

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

March 26, 2009 - 10:10 a.m.  
Concord, New Hampshire

 **ORIGINAL**

**RE: DT 07-027**  
**KEARSAGE TELEPHONE CO., WILTON**  
**TELEPHONE CO., HOLLIS TELEPHONE CO.**  
**AND MERRIMACK COUNTY TELEPHONE CO.**

**PRESENT:** Chairman Thomas B. Getz, Presiding  
Commissioner Graham J. Morrison  
Commissioner Clifton C. Below

Diane Bateman, Clerk

**APPEARANCES:**

**Reptg. Kearsage Telephone Co., et al:**  
Frederick J. Coolbroth, Esq. (Devine...)  
Patrick C. McHugh, Esq. (Devine...)

**Reptg. Daniel Bailey:**  
Alan Linder, Esq. (NHLA)  
Daniel Feltes, Esq. (NHLA)

**Reptg. Comcast Phone of N.H., LLC:**  
Cameron Kerry, Esq. (Mintz, Levin...)  
Paul Abbott, Esq. (Mintz, Levin...)

**Reptg. segTEL:**  
Jeremy Katz, CEO  
Kath Mulholland

**Reptg. Residential Ratepayers:**  
Rorie E. Hollenberg, Esq. (OCA)  
Stephen Eckberg (OCA)  
Ken Traum (OCA)

**Reptg. PUC Staff:**  
Robert D. Hunt, Esq.

**Court Reporter:** Susan J. Robidas, LCR No. 44



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1  
2 CHAIRMAN GETZ: All right. Good  
3 morning, everyone. We'll open the prehearing  
4 conference in Docket DT-07-027.

5 On April 23rd, 2008, the Commission  
6 issued an order finding that the TDS companies  
7 had demonstrated that competitive alternatives  
8 were available to a majority of the customers in  
9 the Wilton and Hollis franchises and that the  
10 plans for such companies satisfied requirements  
11 of alternative regulation, and at the same time  
12 found that demonstration had not been made  
13 sufficient to permit alternative regulation in  
14 the Kearsage and Merrimack franchises. Pursuant  
15 to the order, we kept the docket open in the  
16 event that the TDS companies sought to present  
17 new evidence as to Kearsage and Merrimack. On  
18 January 29, 2009, the companies filed the  
19 supplemental testimony of Mr. Reed, and we had  
20 on February 10th a motion for a prehearing  
21 conference by New Hampshire Legal Assistance; as  
22 a result, we issued an order on February 27th  
23 setting the prehearing conference for this  
24 morning.

1                   And can we take appearances at this  
2                   time, please.

3                   MR. COOLBROTH: Good morning, Mr.  
4                   Chairman and Commissioners. On behalf of  
5                   Kearsage Telephone Company and Merrimack County  
6                   Telephone Company, I'm Frederick Coolbroth of  
7                   the firm of Devine, Millimet & Branch. With me  
8                   today are Patrick McHugh; and from the company,  
9                   Debra Martone and Michael Reed.

10                  COMMISSIONERS: Good morning.

11                  MR. LINDER: Good morning, Mr.  
12                  Chairman and Commissioners. My name is Alan  
13                  Linder from New Hampshire Legal Assistance,  
14                  representing Daniel Bailey. And with me today  
15                  at counsel table is Daniel Feltes from New  
16                  Hampshire Legal Assistance.

17                  MR. FELTES: Good morning.

18                  COMMISSIONERS: Good morning.

19                  CHAIRMAN GETZ: Other appearances?

20                  MR. KERRY: Good morning. Cameron  
21                  Kerry and Paul Abbott from the firm of Mintz,  
22                  Levin, representing Comcast Phone. And from the  
23                  company we have Stacey Parker and Christopher  
24                  Hodgdon.

1 COMMISSIONERS: Good morning.

2 MR. KATZ: Good morning, Mr.  
3 Chairman, Commissioners Below and Morrison. I'm  
4 Jeremy Katz. I'm the Chief Executive Officer of  
5 segTEL, representing segTEL pro se today. And  
6 with me is Katherine Mulholland from segTEL.

