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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

May 4, 2007 - 11:09 a.m.
Concord, New Hampshire

RE: DT 07-027
KEARSARGE TELEPHONE CO., WILTON TELEPHONE
CO., HOLLIS TELEPHONE CO., AND MERRIMACK
COUNTY TELEPHONE CO.: Petitions for
Alternative Regulation Pursuant to
RSA 374:3-b.
(Prehearing conference)

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

Lynn Fabrizio, Clerk

APPEARANCES: Reptg. Kearsarge Telephone, Wilton Telephone,
Hollis Telephone & Merrimack County
Telephone:
Frederick J. Coolbroth, Esq. (Devine...)

Reptg. Union Telephone Company d/b/a
Union Communications:
Linda S. Lockhart, Esq. (Preti, Flaherty)

Reptg. segTEL, Inc.:
Susan S. Geiger, Esq. (Orr & Reno)

Reptg. Granite State Telephone:
Paul J. Phillips, Esq. (Primmer, Piper...)

COURT REPORTER: Steven E. Patnaude, CCR

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APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:
Rorie E. P. Hollenberg, Esq.
Office of Consumer Advocate

Reptg. PUC Staff:
F. Anne Ross, Esq.

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1 P R O C E E D I N G S

2 CHAIRMAN GETZ: Good morning. We'll
3 open the prehearing conference in docket DT 07-027. On
4 March 1, 2007, Kearsarge Telephone, Wilton Telephone,
5 Hollis Telephone, and Merrimack County Telephone,
6 subsidiaries of TDS Telecommunications, filed petitions
7 with the Commission seeking approval for an alternate form
8 of regulation pursuant to RSA 374:3-b. The proposal, if
9 approved, would result in regulation of the TDS companies'
10 retail operations comparable to the regulation currently
11 applied to competitive local exchange carriers. And, an
12 order of notice was issued on April 10 setting the
13 prehearing conference for this morning.

14 And, I'll note for the record that the
15 affidavit of publication was filed on April 20, and we
16 have a Notice of Participation filed by the Office of
17 Consumer Advocate, and Petitions to Intervene on behalf of
18 segTEL and Union Communications.

19 Can we take appearances please.

20 MR. COOLBROTH: Good morning, Mr.
21 Chairman, Commissioners. On behalf of the four
22 petitioners in this case, I'm Frederick Coolbroth, of the
23 firm of Devine, Millimet & Branch, here in Concord. With
24 me today are Michael Reed and Deborah Martone from the

{DT 07-027} [Prehearing conference] (05-04-07)

1 Company.

2 CHAIRMAN GETZ: Good morning.

3 CMSR. MORRISON: Good morning.

4 CMSR. BELOW: Good morning.

5 MR. PHILLIPS: Good morning, Mr.

6 Chairman and Commissioners. My name is Paul Phillips.

7 I'm from the law firm of Primmer, Piper, Eggleston &

8 Cramer, in St. Johnsbury, Vermont. And, I'm here today

9 for Granite State Telephone, which has not yet intervened.

10 And, with me are Susan Rand King, the President of Granite

11 State, and Chris Rand, the Vice President of Granite

12 State.

13 CHAIRMAN GETZ: Good morning.

14 CMSR. MORRISON: Good morning.

15 CMSR. BELOW: Good morning.

16 MS. GEIGER: Yes. Good morning, Mr.

17 Chairman and Commissioners Morrison and Below. I'm Susan

18 Geiger, from the law firm of Orr & Reno, here in Concord,

19 and I represent segTEL, Inc. And, with me this morning is

20 Jeremy Katz from the Company.

21 CHAIRMAN GETZ: Good morning.

22 CMSR. MORRISON: Good morning.

23 CMSR. BELOW: Good morning.

24 MS. LOCKHART: Good morning,

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1 Commissioners. My name is Linda Lockhart. I'm with the
2 firm of Preti, Flaherty, of the Augusta, Maine office.
3 And, I'm here representing Union Telephone Company, doing
4 business as Union Communications. And, I have here with
5 me today Darren Winslow and Jasper Thayer, of Union
6 Telephone.

