

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

May 13, 2011 - 1:37 p.m.
Concord, New Hampshire

NHPUC MAY27'11 PM 2:44

RE: DT 11-024
UNION TELEPHONE COMPANY, INC.:
Petition for Approval of an Alternative
Form of Regulation.

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

Sandy Deno, Clerk

APPEARANCES: Reptg. Union Telephone Company:
Paul J. Phillips, Esq. (Primmer Piper...)

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Office of Consumer Advocate

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

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

ORIGINAL

I N D E X

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 KATHRYN BAILEY

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1 P R O C E E D I N G

2 CHAIRMAN GETZ: Okay. Good afternoon,
3 everyone. We'll open the hearing in Docket DT 11-024. On
4 February 4, 2011, Union Telephone Company filed a petition
5 for an alternative form of regulation pursuant to RSA
6 374:3-b. An order of notice was issued on February 14
7 setting a prehearing conference, which was held on March
8 1. A secretarial letter was issued on March 3 approving a
9 procedural schedule. And, pursuant to that schedule, a
10 Settlement Agreement between the Company and Staff was
11 filed on May 6.

12 Can we take appearances please.

13 MR. PHILLIPS: Good afternoon, Mr.
14 Chairman and Commissioners. I'm Paul Phillips, from the
15 law firm of Primmer, Piper, Eggleston & Cramer, here on
16 behalf of Union Telephone Company. And, I'm joined by
17 Mr. Tom Murray, also for Union. He works for Union's
18 parent, TDS Telecom.

19 CHAIRMAN GETZ: Good afternoon.

20 MS. HATFIELD: Good afternoon,
21 Commissioners. Meredith Hatfield, for the Office of
22 Consumer Advocate, on behalf of residential ratepayers.

23 CHAIRMAN GETZ: Good afternoon.

24 MR. FOSSUM: And, good afternoon.

1 Matthew Fossum, for the Staff of the Public Utilities
2 Commission. And, with me today are David Goyette, Michael
3 Ladam, and Kate Bailey from Commission Staff.

4 CHAIRMAN GETZ: Good afternoon. Let me
5 also note for the record that I circulated a letter on May
6 10 disclosing that my son is now employed by Primmer,
7 Piper, in their Litigation Department, and also indicated
8 in that letter that it was my understanding or to my
9 knowledge he's not working in any way on this case, and he
10 does not have an interest in the law firm that could be
11 substantially affected by the proceeding. And, under my
12 analysis of the statutes that apply to the Commission, as
13 well as the New Hampshire Code of Judicial Conduct, I've
14 concluded that disqualification is not required. Also
15 provided that parties, if there's any objection or
16 comment, that they file by the close of business
17 yesterday. I'm not aware that anything was filed.

18 So, is it fair to say that there's --
19 for me to conclude that there's no objection to my
20 participation?

21 MR. PHILLIPS: We have no objection.

22 CHAIRMAN GETZ: Hearing no objection,
23 then we will proceed. Mr. Phillips.

24 MR. PHILLIPS: Thank you, Mr. Chairman.

1 We are here today on behalf of Union Telephone Company to
2 support their petition for approval of an alternative
3 regulation plan. We have filed what we view as a
4 compelling case that demonstrates that there is
5 substantial competition in each exchange of the Company's
6 service area, and that we are entitled to approval of an
7 alternative regulation plan under the statute. We have,
8 in this case, cooperative support from the main
9 competitive wire line carrier in the service territory,
10 Metrocast, and they provided both affidavits and marketing
11 materials, as well as coverage maps, to support the fact,
12 which is that they do serve greater than a majority of the
13 retail customers in each of the exchanges. In fact, their
14 position is that they serve, you know, far in excess of a
15 majority.

16 Their evidence was also supported by
17 data from the Company, which showed that there's been
18 substantial line loss over the last several years,
19 including a significant increase in line loss in the last
20 couple of years. And, so, we believe the facts are
21 compelling.

22 The Plan in this case, the proposed Plan
23 is virtually identical to the other plans, which the
24 Commission has previously approved for Wilton, Hollis, and

1 Kearsarge Telephone Companies. We note in this case that
2 we've reached a settlement with the Staff, which we'll
3 talk about later in the hearing. The settlement calls for
4 greater outreach efforts with respect to Lifeline and
5 Link-Up, increased protections for Lifeline and Link-Up
6 customers, and specific and definitive outreach efforts
7 and deadlines.

8 So, with all of these factors in mind,
9 we will, obviously, put on our case today, but we would
10 ask the Commission to expedite the approval of the Plan
11 based on the nature of the evidence we've presented.
12 Thank you.

13 CHAIRMAN GETZ: Anything else before we
14 -- is there going to be a panel or --

15 MR. FOSSUM: Yes. Well, for Staff, Kate
16 Bailey will take the stand.

17 MR. PHILLIPS: We've previously
18 discussed with the Staff the possibility of having a panel
19 of witnesses, with Kate Bailey and Tom Murray to support
20 the Settlement Agreement.

21 CHAIRMAN GETZ: That's fine.

22 MR. PHILLIPS: So, Tom Murray will be
23 representing Union Telephone.

24 CMSR. IGNATIUS: Mr. Phillips, while

1 they're getting settled, I'd like to ask you a question
2 about the Motion for Protective Treatment that you filed.

3 MR. PHILLIPS: Yes.

4 CMSR. IGNATIUS: And, it was accompanied
5 by an agreement entered into between Union, Metrocast, and
6 IDT, I believe. And, you asked that the Commission order
7 something that has similar terms to that protective
8 agreement. Is that accurate? Am I reconstructing this
9 right?

10 MR. PHILLIPS: Yes, Commissioner. The
11 nature of the evidence that we are putting on, obviously,
12 was a combination of materials from Metrocast and IDT, as
13 well as from Union. And, so, they were, obviously,
14 concerned that their confidential materials be given
15 protective treatment. They're not, obviously, parties in
16 the case. But the agreement was entered into with them,
17 with the intention that their materials, as well as our
18 materials, would be given confidential treatment.

