

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

Before Commissioners: Jay Scott Emler, Chairman
 Shari Feist Albrecht
 Pat Apple

In the Matter of an Investigation to Determine)
the Assessment Rate for the Eighteenth Year of) Docket No. 14-GIMT-105-GIT
the Kansas Universal Service Fund, Effective)
March 1, 2014.)

ORDER TO SHOW CAUSE

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being fully advised on all matters of record, the Commission makes the following findings:

I. Background:

1. On January 23, 2014, the Commission issued the *Order Adopting KUSF Assessment Rate for Year Eighteen of KUSF Operations* (Assessment Rate Order), setting the Kansas Universal Service Fund (KUSF) assessment rate for Year Eighteen. Additionally, the Assessment Rate Order referenced concerns raised by GVNW Consulting, Inc. (GVNW), the current KUSF Administrator, regarding KUSF contributions.

2. On March 18, 2014, in response to GVNW's concerns, the Commission issued an *Order Soliciting Comments Regarding KUSF Contribution Issues; Requiring Entry of Appearance to Actively Participate* (Order Soliciting Comments).

3. On October 3, 2014, Commission Staff (Staff) filed its Report and Recommendation (Staff R&R) summarizing the parties' positions and recommending that the Commission:

- (1) adopt the Federal Communications Commission's (FCC) rules regarding allocation and reporting of end-user discounts for KUSF contribution purposes;
- (2) adopt the FCC's safe harbor provisions for all bundled services that include assessable telecommunications service;
- (3) require providers, including interconnected Voice over Internet Protocol (VoIP) providers, to follow the bundled service safe harbor provisions for all bundled service offerings, including those marketed as offering free telecommunications service;¹

Staff also suggested a "wait and see" approach to the global issue of whether to further modify the KUSF contribution methodology policy.²

4. On October 20, 2015, the Commission issued the Order Determining KUSF Contribution Methodology (Order) pertaining to discounts and bundled services. The Commission found:

A) Providers may report revenue net of end-user discounts only when the purchased service or services are comprised completely of KUSF assessable services. When the KUSF assessable services are bundled with non-assessable services, Providers must either report the stand-alone price of the KUSF assessable services, without applying discounts, or report the revenue for the entire bundle net of discounts. The 90-day window to recognize promotion discounts is abolished.

B) When KUSF assessable services are bundled with non-assessable services, Providers shall report for KUSF contribution purposes the stand-alone price of KUSF assessable services. This methodology applies to all Providers, including Interconnected VoIP Providers that bundle assessable services with non-assessable services, such as CPE [customer premise equipment]. A Provider may determine the stand-alone price based on substantial competent evidence (cost, usage or traffic studies, etc.). In the event the Provider does not have a stand-alone price, or chooses not to determine or assign such, the total price of the bundle may be reported. For all bundled services, regardless of how provisioned (wireless, VoIP, etc.), the use of the safe harbors will be deemed reasonable.

C) If assessable services are offered with non-assessable service revenues, including those from a connection device, an alternative methodology may be used to assign or allocate revenue to the assessable service. Such alternative methodology is subject to an evaluation for reasonableness to ensure a Provider

¹ Staff R&R at 1-2.

² *Id.* at 2.

meets its KUSF obligations through an audit or enforcement action on a case-by-case basis.

5. On November 3-4, 2015, Sprint Communications Company L.P, Sprint Spectrum L.P., Nextel West Corp., and Virgin Mobile USA, L.P. (collectively Sprint), Southwestern Bell Telephone Company, Teleport Communications America, LLC, AT&T Corp., SBC Long Distance, LLC, Bell South Long Distance, Inc. d/b/a AT&T Long Distance Service and New Cingular Wireless PCS, LLC (collectively AT&T), Cox Kansas Telcom, LLC, T-Mobile Central, LLC and USCOC of Nebraska/Kansas, LLC, and Kansas #15, LP, d/b/a U.S. Cellular filed petitions for reconsideration.

6. On November 13, 2015, Commission Staff filed its response to the Petitions for Reconsideration stating the Commission's Order was reasonable and recommended that the Commission deny reconsideration.

