

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

Before Commissioners:                    Andrew J. French, Chairperson  
   Dwight D. Keen  
   Annie Kuether

In the Matter of An Investigation to Determine    )  
the Annual Assessment Rate for the Twenty-    )                    Docket No. 24-GIMT-229-GIT  
Eighth Year of the Kansas Universal Service    )  
Fund, Effective March 1, 2024.                    )

**ORDER OPENING DOCKET; PROTECTIVE ORDER APPLICABLE TO CURB;  
REQUIRING ENTRIES OF APPEARANCE TO ACTIVELY PARTICIPATE AND  
ESTABLISHING PROCEDURAL SCHEDULE**

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:

**I.        The Kansas Universal Service Fund (KUSF) Year Twenty-Eighth Assessment Rate**

1.        K.S.A. 66-2008(a) states: “The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by 47 C.F.R. 9.3 (October 1, 2005), to contribute to the KUSF [Kansas Universal Service Fund] on an equitable and nondiscriminatory basis.” In Docket No. 94-GIMT-478-GIT<sup>1</sup>, the Commission declared that the KUSF contribution would be assessed yearly on each provider’s intrastate retail revenues.

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<sup>1</sup> Order, Dec. 27, 1996.

2. In order to calculate the KUSF assessment rate for the twenty-eighth year of KUSF operations (Year 28), which will be effective March 1, 2024, through February 28, 2025, the Commission requires certain data to be submitted by the Brightspeed Companies (Brightspeed).<sup>2</sup>

3. Each rural local exchange carrier (RLEC)'s KUSF support will be based on its current annual KUSF support, adjusted for any increase or decrease in its annual KUSF support as determined in a company-specific audit. Therefore, the RLECs will not need to file any information in the annual KUSF Docket this year.

4. Brightspeed's Year 28 KUSF support will be based on its September 30, 2023, KUSF support-eligible lines, the high-cost model,<sup>3</sup> and its intrastate access recovery.

5. Commission Staff (Staff) submitted a Report and Recommendation (R&R) on September 1, 2023, attached hereto and made a part hereof by reference. Staff recommended that Brightspeed submit its required data utilizing Attachment A, attached to the R&R and this Order. Staff also recommended a procedural schedule that would ensure sufficient time to review and analyze all filed data, review revenue and other data provided by the KUSF Administrator, perform all necessary calculations, and submit testimony to the Commission in order for the Commission to adopt the KUSF Year 28 assessment rate in a timely manner.

6. In order to determine the KUSF Year 28 assessment rate, Staff recommended that Brightspeed file Attachment A with the Commission, as well as intrastate access revenues and usage, and supporting documentation. All requested data shall be filed in this Docket and an electronic copy sent to Staff no later than October 20, 2023.

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<sup>2</sup> The Brightspeed Companies are Brightspeed of Kansas, Inc., Brightspeed of Southern Kansas, Inc., Brightspeed of Western Missouri, LLC, and Brightspeed of Eastern Kansas, Inc.

<sup>3</sup> Docket No. 99-GIMT-326-GIT, Sept. 30, 1999 Order 10: Adopting a Forward Looking Cost Methodology for Purposes of Determining KUSF Support and Selecting the FCC's Proxy Cost Model.

**II. Procedural Schedule**

7. Staff proposes a procedural schedule to govern this Docket as follows:

<u>Date</u>	<u>Event</u>
October 20, 2023	Brightspeed data due
December 15, 2023	Staff files Direct Testimony
December 29, 2023	Intervenors' Rebuttal Testimony
January 5, 2024	Staff Rebuttal Testimony, if necessary
January 17, 2024	Evidentiary Hearing, if necessary
January 25, 2024	Order Adopting Year 28 Assessment

8. Staff also suggests that if a party becomes aware of any computational error in Staff's calculations, the party should notify Staff as soon as possible to allow Staff to determine whether the error is material, and if so, to file revised calculations.

