

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

DT 07-027

**PETITIONS OF KEARSARGE, WILTON, HOLLIS AND  
MERRIMACK COUNTY TELEPHONE COMPANIES  
FOR AN ALTERNATIVE FORM OF REGULATION**

**MOTION TO WITHDRAW MOTION TO COMPEL**

**AND TO SET ASIDE ORDER NO. 24,802**

NOW COMES segTEL, Inc. (“segTEL”) and respectfully moves this honorable Commission to permit segTEL to withdraw its Motion to Compel and to set aside Order No. 24,802 which denied said Motion. In support of the instant motion, segTEL states as follows:

1. segTEL has reached settlement with the Petitioners in the above-captioned matter. Thus, segTEL’s Motion to Compel dated October 4, 2007 has been rendered moot.
2. In view of the foregoing, segTEL respectfully requests that the Commission permit segTEL to withdraw its Motion to Compel. segTEL further requests that the Commission set aside Order No. 24,802.
3. NH RSA 365:28 provides the Commission with the requisite authority to grant the relief requested herein without a hearing because no hearing was required or held in connection with the issuance of Order No. 24,802.

4. In the alternative, if the Commission does not set aside Order No. 24, 802, segTEL respectfully requests that the Commission treat the within Motion as a Motion for Clarification.

5. segTEL is concerned that Order No. 24,802, if allowed to stand without the requested clarification, could adversely affect segTEL's interests in future proceedings. This concern stems from language in Order No. 24,802 which suggests that the size of a telecommunications carrier is determinative of its ability to access to competitively sensitive information during the course of discovery in an adjudicative proceeding. More specifically, in denying segTEL's Motion to Compel, the Commission found that such denial was a reasonable exercise of its discretion because, *inter alia*, segTEL "is a small company, seeking to gain access to competitively sensitive materials for key decision makers as opposed to technical experts who can be isolated from such decision makers..." Order No. 24, 802, pages 5-6.

The foregoing rationale presumes without any underlying factual findings that disclosure of competitively sensitive information should never be made to a "small company" because it could never isolate its technical employees from key decision makers. Denying segTEL access to competitively sensitive information because the company is "small" suggests that a larger competitor who intervenes in an adjudicative proceeding could obtain access to the same information because of its presumed ability to segregate technical staff from key decision makers. Such a result is illogical and unfairly relegates a full intervenor such as segTEL to an inferior status which prevents the company from effectively participating in an adjudicative proceeding. This unfair result should be avoided by clarifying that Order No. 24,802 is intended to prevent all

telecommunications carriers, irrespective of their size, from having access to competitively sensitive information in an adjudicative proceeding unless the carrier can demonstrate that the employees to whom access is granted can be effectively segregated from “key decision makers”.

6. In the alternative, if the Commission does not set aside or clarify its Order No. 24, 802, segTEL respectfully requests that the Commission treat the within Motion as a Motion for Rehearing/Reconsideration under RSA 541. In addition to all of the reasons set forth above, segTEL advances the following reasons in support of a request for rehearing/reconsideration: 1) to the extent that the Order relies upon RSA 378:43, such reliance is misplaced as that statute pertains to disclosure of information to the public under RSA 91-A, and not to parties to an adjudicative proceeding; and 2) by denying segTEL employees access to discovery material based on the expertise of segTEL’s attorney, the Order unfairly disadvantages segTEL and creates the unreasonable future situation whereby segTEL would be required to forego the assistance of counsel in order to secure its rights to access the information it needs to meaningfully participate in an adjudicative proceeding. In order to avoid that result, segTEL requests that the Commission vacate Order No. 24,802.

7. Parties to the instant proceeding have been contacted by the undersigned for the purpose of determining their position on this Motion. These parties have responded as follows: Staff takes no position; the Office of Consumer Advocate does not object; Granite State Telephone takes no position either affirmatively or negatively with respect to the merits; NHLA takes no position; the Petitioners take no position with regard to the Motion to Withdraw the Motion to Compel and do not support the other relief requested

in the within Motion; and the remaining parties did not indicate their positions prior to the time this Motion was filed.

WHEREFORE, segTEL respectfully requests that this honorable Commission:

- A. Permit segTEL to withdraw its Motion to Compel;
- B. Set aside Order No. 24,802;
- C. In the alternative, clarify Order No. 24,802 as requested above or reconsider and vacate said Order; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

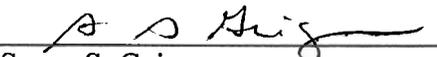
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Susan S. Geiger

December 3, 2007

Certificate of Service

I hereby certify that on this 3rd day of December, 2007 a copy of the foregoing brief was sent by electronic mail to the Service List.

  
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Susan S. Geiger