19 CMSR. IGNATIUS: I'm wondering first
20 just about some of the procedural issues. The agreement
21 that you attached is not entered into with the Public
22 Utilities Commission Staff or the OCA. And, I know you've
23 designated highly confidential and confidential materials
24 for different treatment, so that the PUC Staff and the OCA

1 can see the confidential -- could see everything, --

2 MR. PHILLIPS: Yes.

3 CMSR. IGNATIUS: -- but that competitors
4 would not see the highly confidential materials, correct?

5 MR. PHILLIPS: Yes, that's right.

6 CMSR. IGNATIUS: And the public not see
7 either of those two categories.

8 MR. PHILLIPS: That's right.

9 CMSR. IGNATIUS: What I'm wondering is,
10 there is a series of procedures that receiving parties are
11 supposed to comply with, those who receive the
12 confidential materials. Are you intending those to apply
13 to the PUC Staff and the OCA as well?

14 MR. PHILLIPS: It was not our intention
15 that those procedures apply to either Staff or OCA.

16 CMSR. IGNATIUS: So -- excuse me. Their
17 obligations would be to protect the information as they
18 would in anything that's been declared confidential within
19 the Commission?

20 MR. PHILLIPS: Yes, that's right. And,
21 I would also say that they have been given access to all
22 the materials in the case so far.

23 CMSR. IGNATIUS: All right. Thank you.
24 The other thing I wondered about is, some of the

1 information about "competitive harm" and the "extent of
2 market power" are very powerful for the moment, but fairly
3 short-lived as markets change. Do you have any view about
4 a point at which it might be appropriate for confidential
5 market information to be made publicly available?

6 MR. PHILLIPS: I don't have a specific
7 view, because I've not discussed that issue with my
8 client. But I would tend to agree with you, Commissioner,
9 that the confidential value of these materials diminishes
10 over time, and perhaps diminishes rapidly over time. So,
11 we would be more than willing to assess that in a
12 reasonable time frame.

13 CMSR. IGNATIUS: I would appreciate
14 that. It's not a requirement that we have a time limit on
15 it, but increasingly we're seeing information like that
16 that you realize, although there may be very strong
17 arguments on a given day to protect, they really do become
18 weaker and weaker over time. And, I don't know if there's
19 a hard-and-fast rule of what, you know, how many months it
20 might be for any particular company or whether it's going
21 to be on an individual basis. But I would appreciate it
22 if you think about that, and, if there is any
23 recommendation, to submit that to the Commission.

24 MR. PHILLIPS: We will think about that

[WITNESS PANEL: Murray~Bailey]

1 and we will do so.

2 CMSR. IGNATIUS: Thank you.

3 CHAIRMAN GETZ: Ready to proceed?

4 (Whereupon **Thomas Murray** and
5 **Kathryn Bailey** were duly sworn and
6 cautioned by the Court Reporter.)

7 **THOMAS MURRAY, SWORN**

8 **KATHRYN BAILEY, SWORN**

9 **DIRECT EXAMINATION**

10 BY MR. FOSSUM:

11 Q. I'll start out with Ms. Bailey. Could you state your
12 name and place of business and your position for the
13 record please.

14 A. (Bailey) My name is Kathryn Bailey. I'm the Director
15 of Telecommunications for the Public Utilities
16 Commission, at 21 South Fruit Street.

17 Q. And, as Director of the Telecommunications Division,
18 generally speaking, what are your responsibilities?

19 A. (Bailey) I have a staff which, together with myself, we
20 analyze information provided by companies. We look
21 over developments in the telecommunications market.
22 And, we make recommendations to the Commission, when
23 appropriate, to do various things that we think need to
24 be done.

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[WITNESS PANEL: Murray~Bailey]

1 Q. And, you, along with your staff, participated in this
2 docket?

3 A. (Bailey) We did.

4 Q. And, Staff is a signatory to the Stipulation that was
5 filed in this docket?

6 A. (Bailey) Yes.

7 MR. FOSSUM: Thank you.

8 BY MR. PHILLIPS:

9 Q. Good afternoon, Mr. Murray. Would you please state
10 your full name and identify your employer and your
11 present position for the record.

12 A. (Murray) Thomas Murray. I work for TDS Telecom, which
13 is the parent company of Union Telephone Company. My
14 position is the Manager of State Government Affairs for
15 TDS. And, I cover a four-state region, New York,
16 Vermont, New Hampshire, and Maine.

17 Q. And, Mr. Murray, you've previously testified before the
18 Commission on another occasion?

19 A. (Murray) Yes.

20 Q. And, what case was that?

21 A. (Murray) That was in the Kearsarge alternative
22 regulation docket.

23 Q. And, you're aware that Union Telephone Company has
24 entered into a Settlement Agreement and Stipulation

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[WITNESS PANEL: Murray~Bailey]

1 with the Staff of the Commission in this case?

2 A. (Murray) Yes.

3 Q. And, you've had an opportunity to review that
4 agreement?

5 A. (Murray) Yes, I have.

6 Q. And, is it your position or is it Union's position that
7 Union supports that agreement?

8 A. (Murray) We do.

9 MR. PHILLIPS: Mr. Chairman and
10 Commissioners, the Settlement Agreement has previously
11 been marked for identification purposes as "Exhibit Joint
12 1", and we would move for the admission of that agreement
13 at this time?

14 CHAIRMAN GETZ: We'll address admission
15 at the end of the proceeding, but we'll mark it for
16 identification as "Exhibit 1".

17 (The document, as described, was
18 herewith marked as **Exhibit Joint 1** for
19 identification.)

20 BY MR. PHILLIPS:

21 Q. Now, Mr. Murray, did you prefile some direct testimony
22 in this case?

23 A. (Murray) Yes.

24 Q. And, do you have that testimony with you on the stand?

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[WITNESS PANEL: Murray~Bailey]

1 A. (Murray) I do.

2 Q. Do you have any changes to that testimony today?

3 A. (Murray) I do not.

4 Q. I note for the record that your testimony has been
5 marked for identification purposes as "Exhibit Union 2,
6 and there are a number of attachments to it. There's
7 both a confidential version and a public version of
8 your testimony. And, there are several confidential
9 attachments that accompany your testimony, including
10 five highly confidential exhibits, which are marked as
11 "Attachments D-1 through D-5. These are maps of the
12 Union exchanges showing the locations of customer --
13 showing the locations of their customers.

