

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

**DT 07-027**

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

**MOTION TO COMPEL**

NOW COMES segTEL, Inc. (“segTEL”) and, pursuant to N.H. Admin. Rule Puc 203.09 (i), respectfully moves this honorable Commission to compel the above-referenced petitioners (“TDS”) to provide segTEL with responses to certain data requests to which TDS has objected. In support of this motion, segTEL states as follows:

1. During the first round of discovery in the instant action, Commission Staff (“Staff”) propounded, *inter alia*, the following data requests upon TDS:

1-37: “Reed Testimony, Page 10, line 4. Please explain specifically for each exchange in each of the four company’s service territories, why you believe that ‘significant competition exists at this very moment in each and every exchange, and will increase tomorrow’? Please provide your analysis for each of the exchanges for each of the four companies individually.”

1-66: “Reed Testimony, Attachment A-MCT. In the referenced attachment, the analysis of competition is based on company-wide availability of alternatives. Please provide similar details explicitly for each of the exchanges served by MCT.”

1-67: “Reed Testimony, Attachment B-KTC. In the referenced attachment, the analysis of competition is based on company-wide availability of alternatives. Please provide similar details explicitly for each of the exchanges served by KTC.”

1-70: “Reed Testimony, Attachment C-WTC. Please provide the evidence which you believe demonstrates that a majority of the retail customers served by WTC have competitive alternatives.”

1-72: “Reed Testimony, Attachment D-HTC. Please provide the evidence on an exchange basis which you believe demonstrates that a majority of the retail customers served by HTC have competitive alternatives.”

2. TDS responded to the foregoing data requests as follows:

Staff 1-37: “In order to clearly demonstrate the available competition to the Commission the Petitioners prepared a detailed map of each exchange (see attachments TDS-CONF 0057-0072), as well as a summary of competition for each exchange included in responses Staff 1-66, 1-67, 1-70 and 1-72. On each detailed map the Petitioners (sic) DSL coverage was outlined along with the best estimate of cable coverage. Wherever broadband service is available using DSL, cable modem, or satellite, VoIP service such as Vonage is available. A detailed map outlining the wireless coverage of multiple wireless providers is attached in this response. In addition to this map the Petitioner relied on the individual websites of the wireless providers to verify and provide the detail in responses Staff 1-66, 1-67, 1-70 and 1-72, including coverage maps (see attached example of Verizon Wireless coverage in response Staff 1-73). Examples of advertising by competitors are provided in response Staff 1-38. Combined

these data provide a clear picture of the competition available today and clearly meets the requirements of RSA 374 III a. Clear indications of increasing competition can be found in the ongoing growth and usage of wireless. One wireless company has committed to making service available to all customers in the areas they serve, including the Petitioners' serving area (see response Staff 1-79). **[BEGIN CONFIDENTIAL END CONFIDENTIAL].**”

Staff 1-66: “Please see attached MCT Competitive Analysis-Exchange Level, Attachment TDS CONF 0073 (confidential).”

Staff 1-67: “Please see attached KTC Competitive Analysis-Exchange Level, Attachment TDS-CONF 0074 (confidential).”

Staff 1-70: “Please see attached Wilton Competitive Analysis –Exchange Level, Attachment TDS-CONF 0075 (confidential) and response to STAFF 1-37 for the map.”

Staff 1-72: “Please see the prefiled testimony of Petitioners, the attached Hollis Competitive Analysis-Exchange Level, Attachment TDS-CONF 0076 (confidential) and the response to STAFF 1-37 for the map.”

3. During the second round of discovery in this case, segTEL propounded the following data requests upon TDS:

2-1. Please provide all of the documents, maps and other material referred to as “confidential” in the response provided by Mr. Reed to Staff’s Data Request 1-37.

2-2. Please provide all of the documents, maps and other material referred to as “confidential” in the response provided by Mr. Reed to Staff’s Data Request 1-66.

2-3. Please provide all of the documents, maps and other material referred to as “confidential” in the response provided by Mr. Reed to Staff’s Data Request 1-67.

2-4.1. Please provide all of the documents, maps and other material referred to as “confidential” in the response provided by Mr. Reed to Staff’s Data Request 1-70.

2-4.2. Please provide all of the documents, maps and other material referred to as “confidential” in the response provided by Mr. Reed to Staff’s Data Request 1-72.

