

Decision PROPOSED DECISION OF ALJ MATTSON (Mailed 10/28/2011)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of Application of Foresthill Telephone Company (U-1009-C), dba Sebastian, to Review Intrastate Rates and Charges and Rate of Return For Telephone Service Furnished Within the State of California, and Increase Selected Rates.

Application 10-12-012  
(Filed December 22, 2010)

**DECISION ADOPTING SETTLEMENT AGREEMENT**

We adopt an all-party settlement resolving all issues in this proceeding. The result, compared to present rates, is an overall increase in test year 2012 intrastate revenues of \$891,110 (18.8%) effective January 1, 2012. The increase will be funded through the California High Cost Fund-A, without change to applicant's rates. A copy of the Settlement Agreement is attached as Appendix A. The proceeding is closed.

**1. Background**

On December 22, 2010, Foresthill Telephone Company (Foresthill or applicant) filed a general rate case application, seeking an overall increase in test year 2012 intrastate revenues of \$3,914,838 (150.9%) effective January 1, 2012. Applicant provided its customers with timely public notice of the application.

On January 21, 2011, the Commission's Division of Ratepayer Advocates (DRA) filed a protest. On February 9, 2011, the Commission held a prehearing conference. On March 2, 2011, the assigned Commissioner filed a Scoping Memo

and Ruling stating the issues and schedule. By ruling dated March 24, 2011, applicant's motion to alter the dates for hearing was granted.

DRA engaged in extensive discovery, including written and oral data requests. On May 27, 2011, DRA served its proposed direct testimony. On June 15, 2011, applicant served its proposed rebuttal testimony.

Hearings were scheduled to begin on June 27, 2011. On June 16, 2011, parties participated in duly noticed settlement discussions, in compliance with Rule 12.1 of the Commission's Rules of Practice and Procedure (Rules). In consultation with parties, the Administrative Law Judge (ALJ) granted parties' motion to suspend hearings until June 29, 2011, pending further settlement discussions. On June 29, 2011, parties filed a Joint Motion for Adoption of All-Party Settlement Agreement (Settlement Agreement). On August 23, 2011, the ALJ admitted proposed testimony into evidence based on parties' stipulation for admission of evidence and waiver of cross-examination and objections.

No party raised any objection to the Settlement Agreement, and there is no known opposition. No hearing was held.

## **2. Summary of Settlement Agreement**

Applicant and DRA settled all issues. The Settlement Agreement is contained in Appendix A to this order. Settling parties state that the principal components of the settlement compared to the 2012 test year request filed by applicant are:

- A reduction of total intrastate company test year expenses (including depreciation) of \$661,323 from the expense amount filed by Foresthill in its application. This equates to a 14.36% reduction.
- A reduction of intrastate rate base for the test year by approximately \$544,000, or 4.94%. Net test year intrastate plant additions are reduced by \$696,000.

- Acceptance of Foresthill's depreciation study as submitted with its direct testimony, with the exception of vehicles, which will remain at the existing depreciation rate.
- Total intrastate company test year 2012 operating revenues have been reduced by \$1,240,776 from Foresthill's application, or 18.03%. The Settlement Agreement results in a reduction of test year 2012 proposed net operating income of \$352,014 or 25.15%.
- No changes in rates.
- A 10% intrastate rate of return.
- A stipulated capital structure for Foresthill of 65% equity and 35% debt, with a 5% cost of debt and a 12.69% return on equity. These factors result in a 10% return on rate base.
- Agreement with DRA's proposed local test year revenues at present rates.
- Agreement with DRA's net to gross multiplier factor.
- Agreement that Foresthill's federal Universal Service Fund (USF) support for the test year will adjust the CHCF-A support number adopted by the Commission, if it is different from the estimate agreed upon by the parties.

### 3. Discussion and Analysis

Commission Rules provide that:

"The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." (Rule 12.1(d).)

In evaluating settlements, the Commission recognizes a strong California public policy favoring settlements and avoiding litigation.<sup>1</sup> Settling parties

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<sup>1</sup> See Joint Motion for Adoption of All-Party Settlement Agreement at 5, citing *Re Pacific Bell*, 45 CPUC2d 158, 169, D.92-07-076 (July 22, 1992).

demonstrate here that the Settlement Agreement satisfies all three requirements and should be adopted.