14 And, I would also note for the record
15 that there was an exhibit, an Attachment G that was
16 originally filed with Mr. Murray's testimony, which was
17 subsequently corrected. And, so, there is a corrected
18 Attachment G that is included with the exhibit package.

19 BY MR. PHILLIPS:

20 Q. Mr. Murray, did you prepare this testimony or supervise
21 its preparation?

22 A. (Murray) Yes.

23 Q. And, does this prefiled testimony accurately reflect
24 your position today?

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[WITNESS PANEL: Murray~Bailey]

1 A. (Murray) Yes.

2 Q. And, you would testify identically to this testimony,
3 to this prefiled testimony, if you were to do so from
4 the stand today?

5 A. (Murray) Yes.

6 MR. PHILLIPS: Thank you. We would also
7 move the admission of Union Exhibit 2?

8 CHAIRMAN GETZ: Okay. We'll address
9 that at the close of the proceeding.

10 (The document, as described, was
11 herewith marked as **Exhibit Union 2P** and
12 **Exhibit Union 2C**, respectively, for
13 identification.)

14 BY MR. PHILLIPS:

15 Q. And, Mr. Murray you're familiar with the proposed
16 Alternative Regulation Plan of Union Telephone?

17 A. (Murray) Yes.

18 Q. And, you have that with you on the stand?

19 A. (Murray) I do.

20 Q. That has been marked for identification purposes as
21 "Union Exhibit 1". Mr. Murray, does this exhibit
22 represent the proposed Alternative Regulation Plan that
23 Union is asking the Commission to approve today?

24 A. (Murray) Yes.

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[WITNESS PANEL: Murray~Bailey]

1 MR. PHILLIPS: We would also move the
2 admission of Union Exhibit 1.

3 (The document, as described, was
4 herewith marked as **Exhibit Union 1** for
5 identification.)

6 MR. PHILLIPS: We also have a number of
7 discovery responses, which, under the Settlement
8 Agreement, are to be admitted into evidence. And, we have
9 a set of discovery responses from Union to the Staff.
10 These are the Staff's data requests and Union's responses
11 to those. We have -- and those have been marked as
12 "Exhibit Union 3", and there's a confidential and a public
13 version of those, "Union 3C" and "Union 3P". There's a
14 set of data responses from Union to the OCA's data
15 requests, which have been marked for identification
16 purposes as "Union 4", in both confidential and public
17 form. And, finally, there's a supplemental set of data
18 responses from Union to the OCA, which are marked for
19 identification purposes as "Union 5", and they're also in
20 confidential and public form.

21 CHAIRMAN GETZ: Ms. Hatfield.

22 MS. HATFIELD: Thank you, Mr. Chairman.
23 I know that you said we would deal with admissibility
24 later in the hearing, but I did just want to note for the

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[WITNESS PANEL: Murray~Bailey]

1 Commission that we do object to the Company seeking to put
2 its own responses to data requests into the record.
3 Usually, parties seek to get those in through cross. And,
4 we don't think it's appropriate. But we can address it
5 later, if you'd rather.

6 CHAIRMAN GETZ: Well, Mr. Phillips, do
7 we -- first of all, I don't see those proposed exhibits.

8 MR. PHILLIPS: May I approach?

9 CHAIRMAN GETZ: We don't have copies of
10 those. Are you planning to use some of that in your
11 direct or is it just as a matter of --

12 MR. PHILLIPS: I'm not planning to
13 examine Mr. Murray directly on these. I do want him to be
14 able to refer to them if the Commission has questions that
15 raise issues raised in those responses. I think the
16 purpose -- basically, the purpose for asking their
17 admission is to reflect the fact that there was a
18 discovery round, in fact, there were two rounds, there was
19 a supplemental round with OCA, to reflect the fact that
20 there was, you know, a fairly vigorous discovery period,
21 questions were comprehensive, the answers are, obviously,
22 helpful to clarifying the issues that both Staff and OCA
23 had. And, so, to the extent that they lend weight to the
24 compelling case that was previously filed, we would want

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[WITNESS PANEL: Murray~Bailey]

1 to have them on the record.

2 CHAIRMAN GETZ: Okay. Well, I'm not
3 persuaded of the necessity of that at this point. But, I
4 think, is there anything else? Do you have anything on
5 this, Mr. Fossum?

6 MR. FOSSUM: I do not.

7 CHAIRMAN GETZ: Well, they're marked for
8 identification. At some point we may see them, and then
9 we'll deal with whether they -- see if they're used at all
10 during the process, and then we'll deal with whether they
11 need to be admitted at the close.

12 (The documents, as described, were
13 herewith marked as **Exhibits Union 3P,**
14 **Union 3C, Union 4P, Union 4C, Union 5P,**
15 **and Union 5C,** respectively, for
16 identification.)

17 CHAIRMAN GETZ: Okay. Anything further
18 on that issue?

19 MR. PHILLIPS: I just would note that
20 several of the elements of Mr. Murray's prefiled
21 testimony, as well as several of the discovery responses,
22 have been marked as "confidential". It's my hope to be
23 able to refer to them, if necessary, only obliquely and
24 not to state any confidential information on the record.

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[WITNESS PANEL: Murray~Bailey]

1 It may be that Mr. Murray, in the course of his responses,
2 may refer to confidential information.

3 CHAIRMAN GETZ: And, I think, for
4 purposes of the hearing today, there doesn't appear to be
5 anybody in the room who is not authorized to hear the
6 confidential information. To the extent you can avoid
7 putting information on the record, that would be fine.
8 But, if it gets on the record, then I would just ask that
9 the parties work with the court reporter after-the-fact to
10 make sure there's an agreement on what shouldn't be in the
11 public transcript.

