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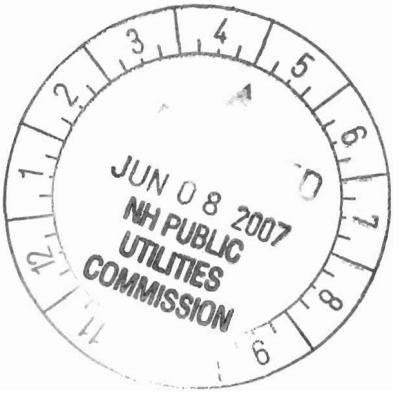

June 8, 2007

VIA HAND DELIVERY

Ms. Debra A. Howland, Executive Director and Secretary
NH Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, NH 03301-2429

Re: DT 07-027, TDS Telecommunications Corporation-Request for Alternative Form of Regulation

Dear Ms. Howland:

Enclosed please find an original and eight copies of segTEL's brief for filing in the above-captioned docket.

Please do not hesitate to contact me if you have any questions. Thank you for your attention to this matter.

Very truly yours,

Susan S. Geiger

Enclosures
cc: Service List
442930_1.DOC

THE 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

INITIAL BRIEF OF segTEL, INC.

I. INTRODUCTION AND BACKGROUND

NOW COMES segTEL, Inc. ("segTEL"), by and through its undersigned attorneys, and submits this initial brief to the New Hampshire Public Utilities Commission ("Commission") pursuant to an agreement between parties to the above-captioned docket and Commission Staff ("Staff") reached at the technical session held May 4, 2007. Said agreement is reflected in a letter dated May 7, 2007 to the Commission from Staff Attorney F. Anne Ross and provides an opportunity for briefing issues involving the interpretation of statutory language contained in NH RSA 374:3-b with a view toward the Commission's determination of how the above-referenced statute will be applied to the plan for an alternative form of regulation ("AFOR") filed by Kearsarge, Wilton, Hollis and Merrimack County Telephone Companies (collectively "the TDS companies") in this docket.

II. QUESTIONS PRESENTED

Without waiving its right to brief additional issues in its reply brief if necessary, segTEL has identified the following questions for briefing: 1) whether the definition of "small incumbent local exchange carrier" contained in RSA 374:3-b, I. permits each TDS subsidiary to severally qualify for AFOR because each has less than 25,000 access lines or whether, because all four companies are owned by the same parent, their access lines should be considered together, thereby disqualifying the TDS companies from an AFOR under this statute because, on a combined basis, the access line threshold in RSA 374:3-b, I is exceeded; 2) does the proper interpretation of the RSA 374:3-b, III (a) as to the availability of "competitive wireline, wireless or broadband" permit an ILEC to retain its rural exemption under the Telecommunications Act of 1996; 3) does an AFOR plan promote the offering of innovative services in the state within the meaning of RSA 374:3-b, III (c) if it maintains the ILEC's rural exemption under federal law; and 4) what are the "intercarrier service obligations" that an ILEC must meet under RSA 374:3-b, III (d) in order to qualify for an AFOR.

By secretarial letter dated May 29, 2007, the Commission requested that the parties brief "at least" the following issues, both of which relate to the proper interpretation of RSA 374:3-b, III (a): 1) does a service provided by an affiliate of the incumbent local exchange carrier ("ILEC") qualify as a competitive service for purposes of the statute; and 2) does long distance service qualify as a competitive wireline service for purposes of the statute?

