

**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 Year) Docket No. 20-GIMT-086-GIT
of the Kansas Universal Service Fund, Effective)
March 1, 2020.)

**ORDER CLARIFYING AND ADOPTING KUSF ELECTION CRITERIA AND
KUSF ADMINISTRATIVE PENALTIES**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On August 29, 2019, the Commission issued its Order Opening Docket; Protective Order Applicable to CURB; Requiring Entries of Appearance to Actively Participate and Establishing Procedural Schedule (Order) to determine the KUSF assessment rate for the twenty-fourth year of the KUSF, effective March 1, 2020, through February 28, 2021 (FY 24). In relevant part, the Order directed Commission Staff (Staff) to file direct testimony and its calculation of the KUSF FY 24 assessment rate.¹

2. On December 13, 2019, Staff witness, Ms. Sandy Reams, filed direct testimony containing the following recommendations:

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

¹ Order Opening Docket; Protective Order Applicable to CURB; Requiring Entries of Appearance to Actively Participate and Establishing Procedural Schedule, Aug. 29, 2019, Ordering Clause D.

- 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 on its own; and
- e. adopt KUSF penalty guidelines for non-compliance with KUSF obligations similar to those adopted by the Commission for Kansas Lifeline Service Program obligations (KLSP).²

3. On January 23, 2020, the Commission issued its Order Adopting KUSF Assessment Rate, adopting the 9.40% assessment rate for KUSF FY 24 and noting it would issue a future order addressing the criteria for a carrier to change its annual KUSF reporting election, the Commission's authority to assess KUSF administrative penalties, and KUSF penalty guidelines for non-compliance with KUSF obligations similar to those adopted for non-compliance with KLSP obligations.³

4. In her testimony, Reams explained that GVNW Consulting, Inc. (GVNW), the third-party administrator of the KUSF, has caught several smaller carriers attempting to modify their KUSF reporting elections to avoid paying KUSF administrative penalties.⁴ Reams recommended the Commission clarify its KUSF election reporting criteria to allow carriers to change their reporting election during a KUSF year only when the carrier is in compliance with

² Direct Testimony of Sandy Reams (Reams Direct), Dec. 13, 2019, p. 3.

³ Order Adopting KUSF Assessment Rate, Jan. 23, 2020, ¶ 10.

⁴ Reams Direct, pp. 21-22.

all of its KUSF obligations, including payment of penalties based on its current reporting election.⁵ Under Staff's recommendation, any reporting election change would be effective prospectively.⁶

5. Reams also recommended that the Commission reaffirm its authority to levy KUSF administrative penalties under its own authority.⁷ She explained that unlike the KUSF administrative penalties levied by GVNW, which benefit the KUSF, penalties levied by the Commission under K.S.A. 66-138 are paid into the State's General Fund.⁸ Reams testified that she is unaware of any authority prohibiting the Commission from assessing KUSF administrative penalties for remittance to the KUSF, and recommended the Commission assert its authority to levy KUSF administrative penalties to providers, with payment of the penalties benefiting the KUSF.⁹

6. Lastly, Reams recommended the Commission adopt KUSF penalty guidelines, similar to those adopted for non-compliance with KLSP obligations.¹⁰ Specifically, Reams advocated requiring carriers to report all revenue, pay all assessments and levied penalties to the KUSF, and refund any assessments over-collected from subscribers to subscribers whenever possible.¹¹ She also suggested the following penalty guidelines: (1) defining each occurrence of a violation as one month, unless the Commission determines the situation warrants different treatment; and (2) monthly fines levied under K.S.A. 66-138 should range from \$100 to \$5,000, depending on the carrier's classification under K.S.A. 66-138.¹² Under her recommendation, fines may be increased based on: (a) egregious misconduct; (b) whether the size of a carrier's assets

⁵ *Id.*, p. 24.

⁶ *Id.*

⁷ *Id.*, pp. 24-25.

⁸ *Id.*, p. 24.

