

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 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 DETERMINING KUSF CONTRIBUTION METHODOLOGY

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 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). In the Order Soliciting Comments, the Commission sought comments concerning:

Discounts: Should companies report revenue gross or net of discounts? What discounts should be recognized (e.g. all discounts or only certain discounts)? What is the appropriate time period to recognize discounts that may be offered for an extended period of time? If companies are to report gross revenues and a

company claims it cannot determine gross revenues, what methodology should be employed to ensure all carriers report on an equitable basis?

Bundled Services: How should revenues for bundles or all data plans be identified for purposes of determining assessable KUSF revenues? Should revenues continue to be allocated to voice services, or pursuant to K.S.A. 66-104(a), should all revenue be identified as revenue subject to the KUSF (prior to allocation between the interstate and intrastate jurisdictions?)

VoIP Packages: How should VoIP revenue be allocated when a company claims its service is provided for free and the subscriber price is solely for the connection device? Should companies that claim their voice service is “free” and the only customer charge related to their service is the cost to purchase a device to access the company’s VoIP Service be allowed to report zero intrastate assessable revenues? If a portion of the cost is allocated to telecommunications services, how should that portion be identified (e.g. 50% of revenue for device; 50% for telecommunications, 75% to device and 25% to telecommunications, etc.)?

Electronic Billing/Revenue Records: How long should carriers be required to maintain electronic customer billing records, given that audits occur based on historical data? If a carriers states it does not have electronic billing records for the audit period, what information do they have available to support their revenues (e.g. a company may be subject to other audits, (e.g. state revenue departments, Internal Revenue Service, etc.))?

Early Termination Fees: What Early Termination Fees should be reported to the KUSF and under what accounting basis?

Global Issue of KUSF Contributions: Given changes in technology and services in the telecommunications world, should the revenue subject to the KUSF be expanded to include other revenue? What revenue should be subject to the KUSF in accordance with K.S.A. 66-104(a)? What other issues should the Commission consider in regards to KUSF contributions?

3. The Parties filed fourteen comments at differing times concerning all or in part the issues described above.¹

4. 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 For a full accounting of all comments filed in this docket please see Staff Report and Recommendation at 2, (Oct. 3, 2014) (Staff R&R).

- (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;
- (4) require companies to maintain customer billing records for a period of no less than three-years after the end of a KUSF fiscal year; and
- (5) allow companies to report Early Termination Fee (ETF) revenue using the accrual, modified cash, or cash [basis] method of accounting provided the company's external auditor agrees with such method.²

Staff also suggested a "wait and see" approach to the global issue of whether to further modify the KUSF contribution methodology policy.³

5. On October 27, 2014, 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) filed a response to Staff's R&R. AT&T asserts that with regard to the allocation and reporting of revenue from VoIP, discounted, and bundled services, the FCC intended to allow companies to use methodologies other than the two safe harbor provisions identified by Staff. AT&T stated that Staff, in its R&R, recognized that the FCC allows companies to use other reasonable methodologies and that the FCC provided examples in the docket *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, and 1998 Biennial Regulatory Review - Review of Customer Premises Equipment And Enhanced Services Unbundling Rules in the Interexchange, Exchange Access And Local Exchange Markets* at ¶¶50-

² Staff R&R at 1-2.

³ *Id.* at 2.

52, CC Docket Nos. 96-61, 98-183 (Mar. 22, 2001) (FCC Bundled Service Order).⁴ AT&T further stated that the alternate methodologies can be evaluated by the Commission through its KUSF audits or evaluated on a case-by-case basis. AT&T concurred with Staff recommendations (4) and (5).⁵

6. On October 27, 2014, T-Mobile Central, LLC (T-Mobile) filed a response to Staff's R&R asserting that Staff's position, with regard to discounts, is arbitrary and should not be adopted.⁶ T-Mobile also pointed to a perceived inconsistency with previous Commission rulings regarding reporting of discounts and uncollectable revenue.⁷ If the Commission adopts a net discount policy, T-Mobile recommends the Commission allow Providers to pro-rate the discounts in a manner consistent with the company's method for financial accounting statement purposes.⁸

