

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

STATE CORPORATION COMMISSION

MAR 25 2010



Docket No. 08-GIMT-1023-GIT

In the Matter of the Petition of Sprint
Communications Company L.P., Sprint
Spectrum L.P., and Nextel West Corp., d/b/a
Sprint, to Conduct General Investigation
into the Intrastate Access Charges of United
Telephone Company of Kansas, United
Telephone Company of Eastern Kansas,
United Telephone Company of South
Central Kansas, and United Telephone
Company of Southeastern Kansas, d/b/a Embarq.)

PETITION FOR RECONSIDERATION

The Citizens' Utility Ratepayer Board (CURB), pursuant to K.S.A. 66-118b, K.S.A. 77-529, and K.A.R. § 82-1-235, hereby petitions the Commission for reconsideration of two aspects of its March 10, 2010 Order Setting Embarq's Intrastate Access Rates to Parity and Providing for Rebalancing Through the KUSF ("March 10th Order"). Specifically, CURB is requesting that the Commission reconsider the portions of its order that (1) failed to phase in Embarq's intrastate access rate reductions over at least a three year period, and (2) failed to order a true-up process for intrastate access volumes (resulting in a smaller amount of access dollars rebalanced to the KUSF) to reflect the fact that Embarq's intrastate access volumes are declining and will continue to decline. In support of its Petition for Reconsideration, CURB states as follows:

I. The Commission Should Reconsider Its Decision Denying CURB's Request for a Minimum Three Year Phase-In Period and a True-Up Mechanism for Access Reduction Rebalancing Through the KUSF.

1. In its March 10th Order, the Commission denied CURB's request to implement a minimum three-year phase-in period for any reduction rebalanced through the KUSF based upon the following rationale:

The Commission appreciates CURB's suggestion to utilize a phased-approach for reductions in access rates. AT&T has indicated it would not oppose such an approach. However, because the access revenues will be recovered from the KUSF the Commission does not find it necessary to utilize a phased approach.¹

2. The Commission acknowledged CURB's request for a true-up mechanism in its Order, but did not provide language expressly denying CURB's request.²

3. While CURB acknowledges the Commission is afforded discretion under K.S.A. 66-2005(c), CURB respectfully submits the Commission's rationale in denying CURB's proposed minimum three year phase-in period and true-up mechanism is not supported by the evidence in the record, is in fact contrary to the evidence in the record, and constitutes an abuse of discretion.

4. The evidence in the record established that Embarq's intrastate access volumes and revenues have been declining, and will continue to decline.³

5. The record further established that substantial consumer harm will result from reducing Embarq's intrastate access rates and rebalancing these related revenues to the KUSF. Recovering Embarq's lost intrastate access rate revenues immediately from the KUSF will increase the KUSF burden on Kansas ratepayers by \$3.85 million⁴ at a time when the assessment has already been substantially increased to the second highest KUSF assessment.⁵ Recovering these lost intrastate access revenues immediately from the KUSF will increase the KUSF assessment for all Kansans from a 5.03 percent to 5.34 percent, and increase the size of the KUSF fund by \$3.85 million.⁶ Without a phase-in period, all Kansas ratepayers will be required to immediately bear the brunt of the entire \$3.85 million increase in KUSF assessments.

¹ March 10th Order, at ¶ 241 (emphasis added).

² March 10th Order, at ¶ 190.

³ Idoux, Tr. Vol. 2, at 303; Bax SR, at 15; Bax, Tr. Vol. 2, at 264, 279-281, Reams D., at 9.

⁴ Idoux, Tr. Vol. 2, at 299-300; Reams D., at 4.

⁵ Idoux D., at 18.

⁶ Idoux D., at 18.

Without a true-up mechanism, Kansas ratepayers will be required to over-compensate Embarq for intrastate access revenues it would not have received in future years due to the continuing decline in Embarq's intrastate access volumes.