7 COMMISSIONERS: Good morning.

8 MS. HOLLENBERG: Good morning.  
9 Rorie Hollenberg, Stephen Eckberg, and Ken Traum  
10 here for the Office of Consumer Advocate.

11 CHAIRMAN GETZ: Good morning.

12 MR. HUNT: Good morning. Rob Hunt,  
13 Staff attorney, here with Pradip Chattopadhyay,  
14 Josie Gage and Michael Ladam.

15 CHAIRMAN GETZ: Good morning.

16 The one procedural issue that was  
17 raised in the papers filed in advance of the  
18 prehearing conference goes to the standing of  
19 Mr. Bailey and New Hampshire Legal Assistance to  
20 participate in this proceeding. And as much as  
21 intervention was already permitted in this case,  
22 07-027, we're not going to revisit that grant of  
23 intervention, and we'll permit their continued  
24 participation in this proceeding.

1 MR. COOLBROTH: Mr. Chairman, if  
2 you could just please note our exception to that  
3 ruling. Thank you.

4 CHAIRMAN GETZ: Exception noted.

5 Okay. Anything else of a  
6 procedural nature before we hear parties on the  
7 statement of positions and proposals, I guess,  
8 on how to proceed? Hearing nothing, then  
9 Mr. Coolbroth.

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

12 The Commission's order in this case  
13 denied alternative regulation to Kearsage and  
14 Merrimack on the basis that these companies had  
15 not made the requisite showing of the  
16 availability of competitive alternatives to a  
17 majority of customers in all of their exchanges.  
18 Specifically, The Commission relied on Staff  
19 testimony regarding the availability of wireless  
20 service in two exchanges: The Salisbury  
21 exchange of Kearsage and the Sutton Exchange of  
22 Merrimack County Telephone. The Commission left  
23 open the record for Kearsage and Merrimack to  
24 present additional evidence regarding the

1 availability of competitive alternatives.  
2 Kearsage and Merrimack did not concur with the  
3 Staff's analysis regarding wireless coverage.  
4 So, focusing on the two most rural exchanges, as  
5 the Staff did, Kearsage and Merrimack retained  
6 the services of experts in wireless coverage, C  
7 Squared Systems, LLC, to conduct physical  
8 measurements of wireless coverage in Salisbury  
9 and Sutton. Based on the work by C Squared, we  
10 have provided further proof on the availability  
11 of wireless service to these most rural  
12 exchanges. With this check on the availability  
13 of wireless in the most rural exchanges,  
14 Kearsage and Merrimack believe that their  
15 evidence shows the availability of competitive  
16 alternatives to a majority of customers in all  
17 of their exchanges.

18 Kearsage and Merrimack also point  
19 out that the Staff evidence on this point upon  
20 which The Commission appears to have heavily  
21 relied contained incorrect depictions of the  
22 cellular coverage in these exchanges. Diagrams  
23 purporting to show radiuses of five miles around  
24 cellular towers simply did not show radiuses of

1 five miles, based on our analysis. Had they  
2 done so, had those radiuses been out for five  
3 miles, it would have shown -- it would have  
4 provided support to show the availability of  
5 wireless coverage in these exchanges.

6 As Mr. Reed's testimony points out,  
7 the C Squared test results confirm that the  
8 American Roamer CoverageRight maps are a good  
9 way to measure cellular coverage in exchanges.  
10 This testimony also points out the reliance that  
11 the New York Public Service Commission gave to  
12 this same approach taken in New York to use  
13 coverage right maps over the exchange areas. We  
14 believe there is no reason why this Commission  
15 cannot use a similar approach in New Hampshire.

16 In all other respects, the plans  
17 proposed by Kearsage and Merrimack, as amended  
18 pursuant to their settlements with the Staff,  
19 the OCA and segTEL, fully conform to the  
20 requirements of the statute, and the companies  
21 respectfully request approval of their plans.