III. DISCUSSION

A. TDS Does Not Meet The Definition of "Small Incumbent Local Exchange Carrier" Under RSA 374:3-b.

The alternative form of regulation ("AFOR") provisions contained in RSA 374:3-b apply only to a "small incumbent local exchange carrier" ("ILEC"). *See* RSA 374-3-b, II. That term is defined as "an incumbent local exchange carrier serving fewer than 25,000 access lines." RSA 374:3-b, I. In this case, the four subsidiaries of TDS Telecommunications Corporation ("TDS Telecom") which operate in New Hampshire have petitioned separately under RSA 374:3-b for an AFOR. Each subsidiary has alleged that it serves fewer than 25,000 access lines. However, on a combined basis, the four TDS Telecom companies serve approximately 33,600 access lines. *See* Secretarial Letter of Debra A. Howland, DT 07-027 (May 29, 2007), p. 2. Therefore, as a threshold matter, the Commission must determine whether each of the TDS subsidiaries qualify separately for consideration of an AFOR petition under 374:3-b (because each meets the statutory definition of small ILEC), or whether, because all four companies are owned by the same parent, all of the New Hampshire access lines of TDS Telecom should be counted for purposes of determining whether the AFOR request is being made by a "small" ILEC within the meaning of the statute.

Allowing each TDS Telecom company to qualify under RSA 374-b for an AFOR simply because each subsidiary serves fewer than 25,000 access lines is inappropriate. Although TDS claims that each of its subsidiary companies should be considered separately for purposes of determining whether the provisions of RSA 374:3-b, I. have

been satisfied, the facts and circumstances surrounding this case as well as the language of the statute itself undermine that claim.

First, all four TDS companies are owned by the same parent. They have filed virtually identical and simultaneous AFOR petitions seeking approval of the same AFOR plan. The TDS companies have proffered the same prefiled testimony in support of each petition. Thus, there is essentially one filing in this case, even though it has been made on behalf of four companies. In these circumstances, a separate consideration of each TDS company's access lines simply to enable each to qualify for the same AFOR under RSA 374:3-b elevates form over substance and therefore should not be allowed. The policy considerations underlying this conclusion are obvious: a contrary interpretation would enable a "large" incumbent local exchange carrier to reorganize into smaller subsidiaries serving less than 25,000 access lines, thereby enabling each to qualify for the same AFOR plan just as the TDS companies are attempting to do in this case. For example, FairPoint Communications could propose to purchase the Verizon-NH business in each exchange separately and then apply for AFOR status using the interpretation of the statute that TDS is asking the Commission to entertain here. Such an absurd result would clearly be contrary to the legislature's intent to provide different AFOR petitioning processes for large and small ILECs. *Compare* RSA 374:3-a. with RSA 374:3-b.

It is clear that TDS owns and is operating all four companies in a similar and integrated fashion.[1] Accordingly, considering each company's access lines separately

[1] The New Hampshire Secretary of State website shows independent filings for the subsidiary companies but all of them list their officers and directors being in the Midwest and there are substantially the same addresses for all of them. In addition, the tradenames TDS Telecom/Chichester Telephone, TDS

simply for AFOR filing purposes would require that the Commission put blinders on and ignore the fact that there is a single entity behind those access lines. Such an approach ignores reality and therefore should be rejected.

Second, the TDS companies are part of a large telecommunications corporation that is not "small" by any definition. TDS consists of two primary business units: U.S. Cellular and TDS Telecom which provide wireless, local telephone and broadband services.[2] **US Cellular is the sixth largest wireless provider in the United States.**[3] TDS employs approximately 11,500 people and serves more than 6 million customers in 36 states.[4] In 2005 TDS Telecom achieved consolidated revenues of $906 million, with ILEC revenues of $670 million and CLEC revenues of $241 million[5]. Compare this to, for instance, Verizon New England which serves 1.5 million access lines in Vermont, New Hampshire and Maine[6], or to FairPoint Communications, Inc., which is expected to earn over $260 million in 2007[7] and which, as of September, 2006, had approximately 2 million access lines.[8]

Lastly, it is important to consider that the precise language contained in the statutory definition of small ILEC relates not to "companies" but rather to "carriers". Thus, even though each TDS subsidiary may be a separate company, the legislature chose

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Telecom/Kearsarge Telephone, TDS Telcom/ Hollis and TDS Telecom/Merrimack County Telephone are registered with the New Hampshire Secretary of State.

[2] Source: http://ir.telda.com/phoenix.zhtml?c+67422&p+irol-irhome.

[3] Source:http://finance.abc7chicago.com/abc?Account=wls&GUID=2003293&Page=MediaViewer&Ticker=TDS.

