

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**

segTEL'S RESPONSE TO PETITIONERS' OBJECTION

NOW COMES segTEL, Inc. ("segTEL"), by and through its undersigned attorneys, and submits the following response to the "Petitioners' Objection to segTEL, Inc.'s Motion to Compel (Group II Data Requests)" filed by TDS in the above-captioned matter.

1. Petitioners' Objection to segTEL's Motion to Compel argues that the Commission should deny segTEL's Motion in order to prevent this proceeding from becoming a vehicle for a competitor to gain a competitive advantage. *See Petitioners' Objection*, ¶10. Petitioners' Objection also argues that segTEL will have the opportunity to "participate fully" in these proceedings by virtue of the Petitioners' having afforded the undersigned attorneys access to the information which is the subject of the Motion to Compel. *Id.*

2. Neither of the foregoing arguments is valid. First, segTEL is not seeking access to the confidential information to gain a competitive advantage. The use of the confidential information sought by segTEL will be limited solely to this proceeding for the purpose of developing and presenting segTEL's position 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.

3. TDS's second argument also lacks merit. Providing the confidential material only to segTEL's attorneys does not enable segTEL to fully participate in the proceeding. In order to effectively represent segTEL's interests in this proceeding, its attorneys must rely on segTEL's employees such as Ms. Mullholand who possess the technical expertise and field experience necessary to evaluate all of the data which TDS intends to proffer in support of its allegations about the level and modes of competition which it faces. This is a central and threshold issue which the Commission must determine. *See* RSA 374:3-b, III. (a). Preventing representatives of segTEL from seeing and evaluating this information denies segTEL the ability to fully participate in this case.

4. The Objection contains factual inaccuracies regarding Mr. Katz's role in the operations of segTEL. Mr. Katz does not own segTEL. Contrary to the assertions in paragraph 15 of the Objection, Mr. Katz does not hold the title of "President," is not the "proprietor" of segTEL, and is not "intimately involved in all corporate functions." Thus, because the Objection relies upon misinformation about Mr. Katz, the arguments contained therein are based on faulty premises and therefore should not prevail.

5. Although segTEL believes that all three of the segTEL employees (*i.e.*, Mr. Katz, Ms. Mullholand and Attorney Cole) identified in its Motion to Compel are entitled

to receive access to the confidential material (for all of the reasons set forth in the Motion which are hereby incorporated herein by reference), segTEL is willing to agree to a compromise position which would be to allow only its attorneys, Orr & Reno, P.A., and its employee, Ms. Mullholand, to have access to the requested information, subject to an appropriate confidentiality agreement.

6. In the alternative, should TDS not agree that the compromise position is acceptable, segTEL would agree to an alternative resolution of this discovery dispute; that is, for TDS to hire, at its own expense, an independent expert with qualifications acceptable to segTEL who could review and analyze the data from a technical perspective and act as an advisor to segTEL and its attorneys.

Respectfully submitted,

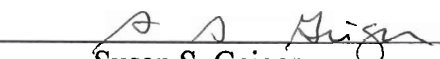
segTEL, Inc.
By Its Attorneys
ORR & RENO, P.A.
One Eagle Square
Concord, NH 03302-3550
Telephone: (603) 223-9154
e-mail: sgeiger@orr-reno.com


Susan S. Geiger

October 24, 2007

Certificate of Service

I hereby certify that on this 24th 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.


Susan S. Geiger