

 ORIGINAL

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION



September 17, 2009 - 11:39 a.m.
Concord, New Hampshire

**RE: DT 09-136 UNION TELEPHONE COMPANY:
Transfer of Assets to TDS Telecom
(Prehearing Conference)**

PRESENT:

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

Sandy Deno - Clerk

APPEARANCES:

Reptg. TDS Telecom:

Frederick J. Coolbroth, Esq.
(Devine, Millimet...)

Patrick C. McHugh
(Devine, Millimet...)

Reptg. Union Telephone Company:

Brian McDermott, Esq.

Reptg. PUC Staff:

Robert Hunt, Esq.

Reptg. Office of Consumer Advocate

Rorie Hollenberg, Esq.

COURT REPORTER: Susan J. Robidas, LSCR/RPR No. 44

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P R O C E E D I N G S

1
2 CHAIRMAN GETZ: Okay. Good
3 morning, everyone. We'll open the prehearing
4 conference in Docket No. DT 09-136.

5 On July 31, 2009, Union Telephone
6 Company and TDS Telecommunications filed a
7 notification pursuant to RSA 369:8,II of a stock
8 and asset purchase agreement, pursuant to which
9 Utel, the parent company of Union, will transfer
10 to TDS all the issued and outstanding shares of
11 capital stock of Union. Additionally, Freedom
12 Ring Communications and Unex, wholly-owned
13 subsidiaries of Utel, would be -- transfers to
14 TDS certain assets consisting primarily of those
15 assets associated with providing customers in the
16 Union service area with interstate and
17 international toll service and Internet service.

18 And order of notice was issued on
19 August 20 setting the prehearing conference for
20 this morning. I'll note for the record that the
21 Office of Consumer Advocate has filed a letter of
22 participation and that the affidavit of
23 publication has been filed.

24 Let's take appearances first,

1 please.

2 MR. COOLBROTH: Good morning,
3 Chairman, Commissioners. On behalf of TDS
4 Telecommunications Corporation, I'm Frederick
5 Coolbroth from the firm of Devine Millimet &
6 Branch. With me today is Patrick McHugh from our
7 law firm. Also from TDS Telecom is Michael Reed
8 and Debra Martone.

9 CHAIRMAN GETZ: Good morning.

10 MR. McDERMOTT: My name is Brian
11 McDermott, M-C-D-E-R-M-O-T-T. I am with the firm
12 Synergies Law Group and representing Union
13 Telephone. And with me is Darren Winslow from
14 Union.

15 CHAIRMAN GETZ: Good morning.

16 MS. HOLLENBERG: Good morning,
17 Rorie Hollenberg, Stephen Eckberg and Ken Traum
18 here for the Office of Consumer Advocate.

19 CHAIRMAN GETZ: Good morning.

20 MR. HUNT: Good morning. I'm Rob
21 Hunt, staff attorney, along with Kate Bailey,
22 Director of Telecommunications, and Michael
23 Ledam, policy analyst, and David Goyette, policy
24 analyst.

1 CHAIRMAN GETZ: Okay. Good
2 morning. In addition to the normal practice of
3 hearing an initial statement of the position of
4 the parties with respect to the filing, we have
5 also provided that we would hear oral argument on
6 the issue of the -- concerning what statutory
7 provisions this transaction would be proceeding
8 under. So, let's do both of those things at the
9 same time. We'll start with Mr. Coolbroth.

10 MR. COOLBROTH: Yes. Thank you
11 Mr. Chairman.

12 This case involves the change in
13 control over a New Hampshire public utility
14 through an acquisition transaction in which the
15 utility's parent company is transferring all of
16 the utility's common stock to another parent
17 company. The utility involved is Union Telephone
18 Company, headquartered in Farmington, New
19 Hampshire. The petition in this case identifies
20 the exchanges Union Telephone Company serves. And
21 all of the outstanding stock of Union Telephone
22 Company is held by its corporate parent, Utel,
23 Inc.

24 Utel, Inc. has entered into a

1 stock and asset purchase agreement pursuant to
2 which it has agreed to sell all of its stock in
3 Union to TDS Telecommunications Corporation,
4 which I will refer to as "TDS Telecom."

5 TDS Telecom is the parent company
6 of rural telephone companies located throughout
7 the United States, including four companies in
8 New Hampshire. TDS Telecom's parent, in turn, is
9 Telephone and Data Systems, Inc., which is a
10 publicly traded corporation headquartered in
11 Chicago. The four existing New Hampshire
12 telephone incumbent local exchange carrier
13 subsidiaries of TDS Telecom are: Merrimack
14 County Telephone Company, Kearsage Telephone
15 Company, Wilton Telephone Company, Inc. and
16 Hollis Telephone Company, Inc.

17 Two other subsidiaries of Utel,
18 Inc. are also parties to the stock and asset
19 purchase agreement and have agreed to sell to TDS
20 Telecom, or its designee, certain assets for the
21 provision on interstate long-distance service and
22 Internet service. Those transfers do not involve
23 utility assets subject to the jurisdiction of
24 this Commission.

1 In this transaction, Union
2 Telephone Company itself is not transferring
3 anything. It will retain its utility properties,
4 remain the franchised public utility serving
5 these exchanges, and will keep in its current
6 tariffs and so forth.

7 The filing in this case has been
8 made under RSA 369:8,II(b), as an acquisition
9 transaction involving the parent company of a
10 public utility. The transaction involves the
11 transfer of utility stock from one parent company
12 to another, with the result that control over
13 Union Telephone Company will be changing from
14 Utel, Inc. to TDS Telecom. The rates, terms,
15 service and operation offered by Union will not
16 be adversely affected by the transaction. TDS
17 Telecom is not proposing any tariff changes at
18 the present time. And any changes that would
19 occur down the road would be subject to the
20 approval of this Commission. There will be no
21 acquisition adjustment on the books of the
22 utility as a result of the transaction. No debt
23 is being incurred by the utility. Union
24 Telephone Company currently has 100-percent

1 equity capital structure, and after the
2 transaction it will have that same 100-percent
3 equity capital structure.

