

DT 00-294 and DT 00-295
DT 01-040 and DT 01-041

WILTON TELEPHONE COMPANY
HOLLIS TELEPHONE COMPANY

Investigation of Companies

Order Approving Comprehensive Settlement Agreement

O R D E R N O. 23,959

April 30, 2002

APPEARANCES: Frederick Coolbroth, Esquire of Devine, Millimet & Branch for the Companies; F. Anne Ross, Esquire of the Office of Consumer Advocate, for Residential Ratepayers; and Lynmarie Cusack, Esquire for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

Dockets DT 00-294 and DT 00-295 were initiated by Order of Notice dated December 22, 2000, as "Show Cause" dockets for Wilton and Hollis Telephone Companies respectively. Since the inception of the dockets the Commission has issued a number of orders addressing various aspects of the case.

The Commission issued Order No. 23,615 on January 10, 2001, requiring the Companies to explain: why they should not be required to replace their auditors; why the Companies and their officers and agents should not be fined and/or penalized for failure to comply with a previous Commission order; why the Companies' authority to engage in business in New Hampshire should not be withdrawn; and why the Commission should not open a

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separate proceeding to investigate the Companies' rates. Order No. 23,615 was followed by Order No. 23,630, dated January 29, 2001, which reestablished a procedural schedule and expanded the dockets to include the review of the Companies' rates.

The Commission subsequently issued Order No. 23,744 on July 26, 2001, separating the dockets into compliance issues (Docket Nos. 00-294 and 00-295) and overearnings issues (Docket Nos. 01-040 and 01-041). Order No. 23,744 provides a procedural history of the docket and enumerates the specific allegations of noncompliance concerning the Companies. The Order also addresses legal challenges raised by the Companies concerning the adequacy of notice as to the acts or emissions of each issue under review and the distinction between the burden of presenting a prima facie case and the ultimate burden of persuasion on the issues. As a result of the Order, on August 23, 2001, the Companies filed a Motion for Rehearing/Reconsideration.

On September 28, 2001, the Commission issued Order No. 23,790, denying in part the Companies' Motion for Rehearing, clarifying therein certain findings of the Commission, and modifying the Procedural Schedule established in Order No. 23,744, by adding an additional 30 days to all previously established dates.

In an effort to narrow the issues and reach a settlement in these proceedings, the Parties and Staff met on several occasions in Technical Sessions and Settlement Conferences. On January 8, 2002, Staff filed with the Commission a request by the Parties to reschedule the January 14, 2002, hearing date while the Parties continued to negotiate a settlement of these dockets. Settlement was reached among the Parties and Staff and on January 22, 2002, the Companies filed a Comprehensive Settlement Agreement.

On March 13, 2002, the Commission notified the Parties that a hearing on the merits of the Settlement Agreement would take place on March 28, 2002. During the course of the hearing, the Commission took official notice of Docket DT 02-033, which concerns the merger of the Companies with Telephone and Data Systems, Inc.

II. TERMS OF THE 2002 COMPREHENSIVE SETTLEMENT AGREEMENT

The comprehensive settlement reached by Staff and the Parties in the dockets has several key elements, including a sale of the Companies, resignation of current directors and senior management, credits to customers totaling \$82,000 per company, discussion about retention of an independent auditing firm, and

dismissal of the pending Superior Court action. In detail, the settlement provides for the following:

Sale of Companies

(a) Telecommunication Systems of New Hampshire, Inc. (TSNH) will use its best efforts to reach agreement with an unaffiliated third party to acquire TSNH or the stock or assets of the Companies, subject to exercise of the business judgment and standard of conduct required under the New Hampshire Business Corporation Act. Best efforts will be exercised to enter into a definitive merger or purchase agreement with a qualified unaffiliated purchaser. If such an agreement shall not have been signed and delivered to the Staff and the OCA by January 31, 2002, the Staff or the OCA shall have the right to terminate this Agreement and pursue all pending proceedings.

(b) The sale documentation shall provide for the closing of the sale to occur promptly following receipt of corporate and all required regulatory approvals and customary conditions of closing.

(c) Staff and the OCA may terminate the Agreement, and the Staff and Parties shall retain all litigation and administrative rights if the sale is not consummated by the later of April 30, 2002 and the date that is 10 days following the

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expiration of all appeal periods with respect to all required regulatory approvals for such transaction without any appeals having been filed.

Management Following Sale

All current directors and senior management of the Companies will resign at the closing. The Companies' current President will not have any employment or consulting roles with or directly or indirectly provide services for the Companies after closing. The President, at purchaser's option, will be permitted to be employed for a maximum of 120 days following the closing for the transition. The costs thereof shall be recorded below the line and shall not be recoverable from customers at any time in the future.

Affiliate Contracts

(a) All contracts with entities owned, managed or controlled by TSNH or any of its affiliates (as defined in RSA 366:I,II), including but not limited to Draper Energy, Inc. and its Souhegan Data Services division, will be terminated at closing.

