

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

MAY 01 2012

In the Matter of Staff's Motion Requesting)
the Commission Order S & T Telephone)
Coop Association, Inc. to Submit to an)
Audit for Purposes of Determining its Cost-)
Based Kansas Universal Service Fund)
support, Pursuant to K.S.A. 66-2008.)

by
State Corporation Commission
of Kansas
Docket No. 12-S&TT-234-KSF

**MOTION FOR ORDER DIRECTING KUSF ADMINISTRATOR
TO DISTRIBUTE INCREASED KUSF SUPPORT IN ACCORDANCE
WITH APPLICATION FILED MARCH 23, 2012**

COMES NOW The S & T Telephone Cooperative Association, Inc. (S&T), by and through its attorney Colleen R. Harrell of JAMES M. CAPLINGER, CHARTERED, and respectfully moves the Commission for an order determining that the information filed by S&T on March 23, 2012 indicates an additional level of Kansas Universal Service Fund support and directing the Kansas Universal Service Fund Administrator to distribute to S&T the additional KUSF support demonstrated by S&T, approved by the Commission by operation of law as provided in K.S.A. 66-117(c) and in effect as of April 23, 2012. In support of its motion, S&T shows the Commission as follows:

1. On October 7, 2011, the Staff of the State Corporation Commission of Kansas (Staff and Commission, respectively) filed its motion requesting the Commission order S&T to submit to an audit to determine whether its cost-based Kansas Universal Service Fund (KUSF) support should be adjusted, pursuant to K.S.A. 66-2008(e). In that motion, which initiated this proceeding, Staff stated that for companies like S&T which operate under traditional rate of return regulation, "all KUSF support shall be based on the carrier's embedded costs, revenue requirements, investments and expenses." Staff went on to state that "[i]n order to consider a carrier's embedded costs, revenue requirements, investments and expense, the Commission conducts a rate of return audit pursuant

to K.S.A. 66-117, in which the carrier's receipt of FUSF support is considered in determination of the carrier's overall revenue requirement and ultimate determination and receipt of cost-based KUSF support."

2. The Commission issued an Order on December 9, 2011 in this docket granting Staff's motion and setting March 15, 2012 as the date by which S&T must file the information required by K.A.R. 82-1-231. On March 9, 2012, S&T filed a motion requesting a one-week extension of the time to make its filing, from March 15, 2012, to March 23, 2012, for serious and unavoidable reasons. S&T thereafter made its filing ordered by the Commission pursuant to K.A.R. 82-1-231, on March 23, 2012. The Commission or a prehearing officer has yet to issue an order on S&T's March 9, 2012 motion. S&T's filing reflected an intrastate revenue deficiency of \$1,167,107 over and above its current level of KUSF support.

3. On April 23, 2012, S&T's counsel received an email from Staff counsel, attached, proposing a procedural schedule for S&T. In the email, Staff counsel stated that the Commission order in this docket is "due" November 18, 2012, a Sunday, 240 days after March 23, 2012, the date S&T made its filing pursuant to K.A.R. 82-1-231.

4. K.S.A. 66-117(c) states:

The commission shall not delay the effective date of the proposed change in rate, joint rate, toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, more than 240 days beyond the date the public utility or common carrier filed its application requesting the proposed change. If the commission does not suspend the proposed schedule within 30 days of the date the same is filed by the public utility or common carrier, such proposed schedule shall be deemed approved by the commission and shall take effect on the proposed effective date.

5. The Commission has yet to issue an order suspending the effectiveness of S&T's March 23, 2012 filing. As the Commission has stated for several years, the dockets in which the

Commission audits the rural local exchange companies to consider their cost-based KUSF receipt are conducted pursuant to several statutory provisions authorizing such audits. That statutory provision includes K.S.A. 66-117. Since the Commission has not yet issued a suspension order, K.S.A. 66-117(c) provides that S&T's application is deemed approved by the Commission. As a result, S&T requests the Commission immediately issue an order to the KUSF administrator informing it of this approval and increasing S&T's KUSF support as approved.

6. When S&T's counsel contacted the prehearing officer to point out the lack of a suspension order, the prehearing officer a few days later responded that K.S.A. 66-117 did not "apply" in that S&T's filing was not a "rate change." S&T respectfully submits that the Commission's prehearing officer may not unilaterally change twelve years of Commission orders, acts, and practices.

7. A review of twelve years of audits of rural telephone companies to determine an appropriate amount of cost-based KUSF shows that the Commission has long applied the provisions of K.S.A. 66-117 to the reviews and has suspended the filings pursuant to K.S.A. 66-117.