4 TDS Telecom understands that Union
5 Telephone Company has a long history of excellent
6 service to its customer. And the TDS Telecom
7 companies in New Hampshire similarly have a
8 history of excellent service as well. The
9 Commission has a track record from which to
10 evaluate the assertion by TDS Telecom that
11 excellent service will be maintained. TDS
12 Telecom also has a proven track record of
13 integrating the operating systems of the acquired
14 company into the TDS Telecom operating systems in
15 a way that's been seamless for customers. TDS
16 Telecom has made arrangements here for a similar
17 result. For an interim period, Utel, Inc. will
18 provide -- or a subsidiary of Utel, Inc. will
19 provide transition services for Union Telephone
20 Company's operations, and then these operations
21 will be integrated into TDS Telecom. Following
22 that integration, the transition services
23 agreement will terminate.

24 TDS Telecom has completed similar

1 transactions over the years with, going back, the
2 Kearsage Company, Meriden Telephone Company,
3 Chichester Telephone Company, and more recently
4 with Merrimack County Telephone and the Wilton
5 and Hollis Companies. Again, the Commission has
6 that track record from which it can evaluate the
7 assertions that we make here.

8 The transaction provides the
9 benefits -- provides benefits for the future of
10 Union's customers that come from being served by
11 a company with a corporate parent having the
12 expertise and resources of TDS Telecom in these
13 challenging, competitive times.

14 We believe that the transaction
15 meets the requirements of 369:8,II(b) and that
16 there is no basis for any expectation that there
17 would be an adverse effect on Union's rates,
18 terms, service or operation, and we urge the
19 Commission to allow the transaction to be deemed
20 approved under that statute.

21 The Commission's order of notice
22 also raised the question of whether RSA 369:8 or
23 RSA 374:33 should be deemed applicable to the
24 transaction, and we believe that it's

1 RSA 369:8,II(b) that is applicable.

2 As noted in my prior remarks, this
3 transaction is happening at the holding company
4 level. Union's parent company is transferring
5 all of the outstanding shares of stock of Union
6 to another parent company. Thus, this is an
7 acquisition transaction, and it does involve the
8 parent companies of a public utility. And Union
9 has made the representation of no adverse effect
10 under the statute, so we think it clearly fits,
11 squarely fits under 369:8,II(b).

12 At the same time, we believe that
13 RSA 374:33 does not apply. RSA 374:33 regulates
14 the acquisition of utility securities by two
15 kinds of acquiring entities. The first is an
16 acquisition by another public utility. And as I
17 have previously explained, TDS Telecom is not a
18 public utility. The other kind of entity covered
19 by the statute is a, quote, public utility
20 holding company, as defined in Section 2(a)(7)(A)
21 of the Public Utility Holding Company Act of
22 1935, close quote. The Public Utility Holding
23 Company Act of 1935 was a federal statute that
24 was enacted during the Depression era of the

1 1930s with the objective of breaking up electric
2 and gas companies. And it did so very
3 effectively, and it's now been repealed. That
4 act did not apply to telephone companies.
5 Obviously, the Bell System remained intact, and
6 the '35 Act did not apply to telephone companies.

7 Specifically, the former
8 definition of a "public utility holding company"
9 under Section 2(a)(7)(A) of the act was: Any
10 company which directly or indirectly owns,
11 controls, or holds with power to vote, 10 per
12 centum or more of the outstanding voting
13 securities of a public utility company or of a
14 company which is a holding company by virtue of
15 this clause or Clause B, unless the Commission --
16 namely, the Securities and Exchange Commission --
17 as hereinafter provided, by order declared such
18 company not to be a holding company.

19 So, and in turn, a public utility
20 company, which is the thing that a public utility
21 holding company owns, was defined in
22 Section 2(a)(5) of the Act as, quote, an electric
23 utility company or a gas utility company, close
24 quote. The holding company of telephone utility

1 was never covered by the '35 Act. And since the
2 acquisition here is not by one of those
3 companies, or by a public utility, our position
4 is that RSA 374 is not applicable here.

5 The distinction between the kinds
6 of utilities can, I think, be understood by
7 reflecting on the context in which this change in
8 the statute, RSA 374:33, was made. The reference
9 to "public utility holding companies" was
10 inserted into the statute in 1990. And as the
11 Commission may well remember, at that time,
12 Eastern Utilities Associates was making a hostile
13 takeover attempt to acquire an electric company
14 in New Hampshire, Unitil. There was no similar
15 pressure being exerted on the telephone
16 utilities.

17 The statute that could possibly be
18 deemed to apply here, if there was -- if this
19 were not a holding-company-level transaction, we
20 think is RSA 374:30. That statute requires the
21 approval of this Commission for a utility to
22 transfer its franchise, works or system. As
23 noted above, Union Telephone Company is not
24 making any such direct transfer. It's keeping

1 its assets. It's remaining a franchised utility.
2 It's keeping its works and its system. However,
3 the ultimate control over that utility is
4 changing from Utel, Inc. to TDS Telecom, or I
5 guess ultimately Telephone and Data Systems.

6 There is precedent under which it
7 is possible that such transfers are governed by
8 RSA 374:30, and that precedent goes back to the
9 days when this Commission regulated common
10 carriers. There's a case called *Appeal of Global*
11 *Moving and Storage of New Hampshire, Inc.*, 122
12 N.H. 784, decided in 1982, in which a group of
13 competing common carriers challenged the transfer
14 of stock from an existing common carrier -- of an
15 existing common carrier from one parent company
16 to another as violative of the statute that
17 required PUC approval for the transfer of a
18 certificate of public convenience and necessity.
19 The Supreme Court rejected the claim made by the
20 competitors in that case, but it did so on the
21 basis that the Commission had a long history of
22 treating stock transfers differently from asset
23 transfers, not on the ground that regulation of
24 stock transfers would be beyond the scope of the

1 statute. Thus, the Court seemed to be saying
2 that if the Commission had a different practice,
3 it might be possible that the Commission, in
4 fact, could regulate such transactions under
5 RSA 374:30. Again, however, assuming the
6 applicability of that statute, the transaction
7 here is happening at the parent company level,
8 and we think RSA 369:8,II(b) governs.

