

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

In the Matter of a General Investigation                    )  
Regarding the Effect of Federal Income Tax            )  
Reform on the Revenue Requirements of                )  
Kansas Public Utilities and Request to Issue         )  
an Accounting Authority Order Requiring            )  
Certain Regulated Public Utilities to Defer         )  
Effects of Tax Reform to a Deferred                 )  
Revenue Account.    )

Docket No. 18-GIMX-248-GIV

REPLY TO STAFF RESPONSE

Come now the following rural telephone companies and Eligible

Telecommunications Carriers:

**Independent Telecommunications Group, Columbus et al. ("Columbus"):**

Columbus Telephone Co., Inc.	Moundridge Telephone Co., Inc.
Cunningham Telephone Co., Inc.	Total Communications, Inc.
Gorham Telephone Co. Inc.	Twin Valley Telephone, Inc.
H & B Communications, Inc.	Wamego Telecommunications Co., Inc.
Home Telephone Co., Inc.	Wilson Telephone Co., Inc.
LaHarpe Telephone Co. Inc.	Zenda Telephone Co., Inc.

**State Independent Alliance ("SIA"):**

Blue Valley Tele-Communications, Inc.	Rainbow Telecommunications Association, Inc.
Craw-Kan Telephone Cooperative, Inc.	S&A Telephone Company, Inc.
Golden Belt Telephone Association, Inc.	The S&T Telephone Cooperative Association, Inc.
Haviland Telephone Company, Inc.	South Central Telephone Association
J.B.N. Telephone Company, Inc.	The Tri-County Telephone Association, Inc.
KanOkla Telephone Association	United Telephone Association, Inc.
Madison Telephone, LLC	
MoKan Dial, Inc.	
Peoples Telecommunications, LLC	
The Pioneer Telephone Association, Inc.	

The Southern Kansas Telephone Co., Inc.  
Mutual Telephone Company  
Wheat State Telephone Company, Inc.

Rural Telephone Service Co., Inc. d/b/a  
Nex-Tech

and for their Reply to Staff's Response filed January 5, 2018, state as follows:

1. Staff is generally correct in stating, at ¶ 2 of its Response, "high-cost KUSF determinations are generally made by analyzing the same cost of service data any other regulated utility would provide." It is incorrect, however, to assert "there is functionally no difference in the effects on cost of service data for the RLECs and other utilities as a result of tax reform." There is in fact a significant difference in the impact on an RLEC. Specifically the administrative cost of a lawful proceeding, and in the uncertain recoverability of those substantial costs, have a greater impact on RLECs in relation to the cost amounts potentially at issue.

2. A KUSF proceeding that identifies tax cost saving of X does no favors to ratepayers if it is achieved only at a recoverable administrative cost of 5X. Such an administrative burden, absent assurance of cost recovery, further would jeopardize the reliable provision of affordable public utility service. Staff's tunnel vision on presumed tax savings, wishing away significant changes in other costs and in revenues, fails to provide substantial competent evidence that the urged process will result in a net saving to consumers and ratepayers statewide.

3. A full audit proceeding would be required by K.S.A. 66-2008 (e)(1) as a prerequisite to any adjustment of KUSF support, regardless of the factor or factors giving rise to consideration of such an adjustment. The Commission would be required to consider all changes in any of the enumerated elements in that statute, including the "carrier's intrastate embedded costs, revenue requirements, investments and

expenses....” Any assumption such factors remain constant from any previous determination would be without factual support, and therefore arbitrary and capricious by definition.

4. To the extent Staff’s proposal seeks eventual retroactive recapture of KUSF support for multiple years, the Commission would be required statutorily to determine all of the statutorily enumerated factors in each of the years for which a KUSF adjustment is proposed. Since a retroactive determination would be based on all such factors in known amounts, the necessary procedure would be to treat each past year as its own “test year,” multiplying the costs of Staff’s proposed determinations.

5. Federal universal service support for intrastate costs has experienced, and continues to experience, significant change adversely affecting RLECs’ recovery of their intrastate costs and investments. Federally mandated changes to intercarrier compensation further have eroded RLEC revenues. Staff fails to recognize, or chooses not to consider, these significant negative impacts on RLEC cost recovery, focusing instead only on a single presumed element of cost saving. Any modification of KUSF support must be made in consideration of the status of all jurisdictional revenue and cost factors for the period or periods covered by such proposed modification.