7. On November 6, 2014, Cox Kansas Telcom, LLC (Cox) filed a reply to AT&T's and T-Mobile's responses to Staff's R&R, agreeing with and supporting AT&T and T-Mobile's positions that Providers be allowed to use other methodologies to allocate end-user discounts and bundled service revenues.⁹

II. Findings and Conclusions:

8. The Commission must separately state findings of fact, conclusions of law, and policy reasons for its decision if it is an exercise of its discretion.¹⁰ The Commission must base findings of fact exclusively upon the evidence of record in the adjudicative proceeding and on

⁴ AT&T Response to the Report and Recommendation of the KCC Staff Regarding KUSF Contribution Issues at 3, (Oct. 27, 2014).

⁵ *Id.* at 5.

⁶ Response of T-Mobile Central LLC to October 3, 2014 Staff Report and Recommendation at 3, (Oct. 27, 2014).

⁷ *Id.* at 3-4.

⁸ *Id.* at 4.

⁹ Reply of Cox Kansas Telecom, LLC, to AT&T's and T-Mobile's Responses to Staff's Report and Recommendation Regarding KUSF Contribution Issues at 4, (Nov. 6, 2014).

¹⁰ K.S.A. 77-526(c).

matters officially noticed in the proceeding.¹¹ The Commission must base agency action upon evidence that is substantial when viewed in light of the record as a whole.¹² The Commission analyzes and resolves each issue separately under these standards.

9. The Commission's statutory obligation is to ensure the KUSF contributions are done on an equitable and nondiscriminatory basis.¹³ KUSF contributions support the advancement of quality universal service—which benefits all Providers.¹⁴

10. The Commission finds it necessary to adopt mandatory reporting methodologies to prevent Providers from shirking their KUSF responsibilities by creatively structuring market offerings or allocating all revenue to non-assessable services, resulting in little or no revenue being assigned to the assessable services. Allowing Providers to effectively “game” the system harms all Providers and offends the spirit of the KUSF.

A. Discounts

11. The Commission, until further notice pending final resolution of the question presented in this docket, requires Providers to report revenue gross of end-user discounts.¹⁵ The Commission notes that no member of industry raised this issue before the Commission pursuing clarification as marketing and service offerings changed. Instead, GVNW raised concerns that some Providers now report revenue net of discounts resulting in revenue being inconsistently reported.¹⁶

12. Staff's R&R noted that several Providers have followed the rule that revenues are reported gross of end-user discounts. Based on the Parties' comments, Staff recommended that:

¹¹ K.S.A. 77-526(d).

¹² K.S.A. 77-621(c)(7), (d).

¹³ K.S.A. 66-2008(a).

¹⁴ See generally K.S.A. 66-2001, 2002.

¹⁵ Assessment Rate Order at ¶ D.

¹⁶ Staff R&R at 5.

(1) the 90-day period for companies to recognize promotional offerings, thereby reducing assessable telecommunications service revenue, be eliminated; (2) if a subscriber purchases only assessable telecommunications services, whether on a stand-alone basis or within a bundle comprised of only assessable services, the end-user discount can be recognized for KUSF contribution purposes; (3) if a bundle includes both assessable and non-assessable services, the stand-alone price of the assessable telecommunications service revenue should be reported for KUSF purposes and all discounts be assigned to the non-assessable services; and (4) if a Provider claims it cannot, or elects not to, determine a stand-alone price for an assessable telecommunications service included in a bundle, the total billed bundled service price, after application of end-user discounts, be reported for KUSF contribution purpose. Staff further recommended that in the event a Provider does not advertise a stand-alone price for an assessable service, it may develop a stand-alone price based on cost, usage, or traffic study, however, the Provider should be aware that the methodology used to develop the price is subject to evaluation during an audit or enforcement action and the methodology may be deemed unreasonable.