9 If the Commission determines that
10 RSA 369:8,II(b) does not apply, notwithstanding
11 our view that it does, we assert that the
12 transaction is, quote, lawful, proper and in the
13 public interest, close quote, as those terms are
14 defined or used in RSA 374:33, and that the
15 transaction is, quote, for the public good, close
16 quote, within the meaning of RSA 374:30, and we'd
17 request expedited approval. TDS Telecom
18 respectfully believes that the transaction is
19 simple, it's straightforward, involving the
20 acquisition of an established, well-capitalized
21 and capable acquiring company -- or involving a
22 capital -- a well-established -- an established,
23 well-capitalized, capable acquiring company, and
24 merits approval without delay.

1 And I'd point out that I've been
2 advised by Attorney McDermott, on behalf of Union
3 Telephone, that the FCC approvals required for
4 this transaction have already been obtained.
5 Both the TDS and Union Telephone, or Utel, are
6 very desirous of closing this transaction by
7 November 30th. They have a transition process to
8 start. They have employees who are
9 understandably concerned about their -- the
10 future of their employer. They have employee
11 benefit issues to -- involved in integrating
12 employees into the new TDS benefit system and so
13 forth. And all of that process will be greatly
14 enhanced if the transaction can close by
15 November 30th. Thank you.

16 CHAIRMAN GETZ: Thank you. I want
17 to begin, Mr. Coolbroth, by focusing on the
18 threshold issue of what statute controls here.
19 And whenever I'm dealing with these types of
20 issues, I have to do some drawings to follow the
21 transaction.

22 But as I understand it, TDS will
23 acquire ownership and control of Union, a
24 regulated utility. And they'll do this by -- and

1 the vehicle for that transfer of control is that
2 Utel sells its interests in Union to TDS. And
3 this is a -- it's the stock ownership that's
4 being transferred. So, is that -- do I have
5 that --

6 MR. COOLBROTH: That is correct.

7 CHAIRMAN GETZ: And you've made
8 the assertion that this is a transaction
9 happening at the parent level. And I take that
10 to be involving the language in 369:8(b)(1) as
11 concerning the language of the corporate merger
12 or acquisition involving parent companies.

13 And my basic question is, is there
14 a distinction between a transfer of -- of TDS
15 acquiring the stock of Utel, which would be
16 clearly a parent-parent transaction, versus
17 effectively, you know, TDS's acquiring Utel's
18 stock ownership of Union? Is there a distinction
19 to be drawn there? Because the end result is
20 it's not the transfer of control of Utel that's
21 occurring; what's happening is the transfer of
22 the control of Union that's happening. And it's
23 happening at the parent level, but it's affecting
24 at the subsidiary level.

1 MR. COOLBROTH: Well, in trying to
2 look at the underlying transaction that could be
3 subject to Commission approval, it seems to me
4 that it is the transfer -- arguably, the transfer
5 of the franchise under RSA 374:30. Union
6 Telephone itself is not transferring the
7 franchise to anybody. It could be deemed to be
8 transferred because of things that are happening
9 by its holding company parent, Utel. So
10 that's -- you know, I think the distinction that
11 is drawn in this statute, where transactions are
12 happening at the parent company level and not at
13 the utility level -- the utility is not issuing
14 securities, it's not transferring assets, it's
15 not composing another utility as the holder of
16 this franchise --

17 CHAIRMAN GETZ: I guess I want to
18 get back to that issue of the transaction
19 occurring at the parent level.

20 MR. COOLBROTH: If one looks at
21 the stock and asset purchase agreement, the
22 seller is Utel, the buyer is TDS Telecom.

23 CHAIRMAN GETZ: And that's the
24 vehicle for the ultimate transaction, which is a

1 change in ownership and control of the
2 subsidiary. If -- this is a hypothetical, and
3 I'm not even sure how this might occur. But if
4 TDS were to acquire directly from Union in a
5 transaction between those two entities, and
6 whether it's a stock or some other type of
7 transaction, would that be covered by 369:8?

8 MR. COOLBROTH: No. The seller in
9 that instance would be Union Telephone Company.
10 I think 369:8 would not apply.

11 CHAIRMAN GETZ: But we have
12 effectively that same result.

13 MR. COOLBROTH: I think it's
14 different. You know, in the latter case, the
15 utility itself would be issuing securities. That
16 brings with it capital structure implications for
17 the utility and so forth that are quite
18 different. I think the legislature could well
19 make a choice that where the utility company is
20 basically a passenger in the transaction, where
21 the real economic substance is happening at the
22 parent company level, that a different kind of
23 analysis could be used by the Commission. And I
24 think that's the case here.

1 CHAIRMAN GETZ: Commissioner
2 Below, Commissioner Ignatius, anything?

3 CMSR. IGNATIUS: I do. I don't
4 know if others want to speak to the legal issues
5 first or --

6 CHAIRMAN GETZ: Well, I think
7 we'll hear from everybody. You can ask your
8 question now or wait. We'll have as many
9 opportunities as you would like to ask questions.

10 CMSR. IGNATIUS: All right. Thank
11 you.

12 CMSR. IGNATIUS: Mr. Coolbroth,
13 following on Chairman Getz's question, if this
14 had been a transaction directly between Union
15 Telephone and TDS, would the practical
16 implications be any different, the practical
17 effect on customers on the ground be any
18 different than doing it through a stock
19 transaction vehicle?

20 MR. COOLBROTH: Well, this would
21 be a situation -- I'm trying to understand to
22 compare. I take it there would be -- I'm trying
23 to think what the status quo would be before the
24 transaction. The utility has outstanding stock.

