

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of a General Investigation       )  
Regarding the Effect of Federal Income Tax       )  
Reform on the Revenue Requirements of       )  
Kansas Public Utilities and Request to Issue an       )       Docket No. 18-GIMX-248-GIV  
Accounting Authority Order Requiring Certain       )  
Regulated Public Utilities to Defer Effects of       )  
Tax Reform to a Deferred Revenue Account.       )

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT REGARDING  
J.B.N. TELEPHONE COMPANY, INC.**

J.B.N. Telephone Company, Inc. ("JBN"), the Staff of the Kansas Corporation Commission ("Commission") ("Staff") and the Citizens' Utility Ratepayer Board ("CURB") (collectively "Joint Movants"), pursuant to K.A.R. 82-1-230a, submit this Joint Motion ("Motion"), which seeks Commission approval of the Settlement Agreement ("Agreement") attached to this Motion as Exhibit A. In support of their Motion, Joint Movants state as follows:

**I. BACKGROUND**

1. On December 14, 2017, Staff filed a Motion to Open a General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform ("Staff Motion").<sup>1</sup> Staff attached a Report and Recommendation ("Staff's R&R") to the Staff Motion, which recommended the Commission issue an Order addressing the following:

- a. Opening a general investigation for the purpose of examining the financial impact of anticipated federal income tax reform on regulated public utilities operating in Kansas;<sup>2</sup>

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<sup>1</sup>Staff's Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform filed December 14, 2017, in Docket No. 18-GIMX-248-GIV ("248 Docket") ("Staff Motion").

<sup>2</sup>Staff Motion, page 1.

b. Requiring, through the use of an Accounting Authority Order ("AAO"), certain regulated public utilities that are taxed at the corporate level (which included JBN), to track and accumulate in a deferred revenue account, with interest compounded monthly at the most current Commission-approved customer deposit interest rate, the reduction in their regulated cost of service that would occur in the event that a new lower federal income tax rate is signed into law. These deferrals should take effect at the same time as the new federal corporate tax rate change and the calculations should be performed using the cost of service data that was used to set the utilities' last Commission-approved revenue requirement (including any line-item surcharges that contain a provision for regulated income tax expense);<sup>3</sup> and

c. Confirming that the Commission's intention regarding the AAO is to preserve any potential tax benefits so that they may be evaluated in the context of a comprehensive evaluation of the reasonableness of the utilities' rates as well as notifying utilities that this portion of their rates should be considered interim subject to refund until the Commission has the opportunity to review the reasonableness of the utilities' rates on a comprehensive and case-by-case basis and confirming that the Commission intends to capture the reduction in Accumulated Deferred Income Tax ("ADIT") balances that will occur in the event that a lower corporate federal income tax rate takes effect, over time, in a manner that comports with Internal Revenue Services ("IRS") Tax Normalization Rules.<sup>4</sup>

2. Staff's R&R referred to and provided a copy of the order issued by the Commission in Docket No. 155,094-U dated March 18, 1987, relating to the effects of the Federal Tax Reform

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<sup>3</sup>Staff Motion, page 1.

<sup>4</sup>Staff Motion, page 1.

Act of 1986 ("1987 Order") and suggested that its recommendation in the current docket was consistent with the 1987 Order.<sup>5</sup> No rural local exchange carriers were impacted by or a part of the 1987 Order.

3. On December 22, 2017, the Tax Cuts and Jobs Act ("TCJA") was signed into law. Among other things, the TCJA reduced the federal corporate income tax rate from 35% to 21% beginning on January 1, 2018.<sup>6</sup>

4. On December 22, 2017, CURB filed a Petition to Intervene and a Response in Support of Staff's Motion.<sup>7</sup>

5. On January 18, 2018, the Commission issued its *Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform* ("Order").<sup>8</sup> In said Order, the Commission made the following findings and conclusions:

a. The TCJA has the potential to significantly reduce the cost of service for many utilities operating in Kansas since tax expenses are recovered in rates.<sup>9</sup>

b. A significant reduction to the corporate tax rate may also impact the ADIT Liabilities and Assets on the regulated books of utilities.<sup>10</sup>

c. An investigation into the impact of the TCJA on utility rates is warranted.<sup>11</sup>

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<sup>5</sup>Staff's Motion, attached to Staff's R&R dated December 3, 2017, page 3, 1987 Order attached to Staff's R&R as Attachment A.