4. TDS responded to all of the foregoing segTEL data requests as follows:

“The Petitioners object to this request on the grounds that it is overbroad and unduly burdensome and that it seeks highly confidential and proprietary commercial and strategic information. segTEL is a competitive local exchange carrier. The information sought pertains to the provision of competitive services and includes trade secret information that required significant effort and cost to produce and/or confidential, research or commercial information, including customer, geographic, market and product-specific data.”

5. The undersigned hereby certifies that an effort has been made to resolve this discovery dispute informally as required by N.H. Admin. Rule Puc 203.09 (i) (4). The undersigned counsel contacted TDS’s attorney by electronic mail to determine if TDS would be willing to provide the requested information to segTEL representatives Jeremy Katz and Kath Mullholand and as well as the undersigned counsel under a protective agreement. By electronic mail dated September 27, 2007, Attorney Coolbroth indicated that the Petitioners oppose providing the confidential information to Mr. Katz or Ms. Mullholand. At the technical session in this matter held October 1, 2007, that opposition was renewed, however TDS did permit the undersigned to view the confidential maps referenced in the response to Staff 1-37 during the technical session on the condition that the undersigned execute a protective agreement.

6. It is indisputable that the requested information goes to the very heart of the issue that the Commission must determine as a threshold matter, *i.e.*, whether competitive wireline, wireless, or broadband service is available to a majority of the retail customers in each of the exchanges served by TDS. *See* RSA 374:3-b, III. (a). In fact, TDS concedes this point in its response to Staff 1-37: “Combined these data provide a clear picture of the competition available today and clearly meets the requirements of RSA 374 III a. (sic).”

7. segTEL seeks the requested information that TDS is withholding solely for the purpose of developing and presenting its position in this case on the issue of whether TDS has met its burden of proving that it meets the competitive criteria set forth in RSA 374:3-b, III (a). Because it is likely that the Commission will be relying on this information in making its decision about whether competitive services are available as contemplated by the above-referenced statute, this information should be made available to intervenors such as segTEL. *See North Atlantic Energy Corporation, et al*, DE 02-075, Order No. 23, 986 (June 5, 2002), p.11.

8. TDS’s objections to these data requests are without merit. First, the requests are very straight forward and are not overly broad. Second, because TDS has already produced this information for Staff (and perhaps for others who have signed a protective agreement), it would not be unduly burdensome to provide this information to segTEL. Third, although TDS asserts that segTEL’s status as a competitive local exchange carrier (“CLEC”) prevents it from obtaining information about “the provision of competitive services”, this argument totally ignores the fact that segTEL is not providing competitive telecommunications services in TDS’s service territories, and that this is primarily due to

TDS's so-called "rural exemption" under the federal Telecommunications Act of 1996. Lastly, TDS argues against disclosure because the information includes trade secrets, confidential, research or commercial information that required significant effort and cost to produce. As a regulated utility, such costs are borne by TDS's ratepayers, not its shareholders. Thus, because TDS is assured recovery of those costs, this argument is lacks merit.

9. segTEL respectfully submits that the competitiveness of the New Hampshire telecommunications market will be enhanced by segTEL's participation in this docket and that, in order for its participation to be meaningful, segTEL must have access to the same information that all of the other parties have obtained and which will ultimately be considered by the Commission in connection with its determination of whether competitive services are available as required by RSA 378:3-b, III. (a). Due process requires no less.

WHEREFORE, segTEL respectfully requests that this honorable Commission:

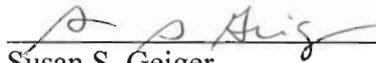
A. Order that TDS provide to segTEL's representatives Jeremy Katz, Kath Mullholand, General Counsel Carolyn Cole and the undersigned counsel, all of the information requested in segTEL's second round of data requests as indicated above subject to the condition that those representatives execute an appropriate protective agreement; and

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

**segTEL, Inc.**  
By Its Attorneys

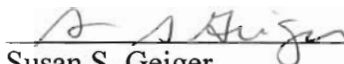
ORR & RENO, P.A.  
One Eagle Square  
Concord, NH 03302-3550  
Telephone: (603) 223-9154  
e-mail: sgeiger@orr-reno.com

  
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Susan S. Geiger

October 4, 2007

Certificate of Service

I hereby certify that on this 4th day of October, 2007 a copy of the foregoing brief was sent by electronic mail or first class mail, postage prepaid to the Service List.

  
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Susan S. Geiger

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