1 So that -- are you suggesting that Union would be
2 just issuing enough shares to constitute new
3 control or something? I'm trying to think of
4 what the --

5 MR. McDERMOTT: Or asset
6 acquisition.

7 MR. COOLBROTH: Right. The
8 utility then would be getting, you know, X
9 dollars. If the utility itself would be getting
10 X dollars in the transaction, the Commission --

11 CMSR. IGNATIUS: Right. And I was
12 trying to simplify things, and I think I've
13 complicated things. So maybe that was not a good
14 question. Let me start again.

15 Apart from the legal questions,
16 from the perspective of the customers and all of
17 the people -- vendors, employees -- everybody who
18 has dealings with Union Telephone, the
19 transaction, once it's done, will -- whether it
20 occurs through the stock transaction that's
21 proposed at the parent level or if it had
22 occurred as a direct sale in the more traditional
23 sense between the two utilities -- from sort of
24 on the ground level, would it make any

1 difference?

2 MR. COOLBROTH: I think it would.
3 If you had -- I think the comparison would be a
4 transfer of all of the assets, franchise and
5 works of Union Telephone Company to a new
6 corporation, for instance. You know, that would
7 be clearly a transaction governed by RSA 374:30.
8 The Commission would want to look at the
9 management of the new company. They would want
10 to look at -- there would need to be new tariffs.
11 There would be a new entity that would run the
12 business. Here, that's being done at the parent
13 company level. It is qualitatively different
14 when the utility itself, the corporate entity, is
15 the same before and after. Not to say the
16 Commission has no say, but it can well be that
17 the say that the Commission has could be under a
18 different standard.

19 CMSR. IGNATIUS: Well, let me
20 pursue that, just to make sure I understand.

21 You said earlier in response to a
22 question from Chairman Getz that TDS would now
23 own Union Telephone. Is that accurate?

24 MR. COOLBROTH: It will own, yes.

1 Yes.

2 CMSR. IGNATIUS: Will TDS now
3 operate Union Telephone?

4 MR. COOLBROTH: The TDS Telecom
5 operation will have control over Union Telephone
6 Company. And over time, those operations will be
7 integrated into the TDS Telecom system. So it
8 certainly is assuming control, and it certainly
9 will be integrating the company for the future.
10 And they believe that provides a benefit, in
11 terms of efficiency, in terms of resources
12 available, that it is a benefit for them to do
13 that.

14 CMSR. IGNATIUS: And there would
15 be some period of transition of, as you described
16 it, integrating the operating systems.

17 MR. COOLBROTH: That's correct.
18 For instance, billing will, over time, be
19 migrated to the TDS billing system. Various
20 other kinds of functions will be migrated, and in
21 some instances centralized, as they have done
22 with the New Hampshire companies before. My
23 understanding is they have seven companies in
24 Maine. I'm not quite sure how many in Vermont.

1 They have several in New York. Probably more
2 than anybody, they are -- who's on the ground --
3 able to do this job.

4 CMSR. IGNATIUS: And you made a
5 reference earlier to employee issues. I assume
6 there's questions of whether new benefit packages
7 would be available to employees or required of
8 employees as part of the transaction?

9 MR. COOLBROTH: That's correct.
10 The employees of Union Telephone who stay on will
11 be integrated into the benefits systems of TDS
12 Telecom.

13 CMSR. IGNATIUS: In your
14 notification document, you said that the
15 corporate structure will not change at Union
16 Telephone. Does that also mean that the
17 individuals within the operating structure of
18 Union Telephone will remain the same?

19 MR. COOLBROTH: Certain of the
20 senior management will be departing. There are
21 employees who are excluded from coming over; you
22 know, primarily the current owners of Union
23 Telephone are being paid for their interests and
24 moving on to other endeavors and not coming over

1 with the transaction.

2 CMSR. IGNATIUS: And you had also
3 said in a response to a question from Chairman
4 Getz that TDS had engaged in similar transactions
5 in New Hampshire, and you mentioned Chichester
6 and Wilton and some others. Do you know if those
7 transactions were done under 374:33?

8 MR. COOLBROTH: The one I have
9 with me is Merrimack County Telephone. That was
10 done under 369:8, II(b).

11 CMSR. IGNATIUS: All right. Thank
12 you. Was that -- I don't know if you know,
13 offhand, if those were done routinely under the
14 same structure or if timing may have affected
15 which statute applied at which time.

16 MR. COOLBROTH: No, it was
17 different. MCT, Inc., the parent company of
18 Merrimack County Telephone Company, was merged
19 into a newly formed subsidiary of Telephone and
20 Data Systems, Inc. That subsidiary eventually
21 was merged into TDS Telecom. So that was a
22 different structure.

23 CMSR. IGNATIUS: Okay. I also had
24 a question about 369:8 and how to interpret it.

1 Is it your position that one must
2 meet Section I, and then if meeting Section I,
3 you go to Section II -- and as you say, you're
4 filing this under Section II(b)(1) -- that you
5 sort of have to start with I and work your way
6 down? Or is your position that you begin with
7 Section II as the starting point for the statute?

8 MR. COOLBROTH: No, Commissioner.
9 I don't believe that Section I has any
10 applicability here. Section I is the statute
11 that -- a portion of the statute that has been
12 around, I think, since 1911. And it dealt with
13 financing requirements for public utilities
14 serving multiple states and the extent to which
15 the Commission had jurisdiction. Why the
16 legislature chose to put this subject matter into
17 that statute, I am at a loss to explain. They
18 really have no relationship to one another, as
19 far as I know.

20 CMSR. IGNATIUS: And so your
21 interpretation of Section II(b)(1) is that the
22 Commission approval is required by another
23 statute; but this one will apply because there is
24 no adverse impact on rates, terms and conditions?

1 MR. COOLBROTH: That's right.

2 CMSR. IGNATIUS: What is the other
3 statute that would apply?

4 MR. COOLBROTH: In my mind,
5 RSA 374:30 may apply. That's as close as I can
6 come for this transaction. I think it may well.

