are devoted to resurrecting his previous argument,
7 originally applied to wireless competition⁸ and then re-purposed for cable competition,⁹
8 that the Commission must consider bundled services packages, pricing and marketing
9 schemes in conducting its analysis.¹⁰ The Commission has rejected this argument on at
10 least three occasions¹¹ His testimony in this regard simply is not responsive to the
11 question before the Commission now.

12 **Q. Please refer to Page 18 of the Johnson Rebuttal where he warns of the possibility of**
13 **“very severe rate increases” if KTC and MCT’s alternative regulation plans are**
14 **approved, and questions the ability of those plans to preserve universal access to**
15 **affordable telephone service. Do you have any comment?**

16 A. Yes. Besides being outside the scope of the current inquiry, it is wrong as a practical
17 matter. As established in Attachments TEM-5 through TEM-13, Comcast offers existing
18 Comcast customers a basic voice service with an introductory rate of \$19.99, which is
19 squarely in the range of what Dr. Johnson has testified, on pages 7 and 9 of his testimony,
20 is comparable to KTC and MCT rates.

⁷ Johnson Rebuttal 19:13-17.

⁸ *Id.* at 18-21.

⁹ Phase I, Tr. Day 2, p. 103, 1-17, 104, 1. 2. *See also* Bailey Brief at 25 (Nov. 6, 2009).

¹⁰ *See* Johnson Rebuttal at 5-18, 19-22.

¹¹ DT 07-027, Order No. 24,852 at 18 (Apr. 23, 2008) (“First AFOR Order”); Second AFOR Order at 13; Bailey Brief at 25 (Nov. 6, 2009).

1 Furthermore, upon approving the amended AFOR plans for Wilton Telephone Company,
2 Inc. ("WTC") and Hollis Telephone Company, Inc. ("HTC"), the Commission found that
3 WTC and HTC met the universal access requirement:

4 We find that the plans submitted for Wilton and Hollis as amended by the
5 settlement meet the minimum requirements of 374:3-b, III(b) and we
6 commend the parties for the additional rate protections provided by the
7 one- and two-year rate freezes for these companies. . . .
8

9 We find that the plans for Wilton and Hollis as amended by the settlement
10 provide additional rate protections through the one and two year rate
11 freezes which preserve universal access to affordable basic telephone
12 service as required by 374:3-b, III(e). In addition, the settlement amends
13 the plans to provide a four-year rate freeze for Lifeline customers as well
14 as a commitment to increase enrollment in that program. These added
15 protections for low-income customers, who are most vulnerable to
16 affordability concerns, meets the statutory requirement of subpart III(e).
17 Finally, the plans for Wilton and Hollis provide for continuing
18 Commission oversight as required by RSA 374:3-b, III(f).¹²
19

20 In addition, Section 2.3 of the KTC and MCT Plans contains safeguards protecting
21 ratepayers:

22 After providing the Company an opportunity for a hearing and in the event
23 that the Commission determines that the Company does not meet the
24 criteria for eligibility for an alternative regulation plan under RSA 374:3-
25 b, the Commission may require the Company to propose modifications to
26 the Plan or return to its prior form of regulation.
27

28 **Q. Do you have any other comments regarding Dr. Johnson's testimony?**

29 A. Yes. As discussed in a previous answer, Dr. Johnson's testimony is an attempt to rehash
30 issues that the Commission has already considered and decided. This is entirely
31 unnecessary and only serves to further extend a proceeding that is now well into its fourth
32 year. The path to a final decision regarding KTC is clear. Not only does the Commission
33 have a year and a half of favorable AFOR experience with HTC and WTC, it can always

¹² First AFOR Order at 28.

1 rely on the safeguards built into RSA 374:3-b(f), referenced above, which permits it to
2 modify the AFOR plan or revoke it entirely. I respectfully recommend that the
3 Commission focus on the single issue still left to resolve – whether Comcast is offering a
4 voice service in the KTC and MCT exchanges. With regard to KTC, I have demonstrated
5 that is indisputably does. Accordingly, the Commission should approve the AFOR Plan
6 in regard to KTC. In regards to MCT, the Commission should find that MCT has met the
7 final evidentiary burden in the exchanges where a Comcast voice service offering has
8 been shown as identified in its Affidavit.

9 **Q. Does this conclude your rebuttal testimony?**

10 **A. Yes, it does.**