<sup>6</sup>Tax Cuts and Jobs Act, Public Law No. 115-97; Statute 131 Stat. 2054 (December 22, 2017).

<sup>7</sup>CURB's Petition to Intervene and a Response in Support of Staff's Motion filed December 22, 2017, in the 248 Docket.

<sup>8</sup>Order issued January 18, 2018, in the 248 Docket.

<sup>9</sup>*Id.* at page 5, ¶6.

<sup>10</sup>*Id.*, at page 5, ¶6.

<sup>11</sup>*Id.*, at page 5, ¶7.

d. The 1987 Order issued by the Commission relating to the effects of the Federal Tax Reform Act of 1986, is informative but not precedential.<sup>12</sup>

e. The purpose of the investigation is to quantify the economic impacts of the new lower tax rates on Kansas utilities, and where appropriate, direct that any cost savings be passed on to Kansas utility customers.<sup>13</sup>

f. All regulated public utilities that are taxable at the corporate level are directed to accrue monthly, in a deferred revenue account, the portion of its revenues representing the difference between: (1) the cost of service approved by the Commission in its most recent rate case; and (2) the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the TCJA.<sup>14</sup>

g. Taxable utilities operating in Kansas are notified that the portion of their regulated revenue stream that reflects higher corporate tax rates should be considered interim and subject to refund, with interest calculated at the rate being used for interest paid on customer deposits, until the Commission can more fully evaluate on a case-by-case basis the impact of the TCJA.<sup>15</sup>

h. Upon the Commission completing its case-by-case evaluation, if it is determined that a rate decrease is proper and would have been proper as of the January 1, 2018, effective date of the TCJA, any excessive collections in the deferred

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<sup>12</sup>*Id.*, at page 5, ¶16.

<sup>13</sup>*Id.*, at page 5, ¶17.

<sup>14</sup>*Id.*, at page 5, ¶17.

<sup>15</sup>*Id.*, at page 5, ¶18.

revenue subaccount, or other appropriate tracking mechanism approved by the Commission, with appropriate adjustments, shall be refundable to customers with interest. Any balance remaining in the account shall be credited to the utility's operating revenue.<sup>16</sup>

i. The Commission intends to capture excess ADIT for the benefit of customers using a methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Tax Normalization Rules, as applicable.<sup>17</sup>

j. Any affected utility that believes other components of their cost of service have more than offset the decrease in its income tax expenses will have the ability to file such information and supporting data with the Commission, to be considered on a case-by-case basis. The Commission's intention here is not to materially impact regulated utilities' profitability, but rather, ensure that the affected utilities are neither positively nor negatively impacted by the passage of federal income tax reform.<sup>18</sup>

k. The Commission adopts the Staff's R&R and incorporates it into the Order.

6. On May 7, 2018, the Joint Movants held a conference call to discuss and attempt to quantify the economic impacts of the new lower tax rates on JBN's operations based upon the instructions provided by the Commission in its Order and how cost savings related to the lower tax rates should be flowed through to KUSF assessment payers. The Joint Movants also discussed how JBN should capture excess ADIT for the benefit of its customers using a method that is consistent with the tax normalization requirements specified in the tax legislation or IRS Normalization Rules, as applicable. As a result of said conference call and follow-up discussions among the Joint

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<sup>16</sup>*Id.*, at page 6, ¶18.

<sup>17</sup>*Id.*, at page 6, ¶18.

<sup>18</sup>*Id.*, at page 7, ¶11.

Movants, the Joint Movants were able to reach the Agreement, which is attached to this Motion as Exhibit A and hereby submit said Agreement to the Commission for approval.<sup>19</sup>

**II. TERMS OF AGREEMENT COMPLY WITH THE INSTRUCTIONS SET FORTH IN THE COMMISSION'S ORDER**

- A. JBN WILL REFUND \$14,137 IN ACCRUED TAX SAVINGS SINCE JANUARY 1, 2018, TO THE KUSF. ADDITIONALLY, JBN'S KUSF SUPPORT WILL BE REDUCED BY \$28,275 ANNUALLY, EFFECTIVE NOVEMBER 1, 2018, TO REFLECT THE LOWERING OF THE FEDERAL TAX RATE FROM 35% TO 21%.