[4] Souce: http://ir.telda.com/phoenix.zhtml?c+67422&p+irol-irhome.

[5] Source: http://ir.teldta.com/phoenix.zhtml?c=67422&p=irol-reports (2006 Proxy/Exhibit 13 to 2005 Form 10-K.

[6] Source: http://www.newscenter.verizon.com/press-releases/verizon/2007/verizon-and- fairpoint-agree.html.

[7] Source: http://www.fairpoint.com/merger_press_release2.html.

[8] *Id.*

the words "small" and "carrier" when it defined the entity that is entitled to petition for an AFOR under RSA 374:3-b.

Given that TDS actually owns the lines that are at issue in this inquiry, it is appropriate for the Commission to determine that TDS is the "carrier" within the meaning of RSA 374:3-b, I. Therefore, because TDS's New Hampshire access lines exceed 25,000 lines, it does not qualify for an AFOR under RSA 374:3-b. However, notwithstanding such disqualification, TDS is not barred altogether from petitioning the Commission for an AFOR. TDS may petition the Commission for an AFOR under RSA 374:3-a and the Commission's rules promulgated thereunder.

B. Proper Interpretation of RSA 374:3-b, III (a).

1. A service provided by an affiliate of the incumbent local exchange carrier ("ILEC") does not qualify as a "competitive" service for purposes of the statute.

As a prerequisite for approving an AFOR plan, the Commission must find, among other things, that "[c]ompetitive wireline, wireless or broadband service is available to a majority of the retail customers in each of the exchanges served" by the small ILEC petitioner. RSA 374:3-b, III (a). The term "competitive" is not defined in RSA 374:3-b. Therefore, under well-established principles of statutory construction, the Commission must "...first examine the language found in the statute and ascribe the plain and ordinary meanings to the words used." *City of Rochester v. Corpening*, 153 N.H. 571, 573 (2006) *citing Carignan v. N.H. Int'l Speedway*, 151 N.H. 409, 419 (2004).

One of the definitions of the word "competitive" contained in Webster's Third New International Dictionary (unabridged) © 1986 is: "produced by, based on, resulting

from, or capable of existing in **rivalry of economic endeavor and without the presence of monopoly or collusion** (a ~ market)..."(emphasis added). The Commission has determined that a "competitive market structure is one in which customers, at their discretion, can choose to buy from many **different** suppliers and change suppliers with relative ease." *Re Statewide Electric Utility Restructuring Plan,* DR 96-150, Order No. 22, 514, 82 N.H. PUC 122, 148 (Feb. 28, 1997) (emphasis added).

From the foregoing plain and ordinary meanings of the word "competitive" (as it relates to economic endeavors such as utility services), it is clear that a service offering made by a TDS affiliate within the TDS service territories does not meet the criteria of RSA 374:3-b, III (a). First and foremost, the Commission has determined that competitive services are those offered by many **different** suppliers. *Id.* In this case, to the extent that another TDS company provides wireline, wireless or broadband service to the petitioners' customers, those services do not qualify as "competitive services" within the meaning of the statute because they are being provided by the same supplier, *i.e.,* TDS. In addition, because the petitioners and their affiliates are owned and controlled by the same parent, it is impossible to conclude (without more information) that any rivalry for customers between the "competitors" exists free of collusion or cross subsidization as the dictionary definition of "competitive" requires.

In view of the foregoing, the Commission should determine that services offered by TDS affiliates are not "competitive" services within the meaning of RSA 374:3-b, III (a). Therefore, when examining whether the criteria of that statute have been met, the Commission should consider only those wireline, wireless and broadband services offered by entities that are totally unrelated to the TDS Telecom companies.