7 CHAIRMAN GETZ: Good morning.

8 CMSR. MORRISON: Good morning.

9 CMSR. BELOW: Good morning.

10 MS. HOLLENBERG: Good morning,
11 Commissioners. Rorie Hollenberg, here on behalf of the
12 Office of Consumer Advocate. And, with me today are
13 Stephen Merrill and Kenneth Traum.

14 CHAIRMAN GETZ: Good morning.

15 CMSR. MORRISON: Good morning.

16 CMSR. BELOW: Good morning.

17 MS. ROSS: Good morning, Mr. Chairman
18 and Commissioners Below and Morrison. I'm Anne Ross,
19 representing the Staff of the Public Utilities Commission.
20 And, with me today from the Telecommunications Division
21 are Kate Bailey, the director; David Goyette; Wayne
22 Hackett; and Jody O'Marra, all members of the
23 Telecommunications Division.

24 CMSR. BELOW: Good morning.

{DT 07-027} [Prehearing conference] (05-04-07)

1 CMSR. MORRISON: Good morning.

2 CHAIRMAN GETZ: Good morning. Well, the
3 next order of business would be to hear objections to
4 Petitions to Intervene. But, Mr. Phillips, would you like
5 to make orally your motion to intervene at this point?

6 MR. PHILLIPS: Well, Mr. Chairman, we
7 haven't intervened as yet because, well, for one simple
8 reason, which is we're not sure whether this docket is
9 going to be the right proceeding in which our interests
10 are going to be decided. Granite State's interests in
11 this case are very narrow, but potentially quite
12 substantial. We really have no intention of offering any
13 view on the merits of TDS's petition, other than to
14 express appreciation to TDS for their willingness to test
15 unchartered waters and to explore the usefulness and the
16 risks of Section 374:3-b.

17 Nonetheless, there are legal and
18 regulatory policy implications that arise from their
19 petition. The petition is the first opportunity for this
20 Commission to apply the terms of the new statute in a
21 real-life situation to a qualifying company. Granite
22 State Telephone is also a qualifying company, as an
23 incumbent local exchange carrier with fewer than 25,000
24 access lines. There are a number of terms and concepts in

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1 the statute that the Commission has to define at some
2 point and flesh out. And, the only question for us is
3 whether this is the docket in which the Commission intends
4 to do that.

5 CHAIRMAN GETZ: And, so, I guess I'm
6 trying to understand your position at this point. You're
7 here to monitor, and you're not making a formal petition
8 to intervene, and you effectively made your statement of
9 your position. So, we can probably jump over you when we
10 get to that part of the proceeding today?

11 MR. PHILLIPS: Well, let me just add
12 that we will intervene in any proceeding in which the
13 Commission decides to define the terms of the statute and
14 to establish the policies underlying the statute. And, if
15 it's this case, then we would ask you to make that
16 explicit in any order or letter ruling that you issue,
17 which will help us to decide whether this is the right
18 place to intervene.

19 If you're intending to open up some
20 other proceeding of a more generic nature, we would ask
21 that you tell us that, so we know if that's the right
22 place for us to go.

23 CHAIRMAN GETZ: Okay.

24 MR. PHILLIPS: Thanks.

1 CHAIRMAN GETZ: Thank you. Well, let's
2 deal with the actual Petitions to Intervene. Is there any
3 objection to the petitions by segTEL and Union
4 Communications?

5 MR. COOLBROTH: Mr. Chairman, on behalf
6 of the Petitioners, we do not object to their
7 participation in a proceeding that reviews these requests
8 for alternative regulation. We do object to turning this
9 into a generic proceeding that would look at a Union
10 Telephone alternative regulation plan, for instance, or
11 other more general views. We have filed what works for
12 these four companies. And, so, if the focus of this
13 proceeding and their participation is on these proposals,
14 we have no objection. Of course, a fair amount of our
15 proof includes confidential information. And, we do
16 object to their reviewing confidential financial and usage
17 information that we have submitted under RSA 378:43. So,
18 we would expect that that confidentiality be protected and
19 their participation limited in that regard.

20 But, as long as the focus of their
21 participation is on these proposals that these companies
22 have submitted, we do not object.