13. The Commission previously determined that Providers shall report a stand-alone price for KUSF assessable services when those services are bundled with non-assessable services.¹⁷ This will be discussed in more detail below. The Commission's decisions regarding KUSF reporting are incorporated into the KUSF Instructions provided to carriers.¹⁸ Under that rule and pertinent to this conversation is the rationale that if the stand-alone price is being reported, then any discount offered should be applied to non-assessable services already. As the

¹⁷ Order at 2-3, In the Matter of a General Investigation Into Procedures for Recording and Reporting Kansas Universal Service Fund Revenues for Assessment Purposes, No. 03-GIMT-932-GIT (Sep. 02, 2003) (03-932 Docket Order).

¹⁸ Staff R&R at 5.

Commission has already made this determination it does not necessarily need to adopt the policy but reaffirms said policy.¹⁹

14. A number of Providers have stated on the record that their internal operations either cannot calculate revenue gross of discounts or it is not easily done.²⁰ Multiple Providers have commented on the record that they do not report assessable revenue gross of discounts. This may indicate non-compliance in itself. Nonetheless, the Commission finds the inconsistency in reporting alone troubling.

15. Some Providers evidence an inconsistency in Commission Orders by comparing discounts with “uncollectibles” which may be reported in a net manner.²¹ The Commission does not find it accurate to compare discounts to “uncollectibles” and holds that they are inherently different. A discount is not revenue that is uncollected. A discount represents a conscious decision by the Provider to offer a good or service at a reduced price whereas an “uncollectible” is an unpaid financial obligation of the subscriber. The Commission therefore finds the Providers’ argument unpersuasive.

16. Some Providers also draw a comparison between discounts and a taxing mechanism.²² It is settled law that the KUSF assessment is not a tax.²³ Therefore, the Commission finds the comparison to taxing schemes unpersuasive as well.

¹⁹ See 03-932 Docket Order at 2; *contra* Response of T-Mobile Central LLC to October 3, 2104 Staff Report and Recommendation at 3, (Oct. 27, 2014) (the Commission would not need to “adopt” the recommendation).

²⁰ Initial Comments of T-Mobile Central LLC at 2, (Apr. 17, 2014); AT&T’s Comments on KUSF Contribution Issues at 4, (Apr. 17, 2014); Reply Comments of NE Colorado Cellular, Inc. at 1, (May 9, 2014); Reply Comments of Comcast Phone of Kansas, LLC at 1, (May 9, 2014); Reply Comments of Cost Kansas Telcom, LLC at 1, (May 9, 2014).

²¹ *E.g.* AT&T’s Comments on KUSF Contribution Issues at 2, (Apr. 17, 2014); *See* Order on Issue of Uncollectible Revenue and Additional KUSF Revenue Reporting Issues at 4-5, In the Matter of a General Investigation into Competition with the Telecommunications Industry in the State of Kansas, No. 94-GIMT-478-GIT, (Aug. 13, 1999) (94-478 Docket Uncollectible Revenue Order).

²² *See e.g.* AT&T’s Comments on KUSF Contribution Issues at 2, (Apr. 17, 2014).

²³ *Citizens’ Util. Ratepayer Bd. v. State Corp. Comm’n of State of Kan.*, 264 Kan. 363, 399 (1998).

17. The Commission finds that being unable to consistently account for the application of discounts may promote a system rife with mischief. The Commission has difficulty finding credible the allegation that Providers are inherently unable to report a pre-discounted price for their services, especially since many, if not all, Providers are required to do so for Federal Universal Service Fund (FUSF) contribution purposes. For that reason, the accounting and reporting of discounted revenue shall be done in the following manner, consistent with the FCC's application for FUSF purposes.

18. Where a customer purchases stand-alone service or bundled services that consist completely of KUSF assessable services, the Commission finds the associated discount can be recognized and the net revenue reported for KUSF contribution purposes.