### 3.1. Reasonable In Light of the Whole Record

The Settlement Agreement is reasonable in light of the whole record. For example, the record contains a range in requested and recommended test year 2012 intrastate operating expenses, plant-in-service, rate base, and rate of return:

#### 2012 INTRASTATE RESULTS OF OPERATIONS

LINE NO	ITEM	APPLICANT REQUESTS	DRA RECOMMENDS	SETTLEMENT
1	Operating Expenses	\$4,606,304	\$3,373,570	\$3,944,981
2	Plant-in-Service	\$17,460,184	\$15,741,477	\$16,955,334
3	Rate Base	\$11,022,017	\$9,613,531	\$10,477,651
4	Rate of Return	12.70%	6.00%	10.00%

Parties' testimonies establish a reasonable basis for estimates, requests and recommendations. The Settlement Agreement reflects parties' compromises within the range of parties' testimony. The 10% intrastate rate of return upon which parties agree is consistent with recent Commission decisions.<sup>2</sup> The resulting adopted test year 2012 rate increase is \$891,110, which is substantially less than applicant's requested increase of \$3,914,838.

The record reflects no disputes with parties' joint proposal to retain existing rates and rate design without change. The existing rates and rate design are consistent with our directions for high-cost rural telephone companies, such as Foresthill, to receive CHCF-A support. (See, for example, D.10-02-016.)

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<sup>2</sup> See Resolution Nos. T-16697, T-16707, T-16711; also see D.10-11-007 (Siskiyou Telephone Company).

The record demonstrates that applicant has adequate service quality to support adoption of the Settlement Agreement. General Order (GO) 133-C sets forth telephone service quality standards with which applicant must conform. Reporting under GO 133-C has only recently commenced, but applicant satisfied each of the service quality standards provided for both in GO 133-B (the predecessor to GO 133-C) and GO 133-C.

No party identifies any element of the Settlement Agreement that is unreasonable in light of the whole record, and we are aware of none.

### **3.2. Consistent with Law**

The Settlement Agreement is consistent with law. For example, the Commission must provide utilities an opportunity to earn a reasonable rate of return.<sup>3</sup> The Settlement Agreement includes a rate of return and rate design that provides applicant this opportunity.

No party identifies any element of the Settlement Agreement that is inconsistent with law, and we are aware of none.

### **3.3. In the Public Interest**

The Settlement Agreement is in the public interest. DRA, the Commission division charged with protecting consumer interests, has conducted extensive discovery concerning the application, and has agreed to the settlement. The settlement provides that Foresthill will be in a position to generate revenues sufficient for it to maintain a reasonable level of plant investment and service quality, and also service its debt and provide the opportunity to earn a reasonable return for its shareholders. Among other things, this is accomplished

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<sup>3</sup> In support, the Joint Motion for Adoption of All-Party Settlement Agreement at 6 cites *Duquesne Light Co. V. Barasch*, 488 U.S. 299, 109 S. Ct. 609, 102 L.Ed.2d 646 (1989).

by the settlement provision that applicant's draw from the CHCF-A will be adjusted as necessary to align with actual USF support for test year 2012, if different than the USF support number included in the settlement. (Settlement Agreement at 2, Item 3.)

The Commission was notified by the National Exchange Carrier Association, Inc. in October 2011 that Foresthill's USF support for test year 2012 will be \$1,838,246. This is \$115,981 more than the amount to which parties' stipulated in the Settlement Agreement. Provisions of the CHCF-A require that amounts paid to carriers be specifically adopted by the Commission. We do that here by employing the provision in the Settlement Agreement to adjust the CHCF-A to reflect changes in test year USF support. We reduce applicant's CHCF-A draw by \$115,981 (from \$2,682,145 to \$2,566,164). In joint comments on the proposed decision, applicant and DRA state their agreement with this adjustment and, to memorialize the updated amounts, attach to those comments revised versions of Attachment B and Attachment C to the Settlement Agreement. We include those here in Appendix B to this order.

No customer has contacted Foresthill, DRA or the Commission's Public Advisor in response to the Application or to object to the relief Foresthill originally sought. Because the Settlement Agreement provides Foresthill with relief that is less than what Foresthill originally sought, and because the parties have agreed that no rate charged to Foresthill customers will be raised, it is reasonable to infer that no customer would object to the Settlement Agreement.

No party or member of the public identifies any element of the Settlement Agreement that is not in the public interest, and we are aware of none. For these reasons, adopting the Settlement Agreement is in the public interest.