23 CHAIRMAN GETZ: Any other comments about
24 the Petitions to Intervene?

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1 (No verbal response)

2 CHAIRMAN GETZ: I think, at this point,
3 maybe the best step is that we would take under advisement
4 the petition, which also sounds like we're including
5 arguments about scope and ways of treating confidential
6 material in the proceeding. And, I would suggest that, in
7 the tech session, to the extent that the parties can come
8 to some agreement on those issues and make a
9 recommendation, that that could be helpful. And, if we
10 need to make formal rulings on those three related issues,
11 then we'll wait and hear what comes back from the
12 technical session.

13 So, is there anything else before we
14 hear statements of the positions of the parties or the
15 proposed parties?

16 (No verbal response)

17 CHAIRMAN GETZ: Hearing nothing else,
18 then, Mr. Coolbroth.

19 MR. COOLBROTH: Thank you, Mr. Chairman.
20 The petitions in this docket have been submitted in
21 accordance with RSA 374:3-b. It's a statute that
22 specifically addresses small incumbent local exchange
23 carriers. These four companies are qualifying carriers
24 under that statute. And, we have attempted as well as we

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1 can to tailor these plans specifically to every feature of
2 that statute.

3 The statute itself came about as a
4 recognition that the world of telecommunications has
5 changed greatly, and that it continues to change. And,
6 there is a very recent study by the National Regulatory
7 Research Institute, dated April 2007, and it's entitled
8 "State Retail Rate Regulation of Local Exchange Providers
9 as of December 2006. And, Figure 1, on Page 13 of this
10 publication, shows that there are only -- that New
11 Hampshire is one of only five remaining states in which
12 all ILECs remain under rate of return regulation.

13 The New Hampshire enabling statute was
14 also the subject of a legislative study committee. This
15 committee met during the 2005 session of the New Hampshire
16 Legislature and produced a report dated October 28th,
17 2005. And, the recommendation of that study committee, on
18 Page 3 of the report, is as follows: "We strongly
19 encourage small ILECs to proceed with alternative
20 regulation proposals as defined in RSA 374:3-b already in
21 effect", and "already in effect" at this point referred to
22 a prior version of the statute, but that's the sentence.
23 "As a state, we cannot gauge the success of alternative
24 regulation until someone tries it and exposes its benefits

1 and/or shortcomings."

2 And, representing the New Hampshire
3 Telephone Association during the 2006 legislative session,
4 I can specifically remember the Chair of the Committee
5 involved of this study committee, Representative Garrity,
6 looking us in the eye and saying to us that "the
7 Legislature had done its job of providing enabling
8 legislation, and now it was time for the small ILECs to
9 prove what they could do." And, that's what these four
10 companies are here to do today.

11 Previously, the alternative regulation
12 process in New Hampshire has been too time-consuming and
13 too expensive. The new statute provides a streamlined
14 process that this application meets in full. We want to
15 show our customers, this Commission, and the Legislature
16 what we can do.

17 And, as an example, the TDS affiliate
18 companies in Vermont have now been under alternative
19 regulation in Vermont for two years. During that period
20 of time, new services have been rolled out, quality of
21 service has remained excellent, broadband penetration has
22 increased, and there has been no rate increases. That's
23 not to say there never will be rate increases, there could
24 well be. But alternative regulation is working very well

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1 in Vermont. We can do the same in New Hampshire, and
2 we're asking for the opportunity to do so.

3 This should not be a complicated case.
4 During the course of the enactment of RSA 374:3-b, many
5 provisions were proposed that would have made this process
6 much more complicated and expensive and effectively
7 precluded companies from seeking alternative regulation.
8 Those proposals that were made and rejected, including
9 mandating that there be a rate case, mandating that there
10 be a waiver of the rural exemption under Section 251 of
11 the Telecommunications Act of 1996. Mandating changes in
12 access rates. Mandating wholesale tariff requirements.
13 All of those proposed mandates were rejected in the
14 process of enactment of that legislation.

15 Some may argue that the Commission
16 should perform an extensive theoretical exercise on
17 whether intermodal services really are competitive with
18 landline telephone service, such as whether cellphones
19 really compete with landline service or whether Voice-over
20 Internet Protocol service really competes with landline
21 long distance service. We urge the Commission to reject
22 those arguments.