22 Kearsage and Merrimack also ask  
23 this Commission to consider this submission in  
24 the broader context of what is appropriate for

1 regulation for this industry at this time. This  
2 industry has undergone tremendous change.  
3 Customers are demanding more than plain, old  
4 telephone service. And Kearsage and Merrimack  
5 have met this challenge. They have long since  
6 deployed DSL to their rural customers. And  
7 while The Commission did not approve these  
8 alternative regulation plans, they've continued  
9 their commitment to New Hampshire customers, and  
10 even with the alternate regulations plans  
11 denied, have moved forward with millions of  
12 dollars of investment in broadband  
13 infrastructure in New Hampshire, including  
14 fiber-to-the-home technology. At the same time,  
15 they face a gross imbalance, regulatory  
16 imbalance with their competitors. Wireless  
17 service is completely unregulated in New  
18 Hampshire. The retail telephone exchanges  
19 service that Comcast proposes to provide in most  
20 of the Kearsage and Merrimack service  
21 territories would also, under Comcast's  
22 proposal, be completely unregulated at the state  
23 level. At the same time, after years and years  
24 of unsuccessful efforts to obtain alternative

1 regulation to compete, Kearsage and Merrimack  
2 still operate under full-rate-of-return  
3 regulation, facing filing requirements and  
4 extensive data requests when they offer a new  
5 service. And the data request recently issued  
6 in DT 08-171 and DT 08-172 are examples. We  
7 believe that this imbalance is unjust and  
8 unreasonable, and these companies seek a  
9 regulatory -- these companies are prepared to  
10 offer their customers the very best in broadband  
11 capability and seek a regulatory framework that  
12 will enable them to do so.

13 This filing is also the third  
14 attempt, formal attempt, at alternative  
15 regulation for these companies, using two  
16 different statutes, hundreds and hundreds of  
17 hours, thousands of dollars, years of  
18 negotiations. And at some point the companies  
19 respectfully request that this come to  
20 conclusion. This filing, proving the  
21 availability of competition in most of the  
22 exchanges, gives the Commission the assurance  
23 that it needs to approve this alternative  
24 regulation plan, and we would respectfully

1 request approval.

2 CHAIRMAN GETZ: Thank you.

3 Mr. Linder.

4 MR. LINDER: Thank you, Mr.  
5 Chairman. Five points we'd like to make.

6 We interpret the new testimony  
7 filed by the company and the newest information  
8 provided as renewal of the company's petition  
9 for an alternative form of regulation. As the  
10 Commission is aware, the statute, R.S.A.  
11 374:3-b, III requires a number of statutory  
12 criteria be satisfied. It is our opinion, based  
13 on the new information provided by the company,  
14 that the statutory criteria have not been met.  
15 There is not sufficient showing that competitive  
16 services currently exist to the majority of  
17 customers in each of the exchanges served by the  
18 companies.

19 The Commission is also aware that  
20 in its order of April 23rd, 2008, the Commission  
21 noted that the issues that the Commission  
22 addressed were whether competitive services were  
23 available to specific exchanges. And the  
24 Commission did not reach the issue of whether

1 competitive services were available in the 14  
2 exchanges at issue today with the two companies  
3 combined. So the companies are not proving that  
4 competitive services do currently exist, as is  
5 required by the statute, in each of the 14  
6 exchanges. That is an issue still to be decided  
7 by the Commission, which leads to the second  
8 point; and that is, that we would hope that the  
9 Commission would, after the conclusion of the  
10 technical session following today's prehearing  
11 conference, establish a procedural schedule to  
12 provide the opportunity for the parties to do  
13 appropriate and necessary discovery and prepare  
14 their cases in response to the company's  
15 petition for an alternative form of regulation.

16 And the third point is that one of  
17 the major concerns being expressed by our  
18 client, who can't be here today because he's  
19 laid up as a result of injuries, is that the  
20 plan, and even the plan as amended, as referred  
21 by the company, and even as the settlement  
22 agreement has proposed, did not and does not, in  
23 our view, provide adequate protections for the  
24 basic local exchange customers. And that is a

1 key issue in our opinion.

