

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Mark Sievers, Chairman
 Thomas E. Wright
 Shari Feist Albrecht

In the Matter of the Application of Google)
Fiber Kansas, LLC Filing for Kansas Video) Docket No. 12-GFKC-643-VSA
Service Authorization.)

**ORDER APPROVING AMENDED APPLICATION FOR A STATE-ISSUED VIDEO
SERVICE AUTHORIZATION**

NOW, the above-captioned 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 duly advised in the premises, the Commission makes the following findings:

1. On August 22, 2012, Google Fiber Kansas, LLC (“Google Fiber”) filed an Amended Application for a state-issued Video Service Authorization, as authorized by K.S.A. 12-2023 and K.A.R. 82-15-1.

2. The amended filing seeks additional video service authority for the cities of Westwood, Westwood Hills, and Mission Woods. The service areas are specifically described as follows:

The City of Westwood, Kansas:
Township 12S, Range 25E, Section 2

The City of Westwood Hills, Kansas:
Township 12S, Range 25E, Section 2

The City of Mission Woods, Kansas:
Township 12S, Range 25E, Sections 2 and 3

3. Commission Staff (“Staff”) submitted a Report and Recommendation regarding the amended application on August 29, 2012, attached hereto and made a part hereof by reference. Staff found that Google Fiber is properly registered with the Kansas Secretary of State’s Office, its principal place of business is located at 1600 Amphitheatre Parkway, Mountain View, CA, 94043, and Google Fiber has provided a list of its officers and contact personnel. (*See* K.S.A. 12-2023(a)(1)). Staff found that Google Fiber asserts that it is not a “cable operator” operating a “cable system,” and therefore has not filed an FCC Cable Community Form 322 or been assigned a CUID. (*See* K.S.A. 12-2023(a)(2)). Staff found that Google Fiber agreed to follow all applicable federal, state, and municipal rules and regulations. (*See* K.S.A. 12-2023(a)(3)-(4)). Finally, Staff found that Google Fiber states it will become capable of providing video programming throughout its service area footprint within 5 years. (*See* K.S.A. 12-2023(a)(5)(A)). For ease of future reference, Staff is identifying the proposed service areas as follows: The City of Westwood, WSWD-02-GFKC-01; The City of Westwood Hills, WSWH-03-GFKC-01; and The City of Mission Woods, MSWD-04-GFKC-01.

4. Staff recommended approval of the amended application.

5. The Commission finds all of Staff’s findings and recommendations to be reasonable and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The amended application filed by Google Fiber on August 22, 2012 for a state-issued Video Service Authorization is approved.

B. Google Fiber is granted authority to provide video service as requested in the application. The grant of authority is subject to lawful operation of the video service by the applicant or its successor in interest.

C. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Wright, Com.; Feist Albrecht, Com.

Dated: SEP 13 2012


ORDER MAILED SEP 13 2012
Patrice Petersen-Klein
Executive Director

MRN

1500 SW Arrowhead Road
Topeka, KS 66604-4027



Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Mark Sievers, Chairman
Thomas E. Wright, Commissioner

Sam Brownback, Governor

STATE CORPORATION
COMMISSION

**STAFF REPORT AND RECOMMENDATION
UTILITIES DIVISION**

SEP 04 2012

PATRICE PETERSEN-KLEIN
EXECUTIVE DIRECTOR

TO: Chairman Mark Sievers
Commissioner Thomas E. Wright

FROM: Kelly Mabon, Telecommunications Analyst

Date: August 29, 2012

DATE SUBMITTED TO EXECUTIVE DIRECTOR: 9/4/12

DATE SUBMITTED TO LEGAL: 9.5.12

DATE SUBMITTED TO COMMISSIONERS: 9-06-12

SUBJECT: In the Matter of the Application of Google Fiber Kansas, LLC Filing for Kansas Video Service Authorization.
Docket No. 12-GFKC-643-VSA

BACKGROUND:

On August 22, 2012, Google Fiber Kansas, LLC (Google Fiber) filed an Amended Application for a state-issued Video Service Authorization, as authorized by K.S.A. 12-2023 and K.A.R. 82-15-1. Staff recommends approval of this Application.

In accordance with K.S.A. 12-2023(a), Commission action in this matter is required not later than **Friday, September 21, 2012.**

ANALYSIS:

The Applicant has identified its principal place of business as 1600 Ampitheatre Parkway, Mountain View, CA, 94043, and has previously provided its officers and contact personnel.

The Applicant is registered with the Kansas Secretary of State's office as a Foreign Limited Liability Company and is currently 'Active and in Good Standing' with the Secretary's office.

The Applicant states that it has not filed with the Federal Communications Commission a "Cable Community Registration Form 322" or been assigned any "Community Unit Identification Number (CUID)" as these items are described in federal regulations, 47 C.F.R. § 76.1801. This regulation applies only to a "cable operator" operating a "cable system" as defined at 47 C.F.R. § 76.5, and it does not apply to the service for which Google Fiber Kansas, LLC seeks authorization. Staff asked for further clarification of this answer to which the Company responded as follows:

Form 322 must be filed by *cable operators* before they can commence operation. See 47 C.F.R. §§ 76.1800 - 76.1801. To meet the definition of "cable operator,"¹ "cable service" must be provided. "Cable service" is defined as: "(A) the *one-way* transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service." 47 U.S.C. § 522(6) (emphasis added). Form 322 also requires that before commencing operation, a "cable system operator must send registration information for each community to be served" to the Federal Communications Commission (FCC).² The FCC assigns a CUID when the registration process is complete.

The FCC has held that the definition of "cable service" is meant to encompass services provided over cable systems, which operate using a one-way, broadcast transmission model in which subscriber interactivity is limited.³ All available linear video programming is simultaneously transmitted, *i.e.*, broadcast, to all households connected to the cable system.

