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

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Dwight D. Keen

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 Accounting Authority Order Requiring Certain Regulated Public Utilities to Defer Effects of Tax Reform to a Deferred Revenue Account.	))))))))	Docket No. 18-GIMX-248-GIV

ORDER APPROVING SETTLEMENT AGREEMENTS REGARDING WAMEGO TELECOMMUNICATIONS, INC. AND J.B.N TELEPHONE COMPANY, INC.

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On January 18, 2018, the Commission issued an Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (Order) to ensure Kansas utilities share the benefits of their reduced federal corporate tax rates with customers who pay the Kansas Universal Service Fund (KUSF) assessment.

2. In relevant part, the Order placed public utilities on notice that the Commission will undertake an evaluation of each utility to determine whether a rate decrease is appropriate as a result of the Tax Cuts and Jobs Act.[1]

3. On October 29, 2018, Commission Staff (Staff), the Citizens' Utility Ratepayer Board (CURB), and Wamego Telecommunications, Inc. (Wamego) filed a Joint Motion for

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[1] Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform, Jan. 18, 2018, ¶ 8.

Approval of Settlement Agreement Regarding Wamego Telecommunications Company, Inc. The key provisions of the Settlement Agreement are:

a. Wamego will refund $69,852 in accrued tax savings since January 1, 2018, to the KUSF;

b. Wamego's annual KUSF support will be reduced by $139,712 annually, effective November 1, 2018, to reflect the lowering of the federal tax rate from 35% to 21%; and

c. Wamego will establish a regulatory liability to account for the impact of the Tax Cuts and Jobs Act on the utility's excess Accumulated Deferred Income Taxes (ADIT).

4. On October 30, 2018, Staff, CURB, and J.B.N. Telephone Company, Inc. (J.B.N.) filed a Joint Motion for Approval of Settlement Agreement Regarding J.B.N. Telephone Company, Inc. The key provisions of the Settlement Agreement are:

a. J.B.N. will refund $14,137 in accrued tax savings since January 1, 2018, to the KUSF;

b. J.B.N.'s annual 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%; and

c. J.B.N. will establish a regulatory liability to account for the impact of the Tax Cuts and Jobs Act on the utility's excess ADIT.

5. On November 5, 2018, Justin T. Grady filed Staff Testimony in Support of Wamego Settlement Agreement, explaining that by revising Wamego's KUSF distribution to reflect its new lower federal tax rate, the Settlement Agreement establishes a just and reasonable

KUSF distribution based on Wamego's embedded costs, revenue requirements, investments and expenses.[2]

6. On November 6, 2018, Justin T. Grady filed Staff Testimony in Support of JBN Settlement Agreement, explaining that by revising JBN's KUSF distribution to reflect its new lower federal tax rate, the Settlement Agreement establishes a just and reasonable KUSF distribution based on JBN's embedded costs, revenue requirements, investments and expenses.[3]

7. Both Settlement Agreements are unanimous settlement agreements as defined by K.A.R. 82-1-230a. Therefore, there is no need to apply the five-factor test.[4]

8. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith to settle the dispute.[5] When approving a settlement, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole, establishes just and reasonable rates, and is in the public interest.[6]

9. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.[7] Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a court can only find that a Commission decision is not supported by substantial competent evidence

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[2] Staff Testimony in Support of Wamego Settlement Agreement Prepared by Justin T. Grady (Grady Wamego Testimony), Nov. 5, 2018, p. 11.
[3] Staff Testimony in Support of JBN Settlement Agreement Prepared by Justin T. Grady (Grady JBN Testimony), Nov. 6, 2018, p. 11.
[4] *See* Order Approving Contested Settlement Agreement (280 Order), Docket No. 08-ATMG-280-RTS, May 12, 2008, ¶¶ 9-10.
[5] *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).
[6] *Citizens' Util. Ratepayer Bd. v. Kansas Corp. Comm'n*, 28 Kan. App. 2d 313, 316 (2000), *rev denied* March 20, 2001.
[7] *Farmland Indus., Inc. v. Kansas Corp. Comm'n*, 25 Kan.App.2d 849, 852 (1999).

when the evidence shows "the [Commission's] determination is so wide of the mark as to be outside the realm of fair debate."[8]

10. The Commission reviewed uncontroverted testimony in support of the Joint Motions and the Joint Motions themselves. The Settlement Agreements are supported by substantial, competent evidence in the form of testimony from Justin Grady of Staff.

11. Having reviewed the record as a whole, the Commission finds and concludes that substantial competent evidence supports approval of both Settlement Agreements in their entirety. Based on its review of the Settlement Agreements, the Commission finds the provisions in the Settlement Agreements comply with the directives contained in the Commission's January 18, 2018, Order regarding federal tax reform. Neither Settlement Agreement impacts Wamego's or J.B.N.'s rates; they simply alter the amount of their respective KUSF distribution.[9] Pursuant to K.S.A 66-2008(e), KUSF support must be based on embedded costs, revenue requirements, investments and expenses. By revising the KUSF distribution to account for its new lower federal tax rate, the Settlement Agreements establish a just and reasonable KUSF distribution based on embedded costs, revenue requirements, investments and expenses.[10] Accordingly, the Commission finds the Settlement Agreements fairly represent a balance of their interests and reaches a reasonable result supported by the evidence.