6. Staff attempts to dismiss concern about administrative cost by creating wildly simplistic examples. The hypothetical examples at ¶¶ 5 and 6 are fundamentally flawed. The change in federal tax rates is but a starting point, amounting to a single element in determining any actual change to a utility’s federal tax liability. As has been noted by Mike Valez, Staff counsel for the Oklahoma Corporation Commission’s Public



Utilities Division, (as quoted in "Utility rate payers might get a tax benefit, but not yet," published January 5, 2018 in *The Oklahoman*) in relation to a similar proposal in that state), "this tax change is more complex than just going from 35 to 21 percent." As Valez acknowledges, it appears the TCJA affects depreciation rates for plant assets, eliminates deductions for fringe benefits, lobbying expenses, compensation expenses related to employees earning more than \$1 million, some tax credits and many other tax-related issues. "That's not a comprehensive list, and the impacts of all of these changes are still unknown," Valez said. "Rates must be fair, just, and reasonable, but they also must be based on known and measurable changes." While not all of these changes will affect every RLEC, it is manifestly untrue that only the change in gross corporate tax rate will affect a carrier's tax liability.

7. Staff's Response, at ¶ 6, claims "it is impossible to analyze [the RLECs'] claim regarding administrative expenses." Commission Staff has been a party to each and every rural company KUSF proceeding, and has ready access to its records showing the administrative expenses allowed for recovery from the KUSF in each such proceeding. There is no basis, in fact or theory, to contend that the contemplated later proceedings would be any less expensive than those previously experienced.

8. Attached hereto is Exhibit A related to the audit expenses approved for recovery from the KUSF in prior proceedings. This Exhibit reflects, in some instances as shown, the amounts recommended for recovery from the KUSF by KCC Staff in Staff's initial testimony in each proceeding and does not include subsequent increases for additional expenses incurred at later stages of the proceedings. In other instances, as

indicated, the amounts shown are the audit expenses approved for recovery from the KUSF by the Commission.

9. Not all KUSF-related proceedings are reflected in this Exhibit, owing to differences in the ability to access the amounts at issue and to inconsistency in the identification of such amounts in KUSF proceedings over the history of the Fund. Further research could yield additional identification of specific audit expenses allowed in proceedings similar to those that would be necessary to make lawful KUSF support adjustments as contemplated in the instant proceeding.

10. Compounding the TCJA's complexity is the virtual certainty that the new federal enactment, like all federal tax legislation, will be subject to the adoption of implementing regulations by the IRS. It is simply unreasonable and unsupported to assume small rural telephone companies will be able to make ready determinations of the effect of the new legislation on their respective federal tax liabilities. Staff's proposal would require an order putting unknown and presently unknowable amounts of RLECs' resources at risk, drastically disrupting any prudent management capability.

11. Staff chooses to ignore the substantial record costs of the very proceedings it acknowledges to be necessary under its proposal before any public benefit can be determined lawfully. At ¶9 of its Response Staff admits "The amounts will then be evaluated in a comprehensive fashion during a rate case, KUSF determination, or company specific financial investigation, where full due process and an analysis of offsetting revenues and expenses will occur."

12. Staff's conjectural examples of net savings by rural companies, after allowing for the costs of individual company reviews, cannot survive comparison to known examples. Even the most modest figure for costs approved for recovery in previous KUSF audits can dwarf an annual tax saving to ratepayers that could be realized. Staff's assumptions of net savings to ratepayers are hypothetical at best, and unless there is assurance of recovery of the Commission-imposed administrative costs the result will be degradation of existing service, to say nothing of the frustration of the purpose of the federal enactment – the creation of incentives for investment and job creation.

13. The RLECs have urged, in their Response to Staff's Motion, that the Commission engage in a fact-based investigation before imposing any new broad administrative obligation. Staff's argument in opposition to such a proceeding rests on its assertion, at paragraph 4 of its Response, that "Staff's Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform" was actually a Motion for Summary Judgment. This theory requires gross disregard of, and deviation from, the lawful requirements for summary action. Staff then proceeds to chastise the RLECs for not following what it claims are relevant rules in opposing a previously undesignated Motion for Summary Judgment.