7 CMSR. IGNATIUS: So that, in your
8 view, anytime there's a corporate merger
9 acquisition involving parent companies, etc.,
10 that -- for which there's no adverse effect on
11 rates, terms or service, this would be the
12 statute that would govern?

13 MR. COOLBROTH: That's correct.

14 CMSR. IGNATIUS: Irrespective of
15 whatever Paragraph 1 says?

16 MR. COOLBROTH: I'm sorry? I
17 didn't hear that.

18 CMSR. IGNATIUS: Irrespective of
19 whatever Paragraph 1 says.

20 MR. COOLBROTH: That's correct.

21 CMSR. IGNATIUS: Thank you.

22 CHAIRMAN GETZ: Okay. Mr.
23 McDermott.

24

1 MR. McDERMOTT: Union would like,
2 obviously, to concur with the interpretations of
3 our colleagues. I don't have huge amounts to
4 add, other than to stress that under
5 Subsection 269:8,II(b) [sic], the approval of the
6 Commission, the way it reads, it states, "for any
7 corporate merger or acquisitions involving parent
8 companies of a public utility." I think that a
9 transaction that would directly involve a public
10 utility would look a lot different. If, for
11 example, this deal was structured as an asset
12 purchase, this subsection clearly wouldn't apply.
13 If instead of purchasing the stock of the company
14 from one public utility holding company to
15 another, if, for example, TDS had acquired
16 Union's assets, customers, certificate,
17 franchises, all of those items, as mentioned
18 before, not only would you need to have new
19 tariffs, new -- the assets of the company would
20 physically change hands. So instead of -- at the
21 end of the day, Union is still going to own the
22 facilities, using provisions and services in the
23 state of New Hampshire.

24 CHAIRMAN GETZ: Union will own,

1 but someone else will own Union.

2 MR. McDERMOTT: Yes. Someone will
3 have control over it. And it's not uncommon in
4 other states to see carve-outs for holding
5 company level transactions, because they have
6 less of an effect on the end user and the
7 ratepayers.

8 The level of review here is that
9 it will not have an adverse effect on rates,
10 terms, service or operations of the public
11 utility within the state; so, in other words, it
12 will have no negative impact. The company will
13 continue operations under the same name, with no
14 adverse effects to the services or rates. And
15 the fact that it isn't a direct acquisition puts
16 it under this statute as opposed to --

17 CHAIRMAN GETZ: I'm sorry. The
18 fact that it is a direct acquisition?

19 MR. McDERMOTT: It is not a direct
20 acquisition. They're not just purchasing Union's
21 assets and folding them into a pre-existing TDS
22 company. That would fall under a different
23 subsection. So, you know, this statute is
24 created to differentiate between the two types of

1 transactions. I also --

2 CHAIRMAN GETZ: Two types of
3 transactions being a stock transaction versus an
4 asset.

5 MR. McDERMOTT: Transaction
6 involving public utility holding companies, such
7 as what's going on here, in our opinion, and a
8 transaction that deals directly with the assets
9 of the public utility. If it were involving
10 directly the phone lines, access lines, if those
11 were being sold and folded into another, say TDS
12 company, we would agree that this statute would
13 be inapplicable. But that's not what's going on
14 here. It's clearly an acquisition involving
15 parent companies of a public utility.

16 CHAIRMAN GETZ: But, again, I
17 guess that's reading "involving," interpreting it
18 broadly.

19 MR. McDERMOTT: It comes down to
20 how do you -- I understand Staff is going to
21 interpret "involving" differently than we do.

22 I also -- as mentioned, the FCC
23 has approved three separate applications, one
24 being the domestic application for domestic

1 services. I'd like to note that that approval
2 was not a streamlined approval. In most cases
3 with the FCC, the Commission will put something
4 on public notice. It will be -- go on streamline
5 treatment, and unless somebody objects to it
6 within a certain period of time, it's deemed
7 automatically approved. This was not the case in
8 this transaction. The FCC took it off public
9 notice and examined the materials that were
10 provided, including an analysis of whether this
11 transaction is in the public interest. I know
12 that the subsection cited by Staff,
13 Section 374:33, has a public interest standard in
14 there. The FCC has made the analysis that this
15 transaction is in the public interest.

16 So, I just want to note for the
17 record that three separate bureaus at the FCC
18 have already reviewed and approved this. We
19 got -- the domestic approval was issued on
20 Tuesday. So I just want to sort of explain that
21 this wasn't just a cursory review. It was --
22 additional information was asked for and
23 provided. And so it has been reviewed by the
24 regulatory agencies and passed-off on. So I just

1 wanted to make that part of the record.

2 And we believe that it would --
3 that this transaction should be approved as
4 quickly as possible so as to allow the transition
5 to occur in a way that they can hit the ground
6 running and be at a point where they can have
7 everything in place by the beginning of next
8 year. So, thank you.

9 CHAIRMAN GETZ: Thank you.

10 CMSR. IGNATIUS: Mr. McDermott,
11 are there any other approvals that you're still
12 awaiting?

13 MR. McDERMOTT: No.

14 CMSR. IGNATIUS: So there were
15 three from the FCC?

16 MR. McDERMOTT: Yes. This did not
17 require --

18 CMSR. IGNATIUS: Excuse me. Go
19 ahead.

20 MR. McDERMOTT: It did not require
21 any approval from, say, the SEC or anything along
22 those lines.

23 CMSR. IGNATIUS: Or the Justice
24 Department.

1 MR. McDERMOTT: No. The only
2 approvals that were required were the three FCC
3 approvals and what was filed under, in our
4 opinion, the notice filed under Section 369:8.