12 BY MR. PHILLIPS:

13 Q. Mr. Murray, did you want to just briefly summarize the
14 purpose of your testimony today?

15 A. (Murray) Yes, I would. Just a couple quick opening
16 comments. You know, Union has presented a compelling
17 and simple case to support our Petition for Alternative
18 Regulation, with the assistance of the maps and
19 affidavits from Metrocast and IDT. We've got some
20 significant supporting evidence that we feel, as the
21 Commission knows, the telephone industry is faced with
22 significant competition as cable, wireless, and voice
23 enter our markets. With the acquisition of Union from
24 TDS, I think we took a little different look at the

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[WITNESS PANEL: Murray~Bailey]

1 previous dockets related to Union challenging the entry
2 of Metrocast and IDT, and recognized that it was best
3 to seek alternative regulation and compete on a level
4 playing field and move in that direction, rather than
5 trying to continue to fight that entry. And, so, that
6 was the settlement that you folks have seen with
7 relationship to Metrocast and IDT on those previous
8 dockets.

9 And, I think the evidence, as it relates
10 to the criteria in the statute, is compelling as well.
11 Certainly, the competitive evidence, as you may be
12 aware, is compelling looking at the maps. And, it
13 shows that Metrocast provides voice and broadband
14 services to a majority of customers. Metrocast is
15 confirming the fact that, throughout their plant, they
16 offer these services, and we believe that the prices
17 are very compatible with Union's bundles and the
18 Metrocast prices there.

19 In addition, the statute calls for rate
20 cap protections. And, certainly, our Plan mirrors
21 those rate cap protections. And, as Mr. Phillips
22 stated, the Plan is virtually identical in all respects
23 to the plans approved by the previous alternative
24 regulation petitions. And, additional Lifeline

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[WITNESS PANEL: Murray~Bailey]

1 commitments have been added, which are very similar to
2 the previous alt. reg. plans, with the addition of some
3 specific outreach goals to ensure that those were very
4 objectively measurable, if you will, in the Plan.

5 And, certainly, we've talked about the
6 other components of the statute, such as the innovative
7 services and the wholesale protections, those are
8 included in the Plan.

9 And, with that, I would welcome any
10 questions from any parties.

11 MR. PHILLIPS: Thank you, Mr. Murray. I
12 have nothing further for you.

13 CHAIRMAN GETZ: Mr. Fossum?

14 MR. FOSSUM: I have nothing at this
15 time.

16 CHAIRMAN GETZ: Ms. Hatfield.

17 MS. HATFIELD: Thank you, Mr. Chairman.
18 Good afternoon.

19 **CROSS-EXAMINATION**

20 BY MS. HATFIELD:

21 Q. Mr. Murray, I have a few questions for you related to
22 the Settlement. The terms that begin, it's the second
23 term, it's on -- begins on the bottom of Page 2. Do
24 you see that? This is the Settlement Agreement.

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[WITNESS PANEL: Murray~Bailey]

1 MR. PHILLIPS: Mr. Murray, do you have a
2 copy of the Settlement Agreement?

3 WITNESS MURRAY: I do. Just a second
4 here, I guess.

5 BY MS. HATFIELD:

6 Q. If we look at the second term at the bottom of Page 2,
7 it states that the Company's "Alt. Reg. Plan is amended
8 by adding a new section", is that correct?

9 A. (Murray) Correct.

10 Q. And, if we turn the page, the new section is described,
11 is that right?

12 A. (Murray) Yes.

13 Q. And, that new section relates to "Lifeline", which I
14 think Mr. Phillips briefly described in the
15 introduction, is that right?

16 A. (Murray) Yes.

17 Q. And, in the new section 4.1.7.3, it states that "Union
18 will file an annual written notice with the
19 Commission's Director of Consumer Affairs reporting its
20 compliance with [these additional] conditions." Do you
21 see that?

22 A. (Murray) Yes.

23 Q. Would the Company agree to provide a copy of those
24 filings to the OCA as well?

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1 A. (Murray) Yes.

2 Q. Would that filing include a report on the status of the
3 number of customers that are on Lifeline or have
4 utilized Link-Up?

5 A. (Murray) It could. I believe all that information is
6 available through other sources, and I'm not
7 100 percent sure, but I believe that that's available,
8 the information is on the -- I think it's the USAC
9 website, if I'm correct on that.

10 Q. Would the Company be willing to provide that in
11 addition to the other information in that written
12 notice?

13 A. (Murray) We could.

14 Q. If we look at both your testimony on Page 12, and the
15 Alt. Reg. Plan in Section 4.1.3, which is on Page 3,
16 you referred to the fact that "no rate increase can go
17 into effect for 14 months after July 2010", do you
18 recall that?

19 A. (Murray) You're referring to the Plan and in the
20 testimony? Let me just read the testimony, just to
21 verify this. Correct.

22 Q. And, in your testimony, you specifically refer to the
23 fact that you agree to that in -- that Stay Out Period,
24 if you will, in the TDS Union docket?

[WITNESS PANEL: Murray~Bailey]

1 A. (Murray) Yes.

2 Q. So, even if the Commission approves the Plan and it
3 goes into effect, as you request, one month after
4 approval, a rate increase wouldn't occur until
5 September of 2011, is that right?

6 A. (Murray) If we were to raise rates, it could not occur
7 until after that date.

8 Q. And, Mr. Murray, on Page 19 of your testimony,
9 beginning at Line 13, you discuss certain service
10 quality reporting requirements that Union agreed to in
11 the TDS/Union case. Do you see that testimony?

12 A. (Murray) Yes.

13 Q. And, I think what you're saying is that the Alt. Reg.
14 Plan doesn't change those requirements, is that right?

15 A. (Murray) Let me read the testimony again, just to
16 refresh my memory on this. Yes.

17 Q. And, if we turn to Page 20 of your testimony, you state
18 "These reports will continue to be submitted through
19 October 1st, 2011, as agreed to in the stipulation", in
20 the other docket I believe you're referring to, "after
21 which time Union anticipates transitioning to the
22 service quality reporting [requirements] specified in
23 the Plan." Do you see that?

