DT 02-033

WILTON TELEPHONE COMPANY AND HOLLIS TELEPHONE COMPANY

Acquisition by Telephone And Data Systems, Inc.

Order Approving Stipulation

and

DT 02-098

WILTON TELEPHONE COMPANY

Petition for Approval of Increase in Short Term Debt Limit

Order Approving Debt

O R D E R N O. 23,979

May 28, 2002

APPEARANCES: Steven Camerino, Esquire, of McLane, Graf, Raulerson & Middleton, for Wilton and Hollis Telephone Companies; John Lightbody, Esquire, of Murray, Plumb & Murray, for Telephone & Data Systems, Inc.; F. Anne Ross, Esquire, of the New Hampshire Office of Consumer Advocate, on behalf of Residential Ratepayers; and Lynmarie Cusack, Esquire, for the Staff of the New Hampshire Public Utilities Commission.

I. INTRODUCTION and BACKGROUND

On February 22, 2002, Wilton Telephone Company, Inc. (WTC) and Hollis Telephone Company, Inc. (HTC) (collectively, the Companies) filed with the New Hampshire Public Utilities Commission (Commission) a notification of a proposed indirect acquisition of their parent company, Telecommunication Systems of New Hampshire, Inc. (TSNH) by Telephone and Data Systems, Inc. (TDS). The filing indicates that TDS will acquire all issued and outstanding common stock of TSNH, which currently owns 100% of the issued and outstanding shares of WTC and HTC.

The instant docket is, in part, a result of a Comprehensive Settlement Agreement (the Investigation Agreement) entered into among the parties in Dockets DT 00-294, DT 00-295, DT 01-040, and DT 01-041 and approved by Order No. 23,959 (April 30, 2002). A key element of the Investigation Agreement included the sale of the Companies to an independent third party.

As a result of the Companies' notification, the Commission issued an Order of Notice, held a prehearing conference and issued Order No. 23,955 (April 19, 2002), which set out the preliminary positions of the parties and established a procedural schedule for the docket.

The Staff and Parties subsequently engaged in discovery and negotiations, and ultimately reached a stipulation on the merger that was filed with the Commission on May 10, 2002. A hearing was held on May 20, 2002 at which time the Parties and Staff submitted a revised merger stipulation proposing a resolution of all issues raised in the docket.

II. CURRENT STRUCTURE OF COMPANIES

A. Wilton Telephone Company and Hollis Telephone Company

WTC and HTC are New Hampshire corporations engaged in the business of providing telecommunications services within the State of New Hampshire. Both WTC and HTC are public utilities and are subject to the jurisdiction of the Commission. One hundred percent (100%) of the issued and outstanding stock of both WTC and HTC is owned by TSNH.

B. Telecommunication Systems of New Hampshire, Inc.

Telecommunications Systems of New Hampshire is a New Hampshire corporation and the parent of both WTC and HTC.

C. Telephone and Data Systems, Inc.

Telephone and Data Systems, Inc., is a Delaware corporation and the parent company of subsidiaries that provide, among other things, local exchange and exchange access service in 28 states throughout the United States, including New Hampshire. TDS’s wholly-owned subsidiary, TDS Telecommunications Corporation (TDS Telecom) is the sole stockholder of more than 100 independent local exchange carriers (LECs) in the United States, including Kearsarge Telephone Company which operates in New Hampshire under the jurisdiction of the Commission.

TDS Telecom recently received Commission approval, through Order No. 23,961 (May 1, 2002), to acquire Merrimack County Telephone Company (MCT), another independent local exchange carrier in New Hampshire.

III. TERMS OF THE MAY 20, 2002 STIPULATION

Like the recently approved TDS/MCT merger, the Parties and Staff to the WTC/HTC/TDS merger agree that the transfer of the WTC/HTC stock to TDS is in the public interest and that TDS has the requisite financial, managerial and operational abilities to oversee the Companies. The Parties and Staff also agree to keep current rates in effect until at least July 1, 2004, and that TDS will continue to supply the Companies’ customers with reliable and quality telephone service.

The stipulation reached by Staff and the Parties in this docket has several key elements, including agreements that:

- the post-merger company will implement and meticulously maintain all financial and accounting records;
- the transaction will be in the public interest and not adversely affect the rates, terms, services, or operation of the company;

- the current rates of the Companies shall remain in effect following the closing;
- neither the acquisition premium nor merger transaction expenses will be reflected in intrastate rates;
- the post-merger company will continue to take steps to construct and maintain a quality network that includes, but is not limited to, the list of additions, extensions and capital improvements outlined by the Companies;
- the post-merger company will continue to take reasonable steps to maintain quality telephone service and customer service standards;
- TDS intends to maintain existing payphones in their current locations;
- the transaction shall have no impact on the jurisdiction of the Commission over the Companies and their intrastate operations and rates;
- TDS will provide a regulatory presence in various future Commission dockets;
- the consummation of the acquisition will satisfy all the requirements and obligations of the Stipulation and Settlement Agreement filed with the Commission

on January 22, 2002, in Docket Nos. DT 00-294, DT 00-295, DT 01-040 and DT 01-041 (the Investigation Stipulation);

- Commission Audit Staff and the Companies will complete necessary reviews and make all changes to ensure that annual and quarterly reports are correct and in compliance with the prior agreements, Commission orders, and Commission rules;
- should any filing be made by the Companies or TDS with the FCC initiating a proceeding for a waiver or modification of Part 32.27 of the FCC rules, the Companies shall provide the Commission with a copy of the filing and, in the event the FCC changes its financial accounting rules, the Commission may disapprove any affiliate arrangement it may find unreasonable or just.

