

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

In the Matter of a General Investigation )  
Regarding the Effect of Federal Income Tax )  
Reform on the Revenue Requirements of ) Docket No. 18-GIMX-248-GIV  
Kansas Public Utilities and Request to Issue )  
an Accounting Authority Order Requiring )  
Certain Regulated Public Utilities to Defer )  
Effects of Tax Reform to a Deferred )  
Revenue Account. )

**JOINT MOTION TO DISMISS THE UNITED TELEPHONE COMPANIES OF KANSAS**

The Staff of the Kansas Corporation Commission (“Staff” and “Commission,” respectively) and United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas and Embark Missouri, Inc. (hereinafter referred to collectively as “The United Companies” or “United”), all dba CenturyLink, hereby move to dismiss United from this proceeding. In support thereof, the Joint Movants state the following:

**Background**

1. On January 18, 2018, the Commission issued an *Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform* (Tax Order) for purposes of ensuring the benefits associated with reduced federal corporate income taxes (from 35% to 21%) flow through to ratepayers and Kansas Universal Service Fund (KUSF) assessment payers.

2. The Tax Order required all regulated electric, natural gas, water, and telecommunications public utilities taxable at the corporate level, to accrue monthly, in a deferred revenue account, the portion of its revenue representing the difference between: (1) the cost of service approved by the Commission in its most recent rate case or KUSF determination

proceeding; and (2) the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the Tax Cuts and Jobs Act (TCJA). The Commission also noted that it intended to capture excess Accumulated Deferred Income Tax (ADIT) for the benefit of ratepayers using a methodology consistent with Internal Revenue Service (IRS) tax normalization rules.

3. In its Tax Order, the Commission noted that it would analyze the effects of the TCJA on a case-by-case basis, and if it is determined that a rate or KUSF support decrease would have been appropriate as of the effective date of the TCJA, any excessive collections in the deferred revenue subaccount would be refundable to ratepayers or the KUSF with interest.

4. Given the Commission's instructions to review utilities on a case-by-case basis to ensure tax savings as a result of the TCJA flow through to ratepayers and KUSF assessment payers, the Joint Movants analyzed the relevant data in conjunction with the regulatory structure applicable to price-cap regulated companies.

#### **United Telephone Companies of Kansas**

5. United is a price-cap regulated carrier pursuant to K.S.A.66-2005(b) with 25,197 KUSF supported access lines and 53,099 total access lines<sup>1</sup>. As a price-cap regulated carrier:

- a. there is no statutory mechanism to adjust a price-cap regulated carrier's rates for any cost of service component, whether an increase or decrease; and
- b. there is no statutory mechanism to reduce a price-cap carrier's KUSF payments for reductions in the federal tax rate, just as there is no statutory mechanism to increase KUSF support for increases in federal tax rates (similarly, there is no statutory method to increase or decrease a price-cap carrier's end-user rates for federal tax changes).

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<sup>1</sup> As of September 30, 2018 (Docket No. 18-GIMT-084-GIT)

### **Price Cap Regulation Lacks a Statutory Mechanism to Adjust for Cost Components**

6. United elected - pursuant to K.S.A. 66-2005(b) - to have its rates for telecommunications services be subject to “price-cap” regulation rather than “rate-of-return” regulation. Under price-cap regulation, a carrier may price its services anywhere up to a statutory cap administered by the Commission. A price-cap carrier’s actual cost of providing service may or may not bear any relationship to the prices it charges for service. In other words, any cost increases or decreases incurred by United are not used to adjust United’s rates.

7. For price-cap regulated carriers, rates for all services after July 1, 2006, are determined based on the provisions of KSA 66-2005(q) and the price cap adjustment formula used prior to July 1, 2006 is no longer applicable. The price cap adjustment formula prior to 2006 used inflation, productivity and exogenous factors to adjust rates annually; however, the use of these three factors, including the exogenous factor, was eliminated effective July 1, 2006. The purpose of the exogenous factor in the price cap adjustment formula was to allow companies to adjust the cap up or down for unusual or extraordinary circumstances. The use of exogenous adjustments required case-by-case approval by the Commission and was only for events “outside of the company’s control [with] a disproportionate effect on the industry so that its effect is not reflected by the price index”. Although changes to the federal tax rate would be considered a textbook example of an exogenous event, there is simply no longer any statutory procedure to *increase or decrease* a price-cap regulated carrier’s rates for increases or decreases in the federal tax rate or any other cost component.

### **Price Cap Regulation Lacks a Statutory Mechanism to Adjust KUSF Support Amounts**

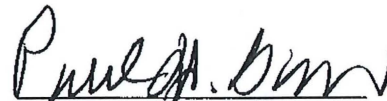
8. The Commission included United as part of this docket as a result of the KUSF support the companies receive. However, as the Commission recently determined in United's KUSF Cap Docket<sup>2</sup>: United's KUSF support must be based on the monthly per line KUSF support identified in the April 2000 Notice, adjusted for CAF II support received for each household. This mandate comes from the statutory language of K.S.A. 66-2008(c)(3). Based upon this statutory directive, a price-cap regulated carrier's KUSF support cannot be modified for increases or decreases in the federal tax rate or for any other cost of service component.

WHEREFORE, for the reasons set forth above, the Joint Movants move for the Commission to dismiss the United Telephone Companies of Kansas from this proceeding and release them from any obligations under the Commission's January 18, 2018, Tax Order.

Respectfully Submitted,



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<sup>2</sup> Docket No. 18-UTDT-356-GIT, In the Matter of a General Investigation to Review the Kansas Universal Service Fund Cap for the United Telephone Companies of Kansas Pursuant to K.S.A. 66-2008(d)(2), Order Adopting Staff Recommendation, pg. 3, June 26, 2018.

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF SHAWNEE    )

**VERIFICATION**

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Joint Motion to Dismiss the United Telephone Companies of Kansas* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



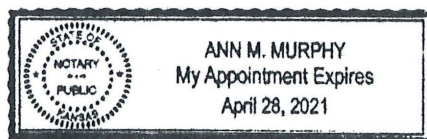
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Subscribed and sworn to before me this 21st day of August, 2019.



Notary Public

My Appointment Expires: April 28, 2021



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18-GIMX-248-GIV

I, the undersigned, certify that a true and correct copy of the above and foregoing Joint Motion to Dismiss The United Telephone Companies of Kansas was served via electronic service and first class U.S. Mail this 21st day of August, 2019, to the following:

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