

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of a General Investigation Into)
the Adjustments of Intrastate Switched Access) Docket No. 16-GIMT-587-GIT
Charges for Rural Telephone Companies in)
Compliance with K.S.A. 66-2005(c) and FCC)
Reforms.)

**ORDER ADOPTING INTRASTATE ORIGINATING SWITCHED ACCESS RATES
AND KUSF ADJUSTMENTS**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

Background

1. On July 14, 2016, the Commission issued an *Order Opening Docket; Requiring RLEC Data Filings; Procedural Schedule; Discovery Order; Protective Order; General Service Matters* (Opening Order)¹ in this docket requiring all rural local exchange carriers (RLECs) to submit certain data to the Commission by August 24, 2016. The purpose of the data submission was to enable the Commission to determine the requisite intrastate switched access rate adjustments and Kansas Universal Service Fund (KUSF) support adjustments necessitated by K.S.A. 66-2005(c) for 2017.

2. The Opening Order adopted a Procedural Schedule requiring Staff to file Direct Testimony on September 21, 2016. Rebuttal Testimony was due October 6, 2016, and an

¹Order Opening Docket; Requiring RLEC Data Filings; Procedural Schedule; Discovery Order; Protective Order; General Service Matters (July 14, 2016) (Opening Order).

Evidentiary Hearing was to be held on October 26, 2016, if requested by any party to the proceeding by October 14, 2016. The date to request a hearing was later modified to October 7, 2016, in an *Order Modifying Procedural Schedule and Notice of Evidentiary Hearing* (Order Modifying).² The Opening Order and Order Modifying both stated that if no evidentiary hearing was held, the Commission would render a decision based upon the pre-filed testimony.³

3. On September 21, 2016, Staff filed the pre-filed Direct Testimony of Sandy Reams in the docket.⁴ Reams discussed numerous items in her Direct Testimony, including: Federal Communications Commission (FCC) decisions that have impacted the RLECs' Inter-carrier Compensation (ICC) rates since November 18, 2011;⁵ how conflicts between the FCC's Universal Service Fund (USF) and ICC reforms and K.S.A. 66-2005(c) have been resolved in the past;⁶ how the National Exchange Carrier Association's (NECA's) interstate access pools have affected the FCC's USF/ICC reforms and K.S.A. 66-2005(c)'s intrastate access requirements;⁷ analysis of the RLECs' access rates filed in the docket;⁸ and finally, the KUSF impact of making the K.S.A. 66-2005(c) access rate adjustments in conjunction with support offsets from the federal Access Recovery Charge (ARC) and Connect America Fund (CAF). Reams ultimately recommended the Commission take the following actions:

- a) adopt the intrastate originating switched access rates, calculated intrastate originating and terminating access revenues, net revenue changes, and CAF support offsets, identified in Attachment 1;
- b) adopt a net aggregate \$411,976 reduction in the RLECs' annual KUSF support;

²The Opening Order provided a date of October 14, 2016, to request the hearing be held, but this date was modified to October 7, 2016, in a subsequent order. *See* Order Modifying Procedural Schedule and Notice of Evidentiary Hearing, p. 2 (Sept. 20, 2016) (Order Modifying).

³Opening Order, p. 4; Order Modifying, p. 3.

⁴Direct Testimony Prepared by Sandy Reams on Behalf of Kansas Corporation Commission Staff (Sept. 21, 2016) (Reams Direct).

⁵*Id.*, p. 4-5.

⁶*Id.*, p. 6-8.

⁷*Id.*, p. 8-9.

⁸*Id.*, p. 9-11.

- c) require the RLECs to file revised intrastate access tariffs in a separate proceeding to be opened later by the Commission to address the FCC's July 2017 reforms; and
- d) determine that the RLECs' revised intrastate originating access rates and adjustments to their KUSF support be effective July 2017, concurrent with the FCC's implementation of the July 2017 ICC reforms.⁹

4. No other party to the proceeding pre-filed testimony, and no hearing was requested by October 7, 2016.

Jurisdiction and Due Process

5. The Commission has general supervisory jurisdiction over local exchange carriers pursuant to K.S.A. 66-1,188 and jurisdiction over telecommunications public utility rates pursuant to K.S.A. 66-1,189. Additionally, the Commission has jurisdiction to adjust RLEC intrastate switched access rates and make KUSF modifications each odd-numbered year pursuant to K.S.A. 66-2005(c).

6. K.S.A. 66-2005 does not explicitly require the Commission to follow the Kansas Administrative Procedure Act (KAPA), found in K.S.A. 77-501 *et seq.*, in order to determine intrastate access or KUSF adjustments. However, to ensure parties to this proceeding have received due process, the Commission will follow KAPA voluntarily.

Standard for Approval

7. The Commission's determination in this matter must abide by the parameters espoused in K.S.A. 77-621(c) and K.S.A. 66-2005(c). The Commission's determination, among other things, must be based upon its lawful authority, and supported by substantial evidence when viewed in light of the record as a whole.

⁹Id, p. 3-4.

Commission Findings

8. Having reviewed Reams' Direct Testimony filed September 21, 2016, the Commission finds the arguments and recommendations contained therein to be compelling. The Commission finds that Reams' recommendations should be adopted in full.

9. Noting that no party formally opposed Reams' findings and recommendations, the Commission finds pursuant to K.S.A. 77-537(a)(3) that a good faith basis exists to believe that its decision in this proceeding will be supported by the applicable standard of proof, should the matter become fully adjudicated.¹⁰

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The intrastate originating switched access rates, calculated intrastate originating and terminating access revenues, net revenue changes, and CAF support offsets, identified in Attachment 1 to Sandy Reams' September 21, 2016, Direct Testimony are hereby adopted.

B. The net aggregate \$411,976 reduction in the RLECs' annual KUSF support identified in Attachment 1 to Sandy Reams' September 21, 2016, Direct Testimony is adopted. Individual company adjustments provided in Attachment 1 are also adopted.

C. RLECs shall file revised intrastate access tariffs in a separate proceeding to be opened later by the Commission to address the FCC's July 2017 reforms.

D. The RLECs' revised intrastate originating access rates and adjustments to their KUSF support shall be effective July 2017, concurrent with the FCC's implementation of the July 2017 ICC reforms.

¹⁰The standard of proof is "preponderance of the evidence." See *Bender v. Clark*, 744 F.2d 1424, 1429 (10th Cir. 1984) (stating "where Congress has failed to establish the degree of proof required in an administrative proceeding, the judiciary is the traditional, and most appropriate, forum to prescribe the standard... The traditional standard required in a civil or administrative proceeding is proof by a preponderance of the evidence.").

E. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.¹¹

F. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: OCT 18 2016



Amy L. Gilbert
Secretary to the Commission

MRN

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¹¹K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

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I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on OCT 18 2016.

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