IV. COMMISSION ANALYSIS

A. Merger Transaction

The record in this case is similar to that of DT 02-009, the MCT/TDS Merger. The testimony here revealed that the merger agreements in both this docket and DT 02-009 are comparable. The witnesses, however, did describe some differences relating to the specifics of this particular merger as a result of the Investigation Agreement and as a result of what was learned through the experience of DT 02-009 and our Order No. 23,961.

Staff witness, Mary Hart, a utility analyst III, described that Staff was satisfied that WTC and HTC met the requirements imposed on them as a result of the Investigation Stipulation and that the Companies had made all necessary changes to the financial records and Annual Reports as required. Moreover, both Ms. Hart and Michael Reed, the TDS representative, testified that the transaction not only has no adverse effects on New Hampshire ratepayers but that it also brings benefits, as well.

The benefits the witnesses described include implementation of rigorous cost accounting and financial record keeping systems, access to aggregate purchasing strength and a larger pool of capital, access to greater expertise in system planning and better monitoring and reporting of service quality.

Lastly, the witnesses addressed a concern that we noted in the MCT/TDS merger order with regard to the TDS Master Affiliate Transaction Agreement (MATA). They pointed out that the settlement included provisions regarding affiliate transaction reporting requirements. The settlement specifically contemplates that if the Federal Communication Commission changes 47 CFR 32.27 the Companies, including TDS Telecom, will still be bound by Commission accounting requirements.

In Order No. 23,961, we acknowledged the statutory framework within which we must act and further stated that we are bound to inquire as to whether the transaction will result in no adverse impacts. Here, the Staff and Parties not only provided evidence that the merger would produce “no adverse impact,” but provided us with a listing of perceived benefits. The Merger Stipulation contains the same provisions of rate continuity and bars TDS from recovering in rates what might be considered an acquisition premium.

Based on the evidence before us, we find that pursuant to RSA 369:8, II, the transaction "will not adversely affect the rates, terms, service, or operation of the public utility within the state." We also find that pursuant to RSA 374:33 the transaction is “lawful, proper, and in the public interest.” Moreover, because the Parties have addressed through the stipulation any prior concerns we had with regard to the affiliate transactions of TDS, we are satisfied that the transaction should be approved.

B. Short-Term Financing

During the hearing we were presented with issues related to WTC's borrowing of $400,000 in the form of a short term, unsecured loan. We were asked to take administrative notice of Docket No. DT 02-098 and, if possible, make a finding on whether to approve the debt *nunc pro tunc.*

A review of the filing reveals that the President of WTC mistakenly believed the Company could borrow on a short term, unsecured basis an amount up to 10% of the value of its plant. Accordingly, the Company received a $400,000 loan on its gross book value of plant of $5,699,823 as of December 31, 2001. Commission rules, however, set the short term debt limit not to exceed 10% of the "net depreciated value of the utility's plant." Admin. Rules Puc 406.04. It was only through the discovery process in the merger case that the mistake was realized.

The filing reveals that the maturity date of the Revolving Loan Agreement is May 29, 2002, but that WTC will need to renew the term of the agreement by extending the maturity date for at least an additional six months. The filing also contends that because of WTC's cash position that it cannot pay off or pay down the RTFC Loan prior to consummation of the proposed acquisition of TSNH by TDS. The filing further notes that it is WTC's understanding that after consummation of the acquisition, TDS intends to refinance the RTFC loan with long term debt at a rate that is less than the interest rate on the RTFC loan.

At the hearing, Staff presented witnesses who acknowledged that the Parties became aware of the issue during the pendency of the merger investigation and a review of the material provided. An audit of WTC’s records completed on the morning of May 20, 2002 indicated that issues surrounding the debt seemed to be noncontroversial. Mr. Stuart Hodgdon, the Commission’s Chief Auditor, testified that the debt was used to pay for a portion of a switch, payroll expenses and certain taxes.

When the issue of the short-term debt was addressed at the hearing, no Party objected to the Commission acting on the matter in this proceeding. Given the filing and the testimony on the issue, we believe that it is appropriate to resolve the matter prior to the completion of the merger transaction. Accordingly, we will authorize the Revolving Loan Agreement *nunc pro tunc*, so that WTC can renew the loan upon its maturity on May 29, 2002 and continue to borrow up to $400,000 in accordance with that agreement. We will, however, require notification from TDS when it refinances the loan with long term debt.

Based upon the foregoing, it is hereby

ORDERED, that the proposed merger between Wilton and Hollis Telephone Companies into Telephone & Data Systems, Inc. is hereby APPROVED; and it is

FURTHER ORDERED, that the Wilton Telephone Company request for approval, *nunc pro tunc*, of $400,000 in short term debt is APPROVED.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of May, 2002.

Thomas B. Getz Chairman	Susan S. Geiger Commissioner	Nancy Brockway Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary