

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

MAY 07 2012

In the Matter of the General Investigation into )  
the Kansas Universal Service Fund pursuant )  
to K.S.A. 2010 Supp. 66-2008(c). )

by  
State Corporation Commission  
Docket No. 12-GIMT-170-GFP

**RESPONSE OF CTIA-THE WIRELESS ASSOCIATION® TO THE MOTION FOR  
EMERGENCY ORDER PROHIBITING DISCLOSURE OF COMPANY-SPECIFIC  
FINANCIAL INFORMATION**

COMES NOW CTIA – The Wireless Association® (“CTIA”) and responds as follows to the Motion of the Independent Telecommunications Group, Columbus et al., the State Independent Alliance, Southern Kansas Telephone Company and Mutual Telephone Company (“RLECs”) for an Emergency Order Prohibiting Disclosure of Company-Specific Financial Information (“Motion”) filed with the Kansas Corporation Commission (“Commission” or “KCC”) in this docket on April 26, 2012.

**I. BACKGROUND**

1. On March 29, 2012, the Commission’s standard Discovery and Protective Orders were issued in this docket. Under those Orders, the parties who have been granted intervention are allowed access to confidential information produced in response to discovery requests to the extent that a non-disclosure certificate is filed on behalf of any individual seeking access.

2. CTIA is an international nonprofit membership organization representing the wireless communications industry. CTIA advocates on behalf of its members at all levels of government. CTIA also coordinates the industry’s voluntary efforts to provide consumers with a variety of choices and information regarding their wireless products and services. CTIA also supports numerous important industry initiatives related to public safety and information. The association also operates the industry’s leading trade shows, as well as equipment testing and certification programs to ensure a high standard of quality for consumers.

3. CTIA is a party to this docket, and on April 10, 2012, CTIA filed non-disclosure certificates on behalf of Jackie McCarthy and Glenda Cafer. Ms. McCarthy is Director of State Regulatory Affairs for CTIA, and Ms. Cafer is local counsel. Neither Ms. McCarthy nor Ms. Cafer work in the operations or marketing division of any telecommunications carrier in competition with the RLECs. As an organization, CTIA does not provide telecommunications services in competition with the RLECs.

4. One of the primary purposes of this docket is to explore the impact that the Federal Communication Commission's ("FCC") Universal Service Fund ("USF) and intercarrier compensation ("ICC") reform could have on Kansas and the Kansas Universal Service Fund ("KUSF"). The form of this process – i.e. hearing, paper proceeding, etc. – has not yet been determined. However, CTIA has been a participant and intends to continue to actively participate through-out the course of the proceeding.

5. On or about March 21, 2012, Staff sent an Information Request to each of the RLECs seeking information regarding the potential impact of the FCC's USF and ICC reform on each carrier. Responses were to be submitted by the RLEC's by April 18, 2012. On April 25, 2012, CTIA submitted to all parties a data request asking that copies of all responses be served upon Ms. McCarthy and Ms. Cafer. On April 26, 2012, the RLECs filed their Motion requesting that the Commission issue a temporary order prohibiting Staff and other parties from disclosing company-specific financial information until the Commission could analyze factors lawfully affecting confidentiality and disclosure in this docket.

## **II. RESPONSE TO MOTION**

6. It is unclear to CTIA whether the RLECs are requesting that the Commission make a determination on whether it is appropriate for CTIA to be granted access to the information at issue, or whether the goal of the Motion is to obtain only a temporarily

postponement of the release of such information to CTIA. It is also unclear if the Motion is intended to apply to the release of information to all parties or just to CTIA. In this response, CTIA will only address why it is not appropriate to limit CTIA's access to confidential information.

7. The Commission has stated that in analyzing the issue of confidential information under K.S.A. 66-1220a, it must first determine if the information at issue is, in fact, confidential. The RLECs state that the data at issue involves "detailed financial information regarding the potential impact on each individual RLEC of universal service and intercarrier compensation (USF/ICC) reform."<sup>1</sup> The RLECs then assert that "the information at any stage of development could be used easily and effectively to identify those RLECs comparatively more disadvantaged by USF/ICC reform, enabling a competitor to "target" such carriers."<sup>2</sup> Although CTIA does not agree that this general assertion reasonably establishes that the as-of-yet undefined information is "confidential", the RLEC's claim is certainly belied by their previous representations to the Commission wherein they argued that the data at issue would not be valid due to the FCC's continuing actions, that the data "does not reasonably contribute to the Commission's review of the KUSF"<sup>3</sup>, and that "it is a virtual certainty that any information that could be developed at this time will be rendered inaccurate and unreliable before it could be acted upon."<sup>4</sup>

8. However, even if the Commission were to accept the RLECs assertion that the data at issue is "confidential", the second part of the Commission's analysis must then consider the following provisions set forth in K.S.A. 66-1220a, as adapted to reflect the proposal at issue in the RLEC's Motion:

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<sup>1</sup> *Motion*, p. 2, para. 5.

