

**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 CLOSING DOCKET**

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* (Jan. 2014 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. Additionally, that Order reminded all providers to report gross revenues in compliance with past Commission Orders.

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 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;<sup>1</sup>

4. On October 20, 2015, the Commission issued the Order Determining KUSF Contribution Methodology (Oct. 2015 Order) pertaining to discounts and bundled services. The Commission found in short that Providers could recognize discounts and report net revenues under certain circumstances but not in others.<sup>2</sup>

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, Staff filed its response to the Petitions for Reconsideration stating the Commission's Order was reasonable and recommended that the Commission deny reconsideration.<sup>3</sup>

7. On December 3, 2015, 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 3<sup>rd</sup> Judicial District Court of Kansas.

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<sup>1</sup> Staff Report and Recommendation at 1-2.

<sup>2</sup> Order Determining KUSF Contribution Methodology at 16-17 (Oct. 20, 2015).

<sup>3</sup> Staff's Response to Multiple Petitions for Reconsideration at 7.

9. On April 6, 2016, Governor Sam Brownback signed into law 2016 S. Sub. for 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.<sup>4</sup>

11. On May 23, 2016, the Commission and AT&T jointly moved the 3<sup>rd</sup> Judicial District Court to suspend the procedural schedule and remand the matter back to the Commission for further proceedings in light of 2016 S. Sub. for 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.

13. On June 7, 2016, the Commission opened the General Investigation into the Implementation of Senate Substitute for House Bill 2131, Docket No. 16-GIMT-517-GIT (16-517 Docket) in response to a May 19, 2016 Report and Recommendation by Commission Staff.

14. On June 9, 2016, the Commission issued the Order to Show Cause asking the Parties to comment as to whether consideration of the matters in this Docket should continue in light of 2016 S. Sub. for H.B. 2131. Specifically, the Commission requested comment on the proposal to rescind or vacate ¶¶ 17-21, 24-27 and 32 and ordering clauses A, B, C and G of the Oct. 2015 Order.<sup>5</sup>

15. On June 10, 2016, AT&T filed comments to the Order to Show Cause supporting the Commission's proposal.<sup>6</sup>

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<sup>4</sup> Motion to Reopen Proceedings; Solicit Comments at 4 (May 23, 2016).

<sup>5</sup> Order to Show Cause at 5 (June 9, 2016).

<sup>6</sup> Comments of AT&T on Order to Show Cause at 1 (June 10, 2016).

16. On June 17, 2016, Staff filed a response to the Order to Show Cause. “Staff notes that it does not find any legal impediment to the Commission’s proposed course of action.”<sup>7</sup> However, Staff proposed an alternative in the form of a new rule or order requiring additional changes to KUSF contribution methodology.<sup>8</sup> Staff further notes that rescission of the proposed sections of the Oct. 2015 Order will cause a reversion to the previous rule espoused in the Jan. 2014 Order requiring Providers report gross revenue.<sup>9</sup>

17. On June 17 and June 20, 2016, respectively, the individual rural local exchange carriers (RLECs) and the State Independent Alliance (SIA) filed responses to Staff’s proposal. Both the RLECs and SIA raise procedural objections to adopting new rules.<sup>10</sup> Neither offered comment or objection to the Commission’s proposal to rescind or vacate portions of the Oct. 2015 Order.<sup>11</sup>

18. On June 20, 2016, United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas, and Embarras Missouri, Inc., d/b/a CenturyLink and CenturyLink Communications Company, Inc. d/b/a CenturyLink (collectively CenturyLink) filed a response to the Order to Show Cause. CenturyLink raised concern that, “[i]f rescission occurs, then the Commission’s January 23, 2014 Order would be the effective regulation in place until July 1, 2016, and that Order ostensibly requires KUSF contributions on the basis of gross revenues.”<sup>12</sup> CenturyLink further states that they made efforts to comply with the Commission’s Oct. 2015 Order and the

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<sup>7</sup> Staff’s Response to Order to Show Cause at 1 (June 17, 2016).