12. The Commission concludes the Settlement Agreements are in the public interest because they return savings to KUSF contributors as soon as possible and avoid a costly and time-consuming process of a fully-litigated hearing.[11]

[8] *Id*. at 851.
[9] Grady Wamego Testimony, p. 11; Grady JBN Testimony, p. 11.
[10] Grady Wamego Testimony, p. 11; Grady JBN Testimony, p. 11.
[11] Grady Wamego Testimony, p. 13; Grady JBN Testimony, p. 13.

13. After a careful review and consideration of the evidence in the record, the Commission finds that the attached Settlement Agreements are supported by substantial competent evidence in the record as a whole, and is in the public interest. The Commission approves the Settlement Agreements with Wamego and J.B.N. in their entirety.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Motions for Approval of the Settlement Agreement Regarding Wamego and J.B.N are granted. The Commission approves the Settlement Agreements in their entirety. The terms of the attached Settlement Agreements are incorporated into this Order.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).[12]

C. The Commission retains jurisdiction over the subject matter and parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 12/06/2018

Lynn M. Retz

Lynn M. Retz
Secretary to the Commission

BGF

[12] K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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 Accounting Authority Order Requiring Certain Regulated Public Utilities to Defer Effects of Tax Reform to a Deferred Revenue Account.	)))))))	Docket No. 18-GIMX-248-GIV

SETTLEMENT AGREEMENT

Wamego Telecommunications Company, Inc. ("WTC"), 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 WTC.

I. TERMS OF AGREEMENT

A. WTC WILL PAY A LUMP SUM OF $ 69,852 FOR ACCRUED TAX SAVINGS AND ITS KUSF SUPPORT WILL BE REDUCED BY $139,712 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, WTC 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. 14-WTCT-142-KSF ("142 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 Commission approved interest rate paid on customer deposits.

Exhibit A

2. WTC shall refund the above referenced regulatory liability to the KUSF through a one-time reduction in payment from GVNW to WTC in the amount of $69,852 for October 2018, with the reduction occurring in the Company's support received in November. This one-time reduction in KUSF payment shall serve to release WTC 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 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 WTC'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 WTC's KUSF support, WTC's annual KUSF support shall be reduced by $139,712 annually beginning with the KUSF support for November 2018, received in December 2018.

4. In the event that there are material changes in federal tax law that affects WTC between now and its next KUSF determination proceeding, Staff and CURB agree to work with WTC in good faith to review the impact of the change in federal tax law on WTC's financial results. In the event that the change in federal tax results in a material impact on WTC's financial results, Staff and CURB agree to recommend to the Commission extraordinary regulatory relief consistent with K.S.A. 66-2008(e) to capture the impact of the change in federal tax liability. This extraordinary regulatory relief may include the implementation of deferral accounting through an Accounting Authority Order and/or the implementation of a change in WTC's KUSF support outside of a full KUSF determination proceeding.

Exhibit A

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

5. WTC 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.

6. Joint Movants also agree WTC will record the Excess ADIT ("EDIT") as a subcomponent of ADIT consistent with National Exchange Carrier Association ("NECA") Reporting Guideline 3.3, Excess Deferred Tax Development, Issue Date: 2/93, Revised 08/18. The calculated EDIT will be amortized over the remaining useful life of the assets through deferred income tax expense as per the NECA Reporting Guideline 3.3. For purposes of KCC reporting, future KUSF determination proceedings, and other intrastate cost study purposes, WTC will not amortize the intrastate EDIT. If the intrastate EDIT is amortized, it will be reversed by the creation of an intrastate regulatory liability such that the net effect is that the intrastate portion of EDIT remains at the unamortized value from December 31, 2017, until the intrastate EDIT amortization is included in a KUSF determination proceeding. Joint Movants have agreed to defer any issues regarding the impact of the TCJA on the utility's intrastate excess ADIT to WTC's next general rate case filing or KUSF determination.

7. WTC 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 WTC and shall not be binding on Staff, CURB, any other rural telephone company as defined in K.S.A. 66-1,187(l) 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 WTC 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 exercise by the Commission or WTC of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that WTC 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 WTC 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 WTC 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 WTC'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 seek judicial review of the Commission's order on these issues.

Exhibit A

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 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. WTC 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,

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Exhibit A

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Exhibit B

**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 Accounting Authority Order Requiring Certain Regulated Public Utilities to Defer Effects of Tax Reform to a Deferred Revenue Account.	)))))))	Docket No. 18-GIMX-248-GIV

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 B

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

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

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 B

proceeding.

D. <u>TESTIMONY IN SUPPORT OF THE AGREEMENT</u>

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,

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CERTIFICATE OF SERVICE

18-GIMX-248-GIV

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 12/06/2018.

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CERTIFICATE OF SERVICE

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CERTIFICATE OF SERVICE

18-GIMX-248-GIV

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