

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

JUL 15 2010

Generic Proceeding to Address Kansas Universal)
Service Fund Support Supplemental Funding)
Procedures, as Adopted by the Commission in)
Docket No. 00-GIMT-842-GIT.)

Docket No. 10-GIMT-667-GIT



CENTURYLINK INITIAL COMMENTS

COMES NOW the United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas, and Embarq Missouri, Inc.,¹ doing business as CenturyLink² (hereinafter referred to as “CenturyLink”), and pursuant to the Commission’s Order Opening Docket and Setting Procedural Schedule (“Opening Order”) offers the following Initial Comments in the above-captioned matter:

1. On June 16, 2010, the Commission opened this Docket to review whether the current supplemental Kansas Universal Service Fund (“KUSF”) funding remains adequate or if modifications are necessary. Specifically, the Commission seeks comments on the following items.

- (a) Is the definition of a line eligible for supplemental KUSF support adequate?
- (b) Is the current filing frequency procedure-allowing companies to request supplemental KUSF funding for lines in service at the end of each quarter or between quarters if a two percent or greater 12-month net increase in lines occurs-appropriate?
- (c) How should prior adjustments adopted by the Commission be incorporated in the carrier’s subsequent requests for supplemental KUSF support?
- (d) What is the appropriate effective date for payment of supplemental KUSF support?

¹ Collectively referred to as United Telephone Companies of Kansas.

² On July 1, 2009, CenturyTel Inc. and Embarq Corporation completed its merger. On September 17, 2009, the United Telephone Companies filed a Notification of Fictitious Name Change notifying the Commission that the fictitious names have changed from “Embarq” to “CenturyLink.”

2. As an initial matter, CenturyLink suggests that, given the advent of competitive ETCs (“CETCs”) receiving KUSF support since the current supplemental procedures were adopted and today’s changing telecommunications environment, the Commission should expand the questions posed to more fully examine whether modifications are needed to the funding formula specifically as it relates to support of CETCs. As the Staff noted in its memorandum to open a generic proceeding to address whether the KUSF supplemental funding procedures should be modified, there were no CETCs receiving KUSF support when the supplemental KUSF funding procedures were adopted and now there are several.³ For CETCs, these guidelines apply for their initial KUSF support.

3. Based upon prior Commission rulings, competitive wireline and wireless ETCs receive the exact same per line dollar amount of support as the underlying incumbent carrier would have received. The rationale for such “equal-payment” was the interpretation of competition policy and competitive neutrality goals developed from various FCC rulemakings implementing the Telecom Act. Recently, however, the FCC clarified its interpretation of competition policy, modified its funding rules for CETCs, and no longer strictly defines competitive neutrality as requiring an “equal-payment.”⁴ Specifically, the FCC has capped the amount of federal USF available to CETCs, consequently, they are no longer guaranteed the same level of support as the incumbent. CenturyLink suggests that whether it is included within the context of the four specific questions posed or as a result of a separate series of questions, it is now time for the

³ *In the Matter of the application of the Request of United Wireless Communications, Inc. for Kansas Universal Service fund Initial and Supplemental Fund Support*, Docket No. 10-UWCC0349-KSF (2009) (349 Docket), See p. 4 of the Staff Memorandum.

⁴ See e.g., *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, we Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008), *aff'd*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009). The Commission adopted a limited exception to the cap for competitive ETCs serving tribal lands or Alaska Native regions.

Commission to fully evaluate the level of KUSF support available to CETCs in much the same manner as the FCC has initiated.

4. As noted, in 2000 (Year 4 for the KUSF) when the current supplemental procedures were adopted, there were no CETCs receiving KUSF support. Starting in 2002, however, CETCs began seeking KUSF support based on the “equal-payment rules in the name of competitive neutrality.” Since then, the amount of CETC support has grown from \$26,000 in 2002 to over \$5 million in 2010. With this increase in CETC funding comes an increase in KUSF assessment surcharge: from 3.7% (wireline carriers) and 3.34% (wireless carriers) in 2002, to 6.64% today.

5. While virtually every incumbent LEC has undergone comprehensive cost proceedings to determine the appropriate amount of KUSF funding support, not a single CETC has undergone such a thorough cost review. Instead, they have simply relied upon the “equal-payment” approach. While the “equal-payment” approach may have been a well-intentioned attempt to achieve competitive-neutrality when originally offered, it has produced the mushrooming of USF support and other unintended consequences. As noted above, the FCC has severed the direct linkage between the goal of “competitive-neutrality” and the requirement for “equal-payment.” In doing so, the FCC has sought to re-establish as the priority a policy of service availability over one that provides funding to multiple providers without regard to whether funding is actually needed to ensure universal availability.

6. CenturyLink submits that the Commission should undertake a similar review of the KUSF to clearly focus the KUSF on universal availability. In fact, CenturyLink submits that failing to do so, particularly while imposing the cost burden on ILECs while allowing the CETCs to forgo such a burden, results not in competitive parity but in a considerable cost advantage for the CETCs.

7. CenturyLink recommends, at a minimum, that the Commission implement a CETC funding cap similar to the CETC funding cap enacted by the FCC for federal USF. Just as the FCC has done, the Commission should reconsider the continued viability and reasonableness of an “equal payment” approach and instead cap the total amount of KUSF funding that supports CETCs at a point in time, such as the point used to cap federal USF. The capped CETC KUSF funding could then be distributed in a manner similar to how the federal USF is distributed to accommodate additional CETCs, as necessary, within that capped CETC funding amount.

WHEREFORE CenturyLink respectfully requests that in response to these Initial Comments, the Commission include in this docket a review of the continued appropriateness of the equal-payment process currently in place. Alternatively, CenturyLink suggests the Commission direct Staff to open a new docket to further explore how competitive-neutrality should be implemented in Kansas in light of recent FCC developments.

Respectfully submitted,



Linda K. Gardner KS Bar No. 22833
5454 W. 110th Street
Overland Park, KS 66211
Tele: 913-345-6193
Fax: 913-397-3598
e-mail: Linda.gardner@embarq.com

*Attorney for United Telephone Company of
Kansas d/b/a CenturyLink, United
Telephone Company of Eastern Kansas
d/b/a CenturyLink, United Telephone
Company of Southcentral Kansas, d/b/a
CenturyLink, and Embarq Missouri, Inc.
d/b/a CenturyLink*

VERIFICATION

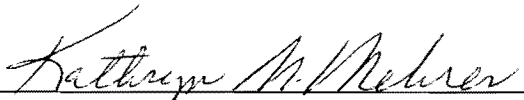
STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

I, Linda Gardner, of lawful age, and being first duly sworn, now state: I am Senior Counsel for CenturyLink, and have read the foregoing CenturyLink Initial Comments and verify the statements contained therein to be true and correct to the best of my knowledge and belief.



Linda Gardner

Subscribed and sworn to before me this 14th day of July 2010.



Notary Public in and for said
County and State

My Appointment Expires:



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of July, 2010, a true and correct copy of the foregoing CenturyLink Initial Comments was served via US Mail, postage paid to each of the following:

David Springe
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, Kansas 66604

Robert Lehr
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Bruce A. Ney
Southwestern Bell Telephone Co.
220 East Sixth Street
Topeka, Kansas 66603