2. Long distance service does not qualify as a "competitive wireline service" for purposes of the statute.

When read in isolation, the words "competitive wireline service" could be construed to include long distance service provided by a wireline company unrelated to TDS. However, because statutory language must be interpreted in the context of the overall statutory scheme and not in isolation, *see City of Rochester v. Corpening,* 153 N.H. 409, 419 (2004), it is not reasonable to conclude that "competitive wireline service" includes long distance service for purposes of RSA 374:3-b, III (a). A review of the overall scheme of the AFOR statute reveals that it enables "small incumbent **local exchange carriers subject to rate of return regulation**", RSA 374:3-b, II. (emphasis added), to request an AFOR if they can demonstrate that they are facing competition in sufficient amount to warrant a more relaxed regulatory process than that which has traditionally applied to monopolies. It therefore follows that such carriers are able to seek an AFOR if they can demonstrate that they face competition for those services which they had been providing as a regulated monopolist, *i.e.*, local exchange services provided under rate of return regulation. Because neither intra-LATA nor inter-LATA long distance service rates are regulated by this Commission (due to the fact that long distance service has already been found to be fully competitive), those wireline services provided by competitors of the TDS companies should not be considered when evaluating whether the AFOR petitions meet the criteria of RSA 374:3-b, III (a). While both of those services have been provided on a competitive basis in New Hampshire for

several years[9], they are clearly different services from local exchange service and therefore are not in competition with it.

The Commission has determined that a competitive market is characterized by the existence of a large number of buyers and sellers of a "homogeneous product". *Re Statewide Electric Utility Restructuring Plan, supra* at 149. Since local exchange and long distance services are not homogenous products, the markets in which they are offered are different and therefore cannot be viewed as competitive with one another as the Commission has described above. Accordingly, long distance service does not qualify as a competitive wireline service for purposes of determining whether a small incumbent local exchange carrier faces competition within the framework established by RSA 374:3-b:III (a).

Furthermore, while the terms "competitive" and "service" as used in the statute contemplate allowing a small ILEC facing intermodal competition to qualify for an AFOR, a more careful examination of the type of intermodal competition which a small ILEC faces should be made. A more reasonable reading of RSA 374:3-b, III (a) requires that it is not the mere existence of broadband or wireless service from an unaffiliated entity that enables a small ILEC to qualify for an AFOR. Rather, it is the existence of broadband or wireless service that is a suitable substitute for traditional wireline services which enables such qualification. A claim that an alternate form of service is a suitable substitute must be tested for validity. segTEL submits as a threshold issue that unaffiliated broadband or wireless services can only begin to be considered a competitive alternative for AFOR purposes if they provide the basic services that

[9] During the period of July 1, 2003 to June 30, 2005, 431 toll providers were registered to operate in New Hampshire, with over 150 of them having provided some form of long distance service during that time. *New Hampshire Public Utilities Commission, Biennial Report, July 1, 2003 – June 30, 2005*, p. 14.

customers expect to see from their traditional wireline service – namely local number portability both to and from the ILEC, E-911 compliance and directory listings. If residential and commercial end users within these service territories are unable to obtain even these most basic of functions from the competitive telecommunications marketplace, TDS will have failed its obligation of proving a competitive business landscape within its territories.

3. Preservation of a small ILEC's "rural exemption" under 47 U.S.C.A. § 251(f) is inconsistent with a finding that competitive wireline, wireless, or broad band service is "available" within the meaning of RSA 374:3-b, III (a).

The Telecommunications Act of 1996 obligates all telecommunications carriers to interconnect directly or indirectly with the systems of other carriers. *See* 47 U.S.C.A. § 251(a). However, rural telephone companies such as the TDS companies are exempt from additional interconnection obligations set forth in § 251(c) (e.g. unbundling, resale and collocation) unless the company has "received a bona fide request for interconnection, service, or network elements" and a State commission has determined that such request "is not unduly economically burdensome, is technically feasible, and is consistent with section 254" (regarding universal service). 47 U.S.C.A. § 251(f)(1)(A). Thus, a New Hampshire competitive local exchange carrier (CLEC) poised to enter the service territory of a rural telephone company cannot do so without first approaching the company with a bona fide request (for interconnection, services or network elements) and receiving the approval of this Commission under 47 U.S.C.A. § 251(f)(1)(B) which, by the terms of that statute, can take up to 120 days.