19. When a customer receives a discount for bundled services that include both assessable and non-assessable services, the Provider must report the stand-alone price of the assessable service included in the bundle for KUSF purposes and the entire discount shall be applied to non-assessable service(s).²⁴ The purpose of this approach is to prevent Providers from minimizing their KUSF obligation by allocating all, or a significant portion of the discount to the assessable service(s). Providers who offer bundled services should already be utilizing a form of this approach despite any application of discounts.

20. If the Provider is unable or unwilling to determine a stand-alone price for assessable services in a bundled package, the Commission orders that the entire bundled service price should be reported. If reporting the entire bundled service price, the Provider may report the price after recognizing end-user discounts.

21. The 90-day window to recognize promotional offerings only further complicates the accounting and Commission efforts and interests to determine consistent reporting

²⁴ 03-932 Docket Order at 2.

methodologies. The Commission hereby abolishes the 90-day allowance for promotional offerings.

B. Bundled Services

22. Providers, in an effort to be market competitive, combine products and services into tailor-made, consumer packages which often include assessable and non-assessable services. By bundling assessable KUSF services with non-assessable services and equipment, the KUSF contribution calculation becomes more complicated. Staff states that as a result of bundling assessable and non-assessable services, some Providers' bundling practices may result in the Provider avoiding the full KUSF contribution that arises from the assessable services.²⁵ This is done when the Provider has adopted the market approach of offering the assessable services for free, thus claiming there is no assessable telecommunications revenue within the bundled service plan.²⁶

23. Like the Commission, the FCC has addressed the issue of bundled services. The *FCC Bundled Service Order* provides two safe harbor methods of reporting Federal Universal Service Fund (FUSF) assessable revenue.²⁷ The Provider may report, 1) the stand alone price of the assessable service, or 2) the total price of the bundle containing the service.²⁸ The FCC also allows Providers to report using other methodologies subject to FCC evaluation with the "standards underlying the safe harbors" applied during such evaluation.²⁹ Providers are responsible for providing evidence that the revenue reported reflects compliance with their universal service fund support obligations.³⁰

²⁵ Staff R&R at 12.

²⁶ *Id.*

²⁷ FCC Bundled Service Order at ¶¶ 50-52.

²⁸ *Id.* at ¶¶ 50, 51.

²⁹ *Id.* at ¶ 53.

³⁰ *Id.*

24. The Commission has determined that Providers must report a stand-alone price for an assessable KUSF service when it is bundled with non-assessable services, which is consistent with FCC policy.³¹ In addition, the FCC allows providers to report the entire price of the bundle if the Provider cannot, or elects not to, determine a reasonable stand-alone price of the service. Therefore, based on the Commission's prior determinations and the FCC's "safe harbors," the Commission sees no reason to retreat from the rationale regarding the reporting of a stand-alone price of the assessable services. All Providers should be aware of these existing methodologies.

25. Staff further recommends that, consistent with the FCC's policies, the Commission allow providers to use an alternative allocation methodology beyond the safe harbor methods to allow flexibility. Therefore, similar to the *FCC Bundled Service Order*, the Commission will allow Providers to elect a methodology other than the two safe harbor methods. The use of an alternative methodology to allocate revenue to assessable services included in a bundle will be subject to review through an audit or enforcement docket and evaluated on a case-by-case basis. It is a Provider's burden to prove its methodology is reasonable. The Commission, if unconvinced, may require a Provider to report using one of the above safe harbor methodologies.

26. By adhering to standing practices, no Provider should be surprised or overly burdened as their current practices, if in compliance, would remain largely unchanged. In addition, those Providers subject to the FCC rules would be equally situated to comply with the above methodologies. The Commission finds this approach reasonable in maintaining consistent, fair and equitable KUSF contribution standards.

³¹ 03-932 Docket Order at 2.