14. While Staff correctly notes that summary proceedings and motions for summary judgment are authorized in administrative proceedings (albeit incorrectly citing the authorizing statute) the motion by Staff cannot reasonably be construed as a legally sufficient motion for summary judgment.



15. K.S.A. 77-519 does authorize the use of summary judgment “at appropriate stages of the proceedings.” It is difficult to imagine the legislature intended summary judgment to be considered, much less granted, before a proceeding had even been formally opened. While Staff’s proposal might provide for administrative expediency it hardly would comport with due process requirements.

16. Kansas Supreme Court Rule 141 sets forth specific requirements for a Motion for Summary Judgment:

- (a) **Motion for Summary Judgment; Requirements.** A motion for summary judgment must be accompanied by a...memorandum or brief that:
- (1) states concisely, in separately numbered paragraphs, the *uncontroverted contentions of fact* on which the movant relies;
  - (2) for each fact, contains precise references to pages, lines and/or paragraphs or to a time frame if an electronic recording of the portion of *the record* on which the movant relies; and
  - (3) is filed and served on all counsel of record and unrepresented parties not in default for failure to appear.

The rule further affords an adverse party at least 21 days to respond after service of a compliant specification of undisputed facts. Finally, disposition of a motion for summary judgment is further limited by rule as follows:

- (f) **Hearing or Final Submission for Decision.** A motion for summary judgment may be heard only when the movant has complied with subsection (a), and one of the following has occurred:
1. (1) the opposing party has complied with subsection (b) and the movant has filed a reply or the time for the movant to reply has expired; or
  2. (2) the court orders that the motion is deemed finally submitted because the opposing party failed to comply timely with subsection (b), in which case the uncontroverted factual contentions stated in the moving party’s memorandum or brief are deemed admitted for purposes of the motion.

Neither of these restrictions on hearing a motion for summary judgment has been satisfied. Even then there is no authorization for issuance of summary judgment without hearing,

17. It is more than a little disingenuous to accuse the RLECs of failing to follow the rules pertaining to responding to a Motion for Summary Judgment when staff clearly made no effort to comply with Rule 141, not even bothering to identify its motion as a Motion for Summary Judgment. Staff's "summary judgment" theory is little more than an effort to distract the Commission from the inherent injustice of a request for an order affecting the rights of its targeted utilities without affording those entities any opportunity to be heard as required by K.S.A. 77-519(a) and (b).

18. Staff, evidently relying on K.S.A. 77-537, asserts that its motion involves nothing more than a summary proceeding and does not require consideration of anything beyond its motion. That statute sets forth the circumstances under which an agency may employ summary proceedings as follows:

**77-537. Summary proceedings; use, when; right to request hearing; orders, contents.** (a) A state agency may use summary proceedings, subject to a party's request for a hearing on the order, if:

(1) The use of those proceedings in the circumstances does not violate any provision of law;

(2) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties;

(3) based upon an investigation of the facts by the state agency, beyond receipt of the allegations, the state agency believes in good faith that the allegations will be supported to the applicable standard of proof, provided however that an alleged failure to meet the standards set forth in this subsection shall not be subject to immediate judicial review and shall



not invalidate any later agency action that has been supported to the applicable standard of proof; and

(4) the order does not take effect until after the time for requesting a hearing has expired.

19. Careful review of these statutory limitations does not support the contention that summary proceedings are appropriate. First, the use of such a proceeding in the manner proposed by Staff likely would violate the law as it relates to single-issue ratemaking, retroactive ratemaking and the right of the RLECs to have all costs and revenues considered in making a determination of the impact of the enacted tax reform on their support levels.

20. Nor can the second or third prongs of the statute justify summary action. The public will not be harmed by affording others notice and the right to participate. If, as Staff contends, this is merely an accounting exercise, that exercise can be performed at a later time, if eventually deemed necessary, without harm to the public. Finally there has been no investigation of the facts asserted. To the contrary, the motion was filed before the substance of the subject law was even finalized and known.