Section 3.6 of the AFOR plan filed by the TDS companies in this case indicates that they intend to maintain their rights to a "rural exemption" under 47 U.S.C.A. § 251(f)(1). At the same time, the companies' petitions, at paragraph 15, argue that approval of the plan will help them "to meet the competitive demands of the marketplace". segTEL respectfully submits that a rural carrier should not be able to claim it faces competition sufficient to enable it to avoid traditional regulation while at the same time retaining the rural exemption which has the effect of slowing down the entry of wireline competitors into rural ILECs' franchise areas by requiring those competitors to submit to the regulatory process outlined in section 251(f)(1)(B). The Commission has determined that "an ILEC fully ready to embrace and encourage competition would waive the exemption." *Kearsarge Telephone Company Petition for Approval of Alternative Form of Regulation*, DT 01-221, Order No. 24,281 (Feb. 20, 2004), p.69. In so finding, the Commission stated that "the perpetuation of the rural exemption under federal law would remain a significant disincentive (although not an insurmountable barrier) to competitive entry." *Id.*

At the present time, the TDS companies face no competition for their local exchange services from facilities-based, wireline CLECs. *See Direct Testimony of Michael C. Reed On Behalf of Merrimack County Telephone Company, Kearsarge Telephone Company, Wilton Telephone Company, Inc. and Hollis Telephone Company,* Attachment E. Although the absence of such competition does not, in and of itself, preclude the Commission from determining that the criteria of RSA 374:3-b, III (a) have

been met[10], such a finding, when coupled with a determination by the Commission that would allow the TDS companies to retain their rural exemption, would have the undesirable result of giving the TDS companies the same regulatory status as a CLEC (which they are explicitly seeking) [11] while at the same time exempting them from any competition (for wireline basic exchange service) from other CLECs. Such a decision would be inconsistent with principles of fairness and sound public policy and would be contrary to 47 U.S.C.A. §253 which prohibits a State from imposing a requirement that "may prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service."

The United States Court of Appeals for the First Circuit has recognized that "[i]t is well-established that §253 (a) 'authorizes preemption of state and local laws and regulations expressly or effectively prohibiting the ability of any entity to provide telecommunications services.'" *Puerto Rico Telephone Company, Inc. v. Municipality of Guayanilla et al.*, 450 F. 3d 9, 16 (1st Cir. 2006) quoting *Nixon v. Mo. Mun. League*, 541 U.S. 125, 128 (2004). Such preemption also expressly exists with respect to "...'other requirements that prohibit or have the effect of prohibiting **market entry**.'" *Id.* quoting *N.J. Payphone Ass'n* 299 F. 3d at 242 (emphasis added). "Courts have also noted that 'a prohibition does not need to be complete or 'insurmountable' to run afoul of §253 (a).'" *Puerto Rico Telephone Company, Inc. v. Municipality of Guayanilla et al., supra* at 18

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[10] The services listed in RSA 374:3-b, III (a) are stated in the disjunctive. However, for the reasons discussed above in section II. B. 2, the Commission must look at whether the alternate services are suitable substitutes for TDS's basic wireline services.

[11] The Direct Testimony of Timothy W. Ulrich submitted in support of the AFOR petitions in this docket indicates that one of the goals of the AFOR plan is to apply to the TDS companies the same state regulatory requirements that apply to CLECS. *See Direct Testimony of Timothy W. Ulrich*, p.5, lines 19-21.

quoting *TCG N.Y., Inc. v. City of White Plains*, 305 F. 3d 67, 76 (2d Cir. 2002) (citations omitted).

While the AFOR statute as written may comply with §253, a Commission ruling that authorizes an AFOR while simultaneously preserving the incumbent's rural exemption is very likely to run afoul of §253. Specifically, the incumbent will be granted regulatory relief while it continues to bar CLEC entrants into its market. Although such a barrier to entry may or may not be "insurmountable", it is a substantial barrier nonetheless and therefore the Commission is likely preempted by §253(a) from allowing TDS to game the system by retaining this barrier at the very time it is seeking to be regulated as a competitive carrier.