24 A. (Murray) Yes.

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[WITNESS PANEL: Murray~Bailey]

1 Q. And, what are the "service quality reporting
2 obligations specified in the Plan"?

3 A. (Murray) It's my understanding that the service quality
4 reporting is that of a competitive local exchange
5 company, with the caveat that, I think it's, I'd have
6 to check, I think it's Attachment 1 to my testimony,
7 outlines the -- or, to the Plan, I think it is, that
8 actually has the list of, if you were to refer to the
9 Plan, it's Appendix 1 of the Plan, basically, the last
10 three pages.

11 So, there are some variances, my
12 understanding, in terms of additional reporting that a
13 CLEC may not provide, and one would have to compare
14 this apples-to-apples, but it's still -- our reporting
15 is a little bit higher than that of a CLEC. And, I
16 think one of those is the service quality, on Page 2 of
17 that, it's about midway down, it's the Form ILEC-4 and
18 then the Form ILEC-5.

19 Q. Thank you. And, do you know if those reports are
20 available on the Commission's website?

21 A. (Murray) I don't know if they are.

22 Q. Ms. Bailey, do you know if they are?

23 A. (Bailey) No, they're not.

24 Q. Do you know if there's a reason that they aren't?

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[WITNESS PANEL: Murray~Bailey]

1 A. (Bailey) Primarily because the value of the information
2 is not very great, in my opinion. And, it's been very
3 difficult to get complete reporting from all the CLECs.
4 So, rather than publish the report cards from the CLECs
5 who comply with the rules, and not have reports from
6 those who don't file these reports, we have elected not
7 to publish them on the website. In the past year, the
8 Telecommunications Division has regained a full staff
9 and we're working on that now.

10 MS. HATFIELD: Thank you. That's very
11 helpful. I don't have any other questions, Mr. Chairman.

12 CHAIRMAN GETZ: Thank you.

13 CMSR. IGNATIUS: Thank you.

14 BY CMSR. IGNATIUS:

15 Q. Mr. Murray, one of the items you identified as a basis
16 for needing to go to alternative regulation is "line
17 loss" as an indicator of competitive -- the competitive
18 circumstances that you're facing. On Page 10 of your
19 testimony, you identify some of the numbers, and it
20 appears that these are public in Line 10, you describe
21 the access line loss, a total of over 2,500 access
22 lines dropped during that period, correct?

23 A. (Murray) Yes.

24 Q. And, in another document, and I confess I couldn't find

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[WITNESS PANEL: Murray~Bailey]

1 just now, but it's in here somewhere, you describe the
2 number of lines that have been ported to competitors,
3 and that is a confidential number, and I won't ask you
4 to state that number. But it's fair to say that it's a
5 smaller number than the line loss number that's in your
6 testimony. So, how do you put those two things
7 together? How does the number of lines ported, that's
8 smaller than the number of access lines lost,
9 demonstrate, in your mind, that the access line loss is
10 an indicator of competitive threat?

11 A. (Murray) You know, one of the things that we didn't
12 submit in our testimony, because we feel that the
13 Metrocast evidence was compelling to meet the statutory
14 burden, was, you know, wireless information. And, I
15 think what we've seen, and I mentioned this in one of
16 the data responses, was that I've worked in the
17 cellular industry. And, we, in the cellular industry,
18 even though we could port, that wasn't what you focused
19 on. It was about selling the phone, getting it, moving
20 it in that regard. And, so, -- and, I think we've seen
21 that over the years, and I assume that many in this
22 room have done that, is that you've gotten a cellphone,
23 had a cellphone for many years, and you finally said
24 "I'm going to cut the cord and just use my cellphone."

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[WITNESS PANEL: Murray~Bailey]

1 And, one of the things that we speculate, because
2 there's a lot of lakefront properties in Union in that
3 regard, is that people, with their camps and things
4 like that, that may have had a phone line for many
5 years, have disconnected it, saying "Well, I've got my
6 cellphone, everybody knows that number. When I'm at
7 camp, you know, five weekends in the summer, why would
8 I bother paying for a phone line." So, that's
9 something that's a fact that we didn't submit in
10 testimony because we feel that it's -- the Metrocast
11 stuff was so compelling. But I think that's a reality,
12 that's part of the industry.

13 And, certainly, when you look at the
14 FCC's latest local competition reporting, the 2009
15 report, with over 1,100,000 cellular phones in the
16 state, and roughly a little over 700,000 phone lines,
17 wireless has definitely become a significant player.
18 And, I think some recent studies have had the amount of
19 cord cutters out there well into the 20s, people that
20 have actually disconnected their phone line altogether.
21 And, my assumption is that those cord cutters, that 20
22 plus percent, probably a majority of them haven't
23 ported their line, because they had their cellphone
24 first while they had a landline, and then they, in

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1 turn, disconnected.

2 Q. You also state in your testimony that your Plan will
3 satisfy the statutory requirement that, among other
4 things, "it will encourage the introduction of
5 innovative services", those aren't quite the right
6 words, but you know what I'm talking about here. And,
7 I think, in the testimony, it just says "it will". It
8 meets that provision in the statute, because the Plan
9 will do so. Do you have anything more to flesh that
10 out, why your Alternative Regulation Plan will actually
11 have that effect?

12 A. (Murray) Well, I think there's a couple points to make
13 on that. One, I think, as we move to these, you know,
14 fully competitive markets, which I think we're fully
15 now in the Union situation, certainly, competition, in
16 a very high-tech field, requires that you continue to
17 innovate, if you want to be relevant. But,
18 specifically, as it relates to TDS and Union, we have
19 just completed a complete upgrade of all of the DSL
20 platforms. And, so, we're moving to faster speed
21 broadband services there. As you may be aware, Union
22 has a significant amount of fiber that can be used for
23 fiber-to-the-home, and we're doing some of that. And,
24 so, you know, Union is an important market to our

[WITNESS PANEL: Murray~Bailey]

1 company, and we want to continue to invest in it. And,
2 in a competitive environment, you're required to
3 invest. And, we continue to -- we hope to continue to
4 do that.

