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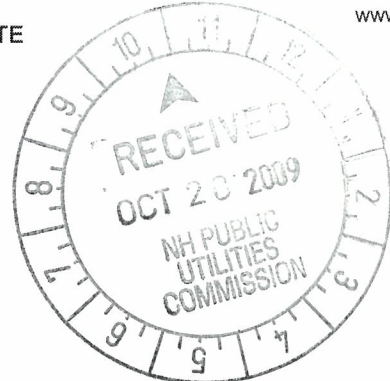
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October 20, 2009

Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301



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**RE: DT 07-027 TDS AFOR, Phase II  
MCT and KTC responses to Oral Data Requests**

Dear Ms. Howland:

On October 15, 2009, TDS Companies Merrimack County Telephone Company (MCT) and Kearsarge Telephone Company (KTC) (collectively "Companies") filed responses to Oral Data Requests (ODR) from the hearing on September 29 and October 1, 2009 held in the above referenced docket. In response to that filing, the OCA offers the following comments for the Commission's consideration.

One of the Companies' responses concerns the testing by C Squared in the Sutton exchange. Specifically, the Companies were asked to provide the signal strength at the point in time on I-89 south when C Squared's call was dropped.

For the first time in this proceeding, the Companies indicate in their response to this ODR that "no calls were dropped" and that the "data collection equipment was turned off." This new information is remarkable in light of the fact that the Company had ample opportunity before the hearing to correct a material misstatement that it made during discovery in the case about the signal strength data on I-89 south.

On June 19, 2009, nearly a month before the due date for intervenors' testimony, and more than three months before the most recent hearing, the OCA asked the Companies about the signal strength data on I-89 south. *See Confidential OCA Exhibit 15 (Companies' Response to OCA 2.11, Phase 2)*. In its data response, the Company provided information that the Companies now say is incorrect. The OCA relied upon this information in preparing for the recent hearing only to learn afterwards that it was incorrect.

Unfortunately, this is not the first instance of the Companies belatedly correcting inaccurate material information. As the Commission may recall, two months after the OCA filed

its testimony on July 17, 2009, the Companies corrected statements in its Supplemental testimony, and only after a request from the OCA, corrected a response to an OCA data request concerning its exhibits depicting the drive routes taken by C Squared. The incorrect version of this statement and data response were relied upon by the OCA in its prefiled testimony, and the corrections, as well as their delayed disclosure, required the OCA to revise its testimony at the hearing on October 1, 2009.

In the same vein, at the hearing on September 29, 2009, the Companies' witness Michael Reed made "one minor change" to his prefiled Supplemental testimony. *See* Transcript of Hearing on September 29, 2009, p. 41, line 18, through p. 42, line 5. In effect, through this "correction," Mr. Reed added the KTC exchange of Andover to the exchanges that the Companies contend have a cable alternative to TDS. Although this point had been made previously in discovery even before the hearing in phase 1 of this proceeding, the hearing on the merits in phase 2 was the first time that the Company included this assertion as part of its case before the Commission. Until then, as far as the record was concerned, the Companies' case for the availability of competitive alternatives in Andover was based only on the possibility of a wireless alternative. Viewed in this light, Mr. Reed's correction to his Supplemental testimony was hardly "minor."

In addition, as the Commission is also aware, the Company attempted to revise its Supplemental filing through improper rebuttal. Specifically, I refer here to the new evidence submitted by the Companies in rebuttal about a propagation analysis performed by C Squared. When faced with having to undergo discovery on this new evidence, the Company chose to withdraw the testimony.

The OCA does not request that the Commission necessarily reject the new evidence provided by the Company in response to ODRs. The OCA also does not ascribe any bad intentions to the Companies in producing this new evidence at this late hour. However, the OCA does ask that the Commission keep in mind, in its decision about the weight to be accorded to it that this evidence is new and has not been tested through the appropriate process. The OCA also asks that the Commission be mindful that the Companies bear the burden of proof in this case, and that the Companies' repeated changes or corrections along the way have created a moving target for the other parties. This approach by the Company is inconsistent with a fair and reliable adjudicatory process. *See Re Manchester Gas Co.*, 71 NH PUC 446 (1986).

Sincerely,



Rorie E.P. Hollenberg  
Staff Attorney

cc: Service List