⁹ *Id.*, p. 25.

¹⁰ *Id.*, pp. 25-26.

¹¹ *Id.*, p. 25.

¹² *Id.*, pp. 25-26.

necessitates a larger disincentive; (c) whether the violation was intentional; (d) whether the violation resulted in substantial harm to the KUSF and/or contributors to the KUSF, including subscribers; (e) whether the carrier has previously violated Commission requirements; (f) whether the violation resulted in substantial economic gain to the carrier; and/or (g) whether the carrier has repeated or continuous violations for the same or a similar issue.¹³ Likewise, Staff offers mitigating factors: (a) the violation is minor; (b) the carrier acted in good faith or self-reports the violation; (c) the carrier has a history of overall compliance; and/or (d) the Commission determines the carrier is unable to pay.¹⁴

7. The Commission adopted the KUSF election criteria to ensure efficient operation of the KUSF and provide more certainty to the KUSF Administrator on reporting deadlines, while allowing smaller providers greater flexibility in meeting its KUSF obligations.¹⁵ The Commission adopted penalties to encourage compliance with the statutorily-mandated KUSF obligations and set the penalty amounts to encourage timely submission. Based on its concerns that carriers are attempting to use the KUSF election process to avoid KUSF penalties, the Commission adopts Staff's recommendation that any KUSF reporting election change to be effective on a prospective-only basis and only if the carrier is in compliance with all of its KUSF obligations, including payment of any outstanding penalties.

8. The Commission has broad authority over the KUSF to ensure each company's compliance with its obligations under Kansas law. The Commission affirms it will levy KUSF administrative penalties on its own on a case-by-case basis, factoring in the impact a company's actions have had on the KUSF and contributors to the KUSF. GVNW and Staff are directed to

¹³ *Id.*, p. 26.

¹⁴ *Id.*

¹⁵ Order Setting the Kansas Universal Service Fund Assessment Rate For Year Ten and Establishing Reporting Requirements, Docket No. 06-GIMT-332-GIT, Jan. 23, 2006.

advise the Commission on appropriate KUSF administrative penalties, and the applicable time frame.

9. The Commission finds KUSF penalty guidelines for the assessment of penalties under K.S.A. 66-138 are appropriate and will help ensure consistency in penalizing carriers who are not complying with their KUSF obligations. Therefore, the Commission adopts the following for non-compliance with KUSF obligations:

- a. a carrier must report all revenue and pay all assessments and levied penalties to the KUSF and refund any assessments over-collected from subscribers to subscribers whenever possible;
- b. each violation occurrence is defined as one month, unless the Commission determines the situation warrants different treatment;
- c. monthly fines levied under K.S.A. 66-138 will range from \$100 to \$5,000, depending on the carrier's classification under K.S.A. 66-138;
- d. a fine may be increased based on: (i) egregious misconduct; (ii) a carrier's assets and whether they are significant enough to support a larger disincentive; (iii) a carrier's violation was intentional; (iv) the violation resulted in substantial harm to the KUSF and/or contributors to the KUSF, including subscribers; (v) the carrier has prior violations of Commission requirements; (vi) the violation resulted in substantial economic gain to the carrier; and/or (vii) the carrier has repeated or continuous violations for the same or a similar issue;
- e. a fine may be reduced if: (i) the violation is minor; (ii) the carrier acted in good faith or self-reported violations; (iii) the carrier has a history of overall

compliance; and/or (iv) the carrier is determined to have an inability to pay.

10. Pursuant to K.S.A. 77-415(b), this Order is designated precedential. Accordingly, this Order will be included in the Commission's index of precedential orders, published on the Commission's website.

THEREFORE, THE COMMISSION ORDERS:

A. A KUSF reporting election change will apply on a prospective-only basis. Before making a change, a provider must be in compliance with all of its KUSF obligations, including having no unpaid, outstanding penalties under its current KUSF reporting election.