2 The Commission has addressed the  
3 issue of standing, so we will not address that.

4 And finally, just for the  
5 Commission's information, as the Commission is  
6 aware, there is a statute that provides for  
7 consumer compensation pursuant to R.S.A.  
8 365:38-a in appropriate cases, in cases where  
9 the Commission finds that the consumer has a  
10 financial hardship and has provided to the  
11 Commission a position which the Commission has  
12 adopted in whole or in part which is in the  
13 public interest. And we wanted to note that on  
14 behalf of our client, Mr. Bailey, we will be  
15 likely filing a petition for compensation.

16 As the Commission is aware, in the  
17 first phase of the proceeding we had a expert  
18 witness who submitted prefiled testimony,  
19 subject to cross-examination. We believe, based  
20 on our reading of the two orders, that the  
21 Commission did adopt the position of Mr. Bailey,  
22 at least in part, particularly with respect to  
23 interpreting the statute that competitive  
24 alternatives must be currently available. So we

1 believe that Mr. Bailey has contributed  
2 significantly to these proceedings and wants to  
3 continue to be able to participate fully and  
4 contribute further to these proceedings, which  
5 will be difficult for us to do without being  
6 able to continue to retain the services of the  
7 expert witness who provided testimony in the  
8 first phase of the case. So we just merely  
9 wanted to make the Commission aware that such a  
10 motion would be filed in this phase of the  
11 proceeding. Thank you very much.

12 CHAIRMAN GETZ: Thank you.

13 Mr. Kerry.

14 MR. KERRY: Thank you, Mr.  
15 Chairman, Commissioners. Good morning. When  
16 Comcast intervened in this proceeding in  
17 September of 2007, it was for the very limited  
18 purpose of making sure that the record and the  
19 proceeding accurately reflected the services  
20 that Comcast delivered in the TDS territories  
21 and those that it did not deliver. And what the  
22 record reflected is that Comcast has cable  
23 television franchises in the territories of the  
24 Wilton and Kearsage and Merrimack companies, and

1 that pursuant to those franchises, it delivered  
2 video services and high-speed data services, but  
3 did not deliver voice service. That,  
4 Commissioners, is still the case today, eighteen  
5 months later. There's been a lot of paper  
6 filed, a lot of proceedings parallel to this  
7 one, but not much has changed in the competitive  
8 landscape in the TDS territories.

9 Now, if you recall the history  
10 leading up to the April decision, in December,  
11 Comcast Phone filed a CLEC-10 application in the  
12 Merrimack and Wilton and Kearsage territories.  
13 And at that time, Staff and the parties sought  
14 to reopen the record to include the fact of that  
15 filing. When you issued your order in April of  
16 2008, you declined to reopen the record; but it  
17 was in response to that, that the order said  
18 that you would leave the docket open, and that  
19 you would leave it open to consider additional  
20 competitive developments. You also said at that  
21 time that, with respect to Kearsage and  
22 Merrimack, where there were not -- where you  
23 found there were not competitive alternatives to  
24 the TDS services, that you would encourage those

1 companies to reduce market barriers by not  
2 opposing CLEC registrations, waiving the rural  
3 exemption and expediting interconnection  
4 negotiations, as proposed in the settlement  
5 agreement that you approved. Well, since then,  
6 TDS companies, Merrimack and Kearsage, have done  
7 everything but follow the Commission's  
8 suggestion. Instead of opening up the  
9 competition, what they've done is follow a  
10 rear-guard action to increase barriers to entry,  
11 to oppose and to delay CLEC registration, to  
12 resuscitate the state rural exemption, and  
13 ultimately to refuse interconnection. And  
14 instead of the opening to competition, that  
15 alternative regulation is premised on what we've  
16 seen is an effort to set out to delay real  
17 facilities-based competition in residential  
18 voice services in the TDS territories. And it's  
19 ironic to hear Mr. Coolbroth come and complain  
20 that in introducing new services, the TDS  
21 companies have been subject to extensive data  
22 requests, that they have had to expend hundreds  
23 of hours and thousands of dollars to pursue new  
24 entry, and have been subject to multiple