5 CMSR. IGNATIUS: Thank you.

6 CHAIRMAN GETZ: Ms. Hollenberg.

7 MS. HOLLENBERG: Thank you.

8 Actually, Staff has agreed to
9 proceed before us this morning, if that is
10 acceptable to the Commission.

11 CHAIRMAN GETZ: Certainly.

12 Mr. Hunt.

13 MR. HUNT: Thank you.

14 It's Staff's position that TDS's
15 acquisition of Union is subject to a
16 determination by this Commission that the
17 transfer and acquisition are lawful, proper for
18 the public good, and in the public interest.
19 Staff further asserts that RSA 369:8 does not
20 apply to the transaction at issue in this docket.

21 The joint filing of July 31st,
22 2009 by Union Telephone Company and TDS
23 Telecommunications Corporation, in Staff's view,
24 incorrectly construes the language of

1 369:8,II(b). Specifically, Union and TDS appear
2 to interpret the phrase "involving parent
3 companies of a public utility" as relieving this
4 Commission of its duty to make a public interest
5 determination if a utility is being sold or
6 acquired by a parent company.

7 Staff's reading of 369:8,II(b) is
8 that the phrase "involving parent companies of a
9 public utility" refers to the corporate merger
10 between parent companies, or the acquisition of
11 parent companies by other companies, not to
12 parent companies buying and selling shares of New
13 Hampshire public utilities. In other words,
14 369:8,II(b) governs mergers and acquisitions of
15 companies that own utility companies. But the
16 instant docket involves the actual transfer and
17 the acquisition of an individual public utility
18 that operates as such in this state now and that
19 will continue to do so after the corporate shares
20 are conveyed, subject to a new owner's control.

21 Staff's position is that such a
22 transaction is very different from acquisitions
23 and mergers of parent companies themselves and
24 that the Commission has the duty to ensure that

1 the change in direct ownership of a New Hampshire
2 utility is in the public interest and that the
3 public utility will furnish service and
4 facilities as shall be reasonably safe and
5 adequate, and in all other respects, just and
6 reasonable.

7 I'll also note that prior dockets
8 involving TDS were approved -- approved mergers
9 both using 369:8(b)(2) -- 369:8,II(b) and 374:33
10 in going from a determination on whether there's
11 adverse impact to a determination of net benefit
12 under 374:33. So that's prior dockets within
13 this Commission.

14 In addition, it does appear, and
15 as Mr. Coolbroth said, 374:30 may well apply.
16 And it's Staff's position that it does and that
17 that requires the Commission to make a
18 determination of public good as well.

19 In the technical session prior to
20 the prehearing conference, there was discussion
21 about a procedural schedule. I can go through
22 that now.

23 Rolling data requests are going to
24 be due September 25th, by agreement; answers to

1 those data requests are due by October 9th;
2 settlement conference and technical session,
3 October 15th; filing of a settlement document,
4 October 21st; and tentatively, a proposed hearing
5 date the afternoon of October 26th and
6 October 27th. In the event that the
7 Commission is --

8 CHAIRMAN GETZ: Well, let me
9 ask -- maybe you're headed there, Mr. Hunt. But
10 does that suggest then that the petitioners would
11 be waiving the deadlines under 369:8, to the
12 extent they apply?

13 MR. HUNT: I don't think they deem
14 themselves to be waiving that provision, as far
15 as -- if the Commission determined that 369:8
16 applied, they're waiving it long enough to allow
17 it to go under that schedule.

18 Is that an accurate assessment?

19 MR. COOLBROTH: Mr. Chairman,
20 there was a disagreement with Staff and with the
21 OCA regarding the extent of the information
22 included in the notification. The parties have
23 reached agreement for that shortcoming to be
24 resolved, so that, in theory, the 60-day clock

1 could be controlled by that having occurred. So
2 with the procedural schedule that was involved
3 here, we believe it still could be under 369:8;
4 in which case, for instance, if the 60 days ran
5 from today, it would be November 16th, plus or
6 minus, that the 60 days would run. If we had a
7 hearing on October 26th and 27th, with an outcome
8 that the Commission issued a secretarial letter
9 to the effect that either -- issued a secretarial
10 letter to the effect that it was not finding any
11 preliminary adverse effect and going to allow the
12 time to run, that would be the positive result
13 for us. The negative result would be a
14 determination, a preliminary determination of
15 adverse effect and the continuation of
16 proceedings under the statute in that event. So,
17 we are not waiving the applicability of
18 RSA 369:8. At the same time, if I go home to my
19 client after today and tell them that what I have
20 is an adverse ruling on the statute that we
21 picked and a right to go to the United States --
22 to the New Hampshire Supreme Court, my client's
23 not going to be very happy that that's the result
24 that I got for them. So we would want the

1 transaction approved, and we would like to be
2 able to close by the end of November. We believe
3 that we meet all of these standards and are
4 trying to expedite -- expeditiously get to a
5 closing.

6 CHAIRMAN GETZ: All right. Thank
7 you.

8 Mr. Hunt, did you have something
9 further on --

10 MR. HUNT: No, just on that issue.
11 If the Commission decides that 369:8 does not
12 apply, the parties will go on to discuss
13 additional procedural issues and a potential
14 amended schedule at the next tech session, which
15 would be on October 15th.

16 CHAIRMAN GETZ: Well, let me ask
17 you this about the 369:8, II specifically. And
18 I'm not going to ask you to opine on the wisdom
19 of the legislature and the statutes that it
20 writes.

21 But, so Staff's position would be
22 that TDS could acquire Utel at the parent level
23 and everything it owns and that that would not be
24 something that we could rule on -- is that a fair

1 conclusion -- because it's a transaction entirely
2 at the parent level?