27. The Commission, therefore, orders Providers who choose to offer a variety of services packaged together to report, for KUSF contribution purposes, using either of the two safe harbor methods: (1) the stand-alone price of KUSF assessable services; or, (2) 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. Use of either safe harbor is deemed reasonable for KUSF compliance purposes. A Provider may elect to use an alternative methodology to allocate bundled service revenue to the assessable services in a bundle. However, such methodology is subject to evaluation by the Commission in an audit or enforcement action on a case-by-case basis. If an alternative methodology is used, the Provider is responsible for supporting the reasonableness of the methodology and demonstrating that the methodology results in the Provider meeting its KUSF obligations. Furthermore, in performing KUSF carrier audits, the KUSF administrator shall advise the Commission if a Provider uses one of the safe harbors or elected an alternative methodology, the results of its review of the alternative methodology, and any recommendation regarding review of the methodology. If the Commission determines an alternative methodology is unreasonable, the Provider may be required to report revenue using a safe harbor methodology.

C. Voice over Internet Protocol

28. Interconnected Voice over Internet Protocol (VoIP) Providers are required to contribute to the KUSF on an equitable and nondiscriminatory basis.³² Some VoIP providers claim that they provide free voice or other assessable services and only charge customers for the customer premise equipment (CPE) therefore claiming they do not produce any revenue subject to KUSF assessment.³³

³² K.S.A. 66-2008(a); 66-2017.

³³ See Staff R&R at 18.

29. VoIP services allow consumers access to voice services through computer hardware, software and the Internet. However, interconnected VoIP consumer calls use the Public Switched Telephone Network (PSTN).³⁴ VoIP Providers therefore benefit from the use and maintenance of the PSTN because their consumers would not otherwise be able to place or receive calls from other consumers connected to the PSTN. The PSTN is not free and providers that use and benefit from the PSTN must contribute on a fair and equitable basis to the KUSF. This provides support to all consumers, indirectly through service providers who must deploy and maintain PSTN facilities.

30. The Commission agrees with Staff and others that because the KUSF supports the PSTN and the PSTN benefits interconnected VoIP Providers, those Providers should not be allowed to avoid or unfairly decrease their KUSF contributions. K.S.A. 66-2008(a) makes it clear that the legislature intended interconnected VoIP providers to contribute to the KUSF on a fair and equitable basis.³⁵

31. Interconnected VoIP Providers are hereby required to make and report KUSF contributions consistent with the provisions of this Order.

32. Therefore, interconnected VoIP providers who market their voice service or other assessable services as free, when bundling assessable services with non-assessable services (e.g. CPE), should report revenue in the same way as Providers report bundled services. Interconnected VoIP Providers may use the safe harbors and report the stand-alone price of the assessable telecommunications services included in their consumer offerings, or report the entire price of the bundled service if the provider cannot, or elects not to, assign a stand-alone price for the assessable telecommunications service. Like other Providers, an Interconnected VoIP

³⁴ See e.g. K.S.A. 66-2017(d)(4).

³⁵ See also K.S.A. 66-2017.

Provider may elect to use a substantiated alternative methodology to allocate the revenues between the assessable services and non-assessable services. If a Provider reports zero revenue for the voice or other assessable service(s), the Provider must be able to substantiate (e.g. a traffic or usage study) that its consumers did not use any voice or other KUSF assessable service.

D. Records Retention

33. It is the responsibility of the Commission to select a neutral and competent third party administrator of the KUSF.³⁶ Pursuant to K.S.A. 66-2010(b), the KUSF Administrator is responsible for:

(1) Collecting and auditing all relevant information from all qualifying telecommunications public utilities, telecommunications carriers or wireless telecommunications service providers receiving funds from or providing funds to the KUSF; (2) verifying, based on the calculations of each qualifying telecommunications carrier, telecommunications public utility or wireless telecommunications service provider, the obligation of each such qualifying carrier, utility or provider to generate the funds required by the KUSF; (3) collecting all moneys due to the KUSF from all telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers in the state.