7. On December 3, 2016, the Commission denied reconsideration.

8. On January 4, 2016, AT&T petitioned for judicial review of the Commission's orders pertaining to discounts and bundled services in the 3rd Judicial District Court of Kansas.

9. On April 6, 2016, Governor Sam Brownback signed into law 2016 H.B. 2131 which amended statutory language affecting KUSF contribution methodology.

10. On May 19, 2016, Staff moved the Commission to re-open the docket and solicit comments. Staff notes that additional information and discussion with various entities may necessitate further consideration of the discount and bundling issues.

11. On May 23, 2016, the Commission and AT&T jointly moved the 3rd Judicial District Court to suspend the procedural schedule and remand the matter back to the Commission

for further proceedings in light of 2016 H.B. 2131. On May 24, 2016, the Court granted the motion.

12. On May 31, 2016, AT&T and Sprint responded in support of Staff's May 19, 2016, motion.

II. Discussion:

13. The Commission, as noted in the Joint Motion for Remand and Suspension of Procedural Schedule, is in agreement that additional proceedings are needed to evaluate KUSF contribution methodology concerning discounts and bundled services in light of 2016 H.B. 2131. The Commission cannot agree however that this docket is the best forum to move forward.

14. Staff's motion does not denote 2016 H.B. 2131 as the impetus for re-evaluating the Commission's Orders in this matter. The Commission believes the passing of the new law is tantamount to Staff's rationale for re-evaluation. The Commission's prior orders were considered and issued prior to the new law's effectiveness (July 1, 2016).

15. Furthermore, the current Docket is an assessment rate docket. While the issues are not completely unrelated, the current issues were spun out from the original proceedings but remained in the same Docket. Such procedure has created a bloated and over-inclusive record for consideration of the remaining issues in contention.

16. For those reasons, the Commission finds it prudent to rescind or overturn those portions of the previous Orders affected by the legislation and simply begin anew. The Commission proposes that this Docket be closed in lieu of a new general investigation docket for the sole purpose of interpreting the language of 2016 H.B. 2131 and Staff's new found interpretations of federal guidelines.

17. The Commission proposes the following on how to effectuate such proposal. By Commission order, the Commission will rescind or vacate the findings and conclusions at ¶¶ 17-21, 24-27 and 32 and ordering clauses A, B, C and G of the Order Determining KUSF Contribution Methodology. Pursuant to the remand, the Commission has jurisdiction to reconsider the matter and if necessary rescind or modify its previous orders.³ Thus, the Docket is re-opened de facto.

18. Any rescission of action upon which a petition for reconsideration was based, moots said petition for reconsideration—in turn moots the Commission’s Order on Reconsideration including clarification made therein. The purpose for requiring the petition for reconsideration is to inform the Commission of mistakes of law or fact made in the order.⁴ In rescinding those portions of the Order Determining KUSF Contribution Methodology and ordering that a new docket be opened to consider the issues under new information nullifies any alleged mistake in the current proceeding.

19. Therefore, the Commission orders the Parties in this proceeding to show cause as to why the Commission should not effectuate the above proposal effectively closing this Docket in lieu of opening a new docket for consideration of KUSF contribution methodology in light of 2016 H.B. 2131. Any Party wishing to oppose the above proposal or make comment thereon shall do so by the close of business ten (10) days from the date of this Order.

³ *Cf. Clawson v. State, Dep't of Agric., Div. of Water Res.*, 49 Kan. App. 2d 789, 800-01 (2013).

⁴ *See Kansas Indus. Consumers v. Kansas Corp. Comm'n*, 30 Kan. App. 2d 332, 338 (2002).

THEREFORE, THE COMMISSION ORDERS:

A. Parties shall show cause within ten (10) days of the effective date of this order in accordance with the above as to why this Docket should not be closed in lieu of opening a new docket to consider KUSF contribution methodology in light of 2016 H.B. 2131.


B. The parties have 15 days from the date this Order was served electronically to petition for reconsideration.⁵

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner.

Dated: JUN 09 2016



Amy L. Green
Secretary to the Commission

DLK/sc

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⁵ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

14-GIMT-105-GIT

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 JUN 09 2016.

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