21. The claim (at ¶ 4 of Staff's Response) that delay harms consumers rests on Staff's unsubstantiated and conclusory claim of "over-collection." The issuance of a preliminary accounting order will not accelerate any reduction in KUSF contribution or any refund to consumers. The information needed for a lawful determination whether there is any "over-collection" takes substantial time to develop, as evidenced by the 240 days remitted for such determination in a KUSF audit and by the period in excess of ten

years required for Staff and the RLECs to complete the initial KUSF audits of each rural company receiving KUSF support.

22. The time necessary to make a comprehensive determination of any net tax saving from the TCJA also will be greater than is implied by Staff. Imposition of an added administrative process on small companies carries added cost, but no added consumer benefit. The Commission should permit consideration both of the present necessity and of the appropriate form and contents of any accounting order; premature issuance of a "one size fits all" order is unnecessary to protect the public interest.

23. At ¶ 13 of its Response Staff attempts to minimize the effect of its proposed accounting order, saying, "an AAO does not set rates." *Bus. & Prof People for the Pub. Interest v. I.C.C.*, 205 Ill. App. 3d 891, 896 (1990) cited by Staff at ¶ 5 of its Response, considered the procedure here proposed by KCC Staff in a comparable regulatory exercise, and has noted "If these special accounts cannot have any effect on future rates, then the ICC has ordered [the targeted utility] to perform a useless act and thus executed an arbitrary and capricious order. But... if the information in the record can have an effect in setting future rates, then the ICC may have set up the record for retroactive ratemaking." That case also rejects the fundamental premise of Staff's Motion, noting in the larger context,

"The rule against single-issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the aggregate costs and demands of the utility. Therefore, it would be improper to consider changes to components of the revenue requirement in isolation. Oftentimes a change in one item of the revenue formula is offset by a corresponding change in another component of the formula."

24. The information that would result from Staff's requested Order will be equally able to be determined if and when the Commission elects to initiate a lawful, prospective and comprehensive review of a small individual carrier's intrastate costs, investments and revenues sufficient to modify the carrier's KUSF support. There is no basis for a gratuitous, unsupported claim of "great harm" to consumers resulting from the Commission proceeding in accordance with all applicable law.

25. The pending motion before this Commission would require near-instant determination of a myriad of interrelated elements to ascertain how much tax saving would be affected, segregated and subject to interest accrual. It is only Staff's proposal of such an exercise that is simple; its implementation by small telephone companies would be complex, burdensome and expensive.

26. At issue here is not the mere matter of "how much it would cost to comply with the AAO" (Staff Response, ¶ 6) that is in question. The public interest concern is rather, in part, whether such cost (whatever it may be) produces any public benefit after required subsequent administrative costs have been considered. It is also a matter of how the proposed relief, if overearning eventually were to be determined, would be unavailable in the absence of such a premature order.

27. Staff both minimizes the burden imposed by an accounting order (¶ 8, "The AAO would merely require an exercise in accounting") and overstates such an order's alleged salutary effect. Staff claims simultaneously, without explanation or factual support, that the requested Order is only an exercise in accounting, but also "The AAO prevents these potential ratepayer benefits from being lost." (Staff Response,



¶ 9) In fact any determination of a change in a carrier's tax liability can be made as easily, and likely more accurately, when all relevant factors are known with certainty.

28. Staff's assertion of the importance of an accounting order demonstrates the effect of such an order as an encumbrance of the resources that would be determined, sooner or later. The claim at ¶ 8 that "No encumbrance will occur," and that "Staff is not asking the utilities to place any funds in escrow or otherwise restrict their use" fly in the face of Staff's simultaneous insistence that the Commission should "require these funds to be *isolated and accounted for as a regulatory liability* until the Commission has an opportunity to examine the effects of this new corporate tax rate." (Staff Response, ¶ 10, emphasis supplied)

29. The fundamental purpose of the process urged by Staff is the determination of how much revenue is to be taken back, at an indefinite future date, from the subject utilities. The undeniable effect of this urged process is to render RLEC revenues, in amounts to be determined later, a contingent liability for an indefinite period. This has the adverse effect, in any notion of prudent management, of prohibiting the use of these funds to pay salaries, meet existing debt obligations, plan a program of plant maintenance, invest in improved facilities or hire new employees to serve the public.

