



*Kathleen Sebelius, Governor  
Thomas E. Wright, Chairman  
Robert E. Krehbiel, Commissioner  
Michael C. Moffet, Commissioner*

MEMORANDUM

To: KUSF Administrator, Solix Inc.

From: Sandy Reams, KCC Staff

Date: July 3, 2007

Re: Write-off Policy

This letter is in response to your inquiries regarding language on page 2 of the June 2, 2000 letter regarding the Kansas Corporation Commission (KCC) write-off policy. Specifically, page 2 states that prior to writing off any company's balance, the Administrator is to provide a request regarding the write-off to the Commission since the Commission adopted a policy allowing the Administrator to write-off certain balances.

Based on recommendations by the KUSF Administrator at the time, NECA, KCC Staff submitted a memorandum to the KCC regarding a write-off policy for delinquent carriers in January 2000. On June 2, 2000, Staff remitted a letter to NECA, the KUSF Administrator at that time, setting forth the write-off policy adopted by the KCC. Copies of both the January 2000 memorandum and the June 2000 letter are enclosed.

With regard to writing-off a company's balance when the balance owed is \$100 or less, the KCC adopted the following policy:

1. When a carrier is 180-days or more delinquent in paying its KUSF assessment and the company owes \$99.00 or less to the KUSF, the cost of calling and sending certified letters to the carrier outweighs the benefits of pursuing the carrier. A company must be current in reporting its KUSF obligations via a Carrier Remittance Worksheet (CRW) in order for this balance to be determined. The Administrator should identify each company and submit a memorandum setting forth the write-off request to the KCC Staff.

As shown on the attached memorandum, dated April 18, 2001, the KCC Staff relied on a memorandum from the State Fund Program Manager of NECA to submit a memorandum to the KCC. This memorandum indicates that while the companies addressed had balances of \$100.00 or less, they were also generally delinquent with other statutory or regulatory requirements, or the balances were not final balances.

After review of the Administrator's April 2001 memorandum, Staff reviewed each company's compliance with KCC Assessments, KCC Annual Reports, and the Kansas Secretary of State's

office requirements, in addition to whether the Commission had received any returned mail from the carrier. If the company is current with these issues, the KCC Staff will send a written authorization to the Administrator for the balance to be written off. The Administrator must maintain each company's files in a manner as to reflect the write-off.

However, as shown on the enclosed memorandum, most companies that are at least 180-days delinquent in paying its KUSF assessments, are also delinquent in reporting their KUSF obligations, preventing the Administrator from determining a final outstanding balance. Thus, the issue is no longer a minimal delinquent balance, but also non-compliance with KUSF reporting requirements. Thus, once a memorandum regarding a company that is both non-compliant with paying and reporting its KUSF obligations is received, KCC Staff will again review the company's compliance with other statutory and regulatory obligations. If a carrier is delinquent with other regulatory requirements, Staff may remit a letter to the carrier, and if the company comes into compliance, the Administrator will be able to remove the carrier from its delinquent files. In the event that Staff submits a memorandum to the KCC regarding the company's non-compliance with its obligations, a Show Cause proceeding may be opened. In this case, the carrier may come into compliance with its regulatory obligations or the KCC may cease the company's certificate.

The other scenarios include a company with a credit account balance. Under this provision, if the balance is \$99.00 or less and the company is current in its reporting to the KUSF, the Administrator may issue a refund to the company. A memorandum should also be remitted to the KCC Staff to allow Staff to verify that the company is current with all other reporting requirements. If the company is in compliance, Staff will send a written authorization to the Administrator regarding the issuance of the refund. If the company is not, Staff will either remit a letter to the carrier or submit a memorandum to the KCC.

A company may have a credit balance of \$99.00 or less, but be 180-days or more delinquent in reporting to the Administrator. In this situation, it is possible that the Administrator no longer has any current contacts for the company and may receive returned mail. The Administrator should first contact the KCC Staff to determine if the KCC has current contact information. Once contact information is determined, the Administrator will be able to follow-up with the carrier regarding its delinquent status, or submit a memorandum to Staff. After receipt and review, Staff will either remit a letter to the carrier or submit a memorandum to the KCC. If the company comes into compliance with its reporting obligations, the credit balance may have resolved itself. Otherwise, either Staff or the KCC will issue written authorization to the Administrator approving the issuance of a refund.

