

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

Before Commissioners: Shari Feist Albrecht, Chair
 Thomas E. Wright
 Jay Scott Emler

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 ADOPTING KUSF ASSESSMENT RATE FOR YEAR EIGHTEEN OF KUSF
OPERATIONS**

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 of all matters of record, the Commission makes the following findings:

1. On August 27, 2013, the Commission issued its Order Opening Docket; Requiring KUSF Data Submissions; Procedural Schedule; Protective Order; Discovery Order; General Service Matters (Opening Order) for purposes of determining the Kansas Universal Service Fund (KUSF) assessment rate for year eighteen of KUSF operations, effective March 1, 2014, through February 28, 2015 (KUSF Year 18).

2. The Commission has jurisdiction over KUSF contributions, distributions, and the assessment rate under K.S.A. 66-2008. On December 27, 1996, in Docket No. 94-GIMT-478-GIT (Docket 94-478), the Commission declared, among other things, that contributions to the KUSF would be made by assessments on each provider's intrastate retail revenues. The assessment rate is calculated on a yearly basis using projected liabilities and assessable revenues.

3. The Opening Order required carriers contributing to the KUSF and carriers receiving KUSF funds to file certain data in the docket by October 18, 2013, and deliver the same data electronically to Commission Staff (Staff).

4. On December 19, 2013, Staff witness Sandra K. Reams filed direct testimony in this docket. Utilizing the collected data filed by the carriers, Reams projected: (1) the KUSF would need to collect \$55.7 million in KUSF Year 18 to meet its funding obligations; and (2) an assessable revenue base of \$920.62 million. Accordingly, Reams recommended a KUSF Year 18 assessment rate of 6.05%.

5. Pursuing mandates from Docket 94-478, Reams calculated per line assessment rates for Southwestern Bell Telephone Company (SWBT), the United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink), and the rural Local Exchange Carriers (RLECs) and recommended the following per line assessment rates: SWBT - \$2.49; CenturyLink - \$1.79; and RLECs - \$1.44.

6. In her testimony, Reams also addressed several matters relating to KUSF administration as a result of the passage of House Bill No. 2201 of the 2013 Regular Session Laws of Kansas (HB 2201). She testified HB 2201's elimination of the identical support rule for competitive eligible telecommunications carriers (ETCs) in Kansas rendered several KUSF calculations and requirements moot. Specifically:

- Calculation of the Federal Universal Service Fund (FUSF) support received by CenturyLink, on a study area and per line basis, to determine the FUSF offset to apply when calculating KUSF support for a competitive ETC.
- Calculation of the revenue-neutral Transitional Factor to determine the additional KUSF support available to a competitive ETC for the revenue-neutral access KUSF support received by CenturyLink.
- The disaggregation plans that target KUSF support for rural LECs, adopted in Docket No. 02-RTCT-366-MIS. Impacted rural LECs include Fairpoint

Communications of Missouri; Madison Telephone Company, LLC; Pioneer Communications (Pioneer); and JBN Telephone Company, Inc.

- The Annual Report to the Commission, submitted no later than April 1st of each year, to advise the Commission of the per line KUSF support available to competitive ETCs.

7. Reams recommended the Commission find these KUSF calculations and requirements are no longer necessary and rendered moot by HB 2201.

8. Reams explained that GVNW, the current KUSF administrator, requested guidance from the Commission relating to: allocation of revenue for bundled services; allocation of VoIP revenue; billing records; discounts; and early termination fees. Reams recommended that the Commission address these issues at a later date.

9. Reams noted that GVNW's discount concerns have already been addressed by the Commission and recommended that the Commission reiterate its policies.¹

10. On January 2, 2014, Daniel Meszler filed rebuttal testimony on behalf of the State Independent Alliance, the Independent Telecommunications Group, Southern Kansas Telephone, Wheat State Telephone, and Mutual Telephone, explaining the purpose of his testimony was to: (1) correct Reams' description of pending litigation regarding the appeal of orders in Commission Dockets No. 12-GIMT-170-GIT (12-170) and 13-GIMT-004-GIT (13-004); and (2) provide revised calculations of the KUSF Year 18 assessment rate.

11. Meszler argues that Reams' description of the appeals of 12-170 and 13-004 is inaccurate and that those appeals do not relate to any Federal Universal Service Fund (FUSF) support claimed to have been lost, nor do the appeals seek recovery of lost FUSF revenue from the KUSF.