<sup>8</sup> *Id.* at 1-3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> State Independent Alliance Reply to Staff Response to Order to Show Cause at 1-2 (June 20, 2016); Response of Rural Telephone Companies to Staff’s Response to Order to Show Cause at 2 (June 17, 2016).

<sup>11</sup> *See e.g. id.* at 1 (“These RLECs take no position on . . . any proposed modification of the Commission’s prior Order on KUSF contribution . . .”).

<sup>12</sup> CenturyLink’s Response to Order to Show Cause at 2 (June 20, 2016).

subsequent reversion to the Jan. 2014 Order would retroactively force CenturyLink into non-compliance.<sup>13</sup>

19. On June 27, 2016, AT&T filed a response to the various comments on record. AT&T voices disagreement with Staff's proposed rules for a number of reasons including inconsistency with 2016 S. Sub. for H.B. 2131 and a lack of foundation in the record.

## **II. Discussion:**

20. The Commission has a desire to bring this Docket to a close. The Commission recognizes and appreciates Staff's attempt to bridge the gap between orders and eliminate confusion and inconsistency by proposing adoption of new rules. However, it is clear that numerous Parties object, evidencing possible additional aggravation if the Commission were to adopt such rules. Additional proceedings and protracted litigation is in no one's interest.

21. Staff does highlight and it is accurate that rescinding those portions of the Oct. 2015 Order would cause reversion to the Commission's earlier mandate in the Jan. 2014 Order. However, no party has expressly stated how they may be aggrieved by such result with the exception of CenturyLink, who will be addressed below. The Commission's Jan. 2014 Order was not challenged and thus has become valid and binding until the law was effectively changed July 1, 2016.

22. The Commission therefore denies Staff's request to adopt new rules.

23. As noted, CenturyLink raises concern over the fact that it made efforts to comply with the Commission's Oct. 2015 Order even though that Order was appealed, stayed and now faces rescission in part. The Commission is sensitive to this concern but it cannot expressly grant relief.

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<sup>13</sup> *Id.*

24. The Commission will not take up such consideration except on a case-by-case basis. The KUSF Administrator and Staff are free in the exercise of their duties to bring alleged violations in the event past reporting or current reporting for past years may evidence non-compliance.<sup>14</sup> As a statement of general policy in response to CenturyLink's concerns, the Commission has little to no interest in punishing good faith efforts to comply with Commission orders. However, the time frames under which certain Commission orders were effective and when certain reporting methodologies were implemented, as well as determining what is a good faith effort and what constitutes compliance are all factually intensive inquiries the Commission reserves the right to investigate. Therefore, a blanket waiver would not be appropriate.

25. Therefore, the Commission finds no compelling reason as to why its proposal should not be carried into effect, thereby closing this Docket.

**THEREFORE, THE COMMISSION ORDERS:**

A. Paragraphs 17-21, 24-27 and 32 and ordering clauses A, B, C and G of the Order Determining KUSF Contribution Methodology, (October 20, 2015) are rescinded or vacated.

B. This Docket shall be closed.

C. The parties have 15 days from the date this Order was served electronically to petition for reconsideration.<sup>15</sup>

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

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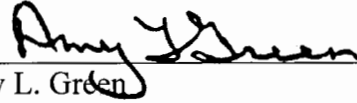
<sup>14</sup> See e.g. Audit of CenturyLink Communications, LLC by the Kansas Universal Service Fund (KUSF) Administrator Pursuant to K.S.A. 2014 Supp. 66-2010(b) for KUSF Operating Year 18, Fiscal Year March 2014-February 2015.

<sup>15</sup> K.S.A. 66-118b; K.S.A. 77-529(a)(1).

**BY THE COMMISSION IT IS SO ORDERED.**

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

Dated: JUL 19 2016



Amy L. Green  
Secretary to the Commission

DLK/sc

**EMAILED**

JUL 19 2016

## 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 JUL 19 2016.

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