8. The first such cost-based KUSF audit or review was the audit of Rural Telephone Service Company, Inc. (RTSC), in Docket No. 01-RRLT-083-AUD. In the September 9, 2000 Order opening that docket, the Commission stated:

The Commission is given full power, authority and jurisdiction to supervise and control the telecommunications public utilities, as defined in K.S.A. 66-1,187, doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. K.S.A. 66-1,188. Further, all grants of power, authority and jurisdiction to the Commission shall be liberally construed. K.S.A. 66-1,194. In addition, K.S.A. 66-2008(d) specifically mandates that the Commission periodically review the KUSF to determine if the costs of qualified telecommunications public utilities to provide local service justify modification of the KUSF. If the Commission determines that any changes are needed, the Commission has the authority to modify the KUSF accordingly. Finally, pursuant to K.S.A. 66-1,191, the Commission, upon its own

initiative, may investigate all rates, joint rates, tolls, charges and exactions, classifications or schedules of rates or joint rates and rules and regulations of telecommunications public utilities. The review of Rural Telephone's current KUSF support and its current rates is therefore properly within the scope of the Commission's jurisdiction.

9. The Commission ordered RTSC to make a filing under K.A.R. 82-1-231, which RTSC did on October 27, 2000, and on November 2, 2000, the Commission issued a "Suspension Order" suspending the filing's operation and effective date from the date of the application to June 25, 2001.

10. In every audit or review of a rural, rate of return regulated company's KUSF support since that first one, the Commission has, pursuant to K.S.A. 66-117, suspended the filing's operation and effective date for 240 days to allow its Staff time to investigate the information filed by the company.¹ Staff noted as such several times in its motion to the Commission to open this docket.

11. Although the increase in necessary KUSF support demonstrated by S&T is not a tariffed rate, it is a rate, nonetheless. As this Commission is well aware, prior to the 1996 Kansas Telecommunications Act, intrastate access rates across the country were much higher than interstate access rates. The 1996 Kansas Act mandated that over a three-year period intrastate access rates be reduced to interstate levels and the companies' resulting revenue shortfall was replaced by KUSF funding. See K.S.A. 66-2005(c). K.S.A. 66-2008(e) now requires that a rate of return regulated

¹ Docket Nos: 01-RRLT-083-AUD; 01-SCNT-512-AUD; 01-SKNT-544-AUD; 01-CRKT-713-AUD; 01-SFLT-879-AUD; 01-BSTT-878-AUD; 01-PNRT-929-AUD; 02-HOMT-209-AUD; 02-WLST-210-AUD; 02-BLVT-377-AUD; 02-S&TT-390-AUD; 02-S&AT-847-AUD; 02-JBNT-846-AUD; 03-S&AT-160-AUD; 03-WHST-503-AUD; 03-TWVT-1031-AUD; 03-MGRT-1117-AUD; 04-GNBT-130-AUD; 04-MKNT-364-AUD; 04-UTAT-690-AUD; 05-CNHT-020-AUD; 05-KOKT-060-AUD; 05-TTHT-895-AUD; 05-SCNT-1048-AUD; 06-ELKT-365-AUD; 06-H&BT-1007-AUD; 06-WTCT-1020-AUD; 06-RNBT-1322-AUD; 07-MDTT-195-AUD; 07-PLTT-1289-AUD; 08-MGRT-221-KSF; 08-CBST-400-KSF; 09-TWVT-069-KSF; 09-BLVT-913-KSF; 10-HVDT-288-KSF; 10-UTAT-525-KSF; 10-GNBT-526-KSF; 11-PNRT-315-KSF; 11-RNBT-608-KSF; 11-CNHT-659-KSF.

RLEC's KUSF support, and any adjustment to that support, be based on the carrier's embedded costs, revenue requirement, investments and expenses. All reviews of those embedded costs, revenue requirement, investments and expense are conducted by the Commission using a traditional rate case proceeding that clearly falls under K.S.A. 66-117 and, under 66-117(c), requires either an order suspending the effectiveness of the filing within 30 days or the filing is deemed approved by operation of law.

12. As the Commission clearly noted in its September 30, 2009 Order in Docket No. 08-GIMT-154-GIT:

The Commission further concludes that, if an ETC fails to meet its KUSF certification support, the ETC will continue to be paid its approved KUSF support, without suspension of any amount of the support, and a company-specific proceeding shall be opened. In the case of a RELC [sic], a rate-of-return docket will be instituted as quickly as the Commission can establish one to determine the lawful level of KUSF support available to that ETC.

The Commission first opened such a docket in October 2009 to review Haviland Telephone Company's receipt of KUSF support. See Docket No. 10-HVDT-288-KSF. The Staff motion for the Commission to open that docket was almost identical in every respect to the Staff's motion to the Commission to open this docket. Likewise, the Commission's order opening that docket was almost identical in every respect to the Commission order opening this docket. In the 10-HVDT-288-KSF docket, the Commission clearly recognized that K.S.A. 66-117 applies and directed the company to make its filing pursuant to K.A.R. 82-1-231 on or before February 15, 2010. The company made its filing on February 12, 2010, and the Commission issued an order suspending operation of the filing pursuant to K.S.A. 66-117 on February 19, 2010.