1 statutes, because that is exactly what Comcast  
2 Phone has seen in its effort to roll out new  
3 services in the TDS territories. And what's  
4 more, that effort has come not just from the  
5 Merrimack and the Kearsage companies, but  
6 effectively from the Wilton company, who was a  
7 party to the settlement that made the  
8 undertaking not to oppose CLEC registration and  
9 to waive the rule exemption and expedite  
10 interconnection with CLECs. Wilton is a party  
11 to the pending interconnection arbitration in  
12 Docket DT-08-162 which arises from the refusal  
13 of the TDS companies to provide interconnection  
14 to Comcast Phone on the theory that Comcast  
15 Phone is not a CLEC, even though this Commission  
16 ruled in its August order, in Docket 08-13, that  
17 the services offered by Comcast Phone are  
18 telecommunication services. So the result today  
19 is that 1500 homes within the Wilton territories  
20 served by Comcast do not have competitive voice  
21 services, facilities-based services available to  
22 them. And that is on top of the 20,000 homes  
23 that are in the territories of the Merrimack and  
24 Kearsage companies. Residents in all those

1 territories have been denied a competitive  
2 choice, because what the TDS companies have done  
3 have effectively turned competitive entry into a  
4 desert mirage, in which that entry is the  
5 receding vision and the desert is the TDS  
6 territories. So what we've seen in the history  
7 of these other proceedings is one specious and  
8 repetitive reason after another thrown up as  
9 procedural obstacles to entry.

10 So what we submit to the  
11 Commissioners is that in the course of this  
12 proceeding, as you consider additional  
13 competitive developments pursuant to the  
14 previous order in this docket, that the  
15 Commission should take administrative notice of  
16 dockets in DT-08-13 and 08-162 and DRM-08-126;  
17 that you should also consider whether the Wilton  
18 company is in compliance with the undertakings  
19 in the settlement agreement that the Commission  
20 approved last year; whether the TDS companies as  
21 a group are fulfilling their obligation under  
22 R.S.A. 374:3-b to promote the offering of  
23 innovative services; and whether the Commission  
24 should exercise its power under R.S.A.

1 374:3-b, II(f) to require that the TDS companies  
2 propose modifications of alternative regulation  
3 plan or return to rate-of-return regulation. I  
4 think we are all a lot wiser than in 2007 when  
5 Comcast intervened and when settlement was  
6 negotiated and proposed to this Commission.

7           Commissioners, this is the 21st  
8 Century. I've been involved now -- it's been 25  
9 years since competitive entry was introduced to  
10 telecommunications. And you may recall that in  
11 Massachusetts, where I'm based, was the first  
12 state to introduce intraLATA competition. And I  
13 recall working on what was the first, we now  
14 call them CLECs, but the first CLEC entry in  
15 Massachusetts, my client by the name of Yankee  
16 Microwave. Remember microwave carriers? And  
17 nobody knew the rules then, and it was a lengthy  
18 and a frustrating process as a result. This was  
19 at a time when there were hearings on every  
20 entry, as used to take place in New Hampshire.  
21 I will tell you that in those 20-some years  
22 since, I have never seen an entry process such  
23 as Comcast Phone has faced here. This is the  
24 21st Century. The TDS telephone companies want

1 to be regulated like a 21st Century telephone  
2 carrier, but they don't want 21st Century  
3 competition. So they should not be able to have  
4 it both ways. And this proceeding going forward  
5 is going to test whether that's possible. Thank  
6 you.