23 And, again, what I'd like to do is to
24 quote from the legislative study committee report, on Page

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1 4: "We heard many hours of testimony about the presence
2 of and potential impact of competition in New Hampshire --
3 in the New Hampshire communications market. We believe
4 that, in theory, and in general, competition will keep
5 prices affordable and result in more innovation. We
6 prefer to see this theory proved out in practice by
7 following the progress of small ILEC alternative
8 regulation plans under RSA 374:3-b."

9 So, the Legislature has made a policy
10 choice to try this out. Let's try out alternative
11 regulation. And, as the Companies carry out these plans,
12 we understand that this Commission isn't going anywhere,
13 this Commission will be here to oversee the progress of
14 those plans. And, the Legislature isn't going anywhere.
15 And, to the extent that either this process does not work
16 out or the plans don't work out, the Legislature is not
17 going anywhere either, it will be there and it will be
18 watching.

19 So, our proposal is to ask the
20 Commission "let's give this a try." Let's not make this a
21 long, complicated, theoretical exercise. Let's -- We
22 believe we've clearly laid out proposals that meet the
23 requirements of the statute. We want to take the
24 Legislature up on their recommendation that we go ahead

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1 and try alternative regulation. And, we have a proposal
2 that we believe meets the objectives of the statute, and
3 we're seeking its approval. Thanks.

4 CHAIRMAN GETZ: Thank you.

5 Mr. Phillips, did you have anything additional?

6 MR. PHILLIPS: Mr. Chairman, I think I
7 made my client's position pretty clear. Again, all we're
8 really looking for is some explicit signal from the
9 Commission as to whether this is the right place for us to
10 be. Thanks.

11 CHAIRMAN GETZ: Thank you. Ms. Geiger.

12 MS. GEIGER: Thank you, Mr. Chairman.

13 As a competitive local exchange carrier doing business in
14 New Hampshire, segTEL is interested in this docket in
15 terms of the issue of competition, and, more specifically,
16 the competitiveness of the markets within which the TDS
17 companies operate.

18 First, segTEL is interested in examining
19 TDS's allegations of competition, to see whether, in fact,
20 TDS has made a sufficient showing of competition which
21 would entitle it to obtain an alternative form of
22 regulation under the statute.

23 And, second, segTEL is interested in
24 seeing that the outcome of this docket does nothing to

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1 harm the competitiveness of those markets within which TDS
2 operates and within which segTEL is interested in
3 operating. Thank you.

4 CHAIRMAN GETZ: Thank you. Ms.
5 Lockhart.

6 MS. LOCKHART: Yes, your Honors. Union
7 Telephone takes no position at this time. It would like
8 to see how this proceeding develops, and would like the
9 opportunity to protect its interests, both as a customer
10 of TDS and also as a similarly situated business in the
11 State of New Hampshire interested in seeing how this new
12 form of regulation will be rolled out. Thank you.

13 CHAIRMAN GETZ: Thank you.
14 Ms. Hollenberg.

15 MS. HOLLENBERG: Thank you. The Office
16 of Consumer Advocate takes no position on the filing at
17 this time. We are looking to ensure that the filing meets
18 the requirements of the statute. And, we look forward to
19 participating in the docket with the parties and the Staff
20 and the Applicants, to ensure a complete review of the
21 application. Thank you.

22 CHAIRMAN GETZ: Thank you. Ms. Ross.

23 MS. ROSS: Thank you. Commission Staff,
24 at this early stage in the proceeding, has not had the

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1 opportunity to thoroughly analyze the data presented in
2 the Companies' petitions. Therefore, the Staff does not
3 have a preliminary position on whether these four
4 petitions meet the requirements of RSA 374:3-b.

5 Staff would make the following
6 observations. These four petitions of Kearsarge
7 Telephone, Merrimack County Telephone, Hollis Telephone,
8 and Wilton Telephone represent a total line count of
9 approximately 33,600 lines. Although, no one of these
10 companies exceeds the 25,000 line count, and therefore
11 each company is eligible for consideration under 374:3-b,
12 granting alternative regulatory treatment for these four
13 TDS subsidiaries will have a profound impact on the
14 telecommunications landscape in New Hampshire.