6. CURB proposed a minimum three year phase-in period and the true-up mechanism be implemented to lessen the substantial consumer harm described above and prevent overpayment by ratepayers of amounts rebalanced and recovered through the KUSF as a result of declining access volumes over time.⁷

7. As noted by the Commission, Staff did not oppose CURB's proposed minimum three-year phase in period and true-up proposals,⁸ but merely suggested that the Commission may want to consider whether a true-up mechanism be incorporated for Embarq in this docket only or whether, in general, a true-up mechanism should be incorporated in future access proceedings.⁹

8. The Commission also noted that AT&T did not oppose CURB's request.¹⁰ In fact, AT&T concurred with CURB's proposal:

Before discussing AT&T's disagreements with the arguments presented by CURB, Staff and Embarq, AT&T would like to state its concurrence with CURB's secondary position recommending that any reduction of Embarq's access rates ordered by the Commission be phased-in over a three-year period with a true-up mechanism. (footnote omitted) Staff did not oppose this suggestion by CURB, and AT&T believes it is a reasonable compromise which would accomplish the legislative goal of removing implicit subsidies from access rates and making them explicit, while employing the Commission's statutorily granted discretion to determine the timing and method for implementation.¹¹

⁷ Ostrander D., at 18, 20-21.

⁸ March 10th Order, ¶¶ 190, 241, 246.

⁹ Reams R., at 5. It was not explained by Staff what it meant by whether a true-up mechanism should be considered in future access proceedings, but CURB does not oppose the possibility of true-up mechanisms for any potential future access proceedings.

¹⁰ March 10th Order, ¶¶ 190, 246.

¹¹ Post-Hearing Reply Brief of AT&T Communications of the Southwest, pp. 3-4.

AT&T has no objection if the Commission accepts CURB's or Staff's secondary recommendations that access reductions to parity and the associated rate rebalancing be phased-in over some limited period of time and trued-up. A gradual transition to explicit subsidies would accomplish the ultimate goals of the Kansas Act, and would be a positive signal to carriers that Kansas continues to adhere to policies that encourage investment and innovation in the State.¹²

9. AT&T also indicated:

If a phase-in approach is adopted by the Commission, any changes to Embarq's interstate access rates ordered by the FCC during the time period of the phase-in should be reflected in subsequent adjustments to Embarq's intrastate access reductions. This will ensure that the goal of bringing intrastate access into parity with interstate access is actually accomplished upon completion of the phase-in process.¹³

CURB has no objection to this additional suggestion by AT&T.

10. The fact is, no party to this proceeding offered any testimony opposing CURB's request for a minimum three year phase-in period or a true-up mechanism to lessen the substantial consumer harm described above and prevent overpayment by ratepayers of amounts rebalanced and recovered through the KUSF as a result of declining access volumes over time. CURB's recommendations do not cause harm to any party in this proceeding and satisfy the Commission's overall objectives, which explains why there is no opposition to CURB's recommendation.

11. As noted by the Commission in the Order Opening General Investigation, "The Commission's mandate, in light of the legislature's grant of discretion, is to balance the multiple important and potentially conflicting policy concerns and objectives and address them in an interrelated and balanced manner."¹⁴

12. Utilizing a minimum three year phase-in period and true-up mechanism reasonably balances the multiple important and potentially conflicting policy concerns and

¹² *Id.*, at p. 30 (emphasis added).

¹³ *Id.*, at p. 4, footnote no. 4.


¹⁴ Order Opening General Investigation and Denying Motion to Dismiss, ¶ 44, October 10, 2008.

objectives at issue in this docket, and addresses them in an interrelated and balanced manner. CURB's proposals were reasonable, balanced, and supported by the record – which reflects no objection by any party and support by AT&T.

II. Conclusion.

13. CURB respectfully requests that the Commission reconsider the portions of its March 10th Order denying CURB's request for a minimum three year phase-in period and a true-up mechanism to lessen the substantial consumer impacts of the rebalancing and prevent overpayment by ratepayers of amounts rebalanced and recovered through the KUSF as a result of Embarq's declining access volumes over time.

Respectfully submitted,


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CERTIFICATE OF SERVICE

08-GIMT-1023-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed, or hand-delivered this 25th day of March, 2010, to the following:

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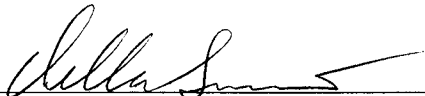
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