

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



I N D E X

STATEMENTS OF PRELIMINARY POSITION BY:

	PAGE
Mr. Coolbroth	6, 25
Mr. Linder	11
Mr. Kerry	14
Mr. Katz	20
Ms. Hollenberg	21
Mr. Hunt	24

P R O C E E D I N G S

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

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

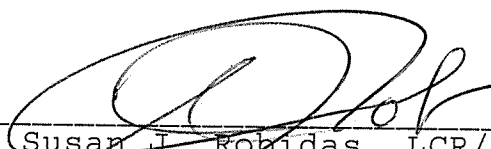
13 CHAIRMAN GETZ: All right.
14 Anything else to address this morning? Hearing
15 nothing, then we'll close the prehearing
16 conference and wait for the filings of the
17 parties. Thank you, everyone.

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19 (Hearing concluded at 11:00 a.m.)
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C E R T I F I C A T E

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

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



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