Finally, a company may have a credit balance of \$100 or more. If the company is current with its KUSF obligations, a final balance can be determined. Again, a memo would be remitted to Staff to verify the company is current with all regulatory obligations, and the Administrator will receive written authorization to remit a refund to the company.

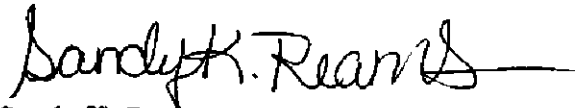
However, if the company has a credit balance of \$100 or more, and is delinquent in reporting its KUSF obligations, a memorandum should also be remitted to the KCC Staff to allow Staff to verify that the company is current with all other reporting requirements. If the company is not in compliance with one or more regulatory requirements, Staff will remit a letter to the carrier or submit a memorandum to the KCC.

Please remember that a final KUSF balance cannot be determined for a carrier until the carrier is current with its KUSF reporting obligations. Thus, the Commission maintains its authority to retain credit balances, regardless of the amount, until a company comes into compliance with all KUSF obligations.

Hopefully, this letter provides clarification that there are few instances in which a true write-off will occur on a company's KUSF account. In general, in each case, a memorandum will be provided by the Administrator to KCC Staff. KCC Staff will review to determine the carrier's compliance with other regulatory requirements. Staff will either remit information or authorization directly to the Administrator, remit a letter to the carrier, or a Show Cause memorandum to the Commission.

Please let me know any further questions you may have regarding this issue.

Sincerely,

A handwritten signature in black ink that reads "Sandy K. Reams" with a long horizontal flourish extending to the right.

Sandy K. Reams

Managing Auditor



Adopted Rule  
of Procedure

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## Kansas Corporation Commission

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Bill Graves, Governor   John Wine, Chair   Cynthia L. Claus, Commissioner   Brian J. Moline, Commissioner

June 2, 2000

Ms. Kim Thomas  
Manager-State Funds  
National Exchange Carrier Association (NECA)  
80 South Jefferson  
Whippany, NJ

RE: KCC's KUSF Write-Off Policy

Dear Ms. Thomas,

On November 10, 1999, Mr. Jerry Lammers, Staff, received an e-mail from Eric Sequin requesting that a write-off policy for minimal outstanding or credit balances be implemented. On January 31, 2000, Staff issued a memo to the Commission regarding implementation of a write-off policy for (1) delinquent providers with outstanding balances of \$100.00 or less once the balance is 180-days or older and (2) minimal credit balances owed as refunds to companies that are either no longer doing business in Kansas and for which NECA has no current contacts or are 180-days or more delinquent in reporting to the KUSF (See attached). Upon receipt of the memo, the Commissioners requested that Ms. Eva Powers, Assistant General Counsel, consult the Kansas' Attorney General's Office regarding relevant state statutes. On March 14, 2000, Ms. Powers sent a letter to the Attorney General office seeking advice regarding implementing a write-off policy and whether the Commission's attorneys could seek collection action against a delinquent company or if NECA's attorneys needed to take such action. On April 28, 2000, the Commission received a response from the Office of the Attorney General (See attached).

First, as of January 31, 2000, five providers were 180-days or more delinquent in paying into the KUSF and had outstanding balances of \$100.00 or less due to the KUSF. The cost of calling and sending certified letters to these companies is greater than that owed by the companies. In an effort to balance the cost of administering the KUSF to the benefits received by pursuing delinquent companies, the Commission agrees that it is reasonable to implement a write-off policy for companies meeting this criterion.

Staff's January 31, 2000 memo stated that two companies, with credit balances of \$100.00 or less, were no longer doing business in Kansas. Since NECA had no current contacts for these companies, NECA was unable to issue a credit. After reviewing state statutes, the Office of the Attorney General stated "the Kansas Telecommunications Act does not provide the administrator authority to retain property otherwise subject to the Unclaimed Property Act".<sup>1</sup> At this time, the Commission adopts a write-off policy for those companies, with a credit balance of \$99.00 or

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<sup>1</sup>See April 28, 2000 letter, page 2, ¶ 2, and May 24, 2000 letters from the Office of the Attorney General.

less, that are no longer doing business in Kansas and for which NECA has no current contacts. In the event that the company later begins doing business in Kansas or supplies NECA with a current contact, NECA's records shall reflect any credit balance written off in that company's records.