8. As indicated above, the Commission stated that in order to quantify the economic impacts of the new lower tax rates on Kansas utilities the calculation should be based upon the difference between: (1) the cost of service approved by the Commission in the utility's most recent rate case; and (2) the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the TCJA and said amount should be accrued monthly.<sup>20</sup> For the period of time between January 1, 2018, and October 31, 2018, JBN accrued in a deferred revenue account that portion of its revenue representing the difference between: (1) the cost of service as approved by the Commission in its most recent KUSF docket, Docket No. 13-JBNT-437-KSF ("437 Docket"); and (2) the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the TCJA, plus a 1.62% annual interest rate reflecting the current Commission approved interest rate paid on customer deposits. The Joint Movants have agreed in compromise that because JBN has agreed to reduce its KUSF support without an audit, thereby saving significant administrative expense, JBN shall refund \$14,137 to the KUSF. JBN shall refund this deferred amount to the KUSF through a one-time reduction in KUSF support from GVNW to JBN for October 2018, with

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<sup>19</sup>See, Exhibit A to the Joint Motion, Settlement Agreement ("Agreement").

<sup>20</sup>Order, page 5, ¶7.

the reduction occurring in the Company's support received on or before December 1, 2018. Furthermore, to reflect the ongoing reduction in federal taxes imbedded in JBN's KUSF support, the Joint Movants agree that JBN's annual KUSF support shall be reduced by \$28,275 annually beginning with KUSF support received for November 2018 and paid on or before January 1, 2019.

B. JBN SHALL ESTABLISH A REGULATORY LIABILITY TO ACCOUNT FOR THE IMPACT OF THE TCJA ON THE UTILITY'S EXCESS ADIT

9. As indicated above, the Commission in its Order stated its intent was also to capture the impact of the TCJA on the utility's excess ADIT for the benefit of customers using a methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Normalization Rules.<sup>21</sup> Under the Agreement, JBN has indicated that it will also establish a regulatory liability to account for and capture the impact of the TCJA on the utility's excess ADIT and will provide evidence of such to Staff and CURB upon request.<sup>22</sup> Joint Movants have agreed to defer any issues regarding the impact of the TCJA on the utility's excess ADIT to JBN's next general rate case filing or KUSF determination.<sup>23</sup>

10. Joint Movants also agreed that JBN would not start amortizing the excess ADIT as of December 31, 2017, until the excess ADIT is reflected in base rates as approved by the Commission in JBN's next general rate case filing or KUSF determination.<sup>24</sup>

11. Under the Agreement, JBN is not bound to any particular date for a future rate case filing or KUSF determination.

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<sup>21</sup>Order, page 6, ¶8.

<sup>22</sup>Agreement, page 2.

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

C. THE GENERAL PROVISIONS IN THE AGREEMENT ARE CONSISTENT WITH THE COMMISSION'S ORDER TO EVALUATE THE IMPACT OF THE TCJA ON A CASE-BY-CASE BASIS

12. As indicated above, the Commission in its Order stated it intended to evaluate the impact of the TCJA on a case-by-case basis so that affected utilities are neither positively nor negatively impacted by the passage of the TCJA.<sup>25</sup> The Agreement attached to this Motion contains provisions consistent with the Commission's Order to evaluate the impact of the TCJA on a case-by-case basis. The Joint Movants agree the terms in the Agreement, if approved by the Commission, shall apply only to JBN and shall not be binding on Staff, CURB or the Commission in reviewing or approving any other proposal or agreement submitted by any other public utility in this docket or ordered by the Commission in this or any other docket.<sup>26</sup> Under the Agreement, Staff and CURB specifically reserve their respective rights to make all arguments and to take positions that are different than what they have agreed to in the Agreement for JBN with respect to TCJA proposals submitted by other public utilities for approval by the Commission.<sup>27</sup> Finally, the Agreement contains a provision that indicates the Joint Movants represent to the Commission that the terms are consistent with the requirements set forth in the Commission's Order issued in this docket and constitute a fair and reasonable resolution of this matter.<sup>28</sup>

III. TESTIMONY IN SUPPORT OF THE AGREEMENT

13. The Joint Movants agree that Staff will file testimony in support of the Agreement within seven (7) days after this Joint Motion is filed with the Commission. JBN and CURB may

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<sup>25</sup>Order, page 7, ¶11.