The Telecommunications Act of 1996 was enacted by Congress "in an attempt to maintain 'the balance...necessary to effectuate its intent to enhance competition and eliminate local monopolies while leaving room for reasonable regulation of issues of particular state concern.'" *Puerto Rico Telephone Company, Inc. v. Municipality of Guayanilla et al.*, *supra* at 23 quoting *N.J. Payphone Ass'n*, 299 F. 3d at 245. Allowing TDS to proceed under an AFOR with a rural exemption will neither enhance competition nor eliminate its status as a monopoly wireline local exchange carrier. Thus, the TDS AFOR request is clearly inconsistent with the above-stated Congressional intent and therefore should not be approved in its present form (*i.e.,* with a rural exemption).

Lastly, because the TDS companies are essentially asking the Commission to treat them as CLECs, the Commission should interpret the provisions of RSA 374:3-b, III (a) in such a way as to find that an assertion by a small ILEC that it meets those statutory provisions (and therefore should be regulated as a CLEC) is commensurate with a waiver

of its rural exemption under federal law. In the alternative, the Commission should require, as a condition of approving any AFOR plan that calls for an ILEC to be regulated as a New Hampshire CLEC, that such ILEC voluntarily and permanently waive its rural exemption under federal law.

C. A Plan Which Retains the Rural Exemption Under Federal Law Does Not Promote The Offering of Innovative Telecommunications Services In the State.

RSA 374:3-b, III (c) provides that an AFOR plan must promote "the offering of innovative telecommunications services in the state...". Section 5.1 of the AFOR plan submitted by the TDS companies in this docket states that "[t]he Company commits to maintaining a network that will enable the offering of state-of-the-art, innovative services to its customers by the Company, its wholesale providers, **and others.**" Alternative Regulation Plans, p. 4 (emphasis added).

Maintaining the rural exemption under federal law is totally inconsistent with "promoting the offering of telecommunications services" by other CLECs in this state. If an AFOR with a rural exemption is approved in this case, CLECs will not be able to offer local exchange services (innovative or otherwise) in the TDS areas unless they expend the financial and other resources necessary to initiate the regulatory process established in 47 U.S.C.A. §251(f)(1)(B), which could take several months with no guarantee of success. This would allow the TDS companies to immediately raise their rates to those charged by Verizon for basic exchange service and leave their customers with no competitive alternative to TDS's monopoly wireline basic exchange service.

In addition, in the absence of local exchange competition from any alternative wireline CLEC, there will be no incentive for the TDS companies to develop any

innovative basic exchange services or products. Accordingly, if at the outset of the implementation of an AFOR, an ILEC faces no actual competition from a CLEC for basic exchange service and continues to be protected from competition by the rural exemption, the Commission should find those circumstances prevent an ILEC from meeting the requirements of RSA 374:3-b, III (c) because the plan will not promote the offering of innovative telecommunications services in the state.

D. "Intercarrier Service Obligations" Within the Meaning of RSA 374:3-b, III (d) Include, *Inter Alia*, Obligations to Provide CLECs With Interconnection, Services and Unbundled Network Elements Pursuant to Commission Rules.

One of the criteria which must be met by an AFOR plan in order for it to qualify for Commission approval is that the plan must "meet intercarrier service obligations under other applicable laws". RSA 374:3, III (d). Such obligations are not defined or otherwise described by the above-cited statute. Nor does the TDS AFOR plan enumerate what TDS will do to meet its intercarrier service obligations; it simply states that "[t]he Company shall meet its intercarrier obligations under other applicable laws, including without limitation, the federal Telecommunications Act of 1996 and applicable successor legislation." AFOR Plan, paragraph 3.4, p. 2.

In addition to intercarrier service obligations set forth in the Telecommunications Act of 1996 (which will not be repeated here), Commission rules establish certain intercarrier service obligations for incumbent local exchange carriers. *See, e.g.,* Admin. Rules Puc 418, 419, 420 and 421. Because Commission rules have the force and effect of law, *see* RSA 541-A:22, II., the rules relating to intercarrier service obligations should

be considered by the Commission in making its determination of whether an AFOR plan meets the requirements of RSA 374:3-b, III (d).