34. Staff recommends the Commission adopt, at a minimum, a three-year record retention policy which should include, but is not limited to, accounting and billing records necessary to complete and support the revenue reported by the Provider on its KUSF Carrier Remittance Worksheets and the KUSF assessments billed to and collected from customers.³⁷

35. Staff supports its recommendation by the fact that sixteen (16) audit dockets are generally opened within six months from the end of the KUSF fiscal year (February 28/29). The KUSF Administrator then has until the following June 30th to complete and file the audit report.³⁸ Thus, audit reports for a particular KUSF fiscal year may not be filed for at least twenty-eight

³⁶ K.S.A. 66-2010(e).

³⁷ Staff R&R at 23.

³⁸ *Id.* at 23.

(28) months from the beginning of that KUSF fiscal year.³⁹ Staff also raises a possibility of extensions of time being necessary to complete an audit report. Under an abundance of caution, Staff therefore recommends that records be retained for the minimum of three years.⁴⁰

36. If records sufficient for the KUSF Administrator to carry out its statutory mandate are not adequately maintained by Providers, then the statutory requirements of the Administrator, the Commission, and the general administration of the KUSF may be impaired. It is therefore sound policy to require Providers to maintain records for such time as necessary to allow the Administrator of the KUSF to carry out its statutory function—irrespective of cost, burden, and time considerations of the Providers. The Commission therefore orders Providers maintain for three years, from the end of the KUSF fiscal year, in paper and/or digital form, records including, but not limited to, accounting and billing records relied on and necessary to complete the KUSF Provider Carrier Remittance Worksheets and records pertaining to KUSF assessments billed to and collected from customers.

E. Early Termination Fee Reporting

37. Early Termination Fees (ETFs) are charged to customers who cancel their service before their contract ends. ETFs are subject to the KUSF assessment.⁴¹ Providers may report gross assessed ETFs and then report the amount uncollected to adjust the reported gross amount.⁴² Some Providers report ETF revenues using the modified cash flow basis of accounting, meaning they only report collected ETF revenue, rather than gross ETF revenue minus the uncollected ETF revenue.⁴³

³⁹ Staff's R&R had originally stated in error that this period equates to twenty-seven (27) months. March 1, 2013 – June 30, 2015 equals twenty-eight (28) months.

⁴⁰ *Id.* at 22-23.

⁴¹ *Id.* at 24.

⁴² *Id.* at 25 (citing Docket No. 94-GIMT-478-GIT).

⁴³ *Id.*

38. GVNW and Staff recommend allowing Providers to report only their collected ETF revenue, regardless of the accounting methodology used, provided the methodology is approved by the Provider's external auditor.⁴⁴ The parties support GVNW's position because it provides them the desired flexibility, while at the same time ensures all Providers are subject to the same reporting requirements.

39. The Commission finds that this approach is sound in light of the fact that only the collected ETF revenue is assessed for KUSF purposes regardless which of the three (3) enumerated accounting methods are utilized. The result is a uniform approach affecting all Providers in the same manner.

40. The Commission orders Providers to report ETF revenue using, (1) the accrual method of accounting, (2) the modified cash basis of accounting, or (3) the cash basis of accounting, provided: the methodology the Provider selects is approved by its outside auditor. The Commission or Staff may request that Providers provide verification that their independent auditors approve of the Provider's selected methodology, when applicable.

F. Global Issues of KUSF Contribution

41. The final question left to be resolved by this Docket is the global issue of KUSF contributions. Specifically, citing changes to technology and services in the telecommunications industry, should the KUSF revenue sources be expanded or modified, and if so, what modifications are appropriate? And, what other contribution issues should the Commission consider?

⁴⁴ *Id.*

42. The FCC tasked the Federal-State Joint Board on Universal Service (Joint Board) to review and submit its recommendations concerning the FUSF contribution methodology.⁴⁵ The Joint Board has not yet submitted its recommendation and the FCC is allotted one year to review once such recommendation is made.⁴⁶

43. Staff and other commenters recommend that this issue be postponed until such time as the FCC takes action in the FUSF Contribution Proceeding.