B. The Commission is authorized to levy KUSF administrative penalties on a case-by-case basis, depending on the impact a company's actions have had on the KUSF and contributors to the KUSF. GVNW and Staff are directed to advise the Commission, on whether a KUSF administrative penalty may be appropriate, as well as the applicable time frame.

C. The following KUSF penalty guidelines are for non-compliance with KUSF obligations:

- 1) a carrier must report all revenue and pay all assessments and levied penalties to the KUSF and refund any assessments over-collected from subscribers to subscribers whenever possible;
- 2) each violation occurrence is defined as one month, unless the Commission determines the situation warrants different treatment;
- 3) monthly fines levied under K.S.A. 66-138 will range from \$100 to \$5,000, depending on the carrier's classification under K.S.A. 66-138;
- 4) a fine may be increased based on: (i) egregious misconduct; (ii) a carrier's assets and whether they are significant enough to support a larger

disincentive; (iii) a carrier's violation was intentional; (iv) the violation resulted in substantial harm to the KUSF and/or contributors to the KUSF, including subscribers; (v) the carrier has prior violations of Commission requirements; (vi) the violation resulted in substantial economic gain to the carrier; and/or (vii) the carrier has repeated or continuous violations for the same or a similar issue;

5) a fine may be reduced if: (i) the violation is minor; (ii) the carrier acted in good faith or self-reported; (iii) the carrier has a history of overall compliance; and/or (iv) the carrier is determined to have an inability to pay.

D. Pursuant to K.S.A. 77-415(b), this Order is designated precedential. Accordingly, this Order will be included in the Commission's index of precedential orders, published on the Commission's website.

E. The parties have 15 days, plus three days if service of this Order is by mail, to petition for reconsideration.¹⁶

F. The Commission retains jurisdiction over the subject matter and to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

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

Dated: 03/03/2020



Lynn M. Retz
Executive Director

BGF

¹⁶ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

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I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 03/03/2020.

BRUCE A. NEY, AVP -SENIOR LEGAL COUNSEL
AT&T KANSAS
816 CONGRESS AVE
SUITE 1100
AUSTIN, TX 78701-2471
Fax: 512-870-3420
bruce.ney@att.com

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SWARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
j.astrab@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SWARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SWARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SWARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SWARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

JOHN IDOUX, REGULATORY AFFAIRS MANAGER
EMBARQ COMMUNICATIONS, INC.
D/B/A CENTURYLINK COMMUNICATIONS
KSOPKJ04-4015
600 NEW CENTURY PKWY
NEW CENTURY, KS 66031
Fax: 913-345-7955
john.idoux@centurylink.com

JASON TOPP, ASSOCIATE GENERAL COUNSEL
EMBARQ MISSOURI
D/B/A CENTURYLINK
200 S. 5TH STREET
MINNEAPOLIS, MN 55402
jason.topp@centurylink.com

MARK DOTY
GLEASON & DOTY CHTD
401 S MAIN ST STE 10
PO BOX 490
OTTAWA, KS 66067-0490
Fax: 785-842-6800
doty.mark@gmail.com

THOMAS E. GLEASON, JR., ATTORNEY
GLEASON & DOTY CHTD
PO BOX 6
LAWRENCE, KS 66049-0006
Fax: 785-856-6800
gleason@sunflower.com

CERTIFICATE OF SERVICE

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BRIAN G. FEDOTIN, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
b.fedotin@kcc.ks.gov

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
a.latif@kcc.ks.gov

MARK E. CAPLINGER
MARK E. CAPLINGER, P.A.
7936 SW INDIAN WOODS PL
TOPEKA, KS 66615-1421
mark@caplingerlaw.net

PAUL H. GARDNER
D/B/A ATTORNEY AT LAW
801 W. VESPER
BLUE SPRINGS, MO 64015-3733
Fax: 816-229-9196
lkgardner@hotmail.com

/s/ DeeAnn Shupe
DeeAnn Shupe