<sup>26</sup>Agreement, page 2.


<sup>27</sup>Agreement, pages 2-3.

<sup>28</sup>Agreement, page 3.



indicate their support via pre-filed testimony or pleading, but are not required to do so. Staff's testimony will address the five factors the Commission considers when evaluating a settlement agreement.

WHEREFORE, for the reasons set forth herein, JBN, Staff and CURB request that this Joint Motion be granted and that the Agreement attached hereto be approved.

  
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*Min. Neeley*

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For Commission Staff

*Min. Neeley for Todd Love*

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Attorneys for CURB

**Exhibit A**

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

|   |   |                            |
|---|---|----------------------------|
| In the Matter of a General Investigation        | ) |                            |
| Regarding the Effect of Federal Income Tax      | ) |                            |
| Reform on the Revenue Requirements of           | ) |                            |
| Kansas Public Utilities and Request to Issue an | ) | Docket No. 18-GIMX-248-GIV |
| Accounting Authority Order Requiring Certain    | ) |                            |
| Regulated Public Utilities to Defer Effects of  | ) |                            |
| Tax Reform to a Deferred Revenue Account.       | ) |                            |

**SETTLEMENT AGREEMENT**

J.B.N. Telephone Company, Inc. ("JBN"), the Staff of the Kansas Corporation Commission ("Commission") ("Staff") and the Citizens' Utility Ratepayer Board ("CURB") (collectively "Joint Movants"), pursuant to K.A.R. 82-1-230a, enter into the following Settlement Agreement ("Agreement"), which if approved by the Commission would address all issues in the above-captioned docket as it relates to JBN.

**I. TERMS OF AGREEMENT**

A. JBN WILL PAY A LUMP SUM OF \$14,137 FOR ACCRUED TAX SAVINGS AND ITS KUSF SUPPORT WILL BE REDUCED BY \$28,275 ANNUALLY, EFFECTIVE NOVEMBER 1, 2018, TO REFLECT THE LOWERING OF THE FEDERAL TAX RATE FROM 35% TO 21%.

1. As required by the Commission's January 18, 2018, *Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform* ("Order") in this docket, JBN has been accumulating in a deferred revenue account the difference between: (1) the cost of service as approved by the Commission in its most recent KUSF docket, Docket No. 13-JBNT-437-KSF ("437 Docket"); and (2) the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the Tax Cuts and Jobs Act ("TCJA"), plus a 1.62% annual interest rate reflecting the current

## **Exhibit A**

Commission approved interest rate paid on customer deposits. Staff's calculation of the annual regulatory liability amount is reflected in Appendix 1 attached to this Agreement.

2. JBN shall refund the above referenced regulatory liability to the KUSF through a one-time reduction in payment from GVNW to JBN in the amount of \$14,137 for October 2018, with the reduction occurring in JBN's support received on or before December 1, 2018. This one-time reduction in KUSF payment shall serve to release JBN from any further obligation associated with the tax reform regulatory liability recorded from January 1, 2018 through October 31, 2018. The one-time payment amount was reduced from the annual deferral amount calculated in Appendix 1 to reflect the partial year from January 1, 2018 through October 31, 2018, and to reflect a compromise between the Joint Movants. This compromise recognizes the administrative cost savings and expediency of JBN's agreement to immediately reduce its KUSF support instead of requiring a full KUSF audit proceeding to implement the reduction in support.

3. To reflect the ongoing reduction in federal taxes embedded in JBN's KUSF support, JBN's annual KUSF support shall be reduced by \$28,275 annually beginning with KUSF support received for November 2018 and paid on or before January 1, 2019.

4. In the event that there are material changes in federal tax law that affects JBN between now and its next KUSF determination proceeding, Staff and CURB agree to work with JBN in good faith to review the impact of the change in federal tax law on JBN's financial results. In the event that the change in federal tax results in a material impact on JBN's financial results, Staff and CURB agree to recommend to the Commission extraordinary regulatory relief to capture the impact of the change in federal tax liability. This extraordinary regulatory relief includes the implementation of deferral accounting through an Accounting Authority Order and/or the

## Exhibit A

implementation of a change in JBN's KUSF support outside of a full KUSF determination proceeding.