7 CHAIRMAN GETZ: Thank you.

8 Mr. Katz.

9 MR. KATZ: In the docket's earlier  
10 proceedings, segTEL was a party to a settlement  
11 agreement in which we supported the TDS  
12 alternative form of regulation application in  
13 return for a series of concessions that would  
14 have had the effect of accelerated and  
15 competitive entry of segTEL and other wireline  
16 CLECs into TDS territories. SegTEL believes,  
17 and continues to believe, that the settlement  
18 was in the public good. The settlement  
19 agreement was not approved for the Kearsage and  
20 Merrimack territories. SegTEL has not had an  
21 opportunity to review the additional data that  
22 was submitted by TDS, as most of it was filed  
23 under seal; and as such, we can't comment on the  
24 additional facts that were provided at this

1 time. However, to the extent that the facts  
2 that were submitted can prove that a competitive  
3 landscape has changed, to the extent that TDS  
4 can now satisfy the Commission that the  
5 statutory requirements have been met, segTEL  
6 believes that the settlement agreement should be  
7 approved for Kearsage and Merrimack territory.  
8 SegTEL also thinks that TDS's behavior in  
9 accepting competitive entry may be better  
10 supervised by an AFOR settlement approval with  
11 active regulatory oversight than in the  
12 rejection, as the prior 18 months -- or prior  
13 nearly 12 months after rejection have not seen a  
14 positive improvement in competitive entry, and  
15 we don't believe much public good in the area.  
16 So we continue to support the settlement at this  
17 time. Thank you.

18 CHAIRMAN GETZ: Thank you.

19 Mrs. Hollenberg.

20 MS. HOLLENBERG: Thank you.

21 At this time, the OCA has no  
22 position on the substance of the companies'  
23 filing. And we do concur with the thoughts  
24 expressed by Mr. Linder this morning about the

1 need for a process to analyze the new testimony  
2 and information filed by the company. And we  
3 expect that we will do this at the technical  
4 session following the prehearing conference and  
5 that we will be able to work together to  
6 recommend a process to the Commission.

7 One issue that I would like to  
8 raise, which Mr. Katz just mentioned also, is  
9 one that's mentioned specifically in the  
10 Commission's order scheduling today's hearing,  
11 and that issue is whether the terms of the  
12 earlier settlement should apply to Merrimack  
13 Telephone and Kearsage Telephone Company. And  
14 the comments that I'm hearing from several  
15 people this morning sound to me as though the  
16 parties are operating as though the amended  
17 settlement agreement is still before the  
18 Commission. And I would suggest that the  
19 Commission's order basically denied the  
20 settlement agreement. It specifically states  
21 with regard to Merrimack and Kearsage on Page 32  
22 of the slip opinion, the PUC further ordered  
23 that the amended alternative regulation plans  
24 for Merrimack and Kearsage are denied. So I

1 question the suggestions this morning that the  
2 settlement agreement, or the plans as amended by  
3 the settlement agreement, are still before the  
4 Commission, at least in terms of the OCA's  
5 support of those. Although I'm not stating a  
6 definitive position on that, that is a question  
7 that I have, and we will be discussing that with  
8 the parties. But I didn't want to leave the  
9 Commission with the impression that we are  
10 still -- we still consider the amended  
11 settlement -- or the settlement agreement and  
12 the amended plans as live and before the  
13 Commission for its approval.

14 If I could just have a moment,  
15 please?

16 (Pause in proceedings)

17 MS. HOLLENBERG: Just one further  
18 point that we would like to mention. We do hear  
19 and have observed over the last year the  
20 activities at the Commission with regard to the  
21 entry of competitive alternatives, and we do  
22 share some of the concerns that were expressed  
23 this morning by the CLECs, in terms of the  
24 expansion of competitive alternatives within the

1 areas that TDS serves. Thank you.

2 CHAIRMAN GETZ: Thank you.

3 Mr. Hunt.

4 MR. HUNT: Thank you. From what  
5 I've heard today, it's not a hundred-percent  
6 clear to me as Staff attorney what the scope of  
7 this proceeding is. But I came here  
8 understanding that we had new testimony  
9 submitted by TDS, along with some exhibits,  
10 confidentially. But that's the basis of the  
11 pleading. So my understanding of today's  
12 prehearing conference and technical session is  
13 that we are just discussing our preliminary  
14 positions and scheduling for the purposes of  
15 dealing with that material. Now I'm hearing  
16 that there is a wide array of other issues that  
17 may be discussed and folks -- parties may want  
18 to try to schedule for. So it might be helpful  
19 if the Commission address that prior to us going  
20 into a technical session.