**III. Commission's Adoption of Staff's Recommendations**

9. The Commission finds Staff's recommendations to be reasonable and hereby adopts the same. Brightspeed shall file its information in the Docket utilizing Attachment A provided by Staff as referenced above, and shall adhere to the procedural schedule adopted herein. Failure to submit data in a timely manner may subject a Company to penalties. Brightspeed shall submit electronic versions of the filed information, in Microsoft Excel format, to Staff at s.garrett@kcc.ks.gov. All parties shall contact Staff as soon as possible if they become aware of any computational error in Staff's calculations.

**IV. Procedural Matters Regarding Electronic Service and Entries of Appearance**

10. The Commission finds that all carriers contributing to, and all carriers receiving distributions from the KUSF, and the Citizens' Utility Ratepayer Board (CURB), should be parties to this Docket.

11. The Commission anticipates the number of carriers or entities that will want to be actively involved in this proceeding will be fewer than all carriers or entities being served with this Order. Active parties are those carriers or entities desiring to be involved in litigating issues

to be identified and explored in this general investigation. Only those entities that participate as active parties in this Docket will be served with pleadings, testimony, briefs, and procedural orders as this proceeding progresses; only active parties will be given notice of and allowed to participate in hearings, roundtables, or other sessions that are scheduled in this proceeding. An entity that desires to participate as an active party in this proceeding shall file an Entry of Appearance within fifteen (15) days of the issuance of this Order. Any carrier or entity that is served with this Order, and chooses not to participate as an active party, will not be served with pleadings, testimony, briefs, and procedural orders during litigation of this docket. If a carrier or entity does not file an Entry of Appearance in this proceeding, but later desires to become an active party, that carrier or entity may do so by submitting a Late Filed Entry of Appearance and state whether it is willing to receive electronic service and, if so, provide an email address for service, as discussed above and below. All entities being served with this Order who choose not to enter an appearance will not be served with any further pleadings, testimony, briefs, and orders other than the Commission's Order on the assessment rate for KUSF Year 28. Upon receipt of the Commission's Order on the assessment rate, an entity that chose not to actively participate in this Docket will be allowed to petition for reconsideration, but the entity will not be allowed to introduce new issues inasmuch as it was given notice of the adjudicative proceeding with service of this Order, but chose not to participate.

12. The Commission strongly urges active parties to this proceeding to consent to receipt of pleadings, testimony, briefs, and orders by electronic service without a hard-copy follow-up as required by K.A.R. 82-1-216(a)(6). A party may note its consent on its Entry of Appearance. Testimony, briefs, and other pleadings must be served electronically by 3:00 p.m. on the date due, without requiring service among the parties of a follow-up hard copy. However, the

original and at least seven paper copies of testimony, briefs, and other pleadings must still be filed in the Commission's Docket Room by close of business on the date of the deadline. K.A.R. 82-1-215(a)<sup>4</sup>. Any electronic service of Commission or Prehearing Officer's orders without follow-up hard copies will specifically state in the electronic message serving the order that the electronic message constitutes service of the attached order and that a hard copy will not follow. Parties should provide the Commission their current email address and must maintain accurate, current lists of electronic service email addresses based on information contained within the Commission's orders.

**V. Protective Order Applicable Only to CURB**

13. K.S.A. 66-1220a and K.A.R. 82-1-221a set forth requirements for the designation and treatment of information deemed confidential in Commission proceedings. The Commission finds it is appropriate to issue this Protective Order in order to establish procedures relating to confidential data and information.

14. K.S.A. 66-1220a limits disclosure of trade secrets or confidential commercial information of regulated utilities. Under K.S.A. 66-1220a(a)(4), the Commission must consider alternatives to disclosure that will serve the public interest and protect the regulated entity. This Protective Order provides an interim procedure under K.S.A. 66-1220a(a)(4) to facilitate the prompt and orderly conduct of this case. This Protective Order will govern the treatment and handling of confidential information until further order of the Commission.