30. Staff should decide and clarify whether its intent is for the proposed procedure to have any effect at all. At ¶ 8 Staff attempts to minimize the appearance of the proposed procedure's effect; in the following paragraph Staff acknowledges the requested Order is intended to initiate a costly and protracted process including, for

each small telephone company, what amounts to a full KUSF audit. This process is recommended in spite of the complete absence of information, or evidently concern, about the extent of significant changes in costs likely to offset any tax savings and render net KUSF adjustments *de minimis*.

31. The impact of Staff's proposed Order as to RLECs cannot be confined to those rural telephone companies presently taxed at the corporate level. Although the motion purports to address only such companies it is plain that the earnings and support of Subchapter S RLECs are equally put at risk. In fact, in light of the apparent intent to defer implementation of Staff's proposals as to Subchapter S carriers to an indefinite future time, the cost burdens of such determinations and the intervening uncertainty imposed on these carriers will be magnified due to the multiple tax years that ultimately would be examined.

32. To reiterate, the RLECs do not seek and have never supported excessive consumer charges for utility service. To the contrary, the RLECs have consistently questioned the necessity and propriety of proposals for rate increases that threaten erosion of the universal availability *and affordability* of telecommunications services. Staff's proposal, however, takes an exceedingly shortsighted view of the complexities of high cost rural service. The Commission owes it not only to public utilities but also to the consumers they serve to permit reasonable consideration of the facts and legal principles at issue in the case of a change in a single element of utility costs.

33. Kansas rural telephone companies have shown considerable restraint in seeking additional KUSF support over the history of the fund. In spite of their extensive

added investment, and in spite of revenue erosion from customers and support mechanisms, the RLECs have recognized the substantial administrative costs of the required KCC proceedings and the imposition of those costs ultimately on ratepayers.

34. These carriers do not disagree generally that “KUSF support amounts based upon previously applicable tax expenses should be evaluated to ensure that they are still necessary given the company’s *current cost of service, revenues, expenses, etc.* (Staff Response, ¶ 16; emphasis supplied). This Commission, though, should make an informed, evidence-based judgment regarding the relative benefits and expenses, and the legal requirements, of the proposed evaluation before ordering small utilities to incur added administrative burdens “on spec.” That evidence, if permitted as it should be, will show that burden to be substantial and of dubious impact on the public interest.

35. Finally, Staff purports to respond to the RLECs’ observation that the 1986 Corporation Commission saw no need to include rural telephone companies in its proceeding related to that years’ income tax reductions. The RLECs’ Response expressly recognized the post-1986 establishment of the KUSF and noted that the predecessor external support mechanism (intrastate access rates) had been equally susceptible to adjustment to the benefit of consumers statewide, had the prior Commission determined such action to be in the public interest. In its Response Staff chooses to ignore this explanation and focus instead on the irrelevant transition of external ratepayer-supported high cost funding mechanisms – from intrastate access to the KUSF. Staff’s “second” distinction, at ¶ 16, is a mere repetition of the claim, without

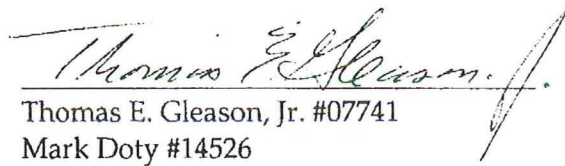


support, that an accounting order is “appropriate now” without citing any difference from the circumstances existing in 1986.

36. The RLECs do not dispute that consumers’ payments should be based on reasonable costs, nor is it disputed that the Commission has authority to review such costs whenever warranted by circumstances and in the public interest. Their Response goes to the method used to determine how, when, and whether the public interest necessitates such an examination as to small rural telephone companies due to the TCJA, and whether the extraordinary administrative requirements proposed by Staff should be ordered without consideration of affected parties’ evidence and applicable legal constraints.