In the instant docket, the TDS AFOR plan lists in Appendix 1 all of the Commission rules that will apply to TDS and states that "[a]ll other rules that would otherwise apply to the Company are waived by the Commission." AFOR Plan, section 3.1.1., p. 2. Among the applicable rules that TDS lists are those rules that relate to ILEC resale, unbundling and interconnection obligations. *See* AFOR Plan, Appendix 1, p. 2. However, those rules, by their terms, apply to a "non-exempt ILEC" which is defined by Admin. Rule Puc 402.33 as an ILEC that is not exempt pursuant to 47 U.S.C. §251 (f) (the so-called "rural exemption" discussed, *supra*). Thus, while the AFOR plan in this case states that rules which ordinarily apply to non-exempt ILECs will be applicable to TDS under the AFOR, TDS has also incongruously indicated that it will retain its rural exemption under federal law. In light of this, the Commission at the very least should require TDS to specifically identify the intercarrier obligations it believes the AFOR plan meets.

Furthermore, for purposes of interpreting "intercarrier service obligations" under RSA 374:3-b, III.(d), the Commission should determine that those obligations encompass all of the intercarrier service obligations which the Commission has established in its rules, including those relating to "non-exempt ILECs". Such a result is consistent with the overall statutory scheme of RSA 374:3-b which permits a small ILEC to be relieved of many of its regulatory obligations to the Commission in exchange for a commitment that it will meet certain service and other obligations to its customers – both wholesale and retail. Resale, interconnection and access to unbundled network elements are

properly part of this *quid pro quo* and should therefore be recognized as some of the intercarrier service obligations that an AFOR plan must meet prior to gaining Commission approval. To determine otherwise would enable an ILEC under an AFOR to pick and choose which regulations apply to it, thereby creating the likely possibility that it would choose those aspects of PUC regulation that protect it from competition while at the same time seeking to be released from regulations that have been in place for decades to protect customers from adverse monopolistic behavior. Again, since the existence of competition is the rationale underlying the need for an AFOR, an ILEC should not be able to engage in anti-competitive behavior by claiming that its intercarrier service obligations do not extend to providing wholesale services to CLECs. Thus, it is appropriate that intercarrier service obligations within the meaning of RSA 374:3-b:III (d) be construed as including all of the service obligations that an ILEC owes to other carriers under federal and state law and regulation.

IV. CONCLUSION

For the reasons discussed in section III. A, above, the Commission should determine as a threshold matter that TDS does not meet the definition of small incumbent local exchange carrier under RSA 374:3-b, I. (because it serves more than 25, 000 access lines) and therefore does not qualify for an AFOR under RSA 374:3-b. If such a determination is made, the Commission need not consider the other issues relating to the proper interpretation of various sections of RSA 374:3-b. However, in the event a contrary decision is made or in the event the Commission believes it is appropriate to decide the additional questions it and others have decided should be briefed, for all of the

reasons set forth above in section III. B, C and D, the Commission should interpret RSA 374:3-b as providing that: a service provided by an affiliate of an ILEC does not qualify as "competitive"; long distance service does not qualify as a competitive wireline service; to be considered "competitive" within the meaning of the statute, wireless and broadband services must be suitable substitutes for wireline basic exchange service; availability of competitive wireline, wireless or broadband service is inconsistent with an ILEC maintaining its rural exemption under federal law; such rural exemption does not promote the offering of innovative telecommunications in the state; and intercarrier service obligations include all obligations owed by ILECs to CLECs under federal and state law, including all Commission rules concerning the same.

Respectfully submitted,

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Susan S. Geiger

June 8, 2007

Certificate of Service

I hereby certify that on this 8th day of June, 2007 a copy of the foregoing brief was sent by electronic mail or first class mail, postage prepaid to the Service List.

Susan S. Geiger

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