15. A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. The party designating the information as confidential must provide a written statement of the specific grounds for the

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<sup>4</sup>This does not apply to parties who file using E-Filing EXPRESS. *See* 14-GIMX-280-MIS.

designation at the time the designation is made.<sup>5</sup> The party claiming confidentiality has the burden of proving the confidential status of the information. Designating information as confidential does not establish that the information will remain confidential after review by the Commission.<sup>6</sup>

16. The provisions of this Protective Order apply to CURB, as other active party carriers will not have access to carrier specific confidential information, unless otherwise ordered, in which case the Protective Order shall apply to all confidential information subject to review by any other designated active party. The provisions also apply to Staff, except that Staff is not required to sign nondisclosure certificates or view voluminous materials on site and is not required to return or destroy confidential information upon request at the conclusion of a proceeding. Outside experts and consultants used by Staff shall have access to information and voluminous materials on the same basis as Staff, except that outside Staff experts and consultants are required to read this Protective Order and to sign nondisclosure certificates as contained in Appendix A. CURB and outside experts and consultants used by Staff who do not sign a non-disclosure certificate will not be granted access to confidential information filed in this docket.

17. The following definitions shall apply:

**Information:** “Information” refers to all documents, data, including electronic data, studies and other materials furnished pursuant to requests for information or other modes or discovery, or any other information or documents that are otherwise a part of the Commission record.

**Confidential Information:** “Confidential information” refers to information which, if disclosed, would likely result in harm to a party’s economic or competitive interests or which would result in harm to the public interest, generally, and which is not otherwise available from public sources. “Confidential information” may include, but is not limited to: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies

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<sup>5</sup> K.A.R. 82-1-221a(a)(5).

<sup>6</sup> See K.S.A. 66-1220a.

employed, to be employed, or under consideration; (6) contract negotiations; and, (7) information concerning trade secrets, as well as private technical, financial, and business information.

18. A party designating information as confidential shall make the confidential information available to CURB, Staff, and/or outside experts and consultants used by Staff under the restrictions in this Protective Order, if such disclosure is not otherwise privileged or objectionable on other evidentiary grounds. The nondisclosure certificate shall contain the signatory's name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of a party to this proceeding. The nondisclosure certificate shall be filed in the Docket. If a response to a discovery request requires the duplication of voluminous material, or the material is not easily copied because of its binding or size, the furnishing party may require that the voluminous material be viewed on its own premises. If duplication of voluminous material can be accomplished without undue burden on the party disclosing the information, the voluminous material may be copied at the expense of the requesting party. Voluminous material shall include documents or materials comprised of 500 pages or more.

19. A party may designate pre-filed testimony and exhibits as confidential pursuant to this Protective Order. The specific grounds for the confidential designation shall be stated in writing at the time the designation is made or the testimony filed. Any party obtaining confidential information may use or refer to such information in pre-filed or oral testimony provided that the confidentiality is maintained, unless otherwise ordered by the Commission.

20. If information to be disclosed in response to a data request contains confidential information designated by another party in this Docket, the furnishing party shall maintain the confidential status by marking the information as confidential and only provide response to parties that have signed nondisclosure certificates. If information that a party intends to use in this

proceeding or that would be disclosed in response to a data request contains confidential information obtained from a source outside of this proceeding, the party intending to use or provide the confidential information must notify the original source which claimed confidential status to allow that entity to decide whether to claim confidentiality in this proceeding.

21. When pleadings, pre-filed testimony, or exhibits include confidential information, the parties are to follow these procedures<sup>7</sup>:

- a. File seven copies of the complete document, including all confidential information. The cover is to clearly state “CONFIDENTIAL VERSION.” Confidential pages shall be stamped “CONFIDENTIAL,” and the specific confidential information shall be identified by being underlined.
- b. File one copy with the confidential portions redacted, for use as a public document. The cover is to clearly state “PUBLIC VERSION.”
- c. File one copy of the pages that contain confidential information in a separate envelope marked “CONFIDENTIAL.” This filing will be maintained in the docket room file under seal. If there are multiple pages with confidential information and it is impracticable to separate the pages with the confidential information, the party may file instead one copy of the entire document that is stamped “CONFIDENTIAL.”