Tuners built into customers' navigation devices (*e.g.*, set-top boxes) select the appropriate channel to display on each customer's television. Cable systems are thus fundamentally one way, passive distribution systems.

Video programming transmission on the Google Fiber network would be based on a client-server architecture similar to that used by end users to access the Internet. Google Fiber's IP-enabled video offering thus would fall outside of the definition of "cable service" because it would be transmitted via a *two-way, interactive* network that would involve regular communication with customer premises equipment to deliver content. When a subscriber selects a channel from the programming guide, a message would be sent through the navigation device through Google Fiber's IP-based network to a regional head end. In response, the requested programming would be encoded and then sent in IP-format over Google Fiber's facilities to the navigation device, where it would be decoded and displayed on the subscriber's TV. Nothing would be sent to the subscriber until the subscriber communicates and interacts with the IP-enabled network and requests specific content. A subscriber's navigation device would need to be in constant communication with, and signaling to, the Google Fiber network the content they want to access and the network responding with the appropriate IP transport stream.

¹ "Cable operator" is defined as: "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." See 47 U.S.C. § 522(5).

² See *Instructions for FCC Form 322, Cable Community Registration*, available at [ftp://ftp.fcc.gov/pub/Forms/Form322/322.pdf](http://ftp.fcc.gov/pub/Forms/Form322/322.pdf). "Cable system" is defined as a "facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community." See 47 C.F.R. § 76.5(a). The term does not include: (1) facilities that serve "only to retransmit the television signals of one or more television broadcast stations;" (2) facilities that serve "subscribers without using any public right-of-way;" (3) facilities of common carriers subject to "Title II of the Communications Act of 1934 . . . except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;" (4) open video systems that "comply with Section 653 of the Communications Act;" or (5) facilities of "any electric utility used solely for operating its electric utility systems." See *id.* § 76.5(a)(1-5).

³ See, *e.g.*, *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd . 4 798, ~ 61 (2002) (subsequent history omitted) (the "phrase 'one-way transmission to subscribers' in the definition [of cable service] reflects the traditional view of cable as primarily a medium of mass communication, with the same package or packages of video programming transmitted from the cable operator and available to all subscribers."); *Telephone Company-Cable Television Cross Ownership Rules*, Sections 63.54-63.58, Second Report and Order, Recommendation, Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd. 5781, ~ 75 n.194 (1992) ("Congress emphasized that services enabling subscribers to interact with or manipulate information typically would not be considered cable service.").

The degree of interactivity inherent in Google Fiber's network, as well as interactive features that Google Fiber would provide, would make the offering fundamentally different from cable service. Google Fiber's service would be provided in a digital, IP-packet format. The offering also would include an array of interactive features that go far beyond those "required" simply to access channels. These features would permit each end user to tailor content and viewing experiences to their individual tastes and needs. Unlike a cable system, it would not be possible for a user to access the Google Fiber service without having a broadband Internet connection. The service simply would be one of many Internet applications that flow over the Internet connection.

For these reasons, Google Fiber asserts it would not be required to file FCC Cable Community Registration Form 322 or be assigned a CUID by the FCC. These requirements apply to a "cable operator" operating a "cable system." Because the Google Fiber offering would not be a "cable service," these definitions are not applicable to Google Fiber.

By initialing, the Applicant has agreed to comply with all applicable federal and state statutes and regulations and agrees to comply with all lawful and applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of video services, including the police powers of the municipalities in which the service is delivered. (Application item #5).

The Applicant is seeking additional authority in Johnson County, Kansas, and has provided the following description:

The Applicant is proposing additional service areas: the Cities of Westwood, Westwood Hills and Mission Woods, Kansas. The services areas are further described as:

The City of Westwood, Kansas:
Township 12S, Range 25E, Section 2

The City of Westwood Hills, Kansas:
Township 12S, Range 25E, Section 2

The City of Mission Woods, Kansas
Township 12S, Range 25E, Sections 2 and 3

The Applicant has provided the above description in an electronic format, compatible with the Commission's mapping system.

For ease of future reference, staff is identifying⁴ the proposed footprint as follows: the City of Westwood WSWD-02-GFKC-01, the City of Westwood Hills WSWH-03-GFKC-01, and the City of Mission Woods MSWD-04-GFKC-01.⁴

⁴ For ease of future referencing, staff assigns a four field footprint number using the following convention: ABCD-xx-EFGH-yy, where ABCD is the four character abbreviation of the major city encompassed by the service area, xx is a two digit sequentially assigned number of the provider's service areas, EFGH is the four alpha character company code and yy indicating the version of the company's footprint where 01 is the initial version, 02 the first revision, etc.

The Applicant states that it will become capable of serving 100% of the service area with five years of the date of Commission approval of the Application.

The Applicant has provided a high level drawing of its IPTV/Regional IP network ending in fiber to the home.

RECOMMENDATION:

Staff recommends Commission approval of Google Fiber's Amended Application with a service area footprint to be identified and known as Westwood WSWD-02-GFKC-01, Westwood Hills WSWH-03-GFKC-01, and Mission Woods MSWD-04-GFKC-01.

cc: Patrice Petersen-Klein, Executive Director
Jeff McClanahan, Director of Utilities
Christine Aarnes, Chief of Telecommunications.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
MILO MEDIN, MANAGER GOOGLE FIBER KANSAS, LLC 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043		
ROBERT A. FOX, SENIOR LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		
MICHAEL NEELEY, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		
FRANK A. CARO, JR., ATTORNEY POLSINELLI SHUGHART 6201 COLLEGE BLVD STE 500 OVERLAND PARK, KS 66211-2435		

ORDER MAILED SEP 13 2012

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.