¹Order On Issue of Uncollectible Revenue and Additional KUSF Revenue Reporting Issues, Docket No. 94-GIMT-478-GIT (Aug. 13, 1999).

12. Meszler claims that based on Reams' faulty description, she incorrectly calculated the total KUSF liabilities for KUSF Year 18 and that \$112,519 in liabilities are to be included in the KUSF Year 18 assessment rate calculation, increasing the assessment rate to 6.06%. Meszler did not challenge any other issues raised by Reams.

13. In response to Meszler's testimony, on January 7, 2014, Reams explained her description of the appeals in 12-170 and 13-004 was her high level overview and was not intended to represent legal arguments. She added the filings with the Court speak for themselves.

14. Reams stated that the \$112,519 figure provided by Meszler included \$57,323 in excluded KUSF recovery from 12-170 and 13-004 relating to terminating access revenue reductions. The \$112,519 figure also included \$55,196 attributable to originating access revenue reductions for Pioneer. She noted Pioneer is already recovering the \$55,196 through its KUSF support; therefore, the \$112,519 figure is inaccurate and should actually be \$57,323.

15. Additionally, Reams explained she excluded the \$57,323 because the Commission orders in 12-170 and 13-004 necessitate exclusion. Additionally, her projected KUSF liabilities include a \$3.9 million contingency fund sufficient to cover the \$57,323 if necessary. Reams recommended that the Commission adopt her proposed 6.05% KUSF Year 18 assessment rate.

16. The Commission finds Reams' position on these issues compelling. Meszler takes issue with Reams' description of his clients' appeals of Commission orders. But statements made by witnesses are their own opinions regarding the matters presented. The Commission weighs the evidence as presented and makes a determination based upon credibility

and merit. The Commission will not order a witness to revise testimony simply because an opposing witness believes it to be inaccurate.

17. The Commission also finds that Reams' statements regarding the \$112,519 figure compelling and elects not to include the correctly calculated \$57,323 liability in determining the KUSF Year 18 assessment rate. The Orders issued in 12-170 and 13-004 require excluding the \$57,323 in lost terminating access revenues from the KUSF. Absent any support for his position, Meszler implies that the Orders will be overturned on appeal, necessitating inclusion of the liability. Metzler has presented nothing to suggest the Commission should ignore its earlier Orders. Even in the unlikely event the Orders are overturned, the \$3.9 million contingency fund is more than sufficient to cover the \$57,323 liability. Accordingly, the Commission finds the \$57,323 shall be excluded and the assessment rate will be 6.05%.

18. The Commission finds all of Reams' arguments and recommendations to be compelling and adopts them.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The KUSF Assessment Rate for March 1, 2014, through February 28, 2015 is 6.05%.

B. The per line assessment rate for SWBT is \$2.49. The per line assessment rate for CenturyLink is \$1.79. The per line assessment rate for the RLECs is \$1.44.

C. The following KUSF calculations and requirements are hereby eliminated due to the elimination of the identical support rule: (1) Calculation of the Federal Universal Service Fund (FUSF) support received by CenturyLink, on a study area and per line basis, to determine the FUSF offset to apply when calculating KUSF support for a competitive ETC; (2) Calculation of the revenue-neutral Transitional Factor to determine the additional KUSF support available to

a competitive ETC for the revenue-neutral access KUSF support received by CenturyLink; (3) the disaggregation plans that target KUSF support for rural LECs, adopted in Docket No. 02-RTCT-366-MIS; and (4) the Annual Report to the Commission, submitted no later than April 1st of each year, to advise the Commission of the per line KUSF support available to competitive ETCs.

D. Carriers contributing to the KUSF are reminded to report gross revenues, prior to any service discounts, for KUSF purposes. Failure to do so is a violation of Commission order and may warrant penalties or a show cause proceeding.

E. The Commission will conduct an investigation into the concerns raised by GVNW regarding carrier contributions. The investigation will be part of this docket.

F. The Commission orders electronic service to be used in this proceeding, including this Order.


G. The parties have 15 days from the date this Order was electronically served to petition the Commission for reconsideration.²

H. 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.

Albrecht, Chair; Wright, Com.; Emler, Com.

Dated: 1-23-2014



Kim Christiansen
Executive Director

BGF

² K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

JAN 23 2014

14-GIMT-105-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Adopting KUSF Assessment Rate for Year Eighteen of KUSF Operations was served by electronic mail this 23rd day of January, 2014, to the following parties who have waived receipt of follow-up hard copies:

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