(b) The decision of whether, after the closing, (i) to enter into new real estate leasing arrangements with any of the TSNH affiliates for office and other facilities, or (ii) to

purchase goods or services (such as gasoline) sold at retail to the public by any of the TSNH affiliates will be left to the business judgment of the purchaser and will not be a condition to the purchase transaction. All other service arrangements with any of the TSNH affiliates will cease permanently within 90 days following the closing.

Customer Refunds

(a) Customer refunds provided for in Dockets DT 98-058 and 059 and approved in Order No. 23,190 shall continue to be made by Wilton and Hollis until fully made in accordance with the terms of that Order.

(b) In addition, Wilton and Hollis will each pay to customers a credit in the amount of \$82,000 per company with interest at a rate of 5% per annum over a 12-month period commencing no later than 30 days following the closing. These credits shall be deemed to be below-the-line items and shall not be used to reduce revenues in calculating the revenue requirement of either Wilton or Hollis.

Independent Accountants

(a) The current independent accountants of the Companies may be retained to audit and close out the 2001 financial books and records. Thereafter, such independent

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accountants shall not be engaged to act as auditors for the Companies or the Companies' successors for a period of 5 years.

(b) The Commission Audit Staff shall work with the primary auditor from the independent accounting firm to ensure the 1999, 2000 and 2001 Annual Reports and Quarterly reports are correct and in compliance with the Stipulation arising out of the February 1999 Settlement Agreement in Dockets DT 98-058 and 059, as well as ensuring all audit funds arising from the most recent audit have been resolved in conformity with Commission requirements.

Dismissal of Proceedings

Upon filing with the PUC of the executed definitive sale contract, the proceedings in Dockets DT 00-294, DT 00-295, DT 01-040 and DT 01-041 and the Superior Court action (Docket No. 01-E-0102) brought by the Companies and Stuart Draper will be dismissed. The dismissals will be deemed to be without prejudice until the sale closes. Upon the sale closure, the dismissals will be with prejudice.

Stay of Procedural Schedules

Pending approval of this settlement by the Commission, all parties agree to stay the procedural schedules in these dockets and in the Superior Court proceeding.

Miscellaneous

As temporary rates have been established in these dockets at current levels and the earnings investigations are superceded by the settlement there is no requirement for reconciliation of temporary rates to permanent. Following approval of this settlement rates shall be reclassified as permanent.

III. COMMISSION ANALYSIS

These dockets were initiated to address issues of non-compliance with Commission rules and orders, overearnings, and improper financial reporting. Based on a review of the settlement, the testimony of the Staff witness at the hearing held on March 28, 2002, and the docket that was initiated to follow through with the sale of the Companies (Docket No. 02-033), we believe the Comprehensive Settlement Agreement is in the public good.

Not only have the Companies agreed to transfer control to an unaffiliated third party, but they have agreed to pay customer credits in the amount of \$82,000, plus interest, for each Company. We believe the ratepayers benefit by both of these terms. We also believe that there is a benefit in having new auditors review the books of the Companies once they are

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transferred. Thus, we find that the settlement is reasonable and adequately addresses the concerns that caused the Commission to initiate the docket. We also note that the Agreement requires the Commission Staff to work with the Companies and the independent accounting firm to ensure the 1999 through 2001 Annual Reports are correct and the audit finds are remedied. We believe this will serve to properly arrange the Companies' financial records pending the sale to the unaffiliated third party.

As a final administrative matter, the Commission understands that the Companies' petitions for long-term debt financing are no longer necessary since the Companies have embarked on the sale process. The dockets opened for these petitions, DT 01-152 and DT 01-153, were temporarily suspended pending the sale of the Companies. Since the dockets are no longer necessary, the Companies should file a letter to that effect with the Executive Director so that Dockets DT 01-152 and DT 01-153 can be closed.

Based upon the foregoing, it is hereby

ORDERED, that the Comprehensive Settlement Agreement entered into by the Companies, OCA, and Staff is reasonable and

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in the public interest and is hereby approved in its entirety;
and it is

FURTHER ORDERED, that the Companies shall each pay to customers a credit in the amount of \$82,000, plus interest at a rate of five percent (5%) per annum over a 12-month period; and it is

FURTHER ORDERED, that the Companies and TSNH will use their best efforts to enter into a definitive merger or purchase agreement with a qualified unaffiliated third party to acquire the stock and assets of the Companies; and it is

FURTHER ORDERED, that immediately following the closing of a merger or sale transaction, all the current directors and senior management of the Companies will resign and will not be employed, directly or indirectly, by the purchasing company; and it is

FURTHER ORDERED, that all contracts with affiliates of the Companies will be terminated immediately following the closing; and it is

FURTHER ORDERED, that the current independent accountants retained by the Companies shall not act as auditors for the Companies or its successors for five years following close-out of the 2001 financial books and records; and it is

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FURTHER ORDERED, that the Companies will file a letter with the Commission requesting withdrawal of their Petitions in Dockets DT 01-152 and DT 01-153.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of April, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra Howland
Executive Director and Secretary