37. Staff’s self-contradictory and conclusory Response provides no additional support for its initial Motion. Rather than determine a conclusion and impose substantial costs through a premature Order, the Commission should first commence an initial investigation to determine how and to what extent utilities and ratepayers should be burdened with extensive administrative costs required to determine whether KUSF adjustments are warranted. Given the recognition of the Commission’s authority to assure reasonable rates and support, the initial issue for consideration should be the scope of information and the extent of administrative proceedings reasonably required immediately in order to pursue any lawful modification of an RLEC’s KUSF support.

Respectfully submitted



Thomas E. Gleason, Jr. #07741

Mark Doty #14526

GLEASON & DOTY, CHARTERED

P.O. Box 6

Lawrence, KS 66044

(785) 842-6800 ph

(785) 856-6800 fax

[gleason@sunflower.com](mailto:gleason@sunflower.com)

[doty.mark@gmail.com](mailto:doty.mark@gmail.com)

Attorney for Independent

Telecommunications Group

JAMES M. CAPLINGER, CHARTERED



Colleen R. Jamison #16121

823 S.W. 10th Ave.

Topeka, KS 66612

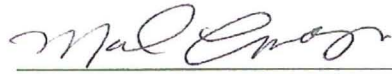
(785) 232-0495 ph

(785) 232-0724 fax

[colleen@caplinger.net](mailto:colleen@caplinger.net)

Attorney for the State Independent Alliance





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Mark E. Caplinger, #12550

Mark E. Caplinger, PA

7936 SW Indian Woods Place

Topeka, KS 66615

(785) 478-9916

[mark@caplingerlaw.net](mailto:mark@caplingerlaw.net)

Attorney for Mutual Telephone Company

Rural Telephone Company Service

Company, Inc. dba Nex-Tech

The Southern Kansas Telephone Company

Inc.

Wheat State Telephone, Inc.

VERIFICATION

STATE OF KANSAS        )  
  ) ss:  
COUNTY OF SHAWNEE )

I, Colleen R. Jamison, of lawful age, being first duly sworn upon her oath states:

That I am an attorney for the State Independent Alliance, that I have read the above and foregoing document, and upon information and belief, states that the matters therein appearing are true and correct.

  
Colleen R. Jamison

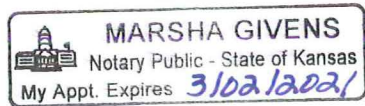
SUBSCRIBED AND SWORN to before me this 16th day of January, 2018.



Marsha Givens  
Notary Public

My Commission Expires:

March 2, 2021



**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 16th day of January, 2018, a true and correct copy of the above and foregoing document was sent by electronic mail to the following reflected on the Commission's "Service List" as of this date:

MONTE PRICE  
AMARILLO NATURAL GAS COMPANY  
2915 I-40 WEST  
AMARILLO, TX 79109  
mwprice@anginc.net

BARRY CONSIDINE, PRESIDENT  
AMERICAN ENERGIES GAS SERVICE, LLC  
136 N MAIN  
PO BOX 516  
CANTON, KS 67428  
barry@americanenergies.com

DAWN GRAFF, Midstream Accounting Manager  
ANADARKO NATURAL GAS COMPANY  
1099 18th Street  
DENVER, CO 80202  
dawn.graff@anadarko.com

JENNIFER G. RIES, VICE PRESIDENT, RATES AND REGULATORY  
AFFAIRS-COLORADO/KANSAS  
ATMOS ENERGY CORPORATION  
1555 BLAKE ST STE 400  
DENVER, CO 80202  
jennifer.ries@atmosenergy.com

JAMES LLOYD  
BARTON HILLS WATER DISTRICT  
66 NE 20 RD  
GREAT BEND, KS 67530-9703

ROBERT J. AMDOR, MANAGER, REGULATORY SERVICES  
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK  
HILLS ENERGY  
1102 E FIRST ST  
PAPILLION, NE 68046  
robert.amdor@blackhillscorp.com



ANN STICHLER, SR. REGULATORY ANALYST-REGULATORY SERVICES  
BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK  
HILLS ENERGY  
1102 EAST 1ST ST  
PAPILLION, NE 68046  
ann.stichler@blackhillscorp.com

THOMAS J. CONNORS, Attorney at Law  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
tj.connors@curb.kansas.gov

TODD E. LOVE, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
D.NICKEL@CURB.KANSAS.GOV