3 MR. HUNT: I think it would be --
4 that probably goes further than what I was
5 arguing. And basically what I would say is that
6 369:8 would apply to that situation. So the
7 Commission would be ruling to the extent that
8 369:8 allows it. There is still Commission
9 involvement through 369:8. But yes, that's, in
10 essence -- there's a difference between that kind
11 of transaction and a transaction involving a
12 parent company selling an active operating
13 utility in this state to another company where,
14 especially as was characterized by TDS's counsel,
15 there's going to be an integration of the
16 operating system, employee issues. The new
17 company, the new owner of the shares, whether it
18 be shares or ownership of the actual systems,
19 will have control over those systems. So the
20 operations could change, the integrating -- the
21 integration of the operations is an issue. These
22 are very specific actions and occurrences that
23 the Commission would have an interest and a duty
24 to be concerned about, and would rise to the

1 level of a public good determination versus just
2 looking at whether there's an adverse impact.
3 And I think that may be the reason why in prior
4 dockets the Commission actually did look at 369:8
5 first and then looked at 374:33 combined -- went
6 from a determination of 369:8 to a determination
7 of 369:3. And the phrase was met -- "net
8 benefit."

9 CHAIRMAN GETZ: But I was trying
10 to understand if you were positing the situation
11 where the Commission would have no jurisdiction
12 over one holding company purchasing entirely
13 another holding company, but the Commission would
14 have jurisdiction where, as here, a holding
15 company is acquiring, you know, just a portion of
16 what the other holding company owns.

17 MR. HUNT: I wasn't positing that.
18 My -- with regard to 369:8, it would appear that
19 the Commission would be involved in that
20 transaction as well, as long as it's a New
21 Hampshire utility that's owned by any of the
22 parent companies.

23 CMSR. BELOW: So, to be clear, are
24 you -- is it your position that both 369:8 and

1 374:33 apply in this case?

2 MR. HUNT: No. In this case, it's
3 Staff's position at this time that 369:8 does not
4 apply to this transaction. However, we do take
5 into account the fact that prior dockets
6 involving TDS's acquisition of other utilities in
7 New Hampshire, that the Commission actually used
8 both 369:8 and 374:33.

9 CMSR. BELOW: And with regard to
10 your concern about how integration might occur,
11 you don't feel that there's adequate authority
12 under our general supervisory authority and
13 ability to look at affiliate contracts and such
14 to consider those?

15 MR. HUNT: Actually, I do.
16 Staff's position is that the authority of the
17 Commission goes beyond both 374:33 and 374:30 to
18 the general supervisory role of the Commission.
19 And that's why I mentioned the reasonably safe
20 and adequate, and in all other respects, just and
21 reasonable standard, because that is one of the
22 duties of this Commission with regard to this
23 kind of operational -- potentially operation --
24 potential operational changes in a public utility

1 operating in New Hampshire.

2 CMSR. BELOW: Okay. Thank you.

3 MR. COOLBROTH: Mr. Chairman,
4 just -- sorry to interrupt. Just briefly.

5 The distinction that counsel for
6 the Staff has made with respect to integration of
7 systems and so forth, I did want to point out
8 that those issues were absolutely identical in
9 the MCT situation. That was an operating company
10 with independent operating systems that were
11 integrated into the TDS systems. Same employee
12 issues. Those issues were no different in that
13 case. And also, we are not asserting that the
14 Commission is going to lose regulatory
15 jurisdiction in any respect with respect to Union
16 Telephone Company. Its service will continue to
17 be required, to be safe, adequate, just,
18 reasonable, all those things. So we don't think
19 that that's at issue, that the loss of regulatory
20 jurisdiction should be a concern of the
21 Commission.

22 CMSR. BELOW: Could I follow-up on
23 that? Do you -- or does TDS contemplate, for
24 instance, that with changes in billing, that that

1 might be accomplished through affiliate contract
2 relations or just through its control of the
3 management of Union?

4 MR. COOLBROTH: Those will be
5 affiliate contracts, I'm assuming; right? Union
6 Telephone Company will be required to rely on
7 another TDS entity for billing services.

8 I'm looking at Mr. Reed. If
9 that's a concern --

10 MR. REED: Let me think about.

11 MR. COOLBROTH: We can take that
12 as a data request and get you an answer on that,
13 if that's --

14 CMSR. BELOW: Well, for the other,
15 do you happen to know for the other TDS
16 subsidiaries, operating telephone subsidiaries in
17 New Hampshire, do they get billing services
18 through an affiliate under contract?

19 MR. COOLBROTH: I think that we
20 need to get an answer back. But it is a separate
21 entity that in fact provides billing services.
22 The specific arrangements for how that is
23 accomplished we can't answer for you on the spot.
24 But we can get you that information.

1 CMSR. BELOW: Okay.

2 CHAIRMAN GETZ: Well, that's -- we
3 haven't got to the point of exhibits and data
4 requests. But if you could just, in writing,
5 respond to that, we'll put that in the file for
6 this case.

7 CMSR. BELOW: Well, likewise, you
8 mentioned there might be changes in benefits and
9 things like that for the employees. Is there a
10 possibility that the employees of Union would
11 become employees of a different company, such as
12 an affiliate of TDS? Or would those changes
13 likely be just to occur through, again, a
14 management decision flowing down because of the
15 ownership?

16 MR. REED: I think we better take
17 that one, too.

18 MR. COOLBROTH: If we can get back
19 to you with a precise answer to that question as
20 well?

21 CMSR. BELOW: Well, that could be
22 part of the same request.

23 CHAIRMAN GETZ: Commissioner
24 Ignatius.

1 CMSR. IGNATIUS: Thank you.

2 It would be also helpful if,
3 whether it's Mr. Hunt, Mr. Coolbroth, Mr.
4 McDermott, someone to provide the cites to the
5 transactions that TDS has been through.
6 Obviously, we can look those up here. But if you
7 have those readily available -- not copies of the
8 orders. We can get that. But if they're readily
9 available, that would be useful. And it could
10 just be noted in a letter.

11 And Mr. Coolbroth, or Mr.
12 McDermott, the representation was made that you
13 were very hopeful to be able to close by
14 November 30th. As I looked at the agreement,
15 there's no required closing date or drop-dead
16 date in the agreement. But I may have not
17 understood it. Is there a date by which it's
18 just too late?

