

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of an Investigation to Determine)
the Assessment Rate for the Twenty-Fourth) Docket No. 20-GIMT-086-GIT
Year of the Kansas Universal Service Fund,)
Effective March 1, 2020.)

ORDER ADOPTING KUSF ASSESSMENT RATE

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records, the Commission finds:

1. On August 29, 2019, the Commission issued an Order Opening Docket; Protective Order for CURB; Requiring Entries of Appearance and Establishing Procedural Schedule (Order) to determine the Kansas Universal Service Fund (KUSF) Year Twenty-Four Assessment Rate, effective March 1, 2020, through February 28, 2021, (Year 24) pursuant to K.S.A. 66-2008(a) and Docket No. 94-GIMT-478-GIT.¹ The Order set a procedural schedule that set deadlines for submission of data and the filing of testimony and directed parties to file entries of appearance.

2. On December 13, 2019, in accordance with the Commission's procedural schedule, Staff witness Ms. Sandra K. Reams filed direct testimony, which included the following recommendations to the Commission:

a. adopt a 9.40% assessment rate for KUSF FY 24;

¹ Order Opening Docket; Protective Order for CURB; Requiring Entries of Appearance and Establishing Procedural Schedule, Aug. 29, 2019, ¶ 1.

- b. clarify the process to implement the \$30 million cap required by K.S.A. 66-2008(e)(3) for the Rural Local Exchange Carriers (RLECs) operating under rate-of-return regulation;
- c. clarify the criteria for a carrier to change its annual KUSF reporting election;
- d. affirm the Commission's authority to assess KUSF administrative penalties; and
- e. adopt KUSF penalty guidelines for non-compliance with KUSF obligations similar to those adopted for non-compliance with Kansas Lifeline Service Program obligations.²

3. On December 18, 2019, the RLECs filed their Motion to Sever or Defer Certain Issues, requesting severing all issues relating to implementation of the cap created by K.S.A. 66-2008(e)(3) from this Docket and made subject of a separate docket or, alternatively, deferred.³ The RLECs' Motion to Sever was limited to deferring discussion of K.S.A. 66-2008(e)(3)'s statutory cap and did not object to Staff's recommendation for a 9.40% assessment rate for the KUSF FY 24.

4. On December 19, 2019, Staff filed its Reply to the RLECs' Motion to Sever or Defer Certain Issues (Staff's Reply) agreeing to defer issues related to implementation of the statutory cap and Staff requesting clarification that the Commission will not address implementation of the statutory cap at this time.⁴ Staff noted that in her testimony, Ms. Reams recommended the Commission direct Staff to file a Report and Recommendation in the applicable KUSF annual docket when it believes the cap for the RLECs would be reached, and to advise the

² Direct Testimony of Sandy Reams, Dec. 18, 2019, p. 3.

³ RLECs' Motion to Sever or Defer Certain Issues, Dec. 18, 2019, p. 4.

⁴ Staff's Reply to Rural Local Exchange Carriers' Motion to Sever or Defer Certain Issues, Dec. 19, 2019, ¶ 4.

Commission of: (1) the month the RLEC cap will likely need to be implemented; (2) the pro-rated KUSF support reduction for each RLEC; and (3) each RLEC's pro-rated monthly KUSF support distribution.⁵

5. On January 6, 2020, Staff filed its Motion to Cancel January 14, 2020 Evidentiary Hearing and Render Decision Based Upon Pre-filed Testimony, explaining Ms. Reams' pre-filed testimony described how the 9.40% assessment rate was derived, and provided work papers detailing her calculations, and that no other parties filed opposing testimony.⁶ Therefore, Staff opines that a hearing is unnecessary under K.S.A. 77-541(a).⁷ Staff represented that its Motion is unopposed.⁸