If a company is 180-days or more delinquent in reporting to the KUSF and has a credit balance, NECA is unable to determine if the company owes money to the KUSF or is truly owed a refund. As noted in the Attorney General's letter,<sup>2</sup> the KCC maintains its authority to retain credit balances until these companies comply with reporting requirements. NECA may implement a write-off policy for companies meeting these requirements; however, NECA shall maintain its records in such a manner as to be able to track each company's credit balance retained. Once a credit balance is written off, it is possible that a company will fully comply with KUSF reporting requirements. Once a company complies with the requirements, any credit balance must be refunded to the company.

Prior to any company's outstanding balance or credit being written off, NECA is to provide a request to the Commission. For each of the above referenced policies, NECA will separately identify each company meeting the criterion and outstanding or credit balance. NECA is best able to determine when a write-off request should be submitted to the Commission; however, requests should not be submitted more frequently than quarterly.

Additionally, the Commission asked the Attorney General's Office if the Commission could use its own attorneys to maintain collection actions against a company. The Attorney General Office's reply states that, although K.S.A. 66-2010 authorizes the KUSF administrator to maintain any collection action, the Commission can use its own attorneys to maintain collection actions against a delinquent company once the administrator determines a debt exists.<sup>3</sup> The Commission will incorporate this change into the new contract for the Administration of the KUSF.

If you have any questions regarding this matter, please feel free to contact me at (785)271-3169 or Sandy Reams at (785)271-3130.

Sincerely,



Judith McConnell  
Director of Administrative Services

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<sup>2</sup>See April 28, 2000 letter, page 3, ¶ 1.

<sup>3</sup>See April 28, 2000 letter, page 2, ¶ 2.



State Corporation Commission

MAY 25 2000

LEGAL DIVISION

State of Kansas

Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

May 24, 2000

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

Eva Powers  
Assistant General Counsel  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027

Re: Follow-up question to our April 28, 2000 response

Dear Ms. Powers:

Attorney General Stovall has asked me to respond to your letter dated May 16, 2000, regarding whether the additional information that the money paid by providers of telecommunications services is actually paid by the ratepayer [because the companies are authorized to pass the assessment on to customers] makes a difference in our conclusion that the Kansas Telecommunications Act does not provide authority to retain property otherwise subject to the Unclaimed Property Act.

As we discussed during our telephone conversation last week, if the assessments were paid to the Commission rather than a third-party administrator, the Commission, pursuant to its general broad powers, would have the authority to ensure that the money would benefit ratepayers. However the statutes creating and authorizing the third-party administrator do not provide any general discretionary powers. Thus, as we both concluded, legislative change is necessary.

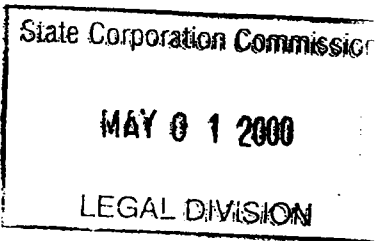
I hope this letter helps in your effort to effect the necessary legislative change. If we can be of any further assistance, please let us know.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL  
CARLA J. STOVALL

Guen Easley  
Assistant Attorney General

GE:jm



State of Kansas

Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

April 28, 2000

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

Eva Powers, Assistant General Counsel  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027

Re: Public Utilities--Telecommunications--Kansas Universal Service Fund; Funding;  
Authorized Expenditures; Supplemental Funding; Collection Actions

Dear Ms. Powers:

In your correspondence dated March 14, 2000, you seek our advice with respect to the operation of the Kansas Universal Service Fund (Fund), established in accordance with K.S.A. 1999 Supp. 66-2008. You inquire whether K.S.A. 1999 Supp. 66-2010(d), which authorizes the third party administrator to bring actions to collect owed funds from telecommunications public utilities, precludes the use of Kansas Corporation Commission (KCC) attorneys to bring the collection actions on behalf of the Fund. We will presume for purposes of your question that the administrator makes the determination that a collection action is necessary given that K.S.A. 1999 Supp. 66-2010 authorizes the third party administrator to collect and audit all of the relevant information about whether a debt exists.

The statute states:

"The administrator shall be authorized to maintain an action to collect any funds owed by any telecommunications carrier, public utility or wireless telecommunications provider in the district court in the county of the registered office of such carrier, utility or provider . . . ."

The statute clearly authorizes the third party administrator, the National Exchange Carrier Association (NECA), to maintain the actions,<sup>1</sup> but does not address whether the collection actions can be maintained by KCC attorneys on behalf of the NECA. A perusal of the Kansas

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<sup>1</sup>See *Kansas Supreme Court in Citizens' Utility Ratepayer Board v. State Corporation Commission*, 264 Kan. 363 (1998) ("The legislature knows the difference between the meaning of the terms 'shall' and 'authorized.'")