19 MR. WINSLOW: There is. I forget
20 the exact date. But it's sometime in 2010, I
21 believe. There is a drop-dead date, I think.
22 But I think that can be extended, based on both
23 parties' agreement as well. So...

24 CMSR. IGNATIUS: Thank you.

1 CHAIRMAN GETZ: Anything else,
2 Mr. Hunt?

3 MR. HUNT: Nothing. Thank you.

4 CHAIRMAN GETZ: Ms. Hollenberg.

5 MS. HOLLENBERG: Thank you. Well,
6 I'm pleased to say that the Office of Consumer
7 Advocate concurs with Staff's recommendation to
8 the Commission this morning. The only thing I
9 wanted to comment on was, to the extent that the
10 company agrees that 374:30 would apply if the
11 Commission found a harm under 369:8,II(b), I
12 question whether or not 369:1 may also apply,
13 which relates to the sale of utility stocks.

14 The only other thing that I would
15 like to point out to the Commission, and Mr.
16 Coolbroth alluded to it earlier. But the Office
17 of Consumer Advocate has been working with the
18 companies since earlier in August to obtain
19 copies of the exhibit that was attached and filed
20 with the Commission, which we understand was a
21 redacted, confidential document. We've also --
22 we received that document from the companies on
23 Monday, still with the redactions. And we did
24 receive the schedules referenced in that document

1 yesterday, which are also redacted. We've
2 discussed the redactions with the companies, and
3 they have agreed today to provide us and the
4 Commission with unredacted documents. The OCA is
5 not going to press at this time its question and
6 concern about whether or not the filing was even
7 perfected when it was filed, in light of the
8 redactions in the documents, because the company
9 has agreed to push forward a date for the
10 beginning of the 60-day period in 369:II(b) [sic].
11 But we did want the Commission to be aware of the
12 fact that we are only now -- later today, we
13 presume -- receiving unredacted documents which
14 accompanied the petition. Thank you.

15 MR. McDERMOTT: Just one thing.
16 The reason they weren't provided earlier is
17 because a protective order was drafted and just
18 recently signed. So I just didn't want the
19 Commission getting the impression that we were
20 stalling on providing those documents. It was --
21 the protective order was recently signed. Signed
22 Monday?

23 MS. HOLLENBERG: The 9th.

24 MR. McDERMOTT: The 9th. Right.

1 So I just want to note that it wasn't the case
2 where we just -- the document, obviously, is very
3 sensitive, contains information that we do not
4 want to be made public, and that's the reason for
5 that delay in giving them that information.

6 MS. HOLLENBERG: You know, and I
7 agree with Mr. McDermott. We did begin the
8 discussion with the companies on the 20th of
9 August to obtain the documents, and there was a
10 back and forth between the companies, in terms of
11 the protective order. But what I will emphasize
12 is that the documents were still redacted. So,
13 even today the Commission hasn't received
14 unredacted copies of the purchase agreement, as
15 well as the schedules referenced in there. So,
16 to the extent that that's necessary for anyone to
17 consider under the applicable statutory
18 standards, you know, we believe that we needed
19 unredacted documents and that the Commission
20 needed them as well.

21 CHAIRMAN GETZ: Okay. Thank you.
22 But Ms. Hollenberg, can we go back to how would
23 RSA 369:1 apply to this transaction?

24 MS. HOLLENBERG: Well, I don't

1 know for sure that it does. But in reading
2 374:30, which talks about a public utility
3 transferring or leasing its franchise, works or
4 system, if you look at the language in 369:1, it
5 says a public utility may issue and sell its
6 stock. So I wonder if -- to the extent that
7 374:30 applies, I just wanted to put out a
8 question about whether or not 369:1 also applies,
9 because even though it's being done at the parent
10 level, it's still the transfer of utility stock.
11 And I don't have a definitive answer for you.
12 It's just something that I thought of while we
13 were discussing any other possible statutory
14 avenues that would exist if the Commission found
15 a net harm or a harm result under 369:8,II(b).

16 CHAIRMAN GETZ: Okay.
17 Commissioner Below, Commissioner Ignatius.

18 MR. COOLBROTH: Mr. Chairman, if I
19 could just respond briefly --

20 CHAIRMAN GETZ: Certainly.

21 MR. COOLBROTH: -- to RSA 369:1.
22 That statute applies to direct issuances of
23 shares by a utility, contemplates the utility
24 receiving proceeds, applying those proceeds to

1 the plant and service -- or construction of
2 utility plant and so forth. It has never been
3 applied to secondary sales of shares once they've
4 been issued by stockholders -- transfers of
5 shares by stockholders. This statute has never
6 been applied to that, and in our mind, clearly
7 does not apply to this situation.

8 CHAIRMAN GETZ: In this case,
9 there's not any contemplation of the issuance of
10 new stock to somehow make the transaction occur.

11 MR. COOLBROTH: That is correct.

12 CHAIRMAN GETZ: Okay. Anything
13 else further this morning?

14 (No verbal response)

15 CHAIRMAN GETZ: Okay. Hearing
16 nothing, then we'll close the prehearing
17 conference and take the matter under advisement.
18 Thank you, everyone.

19 (Hearing adjourned at 12:40 p.m.)
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21
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23
24

C E R T I F I C A T E

1
2 I, Susan J. Robidas, a Licensed
3 Shorthand Court Reporter and Notary Public
4 of the State of New Hampshire, do hereby
5 certify that the foregoing is a true and
6 accurate transcript of my stenographic
7 notes of these proceedings taken at the
8 place and on the date hereinbefore set
9 forth, to the best of my skill and ability
10 under the conditions present at the time.

11 I further certify that I am neither
12 attorney or counsel for, nor related to or
13 employed by any of the parties to the
14 action; and further, that I am not a
15 relative or employee of any attorney or
16 counsel employed in this case, nor am I
17 financially interested in this action.

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20 Susan J. Robidas, LCR/RPR
21 Licensed Shorthand Court Reporter
22 Registered Professional Reporter
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