#### **4. Conclusion**

The Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest. The joint motion for adoption of the all-party settlement agreement should be granted. The final adopted results should be adjusted to show test year 2012 USF support of \$1,838,246 and CHCF-A support of \$2,566,164.

Unless expressly provided otherwise, adoption of a settlement does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding. (Rule 12.5.) Parties do not ask that this Settlement Agreement be precedential, and we do not adopt it on that basis. We recognize that the Settlement Agreement represents parties' compromises of the issues in this proceeding. Accordingly, adoption of parties' Settlement Agreement here does not constitute approval or, or precedent regarding, the estimating methods, assumptions underlying settlement amounts adopted herein, or any other element of the Settlement Agreement in this matter, or in any future proceeding.

#### **5. Categorization and Need for Hearing**

This proceeding is categorized as ratesetting with the need for hearing. (See March 2, 2011 Assigned Commissioner's Scoping Memo and Ruling.) No hearing was held, however. The matter is resolved herein based on the record and Settlement Agreement. No party asks for hearing, and no hearing is necessary.

#### **6. Comments on Proposed Decision**

On October 28, 2011, the proposed decision of Administrative Law Judge (ALJ) Burton W. Mattson was filed and served. On November 17, 2011, joint

comments were filed by applicant and DRA. No reply comments were filed. Changes made based on the comments are incorporated into the decision.

### **Assignment of Proceeding**

Catherine J. Sandoval is the assigned Commissioner and Burton W. Mattson is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The Settlement Agreement reflects parties' compromises within the range of requests and recommendations in parties' testimony, and a 10% overall rate of return is consistent with recent Commission decisions.
2. Retention of applicant's current rates, rate design and tariffs maintains applicant's eligibility to receive CHCF-A support.
3. Applicant has adequate service quality to support adoption of the Settlement Agreement.
4. The Settlement Agreement includes a rate of return and rate design that provide applicant the opportunity to earn a reasonable rate of return.
5. The Settlement Agreement allows applicant the opportunity to generate sufficient revenues to maintain a reasonable level of plant investment and service quality.
6. No customer contacted applicant, DRA or the Commission to object to the relief requested by applicant.
7. The Settlement Agreement is reasonable in light of the whole record and is in the public interest.
8. The Settlement Agreement provides that test year 2012 CHCF-A support is subject to adjustment to reflect actual USF support.
9. Actual test year 2012 USF support for applicant is \$1,838,246.

**Conclusions of Law**

1. No hearing is requested by any party, and no hearing is necessary.
2. The Settlement Agreement is consistent with law.
3. The joint motion for adoption of an all-party Settlement Agreement should be granted.
4. The Settlement Agreement results adopted here (see Appendix A) should be adjusted to show an increase in test year 2012 USF support of \$115,981 (from \$1,722,265 to \$1,838,246) with an equal reduction in CHCF-A support (from \$2,682,145 to \$2,566,164); this is shown in the revised stipulated amounts filed with joint comments by applicant and DRA (see Appendix B).
5. This order should be effective today so that the Settlement Agreement, and the adjustment to the Settlement Agreement results, are effective without delay, thereby providing certainty to applicant, shareholders, ratepayers and the public.

**O R D E R****IT IS ORDERED** that:

1. The June 29, 2011 Joint Motion for Adoption of All-Party Settlement Agreement is granted.
2. The Settlement Agreement contained in Appendix A is adopted.
3. Settlement Agreement adopted test year 2012 results are adjusted to increase interstate Universal Service Fund support by \$115,981 (from \$1,722,265 to \$1,838,246) with an equal reduction in California High Cost Fund-A support (from \$2,682,145 to \$2,566,164). (See Appendix A, page 2, paragraph 3; and Attachment C, lines 2 and 3, last column.) The revised amounts are shown in Appendix B.

4. Within 14 days of the date this order is mailed, Foresthill Telephone Company shall file a Tier 1 advice letter with revised tariff schedules, if and as necessary, that implement the Settlement Agreement in Appendix A. The advice letter, unless suspended by the Director of the Communications Division, shall be effective in one day, and the tariffs shall apply to services rendered on or after January 1, 2012.

5. No hearing is necessary.

6. Application 10-12-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

[Mattson Agenda Dec Adopting Settlement Agreement \(REDLINED VERSION\).](#)

[A1012012 APPENDIX A Mattson](#)

[A1012012 APPENDIX B Mattson](#)