Telecommunication Act of 1996, K.S.A. 1999 Supp. 66-2001 *et seq.*, is necessary to determine whether the Legislature authorized the KCC the discretion to utilize KCC attorneys to maintain collection actions on behalf of the Fund.

The Act authorizes the KCC to establish the Fund, to determine both contributions and distributions, to periodically review the costs and modify the Fund by additional supplemental funding at the KCC's discretion.<sup>2</sup> When considering this Act, the Supreme Court has found that the Legislature not only provided sufficient standards for the KCC to create, pay for, and administer the Fund, the Legislature also provided some discretion to the KCC in regard to how the Fund assessment and payout should occur.<sup>3</sup> In considering the sufficiency, the Court reiterates the long-standing rule that public utility regulation, especially telecommunications, differs from other regulation in that it requires specialized knowledge in a huge, complex industry and that the KCC is an expert with a "large staff and paid consultants."<sup>4</sup>

Both the KCC's statutory discretion and the long-standing rule that public utility regulation requires specialized knowledge support the argument that ~~the KCC has the discretion to use KCC attorneys for collection actions on behalf of the Fund, once the administrator has determined a debt exists.~~ Additionally, the decision would save funds to be used to further the policies and purposes stated in the Act: universal service, improved competition, advancement of the development of a statewide infrastructure capable of supporting applications which serve the public and protect against fraud and practices inconsistent with the public interest.<sup>5</sup> 10

Your next question is whether K.S.A. 1999 Supp. 58-3950 requires the administrator for the Fund to pay credit balances as unclaimed property over \$99.00 to the treasury when the company has ceased doing business in Kansas and there exists no forwarding address. You indicate in your letter that the Disposition of Unclaimed Property Act appears to require a reporting of the unclaimed property and payment to the state treasurer.<sup>6</sup> ~~The Kansas Telecommunication Act does not provide the administrator authority to retain property otherwise subject to the Unclaimed Property Act.~~ 2.

Your next question is whether the KCC can authorize the administrator to retain small credit balances owed to companies that are 180 days delinquent in reporting the revenues which are the basis for assessments.

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<sup>2</sup>K.S.A. 1999 Supp. 66-2208(a) through (f).

<sup>3</sup>*Kansas Supreme Court in Citizens' Utility Ratepayer Board v. State Corporation Commission*, 264 Kan. 363, 402-03 (1998).

<sup>4</sup>*Id.* at 403; *Kansas Gas & Electric Co. v. Kansas Corporation Commission*, 239 Kan. 483, 495 (1986).

<sup>5</sup>K.S.A. 1999 Supp. 66-2001 (a) through (e).

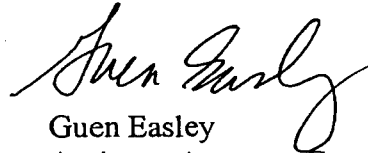
<sup>6</sup>K.S.A. 1999 Supp. 58-3950; 58-3952.



The administrator is authorized to collect and audit all relevant information and verify the obligation of each carrier or company.<sup>7</sup> Without compliance with the reporting requirements, the Fund administrator cannot determine whether the company with the credit balance has a debt obligation owed to the Fund nor can it fulfill its obligation to collect and audit all relevant information. Additionally, absent compliance the KCC is unable to periodically review the Fund to determine whether the costs to provide local service justifies modification of the fund.<sup>8</sup> It is clear from these obligations that the neither the Fund administrator nor the KCC is able to fulfill their respective statutory obligations without the reporting of revenues. Thus, ~~the KCC's power to authorize the administrator to retain the credit balances until there is compliance with the reporting requirement~~ <sup>3,</sup> must be implied in order to give effect to powers specifically granted.<sup>9</sup>

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL  
CARLA J. STOVALL



Guen Easley  
Assistant Attorney General

GE:jm

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<sup>7</sup>K.S.A. 1999 Supp. 66-2010 (b)(1) and (b)(2).

<sup>8</sup>K.S.A. 1999 Supp. 66-2008(d).

<sup>9</sup>See *James v. City of Pittsburg*, 195 Kan. 462, 465 (1965); *Wiggins v. Housing Authority of Kansas City*, 22 Kan.App.2d 367 (1996).