21 As far as Staff's position on the  
22 new material, the new testimony and the new  
23 exhibits, Staff's position is simply that in  
24 order to come to a conclusion as to whether or

1 not R.S.A. 374:3-b is satisfied by that  
2 material, we need to do discovery and further  
3 analysis. And that was the intent that we had  
4 going forward with the technical session. Thank  
5 you.

6 CHAIRMAN GETZ: Thank you.

7 Questions? Any questions?

8 Well, first, let me give the  
9 applicant opportunity to respond to any of the  
10 statements that have been made by the other  
11 parties.

12 MR. COOLBROTH: Thank you, Mr.  
13 Chairman.

14 First of all, with respect to  
15 Wilton Telephone Company, that company is not in  
16 any manner in breach of its settlement  
17 agreement. In the arbitration case, the  
18 question of whether Comcast Phone of New  
19 Hampshire is a telecommunications carrier able  
20 to enter into interconnection, the earlier  
21 Commission order reached out and made a  
22 determination in the CLEC registration case.  
23 The Commission's order went beyond the scope of  
24 that case and made findings about obligations

1 for interconnection that affected the  
2 arbitration case. And to preserve Wilton's  
3 rights in the arbitration case, Wilton  
4 participated in that motion for rehearing.  
5 Wilton did not contest the CLEC registration of  
6 Comcast Phone. We were careful about that. We  
7 believe we're fully in compliance with that  
8 settlement agreement.

9 Comcast can call TDS's actions  
10 specious and repetitive, I guess. But they  
11 can't get around the fact that they have  
12 organized a retail telecommunications provider  
13 in a way that evades New Hampshire Commission  
14 regulation, and they formed a company that they  
15 do want to have regulated that doesn't provide  
16 any utility service. And we continue to stand  
17 by those positions, that they simply haven't  
18 played by the rules. There is a fundamental  
19 regulatory imbalance in New Hampshire with a  
20 totally deregulated wireless business and a  
21 totally deregulated Comcast business. And these  
22 companies are going to continue to contest that  
23 structure. It doesn't enable them -- they fully  
24 agree that this should be 21st Century

1 telecommunications. And we've got somewhere  
2 turn of the 19th to 20th Century regulation for  
3 these companies. We want to change that. And  
4 we think that that fundamental change needs to  
5 be addressed.

6 CHAIRMAN GETZ: Thank you.

7 Let me basically address the scope  
8 issue. And I think Mr. Hunt makes a good  
9 position. The order setting this prehearing  
10 conference was clearly set to consider whether  
11 TDS has in its testimony presented a case on  
12 whether the alternative regulation should be  
13 extended to the Kearsage and to Merrimack  
14 service territories. And what I've heard today  
15 is -- I believe certainly from Mr. Kerry -- is  
16 that Comcast wants to look into the issue of --  
17 or wants us to look into the issue of whether  
18 TDS is in compliance in Wilton and Hollis. Is  
19 that -- and basically examine that as part of  
20 this inquiry. Is that your position, Mr. Kerry?

21 MR. KERRY: I think that's a fair  
22 statement, Mr. Chairman. We believe that that's  
23 within the scope of the issue of future  
24 competitive developments that was part of the

1 purpose for which the Commission left the docket  
2 open.

3 CHAIRMAN GETZ: Well, it seems to  
4 me there's like a couple different things that  
5 can go on in this respect. If you're arguing  
6 they're not in compliance with the existing two  
7 approvals, whether we should do something about  
8 that, or whether somehow that's evidence why  
9 they shouldn't get approval for Kearsage and  
10 Merrimack -- and I suspect that there is not  
11 going to be agreement on how -- among the  
12 parties with respect to that issue.

