

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 07-027

KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE COMPANY
HOLLIS TELEPHONE COMPANY, INC. AND
WILTON TELEPHONE COMPANY, INC.

ALTERNATIVE REGULATION PLANS

SETTLEMENT AGREEMENT AMONG
THE JOINT PETITIONERS
AND THE OTHER SIGNATORIES HERETO

This SETTLEMENT AGREEMENT (this "Agreement") is executed as of the 30th day of November, 2007 by and among KEARSARGE TELEPHONE COMPANY ("KTC"), MERRIMACK COUNTY TELEPHONE COMPANY ("MCT"), HOLLIS TELEPHONE COMPANY, INC. ("HTC"), WILTON TELEPHONE COMPANY, INC. ("WTC"), (the foregoing parties being hereinafter collectively referred to as the "Petitioners"); the Office of Consumer Advocate ("OCA"); segTEL, Inc.; the Staff of the New Hampshire Public Utilities Commission (the "Staff") and the other signatories hereto (the Joint Petitioners and the other signatories hereto being hereinafter referred to collectively as the "Signatories").

RECITALS:

The Petitioners filed petitions with the New Hampshire Public Utilities Commission (the "Commission") dated March 1, 2007 pursuant to RSA 374:3-b seeking approval of a plan for alternative regulation (each, a "Plan") for each of the Petitioners. The Petitioners alleged that each such company was eligible to receive approval of its Plan pursuant to RSA 374:3-b. Prefiled direct testimony and exhibits were included with the initial filings. A prehearing conference was held on May 4, 2007. Thereafter, the parties briefed certain legal issues under the statute. On July 13, 2007, the Commission determined to defer action on the legal issues pending development of an evidentiary record. Following two rounds of discovery, the Staff and intervenors filed testimony on October 12, 2007. This testimony generally opposed granting approval of the Plans. The Petitioners conducted discovery on the Staff and intervenor testimony, and filed rebuttal testimony on November 15, 2007. The procedural schedule also included several technical sessions and settlement conferences, as well as three hearings to receive statements from the public.

The testimony of the parties and the positions taken reflect divergent views regarding interpretation of RSA 374:3-b and the extent of telecommunications competition within the areas served by the Petitioners.

The Signatories have reached a settlement on additional terms and conditions, which they agree will modify the proposed alternative form of regulation Plans as proposed by the Petitioners. This Agreement sets forth those terms and the recommendation of the Signatories regarding action on the Petitions. Accordingly, the

Signatories recommend approval by the Commission of the Plans subject to the following additional terms:

AGREED TERMS AND CONDITIONS FOR APPROVAL:

1. CLEC Certification. Petitioners will not oppose Commission certification or registration of any company seeking to do business as a competitive local exchange carrier ("CLEC") in the service territories of the Petitioners.

2. Rural Exemption.

2.1 Petitioners agree to waive the rural telephone company exemption under Section 251(f)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act") (47 U.S.C. §251(f)(1)); provided, however, that such waiver shall not result in the Petitioners being required to file wholesale UNE and resale tariffs, and to the extent applicable, the tariff filing requirements of Puc 419.01(f) and Puc 420.01 shall be deemed waived.

2.2 Petitioners agree that a CLEC may request an interconnection agreement limited to the items set forth in section 251 (a), (b) and (c) (2), (4) and (6) of the Telecommunications Act of 1996, including, but not limited to the issue of the appropriate discount to be applied to resold retail services. For such a request, the time period set forth in Section 252(b)(1) of the Act to seek arbitration shall be between the 90th and 115th days after receipt of a request for negotiation (instead of between the 135th and the 160th day specified in such section). The expedited process set forth above shall be in addition to, not in lieu of, the obligation to negotiate in good faith for a

complete interconnection agreement, including the obligation to negotiate in good faith to provide unbundled network elements under Section 251(c)(3) of the Act.