SHONDA RABB  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
s.rabb@curb.kansas.gov

DELLA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
d.smith@curb.kansas.gov

BRENT CUNNINGHAM, VICE PRESIDENT & GENERAL MANAGER  
CUNNINGHAM TELEPHONE COMPANY, INC.  
220 W MAIN  
PO BOX 108  
GLEN ELDER, KS 67446  
brent@ctctelephony.tv

TRENT BOALDIN  
ELKHART TELEPHONE COMPANY, INC.  
610 S COSMOS  
PO BOX 817  
ELKHART, KS 67950  
tdboaldin@epictouch.com

JOHN R. IDOUX, DIRECTOR KANSAS GOVERNMENTAL AFFAIRS  
EMBARQ MISSOURI D/B/A CENTURYLINK  
600 NEW CENTURY PKWY  
NEW CENTURY, KS 616031  
john.idoux@centurylink.com

CHRIS KRYGIER, DIRECTOR, RATES AND REGULATORY AFFAIRS  
(CENTRAL REGION)  
EMPIRE DISTRICT ELECTRIC COMPANY  
602 S JOPLIN AVE  
JOPLIN, MO 64801  
Chris.Krygier@LibertyUtilities.com

MICHAEL J. MURPHY, PRESIDENT & MANAGER  
GORHAM TELEPHONE COMPANY  
100 MARKET  
PO BOX 235  
GORHAM, KS 67640  
mmurphy@gorhamtel.com

TONYA M MURPHY, SEC/TREA.  
GORHAM TELEPHONE COMPANY  
100 MARKET  
PO BOX 235  
GORHAM, KS 67640  
tmurphy@gorhamtel.com

SCOTT A. STRAHM, RESIDENT AGENT  
GREEN ACRES MOBILE HOME PARK, LLC  
715 MERCHANT  
EMPORIA, KS 66801-2809  
scott@blirentals.com

ROBERT A. KOCH, PRESIDENT/GEN MGR  
H&B COMMUNICATIONS, INC.  
108 N MAIN  
PO BOX 108  
HOLYROOD, KS 67450  
robkoch@hbcomm.net

RICHARD BALDWIN, PRESIDENT  
HOME TELEPHONE COMPANY, INC.  
211 S MAIN ST  
BOX 8  
GALVA, KS 67443  
rbaldwin@homecomminc.com

MARK WADE, VP OF OPERATIONS  
J.B.N. TELEPHONE COMPANY, INC.  
PO BOX 111  
HOLTON, KS 66436  
mark@havalandtelco.com

ROBERT J. HACK, LEAD REGULATORY COUNSEL  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PL, 1200 MAIN ST 31ST FLOOR (64105)  
PO BOX 418679  
KANSAS CITY, MO 64141-9679  
ROB.HACK@KCPL.COM

MICHAEL NEELEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
m.neeley@kcc.ks.gov



JANET BUCHANAN, DIRECTOR- REGULATORY AFFAIRS  
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.  
7421 W 129TH ST  
OVERLAND PARK, KS 66213-2713  
janet.buchanan@onegas.com

HARRY LEE, PRESIDENT/GENERAL MANAGER  
LAHARPE TELEPHONE COMPANY, INC. D/B/A LAHARPE LONG  
DISTANCE  
109 W 6TH ST  
PO BOX 123  
LA HARPE, KS 66751  
harry.lee@laharpetel.com

DIANTHA STUTESMAN, Business Manager, President and Partner  
MADISON TELEPHONE COMPANY, INC.  
117 NORTH THIRD  
P O BOX 337  
MADISON, KS 66860  
mtn.diantha@gmail.com

KATHY BILLINGER, CEO/GENERAL MANAGER  
PEOPLES TELECOMMUNICATIONS, LLC  
208 N BROADWAY  
PO BOX 450  
LA CYGNE, KS 66040  
KATHY@PEOPLESTELECOM.NET

JANET BATHURST, MANAGER  
S&A TELEPHONE COMPANY, INC.  
413 MAIN ST  
PO BOX 68  
ALLEN, KS 66833  
jbathurst@satelephone.com