<sup>2</sup> *Id.* at para. 7.

<sup>3</sup> *Joint Motion For Limited Deferral of Discovery, Limited Objection and Request For Extension of Time as to Staff Information Request, (Joint Motion)*, filed by the RLECs on March 26, 2012, p. 2, para. 4.

<sup>4</sup> *Joint Petition of State Independent Alliance, et al. for Commission Review of Prehearing Officer Order and Joint Reply to Staff Response*, filed April 9, 2012, p. 4, para.8.

- (1) whether disclosure to CTIA's two representatives in this docket would significantly aid the Commission in fulfilling its function;
- (2) the harm to the public interest from disclosing the information to CTIA's two representatives;
- (3) the harm disclosure will cause to the RLECs if the information is given to CTIA's two representatives, and
- (4) alternatives to disclosure that will serve the public interest and protect the RLECs.

Disclosure to all people executing non-disclosure certificates ("NDCs") under the Commission's standard Protective Order has been the Commission's common practice because it aids the Commission in conducting its proceedings and ensures that all parties have access to equal information. In this instance, CTIA did not file numerous and unnecessary NDCs; it filed only two on behalf of its local counsel and its regulatory affairs director. These individuals are charged with monitoring this proceeding and presenting *in this docket* the position of the association's membership on the questions and issues being addressed by the Commission. As stated above, neither of these individuals engages in the management, operations or marketing of a company in competition with an RLEC. There is no harm to the public or to the RLECs by disclosing confidential information to these two CTIA representatives and there is no reason to believe these individuals will not comply with the terms of the Commission's Protective Order.<sup>5</sup>

9. The statute requires the Commission consider alternatives to disclosure when confidential information is at issue. The alternative normally chosen by the Commission is its standard protective order which the Commission can rely on in this case to adequately protect confidential information. The Commission generally finds that further protections are not warranted.<sup>6</sup> However, if the Commission should determine that further protections will be

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<sup>5</sup> CTIA recognizes that, as this docket moves forward and the Commission begins to focus on specific financial impacts related to the KUSF, CTIA may need to submit an NDC for one of its technical advisors. This would not change the arguments presented herein, and of course, the RLECs can always renew their objection to disclosure if they believe an individual for whom an NDC is filed should not have access to information.

<sup>6</sup> See *In the Matter of the Petition of Kansas City Power & Light Company ("KCP&L") for Determination of the Ratemaking Principles and Treatment that Will Apply to the Recovery in Rates of the Cost to be Incurred by*

granted, CTIA respectfully requests that the Commission adopt the suggestion of the RLECs that *aggregate* information still be made available to all parties who have executed NDCs.<sup>7</sup> At least some level of information is needed for the parties to be able to follow these proceedings and respond appropriately to arguments made by the RLECs, staff or any other entity to whom full disclosure of the information is granted.

WHEREFORE CTIA respectfully requests the Commission deny the RLEC's Motion and require that the RLECs comply with the Commission's Discovery and Protective Orders presently in effect for this proceeding. In the alternative, CTIA requests the Commission not limit parties from receiving data that has been aggregated.

Respectfully submitted,

Jackie McCarthy  
Director of State Regulatory Affairs  
CTIA – The Wireless Association  
1400 16<sup>th</sup> Street, NW Suite 600  
Washington, DC 20036  
(202)736-3246  
[JMcCarthy@ctia.org](mailto:JMcCarthy@ctia.org)



Glenda Cafer ( #13342)  
(785)271-9991  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6<sup>th</sup> Avenue  
Topeka, Kansas 66606  
(785) 233-3040 (fax)  
[glenda@caferlaw.com](mailto:glenda@caferlaw.com)

**COUNSEL FOR CTIA**

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KCP&L for Certain Electric Generation Facilities Under K.S.A. 66-1239, Docket No. 11, KCPE-581-PRE, *Order Denying KCP&L Motion for Two-Tier Protective Order*, issued March 25, 2011.