5 Q. Thank you. I also wanted to ask you about the maps,
6 and that gets into an awful lot of information that
7 seems to have been designated "confidential", and so
8 this may be a little bit difficult to talk about. But,
9 if we -- if we look at the Attachments D-1 and
10 thereafter of the different exchanges, am I correct
11 that these are attachments to Exhibit 2, that these are
12 what you rely on to conclude that there are competitive
13 alternatives available to a majority of customers in
14 the territory, correct?

15 A. (Murray) Yes. In addition to the Metrocast affidavits,
16 which also support that conclusion.

17 Q. All right. Can you describe in a bit more detail what
18 you did, in looking at the data that you had in your
19 own possession and what you received from Metrocast, to
20 develop these maps -- well, let's start with that. I
21 assume you developed -- Union developed these maps?

22 A. (Murray) Yes, with the help of our mapping people
23 within TDS.

24 Q. Why don't you describe the process a bit?

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[WITNESS PANEL: Murray~Bailey]

1 A. (Murray) So, as part of the settlement of the
2 Metrocast/IDT proceedings, we were provided with cable
3 plant maps, from Metrocast, essentially. So, the maps
4 that we -- the other attachment maps, that they're just
5 the raw maps that we got from Metrocast, that have the
6 actual cable plant routes on them.

7 Q. That's Attachment C?

8 A. (Murray) Yes, it is. Confidential C.

9 Q. Thank you.

10 A. (Murray) So, we took those maps, and keeping in mind
11 that Metrocast tracks their facilities on a
12 municipality basis, because that's their franchised
13 area, basically, and it doesn't always line up with
14 exchange boundaries. So, we took those maps, and we
15 pulled them into our GIS mapping system, and we
16 overlaid the exchange boundaries. So, the blue lines
17 you see are the -- in the case -- I'm looking at
18 Attachment D-1, which is the Alton map. So, that was
19 the first step, is to get the exchange boundaries on
20 there. Obviously, the green lines that you see on the
21 map are where Metrocast has cable plant. Then, we took
22 our database of customer locations, basically, where we
23 have facilities. So, that includes current customers
24 and past customers. So, if somebody had a service with

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[WITNESS PANEL: Murray~Bailey]

1 us and they disconnected to go to Metrocast, for
2 example, we had -- we keep track of our cable plant,
3 basically, and that's all in the database. So, we map
4 all of those unique locations to this map. So, the red
5 dots that you see on the map are where we have a
6 current customer or where we have facilities where a
7 previous customer was. Does that answer --

8 Q. That's helpful. I think that was one of the items that
9 was marked as "confidential" in your materials,
10 although I was surprised that that was designated as
11 "confidential", what the red dots mean. Am I correct
12 that that really is considered by the Company to be a
13 confidential piece of data?

14 MR. PHILLIPS: I think it's the location
15 of the red dots, rather than the nature of the red dots
16 that's confidential.

17 CMSR. IGNATIUS: All right.

18 BY CMSR. IGNATIUS:

19 Q. So, continue. You've mapped it out. And, then, how do
20 you reach the conclusion that a majority have a
21 competitive alternative available?

22 A. (Murray) Well, in all but the Center Barnstead
23 exchange, we believe that it's obvious, just by looking
24 at the map, as I look at the Alton map, and I don't see

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[WITNESS PANEL: Murray~Bailey]

1 many roads that aren't green or many red dots that
2 don't have a cable service option to them. In
3 addition, Metrocast affidavits proves a similar result.

4 In the Center Barnstead case, our first
5 indication, when looking at the Center Barnstead, let's
6 pull that out, if you don't mind, just to refer to it
7 specifically, that would be -- that's the map
8 Attachment D-3. And, at first glance, one might say
9 "well, maybe it doesn't cover, you know, 50 plus
10 percent, just because there are some areas of town that
11 are not covered." But, when you actually add up the
12 dots, as we did on this map, down in the inset box,
13 that says that 419 of the total 649 customers had
14 service. So, I think it's in the 76 percent range,
15 essentially. So, that was the only one that, in the
16 interest of making it easier for the other parties to
17 the docket, to ensure that the numbers added up, that
18 we put together the actual numbers.

19 Q. And, is there any significance to the green lines being
20 very thin and slight in some places and very thick and
21 dark in others?

22 A. (Murray) I think it's just a scale thing, but I don't
23 -- those thicknesses were provided by Metrocast. I
24 think those reflected on theirs. And, I'm not sure why

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[WITNESS PANEL: Murray~Bailey]

1 there's a difference.

2 Q. So, in Center Barnstead, you actually counted, within
3 the blue boundary line of the Center Barnstead
4 exchange, you counted all of the red dots and separated
5 those along green Metrocast facilities and those not?

6 A. (Murray) Yes. Yes. And, one point of clarification,
7 I'll use the example of a duplex that has the exact
8 same address, those dots, there may be two, where you
9 see one red dot, there may be two. In some places, you
10 can see where there's two dots that are almost on top
11 of one another, and there are other instances where
12 literally the two dots are in a duplex, an apartment
13 building, where there may be three or four dots that
14 literally are on top of one another. But our program
15 was able to calculate that for us.

16 Q. Anything else on how you developed the maps or the
17 conclusions you drew from them?

18 A. (Murray) No.

19 Q. Thank you. Ms. Bailey, have you also studied these
20 maps to gain an opinion on whether they meet the
21 requirement that 50 percent of the customers have a
22 competitive alternative?

23 A. (Bailey) I have studied these maps, and I have also
24 studied the affidavits from Metrocast. And, one of the

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[WITNESS PANEL: Murray~Bailey]

1 data requests asked the Company to identify which
2 towns/municipalities were served by the exchanges.
3 And, for example, the Center Barnstead exchange serves
4 parts of the municipality of Barnstead and parts of
5 Strafford. So, I then looked at Metrocast's affidavit,
6 which is Exhibit 2, Confidential Attachment C, to Union
7 Exhibit 2, and I looked at, just to corroborate, that
8 the information on the map seemed to agree with the
9 information provided by Metrocast, that Barnstead and
10 Strafford are very heavily served, the towns now are
11 very heavily served by Metrocast. There's a percentage
12 on that attachment.