13 In terms of trying to give some  
14 guidance to the technical session that would  
15 follow this, I would suggest that for purposes  
16 of the technical session that the parties  
17 develop a procedural schedule to deal with the  
18 testimony filed on behalf of TDS, whether they  
19 meet the requirements of the statute on  
20 competitive alternatives as it applies to  
21 Kearsage and Merrimack. And I guess, to the --  
22 and to limit it to that. But I would like to  
23 see something in writing from the parties on how  
24 we would deal with other issues, and then we'll

1 determine, based on those papers, whether --  
2 whether the scope of this proceeding should be  
3 expanded and whether -- or what is the scope of  
4 the rebuttal that's fair to be introduced, and  
5 to whether approval should be given to Kearsage  
6 and Merrimack. I think that's the best we can  
7 do on the -- at the moment. We want to try to  
8 make some progress with this and to look at the  
9 facts as proposed by TDS and see where we are at  
10 least in the state of competitive alternatives.

11 Are there any thoughts with respect  
12 to that proposal?

13 MS. HOLLENBERG: I guess if I could  
14 just have clarification. I understand your  
15 direction to be that we develop a schedule to  
16 process the filing that was made by TDS and that  
17 you mentioned seeing something in writing on  
18 whether or not the scope should be expanded.  
19 And you're looking for feedback on what type of  
20 writing that would be? Is that --

21 CHAIRMAN GETZ: Well, to the extent  
22 the parties just want to file something within a  
23 week on why we should -- I just want further  
24 development on these arguments, why we should or

1 should not expand the scope and what that  
2 precisely would entail. But I want to make  
3 progress on the underlying proposal.

4 MR. COOLBROTH: Mr. Chairman, I  
5 would just not want to have dockets run  
6 together. We have separate proceedings that  
7 should remain separate, it seems to me. And if  
8 Comcast has a complaint, there are complaint  
9 statutes under which Comcast could bring an  
10 action, and I don't think it's appropriate here.

11 CHAIRMAN GETZ: Well, I'd like to  
12 just see those arguments developed. But I also  
13 want to make progress on the underlying proposal  
14 by TDS which is in compliance with the April  
15 order.

16 Mr. Linder.

17 MR. LINDER: Mr. Chairman, I don't  
18 know if the Commission wants to address this or  
19 if the Commission wants to direct the parties to  
20 discuss this issue of the status of the  
21 settlement agreement in Phase 1. Just raising  
22 that as an item that the Commission may want to  
23 address at some point.

24 CHAIRMAN GETZ: Well, I guess that

1 would be helpful to express. I assume out of  
2 the technical session there's going to be a  
3 report. Again, that's not an issue that had  
4 occurred to me walking into the room this  
5 morning. So if there is further development of  
6 that, that would be helpful. Again, I'm not  
7 sure that that's an issue which there's going to  
8 be agreement. So, further explication on that  
9 would be helpful in the report of the technical  
10 session.

11 (Discussion between Commissioner  
12 Below and the Chairman.)

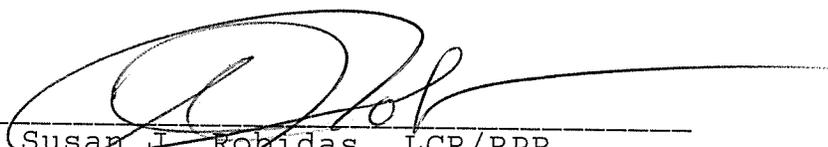
13 CHAIRMAN GETZ: All right.  
14 Anything else to address this morning? Hearing  
15 nothing, then we'll close the prehearing  
16 conference and wait for the filings of the  
17 parties. Thank you, everyone.

18  
19 (Hearing concluded at 11:00 a.m.)  
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## 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 the foregoing proceedings, taken  
8 at the place and on the date hereinbefore  
9 set forth, to the best of my skill and  
10 ability under the conditions present at the  
11 time.

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

20  
21   
22 Susan J. Robidas, LCR/RPR  
23 N.H. LCR No. 44 (RSA 310-A:173)  
24