<sup>7</sup> *Motion*, pp. 3-4, para. 10.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of CTIA's Response to the RLEC's Motion for an Emergency Order was served on this 7<sup>th</sup> day of May, 2012 to:

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 SOUTH HICKORY  
PO BOX 17  
OTTAWA, KS 66067

C. STEVEN RARRICK, ATTORNEY  
DELLA SMITH  
SHONDA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604

TINA GAINES, Director of Telecommunications  
EMPIRE DISTRICT ELECTRIC COMPANY  
720 S SCHIFFERDECKER AVE  
JOPLIN, MO 64801-3525

THOMAS E GLEASON JR, ATTORNEY  
GLEASON & DOTY CHTD  
PO BOX 6  
LAWRENCE, KS 66044-0006

JAMES M. CAPLINGER, ATTORNEY  
COLLEEN HARRELL  
JAMES M. CAPLINGER, CHARTERED  
823 W 10TH STREET  
TOPEKA, KS 66612

MARK CAPLINGER  
MARK CAPLINGER, P.A.  
SOUTHERN KANSAS TELEPHONE COMPANY  
7936 SW INDIAN WOODS PLACE  
TOPEKA, KANSAS 66615

BRUCE A. NEY, ATTORNEY AT LAW  
SOUTHWESTERN BELL TELEPHONE  
CO. D/B/A AT&T  
220 SE 6TH AVE STE 515  
TOPEKA, KS 66603-3507

DIANE C. BROWNING, ATTORNEY  
SPRINT COMMUNICATIONS COMPANY L.P.  
6450 SPRINT PKWY  
OVERLAND PARK, KS 66251

MICHAEL J. FOSTER  
TWIN VALLEY TELEPHONE, INC.  
22 SPRUCE  
PO BOX 395  
MILTONVALE, KS 67466

ARCHIE MACIAS, GENERAL MANAGER  
WHEAT STATE TELEPHONE COMPANY, INC.  
PO BOX 320  
UDALL, KS 67146

JACKIE MCCARTHY  
DIRECTOR OF STATE REGULATORY AFFAIRS  
CTIA – THE WIRELESS ASSOCIATION  
1400 16<sup>th</sup> STREET, NW SUITE 600  
WASHINGTON, DC 20036

ROSE MULVANY HENRY  
BRADLEY ARANT BOULT CUMMINGS  
1600 DIVISION ST STE 700  
PO BOX 340025  
NASHVILLE, TN 37203-0025

LUKE A. SOBBA  
MORRIS, LAING, EVANS, BROCK & KENNEDY  
800 SW JACKSON, SUITE 1310  
TOPEKA, KS. 66612-1216

GREGG DIAMOND  
REGULATORY POLICY AND PLANNING  
VERIZON – MAIL CODE HQE02E84  
IRVING, TX 75015-2092

KURT DAVID  
EAGLE COMMUNICATIONS, INC  
2703 HALL, STE 15  
PO BOX 817  
HAYS, KS 67601

DAVID HAGA  
MCI COMMUNICATION SERVICES  
1320 N COURTHOUSE RD.  
ARLINGTON, VA 22201

LYLE WILLIAMSON  
MCI COMMUNICATIONS SERVICES  
8350 E CRESCENT PKWY STE 200  
GREENWOOD VILLAGE, CO. 80111-2858

RACHEL LIPMAN REIBER  
RACHEL LIPMAN REIBER LLC  
11032 S WHITETAIL LN  
OLATHE, KS 66061-8409

SUSAN CUNNINGHAM  
SNR DENTON US LLP  
7028 SW 69<sup>TH</sup>  
AUBURN, KS 66402-9421

PAMLA SHERWOOD  
TW TELECOM OF KANSAS CITY LLC  
4625 W 86<sup>TH</sup> ST STE 500  
INDIANAPOLIS, IN 46268-7804

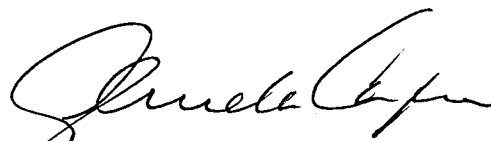
TORRY SOMERS  
UNITED TELEPHONE CO OF KANSAS  
6700 VIA AUSTI PKWY  
LAS VEGAS, NV 89119

CHARLES CARRATHERS  
VERIZON  
HQE03H52  
8350 E CRESCENT PKWY STE 200  
GREENWOOD VILLAGE, CO 80111-2858

DEBORAH KUHN  
VERIZON  
205 N MICHIGAN AVE.  
7<sup>TH</sup> FLOOR  
CHICAGO, IL 60601

DOUG KITCH  
ALEXICON TELECOMMUNICATIONS CONSULTING  
3210 EAST WOODMEN RD  
STE 210  
COLORADO SPRINGS, CO 80920

BECKY SCOTT  
ELKHART TELEPHONE COMPANY  
610 SOUTH COSMOS  
PO BOX 817  
ELKHART, KS 67950



---

Glenda Cafer  
COUNSEL FOR CTIA