15 Further, 374-b (374:3-b?) requires, and
16 I quote from the statute: Competitive wireline, wireless,
17 or broadband service is available to a majority of the
18 retail customers in each of the exchanges served by such
19 small incumbent local exchange carrier." These terms are
20 not defined in the statute, and it will be necessary for
21 the Commission to develop a working definition of these
22 key terms in this docket. In contrast to the Companies'
23 position, Staff believes that this statute requires that
24 the majority of customers in each exchange have a

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1 competitive alternative for local exchange service.
2 Further, Staff believes that this statute requires, among
3 other things, that in order to be a competitive
4 alternative, the provider must be unaffiliated with TDS.

5 Staff would therefore recommend that the
6 parties brief the issue of defining these competitive
7 measures prior to embarking on extensive discovery in this
8 docket. Staff requests that the Commission issue a ruling
9 clarifying how it will interpret the statute as to
10 competitive alternatives, so that the parties can obtain
11 appropriate facts to demonstrate whether or not the
12 statutory requirements are fulfilled. Thank you.

13 CHAIRMAN GETZ: Well, I'll give the
14 Petitioner an opportunity to respond to any of the
15 statements.

16 MR. COOLBROTH: Well, we believe, Mr.
17 Chairman, that we have spelled out in our filing a set of
18 facts that meets the statutory criteria, and would prefer
19 to go forward on our petition as submitted. We do not see
20 this as a matter of great ambiguity, and would prefer to
21 proceed to an expeditious procedural schedule. We're
22 already two months into this. The Companies would like to
23 get on with putting their alternative regulation proposal
24 into effect. And, we would like to sit in a technical

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1 session and work through an expeditious schedule for data
2 requests, follow-ups, staff/intervenor testimony, and
3 hearings, and to complete this matter expeditiously.

4 CHAIRMAN GETZ: Well, I'm trying to
5 think through, Ms. Ross, just in terms of, it seems like
6 we have a, you know, which comes first, between do we lay
7 out the facts, which I believe the Petitioner has
8 indicated that they have attempted to do in their filing,
9 and that these facts indicate exception under the statute.
10 But you're proposing, on the other hand, that before we
11 even get to that, that we create the conceptual construct
12 that would constitute competition, intermodal competition,
13 and then apply whatever that ruling is to the facts as
14 they exist. I'm just wondering if -- well, let me ask
15 this. I don't know if you have a response to that, but I
16 guess it sounds like we certainly have a difference of
17 opinion on which way we should proceed. And, I'm
18 wondering if there's a way to do this on two tracks at
19 once or what you're suggesting sounds like it has to be a
20 serial procedure. Do you have any help on those issues?

21 MS. ROSS: Well, I would just indicate
22 that Staff offered the suggestion of briefing these issues
23 in order to prevent sort of a waste of time for
24 concentrating on facts that may not fulfill what

1 ultimately the Commission determines the definition of
2 "competitive alternatives" is. But, if the Company is
3 frankly comfortable going forward and arguing that at the
4 end of the case, then we're certainly willing to do it
5 that way. We thought, frankly, that it would be fairer to
6 the Company to try to flesh out some of these issues early
7 on. So, you know, if the Company prefers to do it
8 otherwise, we will not press this position further.

9 CHAIRMAN GETZ: Well, would anyone else
10 like to weigh in on that issue of briefs or --

11 MR. COOLBROTH: Mr. Chairman, perhaps
12 this is something we could work on in the technical
13 session and come back to the Commission with a
14 recommendation. I think we need to talk through this a
15 bit and talk it through with the Staff. I think it would
16 be helpful to deal with it in the technical session.

17 CHAIRMAN GETZ: Okay. Then, that would
18 be helpful, if the parties could make this another issue
19 to address during the technical session. Anything else
20 that we need to address this morning?

21 (No verbal response)

22 CHAIRMAN GETZ: Okay. Then, hearing
23 nothing else, we'll close the prehearing conference, await
24 for a recommendation of the parties, and take the matter

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1 under advisement. Thank you.

2 (Whereupon the prehearing conference
3 ended at 11:31 a.m. and the Parties and
4 Staff convened a technical session
5 thereafter.)

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