KENDALL S. MIKESELL, PRESIDENT  
SOUTHERN KANSAS TELEPHONE COMPANY, INC.  
112 S LEE ST  
PO BOX 800  
CLEARWATER, KS 67026-0800  
kendall.mikesell@sktcompanies.com

RANDY MAGNISON, EXEC VP & ASST CEO  
SOUTHERN PIONEER ELECTRIC COMPANY  
1850 W OKLAHOMA  
PO BOX 430  
ULYSSES, KS 67880-0430  
rmagnison@pioneerelectric.coop

MIKE BREUER, PRESIDENT  
SUBURBAN WATER CO.  
P.O. BOX 588  
BASEHOR, KS 66007-0588  
MIKE@SUBURBANWATERINC.COM

MIKE MCEVERS  
TEXAS-KANSAS-OKLAHOMA GAS, L.L.C.  
PO BOX 1194  
DALHART, TX 79022  
MIKE@TKOGAS.COM

MARK M. GAILEY, PRESIDENT & GENERAL MANAGER  
TOTAH COMMUNICATIONS, INC.  
101 MAIN ST  
PO BOX 300  
OCHELATA, OK 74051-0300  
mmgailey@totelcsi.com

BENJAMIN FOSTER, PRESIDENT & CEO  
TWIN VALLEY TELEPHONE, INC.  
22 SPRUCE  
PO BOX 395  
MILTONVALE, KS 67466  
ben.foster@tvttinc.net

JOHN R. IDOUX, DIRECTOR KANSAS GOVERNMENTAL AFFAIRS  
UNITED TELEPHONE CO. OF KANSAS D/B/A CENTURYLINK  
600 NEW CENTURY PKWY  
NEW CENTURY, KS 66031  
john.idoux@centurylink.com

JEFF WICK, PRESIDENT/GENERAL MANAGER  
WAMEGO TELECOMMUNICATIONS COMPANY, INC.  
1009 LINCOLN  
PO BOX 25  
WAMEGO, KS 66547-0025  
jwick@wtcks.com

JEFFREY L. MARTIN, VICE PRESIDENT, REGULATORY AFFAIRS  
WESTAR ENERGY, INC.  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
JEFF.MARTIN@WESTARENERGY.COM

GREGORY REED, CEO  
WHEAT STATE TELEPHONE COMPANY, INC.  
PO BOX 320  
UDALL, KS 67146  
greg.reed@ensignal.com

BRIAN BOISVERT, GENERAL MANAGER  
WILSON TELEPHONE COMPANY, INC.  
2504 AVE D  
PO BOX 190  
WILSON, KS 67490-0190  
boisvert@wilsoncom.us

SCOTT GRAUER  
WILSON TELEPHONE COMPANY, INC.  
2504 AVE D  
PO BOX 190  
WILSON, KS 67490-0190  
scott@wilsoncommunications.co

KATHY PRICE, GENERAL MANAGER\*  
ZENDA TELEPHONE COMPANY, INC.  
208 N MAIN  
PO BOX 128  
ZENDA, KS 67159  
kprice@zendatelephone.com

  
Colleen R. Jamison



**EXHIBIT A**

<b><u>Docket No.</u></b>	<b><u>Staff filed adjustment – total audit expense</u></b>
05-TRCT-607-KSF	\$ 112,126
05-SCNT-1048-AUD	134,162
06-RNBT-1322-AUD	132,419
07-MDTT-195-AUD	152,225
07-PLTT-1289-AUD	134,058
09-BLVT-913-KSF	84,197
10-HVDT-288-KSF	90,011
11-PNRT-315-KSF	175,432
11-RNBT-608-KSF	86,018
12-S&TT-234-KSF	114,593
13-CRKT-268-KSF	82,891
13-JBNT-437-KSF	99,105
13-PLTT-678-KSF	59,660
14-S&TT-525-KSF	69,996
17-RNBT-555-KSF	70,395

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<b><u>Docket No.</u></b>	<b><u>Audit expense ordered recoverable</u></b>
02-HOMT-209-AUD	86,994.23
11-CNHT-659-KSF	72,303
12-LHPT-875-AUD	171,408.83
13-ZENT-065-AUD	49,453
14-WTCT-142-KSF	169,014
15-TWVT-213-AUD	212,480