13 So, together, between the information
14 provided on the maps, with the count of the dots, and
15 the percent of homes passed in the Town of Barnstead
16 and Strafford provided by Metrocast, I have concluded
17 that each of these exchanges have a majority of
18 customers who can get service from Metrocast.

19 CMSR. IGNATIUS: Thank you. Nothing
20 else.

21 CHAIRMAN GETZ: Any redirect?

22 MR. PHILLIPS: I just have a couple of
23 questions for Mr. Murray.

24 **REDIRECT EXAMINATION**

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1 BY MR. PHILLIPS:

2 Q. Mr. Murray, with respect to Ms. Hatfield's question
3 about the timing of rate increases, does Union have any
4 intention to increase its local rates?

5 A. (Murray) No, we do not.

6 Q. And, is it fair to say that, with the level of
7 competition that you described in the Union territory,
8 that it would not be economically sensible at this
9 point to raise rates?

10 A. (Murray) No, it would not be. Given the rate of
11 customer ports in just the last year to Metrocast, it
12 would be a grave concern to us to take that route.

13 Q. With respect to the Metrocast affidavit, I think it's
14 the Affidavit of Jeffrey Drapeau that Ms. Bailey
15 referred to, which is confidential Attachment C to your
16 testimony, and I believe this is part of the public
17 filing, not the confidential filing. Could you turn to
18 Page 2 of his affidavit, and look at Paragraph 7 of
19 that affidavit. Does that paragraph -- is that
20 paragraph a part of the basis for your conclusion that
21 Metrocast offers a competitive alternative to Union's
22 service?

23 A. (Murray) Yes.

24 Q. And, I guess, could you just read that paragraph.

[WITNESS PANEL: Murray~Bailey]

1 A. (Murray) "If Metrocast telecommunications facilities
2 pass an address in the Union service territory,
3 Metrocast can offer homes or businesses located at such
4 address voice services on a stand-alone basis or
5 bundled with cable television services, high-speed
6 internet service, and other advance services."

7 Q. Thank you. Then, I just have one question for Ms.
8 Bailey. Ms. Bailey, you talked about the CLEC service
9 quality reporting being, I guess, spotty or
10 inconsistent, and therefore not suitable for posting on
11 the internet. Mr. Murray talked about the ILEC
12 reports, ILECs 4 and 5. Are those available on the
13 Web?

14 A. (Bailey) I don't believe so. They're the -- it's the
15 same report and it provides the same information. One
16 of the two reports has been deemed "confidential" by a
17 case a long time ago. So, only one of the reports is
18 public and could be available on the Web. And, I don't
19 believe that we publish that on the Web. But that's
20 subject to check.

21 Q. But your understanding of the proposed Alternative
22 Regulation Plan is that Union will file, not just a
23 CLEC Service Quality Report, but also an ILEC Service
24 Quality Report?

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[WITNESS PANEL: Murray~Bailey]

1 A. (Bailey) Yes. It's the same report. So, the ILEC
2 report would substitute for the CLEC report.

3 MR. PHILLIPS: Thank you.

4 CHAIRMAN GETZ: Anything further for the
5 witnesses?

6 (No verbal response)

7 CHAIRMAN GETZ: Hearing nothing, then
8 you're excused. Thank you. Well, we need to address the
9 issue of what to admit into the record. Before we get to
10 that, and also the closings, is there anything else that
11 we need to address?

12 MR. PHILLIPS: We have nothing.

13 (Chairman and Commissioners conferring.)

14 CHAIRMAN GETZ: Okay. Mr. Phillips,
15 with respect to the motions to admit all of the discovery,
16 I guess, which have been marked as Exhibits 3, 4, and 5,
17 our practice disfavors a party, especially a petitioner,
18 moving en masse into the record data responses/discovery
19 answers that have been propounded on it, unless there's
20 some good reason. It's hard to imagine what that good
21 reason would be here. Do you have anything to say in
22 response to that?

23 MR. PHILLIPS: Well, I appreciate that,
24 Mr. Chairman. I think it's important, as I reviewed the

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1 discovery responses, you know, for this, for present
2 purposes, to get at least one of the responses into
3 evidence. And, so, if I could narrow my request and
4 identify that response.

5 CHAIRMAN GETZ: Well, there were
6 certainly two responses, two issues I think were
7 mentioned, one by Ms. Bailey and one by Mr. Murray. I
8 think, whatever those discovery responses were, I think
9 would be reasonable to admit those into evidence. But is
10 it something other than those two?

11 MR. PHILLIPS: Well, there was a
12 supplemental request from the Consumer Advocate to
13 identify the number of basic only customers that Union
14 served. And, this seems to go directly to the point that
15 the Commission had raised in the Kearsarge Alt. Reg. order
16 from last November, which was, if there was sufficient
17 evidence that there was a large number of basic only
18 customers, that might change the Commission's view of
19 whether, you know, stand-alone basic service was to be
20 regarded in the competitiveness issue. And, what -- and,
21 so, the Consumer Advocate I think properly asked Union to
22 provide that number, and we did. And, the number was
23 fairly low. It was quite low, actually. So, I would ask,
24 if it's possible, to admit that into evidence.

1 CHAIRMAN GETZ: Do you have any
2 objection, Ms. Hatfield, to admitting that discovery
3 response?

4 MS. HATFIELD: Mr. Chairman, I don't
5 want to elevate form over function. And, because
6 Mr. Phillips could have asked those questions of
7 Mr. Murray on the stand, at this time I won't object. But
8 I do agree with your characterization about the fact that,
9 typically, the Commission doesn't allow discovery
10 responses, especially as a whole group, to be put into the
11 record.