44. In order to fully resolve this docket, the Commission orders that no changes shall be made to the KUSF contribution methodology at the current time. Staff is directed to monitor the Joint Board and FCC Contribution Proceeding and advise the Commission of any recommendations and/or action that may be considered in relation to the KUSF. Staff is directed to file a recommendation related to the modification of the KUSF contribution methodology in a new proceeding.

THEREFORE, THE COMMISSION ORDERS:

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

⁴⁵ See Order at 1, In the Matter of Federal-State Joint Board on Universal Service, WC Docket No. 96-45, Universal Service Contribution Methodology, WC Docket No. 06-122, A National Broadband Plan For Our Future, GN Docket No. 09-51 (Aug. 6, 2014) (collectively FUSF Contribution Proceeding).

⁴⁶ 47 C.F.R. 254(a)(2).

services. This methodology applies to all Providers, including Interconnected VoIP Providers that bundle assessable services with non-assessable services, such as CPE. 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 meets its KUSF obligations through an audit or enforcement action on a case-by-case basis. The Commission will apply the same standards as those underlying the safe harbor provisions. A Provider electing to use an alternative methodology shall be prepared at all times to provide the KUSF Administrator, Staff, and/or the Commission with evidence to support the reasonableness of such methodology and verify that the Provider has met its KUSF obligations. If a Provider reports zero revenue for the voice or other assessable service(s), the Provider must substantiate (e.g. a traffic or usage study) that its consumers did not use any voice or other KUSF assessable service. Furthermore, in performing KUSF carrier audits, the KUSF Administrator is to advise the Commission on alternative methodologies utilized in the allocation of service revenues, the results of a review of the alternative methodology, and any recommendation regarding the methodology. If the Commission determines the alternative methodology is unreasonable, the Commission may require the Provider to report using one of the two safe harbors.

D. Providers shall retain records for three years from the end of the KUSF fiscal year, in paper and/or digital format, including but not limited to, accounting and billing records relied on and necessary to complete KUSF Carrier Remittance Worksheets and records pertaining to KUSF assessments billed to and collected from customers.

E. Providers shall report ETF revenue using either, (1) the accrual method of accounting, (2) the modified cash basis of accounting, or (3) the cash basis of accounting, provided: the methodology the Provider selects is approved by its outside auditor, when applicable. The Commission, Staff or the KUSF Administrator may request that Providers provide verification that their independent auditors approve of the Provider's selected methodology.

F. No changes shall be made to the KUSF contribution base. Staff is to monitor the FCC proceedings and advise the Commission of any recommendation and/or action that may be considered in relation to the KUSF. Staff is to file a recommendation related to the modification of the KUSF contribution methodology in a new proceeding.

G. Any changes in Provider accounting or reporting necessitated pursuant to this Order shall be made within 90 days from the effective date of this Order. Staff is directed to monitor the implementation of the above provisions and advise the Commission should any Provider be in non-compliance with this Order through the request for initiation of a separate docket. It is at Staff's discretion whether to bring any allegation of past or current non-compliance with Commission orders to the attention of the Commission through a separate docket.

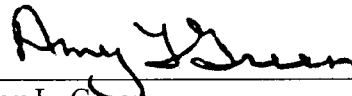
H. The parties have 15 days from the date this Order was electronically served to petition for reconsideration.⁴⁷

I. 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; Emler, Commissioner; Apple, Commissioner

Dated: **OCT 20 2015**



Amy L. Green
Secretary to the Commission

DLK

EMAILED

OCT 20 2015

⁴⁷ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

OCT 20 2015

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 **OCT 20 2015**.

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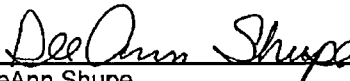
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