6. Later that same day, the RLECs filed their Response and Objection in Part to Staff's Motion to Cancel January 14, 2020 Evidentiary Hearing and Render Decision Based Upon Pre-filed Testimony, explaining that since the Commission has yet to rule on it Motion to Sever or Staff's request for clarification that the Commission will not address implementation of the statutory cap at this time, the RLECs are "obliged to object in part to Staff's Motion."⁹ The RLECs state they do not object to an Order adopting a 9.40% KUSF assessment effective March 1, 2020, and that their objection is limited to issuing an Order addressing KUSF cap issues without a hearing or without the RLECs having a right to file pleadings related to the implementation of the statutory cap.¹⁰ The RLECs explain their objection would be mooted by the issuance of an Order granting the RLECs' Motion to Sever or granting Staff's request for clarification.¹¹

⁵ RLECs' Motion to Sever or Defer Certain Issues, Dec. 18, 2019, p. 4,

⁶ Motion to Cancel January 14, 2020 Evidentiary Hearing and Render Decision Based Upon Pre-filed Testimony, Jan. 6, 2020, ¶¶ 3-4.

⁷ *Id.*, ¶¶ 4-5.

⁸ *Id.*, ¶ 4.

⁹ RLECs' Objection in Part to Staff's Motion to Cancel January 14, 2020 Evidentiary Hearing and Render Decision Based Upon Pre-filed Testimony, Jan. 6, 2020, ¶¶ 10, 13.

¹⁰ *Id.*, ¶ 14.

¹¹ *Id.*, ¶ 15.

7. On January 9, 2020, the Commission issued an Order Designating Prehearing Officer appointing Brian G. Fedotin as Prehearing Officer.

8. On January 10, 2020, the Prehearing Officer issued a Prehearing Officer Order Canceling Evidentiary Hearing.

9. In response to Staff's request for clarification that the Commission will not address implementation of the statutory cap at this time, the Commission notes that on April 7, 2016, Governor Brownback signed S Sub for HB 2131, amending K.S.A. 66-2008(e)(1) and K.S.A. 66-2008(e)(3). The revised K.S.A. 66-2008(e)(1) adds the phrase "subject to the annual cap established pursuant to subsection (e)(3)" to clarify that rate of return carriers' recovery of their costs is superseded by the cap. The revised K.S.A. 66-2008(e)(3) adds the language, "[I]n any year that the total KUSF support for such carriers would exceed the annual cap, each carrier's KUSF support shall be proportionally based on the amount of support each carrier would have received absent the cap", resolving any dispute over how to implement the statutory cap. Since the Legislature has spoken, there is no need for the Commission to address implementation of the statutory cap.

10. As noted earlier, the RLECs explicitly state they do not object to an Order adopting a 9.40% KUSF assessment effective March 1, 2020.¹² Since Ms. Reams' unopposed recommendation of a 9.40% rate is supported by substantial competent evidence, the Commission adopts her recommendation. The Commission approves a 9.40% assessment rate for the KUSF, effective March 1, 2020. The Commission will issue a future order addressing the criteria for a carrier to change its annual KUSF reporting election, the Commission's authority to assess KUSF

¹² See *id.*, ¶ 14.

administrative penalties, and KUSF penalty guidelines for non-compliance with KUSF obligations similar to those adopted for non-compliance with Kansas Lifeline Service Program obligations.

THEREFORE, THE COMMISSION ORDERS:

A. The statutory cap will not be addressed at this time because the Legislature has amended K.S.A. 66-2008(e)(1) and K.S.A. 66-2008(e)(3) to clarify that: (1) the statutory cap supersedes the rate of return carriers' recovery of their costs and (2) if the cap is exceeded, each carrier's KUSF support shall be proportionally based on the amount of support each carrier would have received absent the cap.

B. A 9.40% assessment rate for KUSF FY 24 is adopted.

C. 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).¹³

D. The Commission retains jurisdiction over the subject matter and parties to issue further orders, as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner.

Dated: 01/23/2020.



Lynn M. Retz
Executive Director

¹³ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

20-GIMT-086-GIT

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 01/23/2020.

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