3. Suspension or Modification. Petitioners reserve their rights under Section 251(f)(2) of the Act (47 U.S.C. §251(f)(2)) to seek modification or suspension of Section 251 requirements. Any such request would be subject to the approval of the Commission in accordance with the standards set forth in Section 251(f)(2).

4. BOC Requirements. Petitioners do not agree to undertake obligations applicable only to “Bell operating companies” (as defined in the Act).

5. WTC and HTC Basic Service Rates. WTC will not raise basic service rates during the first year of its Plan, and HTC will not raise basic service rates during the first and second years of its Plan. After the one-year period, in the case of WTC, and the two-year period, in the case of HTC, basic service rates will be permitted to increase by up to ten percent per year during each of the succeeding four years, subject to the rate cap specified in each Plan (basic service rates not to be higher than the comparable basic service rate charged by the largest incumbent local exchange carrier operating in New Hampshire).

6. KTC and MCT Basic Service Rates.

6.1 KTC and MCT shall not raise basic service rates in any exchange during the first and second years of its Plan. After the two year period, basic services will be permitted to increase for an exchange under the Plan when the Petitioners can show that at least one of the tests set forth in Section 6.2 shall have been met for that exchange.

6.2 The basic service rate cap set forth in Section 6.1 may be terminated by KTC or MCT for the affected exchanges if (i) a non-affiliated wireline CLEC has

collocated in the central office serving that exchange and is offering service; (ii) a non-affiliated cable telephone provider is certified to provide telephone service within the exchange and has facilities able to serve a majority of customers within that exchange; (iii) a non-affiliated cable provider is offering the functional equivalent to telephone service within the exchange and has facilities able to serve a majority of customers within that exchange; (iv) a non-affiliated CLEC is providing basic service to the exchange through resale, unbundled network elements, its own facilities or a combination thereof; or (v) the affected Petitioner demonstrates to the Commission that wireless or non-affiliated broadband service¹ is available to a majority of retail customers in the affected exchanges and that such service is "competitive" within the meaning of RSA 374:3-b.

6.3 Following the termination of the basic service rate cap specified in Sections 6.1 and 6.2 hereof for an exchange, the basic service rate increases provided under the Plan (ten percent (10%) per year for four years capped at the corresponding basic service rates charged by the largest incumbent local exchange carrier operating in New Hampshire) shall be permitted for that exchange.

7. Lifeline Rates. Notwithstanding the provisions of Sections 5 and 6, the Petitioners will not raise basic service rates for Lifeline customers in any exchange during the first four years of the Plans and until one or more of the tests set forth in Section 6.2 shall have been met in the affected exchange. Thereafter, basic service rates will be permitted to increase by up to ten percent per year during each of the succeeding four years, subject to the rate cap specified in each Plan (basic service rates not to be

¹ The signatories agree that sometime in the future a non-affiliated third party may use TDS service in the provision of phone service. The third party telephone service in this instance will not be considered affiliated with TDS.

higher than the comparable basic service rate for Lifeline customers charged by the largest incumbent local exchange carrier operating in New Hampshire).

8. Exogenous Changes.

8.1 Notwithstanding the limitations on basic service rates in Sections 5, 6 and 7 hereof, the rates of the Petitioners are subject to increase or decrease, with Commission approval, upon the occurrence of exogenous events as specified in RSA 374:3-b, III (b) (i.e., “changes in federal, state or local government taxes, mandates, rules, regulations or statutes”).

8.2 Exogenous Change Procedure.

8.2.1 Section 7.4 in each of the Plans shall be deleted.

8.2.2 Subject to the reservation by Staff in Section 8.2.3, the following provision shall be inserted as a new Section 7.4:

“7.4 The Commission may initiate an investigation of a proposed exogenous factor rate change by Order of Notice to be issued not more than 30 days following receipt of a request pursuant to § 7.3 or on its own motion. Such investigation shall be limited to the financial impact of the proposed change and shall not include a rate-of-return analysis. If the Commission does not initiate an investigation within 30 days after receiving the request, such request shall go into effect as filed by the Company. The Commission shall complete such investigation not later than five months following the date of the Order of Notice.”