22. Confidential testimony may be offered or subject to cross-examination at hearings. Parties have the right to object to the admissibility of confidential information on standard evidentiary grounds such as relevance. Confidential information that is received into evidence will be kept under seal. Confidential information shall be discussed only after the hearing is closed to all persons except the Commission, its Staff, hearing examiners, court reporters, attorneys of record and individuals to whom the designated information is available under the terms of this Protective Order. Parties shall make every effort at hearings to ask and answer questions in such a way as to preserve the confidentiality of the information without the need to close the hearing. The transcript of live testimony or oral argument disclosing confidential information shall be kept

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<sup>7</sup>This does not apply to parties who file using E-Filing EXPRESS. See 14-GIMX-280-MIS.



under seal and copies provided only to persons entitled to access to confidential information. Neither the parties nor their attorneys shall disclose or provide copies of the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order.

23. If a party disagrees with a claim that information is confidential or should not be disclosed, the parties shall first attempt to resolve the dispute on an informal basis. If the parties cannot resolve the dispute informally, the party contesting the confidential treatment may file a motion with the Commission. Commission Staff is also prepared to challenge a confidential designation when Staff believes that the information does not meet the definition of confidential information. When a dispute concerning the confidentiality is brought before the Commission, the Commission will review the matter to determine: (1) if the party claiming confidentiality has met its burden of establishing the confidential designation is proper, and (2) whether disclosure is warranted under K.S.A. 66-1220a. The contested information shall not be disclosed pending the Commission's ruling.

24. All persons who are afforded access to confidential information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of this proceeding. During the course of this proceeding, parties shall keep confidential information secure in accordance with the purposes and intent of this order. At the conclusion of this proceeding, including judicial review, a party claiming that information was confidential may require that other persons in possession of its confidential information return or destroy all such confidential information and all notes, tapes, documents, and any other medium containing, summarizing, or otherwise embodying such confidential information. If the party claiming

confidentiality requests destruction, the person destroying the information shall certify its destruction. Counsel shall be entitled to retain memoranda or pleadings including or embodying confidential information to the extent reasonably necessary to preserve a file on this proceeding.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. United Telephone Companies of Kansas d/b/a CenturyLink a/k/a Brightspeed shall file, in this Docket, its required Attachment A, its intrastate access revenue and usage data, and supporting documentation by October 20, 2023. Brightspeed shall provide electronic versions of the filed Attachment, in Microsoft Excel format, and a copy of the supporting documentation to Staff at [s.garrett@kcc.ks.gov](mailto:s.garrett@kcc.ks.gov). Failure to submit data in a timely manner may result in a penalty, pursuant to K.S.A. 66-138.

B. With respect to service of process, the Commission waives the requirement that the Attachment, access data, and supporting documentation filed in this Docket be served upon all the parties. Parties need only file the Attachments and supporting documentation and serve them upon the Commission.

C. All affected telecommunications providers are made a party to this Docket and will be served a copy of this Order. However, parties wishing to participate in hearings and conferences, and receive copies of pleadings, R&Rs, testimony, briefs, procedural orders, and any filings other than the final order shall enter their appearance within fifteen (15) days of receipt of this order. Parties that do not enter their appearance will not be served with the aforementioned documents, nor will they be permitted to participate in any hearings or conferences. Parties will, however, receive a copy of the final order resolving this matter. Parties who enter their appearance shall also state whether they consent to electronic service, and provide an e-mail address for that purpose.

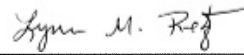
D. Staff's proposed procedural schedule is adopted. Parties are directed to inform Staff as soon as possible if they become aware of any computation error, thus allowing Staff to timely file revised calculations, if necessary.

E. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>8</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 10/12/2023



\_\_\_\_\_  
Lynn M. Retz  
Executive Director

bwb

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<sup>8</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

APPENDIX A

Docket No. 24-GIMT-229-GIT

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

NONDISCLOSURE CERTIFICATE OF CURB

I, \_\_\_\_\_, have been presented a copy of the Protective Order issued in Docket No. 22-GIMT-142-GIT on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I have requested review of confidential information produced in the above-mentioned docket on behalf of \_\_\_\_\_.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Party/Employer

\_\_\_\_\_  
Address (City, State and ZIP)

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Facsimile

## CERTIFICATE OF SERVICE

24-GIMT-229-GIT

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 10/12/2023.

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24-GIMT-229-GIT

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24-GIMT-229-GIT

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24-GIMT-229-GIT

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