13. The Commission has applied K.S.A. 66-117 to at least forty prior identical proceedings over the last twelve years. In all of those proceedings, the Commission applied K.S.A.

66-117 to suspend the operation of the filing ordered by the Commission to be made by rate of return regulated companies and used by its Staff to conduct a traditional rate of return audit in reviewing the company's KUSF support to ensure the support is based on embedded costs, revenue requirements, investments and expenses. For the Commission to not apply K.S.A. 66-117(c) to this proceeding, when it has applied this to every, and over forty, identical proceedings without deviation would be grossly arbitrary, glaringly capricious, and directly contrary to over twelve years of Commission orders and practice.

WHEREFORE, S&T requests the Commission grant this motion, confirm that S&T's March 23, 2012 became effective by operation of law as a result of there being no suspension order entered by the Commission suspending the operation of the application, issue an order directing the KUSF administrator to begin paying to S&T the amount of appropriate support so deemed approved by the Commission under K.S.A. 66-117(c) effective April 23, 2012, and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,

JAMES M. CAPLINGER, CHARTERED

A handwritten signature in cursive script, reading "Colleen R. Harrell", written in black ink over a horizontal line.

Colleen R. Harrell, #16121
James M. Caplinger #04738
James M. Caplinger, Jr. #11147
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VERIFICATION

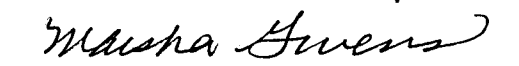
STATE OF KANSAS)
) SS:
COUNTY OF SHAWNEE)

Colleen R. Harrell, of lawful age, being first duly sworn upon oath states:

That she is the attorney for The S&T Telephone Cooperative Association, Inc. in this matter; that she has read and is familiar with the foregoing Motion and that the statements made therein are true and correct to the best of her information, knowledge and belief.

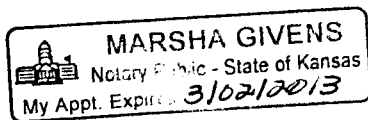

Colleen R. Harrell

Subscribed and sworn to before me this 1st day of May, 2012.


Notary Public

My appointment expires:

March 2, 2013



Colleen Harrell

From: Bob Fox [b.fox@kcc.ks.gov]
Sent: Monday, April 23, 2012 1:42 PM
To: Colleen Harrell
Subject: S&T procedural schedule

Colleen: here is our proposal. Let me know what you think and then we will get it to other parties then Advisory for a procedural schedule order if the hearing dates still work for the Commissioners. (time is currently open)

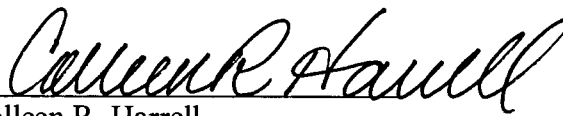
Staff and Intervenor direct:	August 8, 2012
Cross and Answering Test:	August 17, 2012
Rebuttal Testimony:	August 23, 2012
Settlement Conf.:	September 4, 2012
Disc. & motion cut-off:	September 10, 2012
List of Contested issues:	September 10, 2012
S&A w/supporting testmy.:	September 13, 2012
Prehearing Conference:	September 14, 2012
Evidentiary hearing:	September 17-19, 2012
Company initial Brief:	October 4, 2012
Staff/interv. Resp Brief:	October 11, 2012
Company Reply Brief:	October 18, 2012
Order due:	November 18, 2012

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Motion was placed in the United States mail, postage prepaid, or hand-delivered this 1st day of May, 2012 to the following:

Robert A. Fox, Senior Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
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Andrew French, Advisory Counsel
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Colleen R. Harrell

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May 1, 2012

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Executive Director
Kansas Corporation Commission
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Received
on

MAY 01 2012

In re: Docket No. 12-S&TT-234-KSF

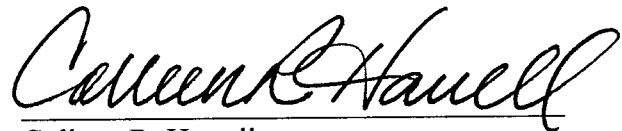
by
State Corporation Commission
of Kansas

Dear Ms. Petersen-Klein:

We are enclosing the original and seven copies of a Motion for Order Directing KUSF Administrator to Distribute Increased KUSF Support in Accordance with Application Filed March 23, 2012 in the above-referenced docket.

If the Commission or Staff have any questions with regard to the filing, please contact this office.

Sincerely,


Colleen R. Harrell

CRH/mg
enclosures

cc: Steve Richards