8.2.3 The Staff takes no position regarding the time frames for reviewing exogenous change requests.

8.3 The text of each of the Plans shall be amended to:

8.3.1 Amend Section 2.1 to provide that the Plan will continue until terminated in accordance with Section 2.2 or Section 2.3 of the Plan;

8.3.2 Amend Section 2.3 by deleting the words “no longer” and substituting instead the words “does not”;

8.3.3 Delete Section 3.6;

8.3.4 Replace “2%” in Section 7.1 with “5%”;

8.3.5 Delete Section 7.2 thereof²;

8.3.6 In Section 7.5 the clause “The Commission shall approve the change in rates to reflect an exogenous change if the Commission finds that” shall be deleted and replaced with the clause “In evaluating a change in rates to reflect an exogenous change, the Commission shall consider whether”;

8.3.7 Amend Section 7.5.3 to state “The proposed rate changes produce revenue covering only the financial impact of all relevant exogenous changes.”

8.4 Petitioners and Staff shall determine additional information to be provided in the reports of Petitioners to the Commission to identify exogenous changes and the impact thereof.

9. Petitioners will work with the OCA, NHLA and Staff to improve the dissemination of information regarding the Lifeline and Link-up programs to eligible persons to increase participation in the programs.

10. As provided in Section 4.3 of the Plans, Petitioners will not raise intraLATA access rates without prior approval of the Commission.

² Exogenous events covered by Section 7 of the Plans shall be limited to those specified in RSA 374:3-b, III (b).

11. In all other respects, the Plans shall operate in accordance with their terms.

12. Procedural Matters:

12.1. Each Signatory agrees to support this Agreement and approval of the Plans with the terms and conditions set forth herein; provided, however, that Staff takes no position with respect to the time frames set forth in Section 8.2.2 hereof.

12.2. The Signatories agree that these terms are part of a comprehensive proposal and agree to cooperate in advocating that these terms be adopted by the Commission in their entirety and without modification.

12.3. The Signatories acknowledge that this Settlement is the product of settlement negotiations and that the content of such negotiations shall be privileged, and all offers of settlement are without prejudice to any party or participant in the settlement negotiations. Approval of this Settlement does not imply Commission approval, acceptance, agreement with or consent to any concept, theory, principle or methodology underlying any matters related to this Settlement, nor shall this approval be deemed to have established a policy or practice of the Commission. Approval of this settlement shall not be deemed to limit the Commission's exercise of its authority to promulgate future orders, regulations or rules that resolve similar matters affecting other parties in a different fashion.

12.4. Capitalized terms used herein without definition shall have the meaning ascribed to them in this Agreement. Section headings used herein are for convenience only and shall have no legal effect.

12.6. In the event that the terms of this Agreement are not adopted by the Commission in their entirety and without modification, any signatory shall have the right to terminate this Agreement and in such event the terms and conditions contained herein shall be null and void.

12.7 In the event of a conflict between the terms of this Agreement and the terms of the Plans, the terms of this Agreement shall govern.

[Signature pages follow.]

Duly executed as of the day and year first above written.

KEARSARGE TELEPHONE COMPANY
MERRIMACK COUNTY TELEPHONE
COMPANY
HOLLIS TELEPHONE COMPANY, INC.
WILTON TELEPHONE COMPANY, INC.

By: Justin J. Colantuono
Name:
Title: Their Attorney

NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION

for By: Kym Bailey
Name: F. Anne Ross, Esq.
Title: Staff Attorney

OFFICE OF CONSUMER ADVOCATE

By: M.A.H.
Name: Meredith A. Hatfield
Title: Consumer Advocate

SEGTEL, INC.

By: S. S. Geiger
Name: Susan S. Geiger
Title: Attorney in Charge