B. JBN SHALL ESTABLISH A REGULATORY LIABILITY TO ACCOUNT FOR THE IMPACT OF THE TCJA ON THE UTILITY'S EXCESS ADIT

5. JBN will establish a regulatory liability to account for and capture the impact of the TCJA on the utility's excess ADIT that exists as of December 31, 2017, and will provide evidence of such to Staff upon request. Joint Movants have agreed to defer any issues regarding the impact of the TCJA on the utility's excess ADIT to JBN's next general rate case or KUSF determination proceeding.

6. JBN will not start amortizing the above-referenced excess ADIT until it is reflected in rates or KUSF support as approved by the Commission in JBN's next general rate case or KUSF determination proceeding.

7. JBN is not bound by any particular date for a future rate case or KUSF determination.

C. GENERAL PROVISIONS

8. The Joint Movants agree the terms in this Agreement, if approved by the Commission, shall apply only to JBN and shall not be binding on Staff, CURB or the Commission in reviewing or approving any other proposal or agreement submitted by any other public utility in this docket or ordered by the Commission in this or any other docket.

9. Staff and CURB specifically reserve their respective rights to make all arguments and to take positions that are different than what they have agreed to in this Agreement for JBN with respect to proposals relating to the TCJA submitted by other public utilities for approval by the Commission.

10. Nothing in this Agreement is intended to impinge or restrict, in any manner, the

## **Exhibit A**

exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that JBN is providing efficient and sufficient service at just and reasonable rates.

11. This Agreement represents a negotiated settlement that resolves the issues in this docket as it relates to JBN only. The Joint Movants represent that the terms of the Agreement constitute a fair and reasonable procedure to address the issues raised in the Commission's Order as they relate to JBN only. Furthermore, the Joint Movants represent that the terms of the Agreement comport with the statutory requirements of K.S.A. 66-2008(e) for purposes of calculating JBN's KUSF support. Except as specified herein, the Joint Movants shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Joint Movants shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

12. The provisions contained in this Agreement have resulted from negotiations among the Joint Movants and are interdependent. In the event the Commission does not approve and adopt the terms of this Agreement in total, it shall be voidable and none of the Joint Movants shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in such event, this Agreement shall be considered privileged and not admissible in evidence and shall be withdrawn from the record in this proceeding and not made a part of the record in any other

**Exhibit A**

proceeding.

D. TESTIMONY IN SUPPORT OF THE AGREEMENT

13. The Joint Movants agree that Staff will file testimony in support of this Agreement within seven (7) days after the Motion is filed with the Commission. JBN and CURB may indicate their support via pleading or pre-filed testimony, but are not required to do so. Staff's testimony will address the five factors the Commission considers when evaluating a settlement agreement.

Respectfully submitted,

/s/ 

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**ATTORNEY FOR KANSAS CORPORATION  
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STATE OF KANSAS            )  
  ) ss.  
COUNTY OF SHAWNEE    )

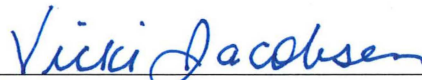
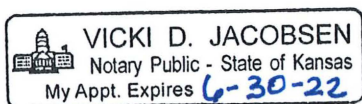
**VERIFICATION**

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Joint Motion for Approval of Settlement Agreement Regarding J.B.N. Telephone Company, Inc.* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



\_\_\_\_\_  
Michael Neeley # 25027  
Kansas Corporation Commission of the  
State of Kansas

Subscribed and sworn to before me this 30th day of October, 2018.



\_\_\_\_\_  
Notary Public

My Appointment Expires: June 30, 2022



## **CERTIFICATE OF SERVICE**

18-GIMX-248-GIV

I, the undersigned, certify that a true and correct copy of the above and foregoing Joint Motion for Approval of Settlement Agreement Regarding J.B.N. Telephone Company, Inc. was served via electronic service this 30th day of October, 2018, to the following:

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## CERTIFICATE OF SERVICE

18-GIMX-248-GIV

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