12 And, also, you know, as Mr. Phillips
13 just acknowledged, that was an issue raised in Kearsarge,
14 and the Company knew that when it made the filing in this
15 case, and it would have much more properly filed that with
16 their case. And, I think you probably recall that in
17 other cases the OCA has objected to similar attempts,
18 because we object generally to a company trying to
19 supplement its case at the final hearing. But, in this
20 case, I won't object.

21 CHAIRMAN GETZ: Well, then, I guess I
22 would say at this point we would deny the motions to admit
23 all of Exhibits 3, 4, and 5 into evidence, but permit what
24 I take is three data responses that the parties I think

1 are going to need to identify and file something in
2 writing with us, and that being this issue raised with
3 respect to basic, the issue that Mr. Murray spoke to, as
4 well as the issue that Ms. Bailey spoke to. So, we'll
5 admit those three responses into evidence, and we will put
6 them as "Exhibit 3".

7 (Three data responses to be identified
8 and filed as **Exhibit Union 3P** and
9 **Exhibit Union 3C** and entered into
10 evidence.)

11 CHAIRMAN GETZ: And, then, we'll also
12 admit into evidence Exhibits 1 and 2, in their public and
13 confidential forms, and also what I guess is "Exhibit J1",
14 "Joint 1", which is the Settlement Agreement. Have I
15 missed anything?

16 MR. PHILLIPS: That's it.

17 CHAIRMAN GETZ: Okay. All right. Then,
18 opportunity for closings. Ms. Hatfield.

19 MS. HATFIELD: Thank you, Mr. Chairman.
20 As the Commission sure well remembers, the OCA was very
21 active in TDS's last alternative regulation case, which
22 was DT 07-027. Although we did not file testimony and we
23 do not take any position with respect to the settlement
24 proposed in this case by Staff and the Company, many of

1 our concerns regarding a potential impact of rate
2 deregulation on residential customers remain, especially
3 those in rural areas and those who are on fixed incomes,
4 we continue to believe that some customers of the smaller
5 ILECs or the RLECs do not have robust competitive choices.
6 And that, even when another service may be physically
7 available to them, it is often priced much higher than
8 either basic local exchange service or some of the more
9 inexpensive packages that are available.

10 While we understand that generally it
11 seems to be the prevailing wisdom in the state that all
12 customers have many choices for their phone service, we do
13 remain concerned about the price of choices that are
14 available, and whether or not those choices are truly
15 alternatives or substitutes for plain old telephone
16 service.

17 But, in light of the Commission's
18 decisions in the prior case, and in the spirit of
19 cooperation, the OCA decided not to vigorously litigate
20 this case. And, we also want to just thank Staff and the
21 Company for the cooperative nature of the docket and for
22 including us in settlement discussions. Thank you.

23 CHAIRMAN GETZ: Thank you. Mr. Fossum.

24 MR. FOSSUM: Thank you. As evidenced by

1 Staff signing the Stipulation and Settlement Agreement
2 here, Staff supports Union's request for alternative
3 regulation in this case. Overall, as Mr. Murray had
4 noted, in his testimony and on the stand, Union has lost
5 approximately a third of its access lines over the last
6 few years, including a large number of those to Metrocast,
7 even at the price point for Metrocast services that's
8 noted in various places in the filing. The fact that
9 about a third of those lines have moved to competitive
10 providers we believe indicates there is a competitive
11 alternative available to the majority of customers in
12 Union's service territory. And, that any apparent price
13 discrepancies are not, at least at this time, an
14 impediment to customers changing carriers.

15 As to the specifics of the Plan itself,
16 Staff does believe the Plan meets the requirements of
17 374:3-b for obtaining alternative regulation. It does cap
18 basic service rates, promotes innovative
19 telecommunications services, as Mr. Murray noted, by, in
20 essence, requiring Union to remain competitive. Relative
21 to the requirement, the Plan preserved universal access to
22 affordable service. As I just noted, the Plan caps basic
23 service rates, but, through the Stipulation, there are
24 added Lifeline provisions giving protection for lower

1 income subscribers as well. And, we note, as Mr. Phillips
2 has also noted, that the Lifeline provision here has more
3 specific and measurable goals than the plans approved for
4 Wilton, Hollis, and Kearsarge, and is not, therefore,
5 subject to that, the infirmity of those plans that was
6 noted by the Commission in its order relative to
7 Kearsarge.

8 So, for those reasons, Staff supports
9 Union's request for alternative regulation, and recommends
10 that the Commission approve Union's Alternative Regulation
11 Plan as it's amended in the Stipulation.

12 CHAIRMAN GETZ: Thank you.
13 Mr. Phillips.

14 MR. PHILLIPS: Thank you, Mr. Chairman
15 and Commissioners. Union started this case understanding
16 that they were facing a very drastic competitive threat,
17 that they were essentially hobbled by their current state
18 of regulation as compared to their competitors. And,
19 there was really a, you know, a dire scenario awaiting
20 them if they could not quickly and easily gain an
21 alternative form of regulation. It was with that
22 motivation that they agreed to settle the two CLEC
23 certification cases with IDT and Metrocast, who are their
24 main competitors in their service territory, and they were

1 able to achieve a cooperative agreement with them, which
2 was, in our view, quite remarkable. Provided this
3 Commission with some very compelling evidence, evidence
4 that was not present even in the earlier cases that you've
5 reviewed, but which clearly shows that there is not only
6 robust, but vigorous competition in the Union territory.
7 That Union has lost a third of its lines over the last
8 several years, and that rate of line loss is increasing,
9 has jumped quite a bit just in the two years since IDT and
10 Metrocast have had their certifications granted. And,
11 that there was a pressing need for a change in the
12 regulatory structure for Union.

13 And, so, it is in that spirit that we
14 presented our case. We ask for your approval. We hope it
15 will be quick. And, we thank you for your time.

16 CHAIRMAN GETZ: All right. Then, we'll
17 close this hearing and take the matter under advisement.
18 Thank you, everyone.

19 **(Whereupon the hearing ended at 2:36**
20 **p.m.)**