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Filed Date: 08/14/2017
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August 14, 2017

Ms. Lynn M. Retz
Secretary to the Commission
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Re: KCC Docket No. 17-GIME-565-GIV

Dear Ms. Retz:

Attached you will find the Joint Petition for Reconsideration of Order Assessing Costs for electronic filing in the above referenced docket.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce A. Ney".

Bruce A. Ney
AVP - Senior Legal Counsel

Attachment

cc: Parties of Record

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

In the Matter of a General Investigation)
Regarding Whether Electric Utilities Should be)
Considered an "Operator" of Private) Docket No. 17-GIME-565-GIV
Underground Lines Under the Provisions of)
the Kansas Underground Utility Damage)
Prevention Act.)

JOINT PETITION FOR RECONSIDERATION OF ORDER ASSESSING COSTS

COMES NOW AT&T¹; CenturyLink²; the Independent Telecommunications Group, Columbus *et al.*³; Midcontinent Communications, a South Dakota general partnership, d/b/a Midco; the State Independent Alliance⁴; Sprint Communications Company L.P.; T-Mobile Central, LLC; and, Cox Kansas Telcom, LLC; (hereinafter the "Joint Petitioners"), pursuant to K.S.A. 66-118b, K.S.A. 2016 Supp. 77-529(a)(1) and K.A.R. 82-1-235, and hereby jointly petition the Kansas Corporation Commission

¹ Southwestern Bell Telephone Company d/b/a AT&T Kansas; AT&T Corp.; Teleport Communications America, LLC; SBC Long Distance, LLC; New Cingular Wireless PCS, LLC d/b/a AT&T Mobility; and, Cricket Wireless, LLC (collectively "AT&T").

² United Telephone Company of Kansas d/b/a CenturyLink, United Telephone Company of Eastern Kansas d/b/a CenturyLink, United Telephone Company of Southcentral Kansas d/b/a CenturyLink, and Embarq Missouri, Inc. d/b/a CenturyLink (collectively "CenturyLink").

³ Columbus Communications Services, LLC; Columbus Telephone Company, Inc.; Fiber Communications of Columbus, LLC d/b/a Optic Communications; Cunningham Telephone Co.; Cunningham Communications, Inc.; Gorham Telephone Co.; H&B Communications, Inc.; H&B Cable Service, Inc.; Home Telephone Co.; Home Communications, Inc.; LaHarpe Telephone Co.; Moundridge Telephone Co.; Moundridge Telcom, Inc.; Totah Communications, Inc.; Totel Customer Services, Inc.; Twin Valley Telephone Co.; Twin Valley Communications, Inc.; Wamego Telecommunications Co.; WTCI Communications, Inc.; Wilson Telephone Co.; Wilson Communications, Inc.; and, Zenda Telephone Co. (collectively the "Independent Telecommunications Group, Columbus *et al.*").

⁴ Blue Valley Tele-Communications, Inc.; One Point Technologies, Inc.; Craw-Kan Telephone Cooperative, Inc.; Golden Belt Telephone Association, Inc.; GBT Communications, Inc.; Haviland Telephone Co., Inc.; JBN Telephone Company, Inc.; KanOkla Telephone Association; Madison Telephone, LLC; MT Networks, LLC; MoKan Dial, Inc.; Peoples Telecommunications, LLC; Peoples Services, LLC; Pioneer Telephone Association, Inc.; Rainbow Telecommunications Association, Inc.; Rainbow Communications, Inc.; S&A Telephone Company; S&T Telephone Cooperative Association, Inc.; S&T Communications; South Central Telephone Association, Inc.; South Central Wireless; Tri-County Telephone Association, Inc.; United Telephone Association, Inc.; United Communications, Inc.; United Wireless, Inc. (collectively the "State Independent Alliance").

“Commission”) for reconsideration of that portion of its July 27, 2017, Order Assessing Costs (hereinafter the “*Costs Order*”) in the above captioned proceeding, wherein the Commission concluded that “the costs of this proceeding should be equally assessed to all jurisdictional gas, electric and telecom companies.” In support of their Petition, Joint Petitioners show the Commission as follows:

Background

1. The genesis of the instant proceeding is a customer complaint case filed with the Commission against an electric public utility, Kansas City Power & Light Company. In that case, Docket No. 15-KCPE-544-COM, the Commission determined that the issue presented, “whether a utility company should be held responsible for marking privately owned facilities under [the Kansas Underground Utilities Damage Prevention Act]”, was a matter of first impression and that it would be “prudent to open a general investigation” to address the issue.⁵

2. On July 27, 2017, the Commission, acting upon the recommendation of its Staff, issued its *Order Opening General Investigation* in the above captioned proceeding.⁶ In doing so, the Commission stated it was appropriate and necessary:

[F]or the purpose of developing an adequate record of locates practices for customer-owned underground electric service lines, determining the definition of the term “operator” found in KUUDPA,[] and ensuring the uniform application of KUUDPA when it comes to the obligation of Kansas electric utilities to provide utility locates for underground electric lines that were installed and owned by the customer, but are upstream of the utility company’s meter facilities.⁷

⁵ *Final Order, In the Matter of the Complaint Against Kansas City Power and Light Company by Stephen and Karen Gradwohl*, Docket No. 15-KCPE-544-COM, dated Jan. 10, 2017 at ¶ 13.

⁶ *Order Opening General Investigation, In the Matter of a General investigation Regarding Whether Electric Utilities Should be Considered an “Operator” of Private Underground Lines Under the Provisions of the Kansas Underground Utility Damage Prevention Act*, dated July 27, 2017 (hereinafter “*Opening Order*”) at ¶ 2.

⁷ *Id.* at ¶ 4. Footnote omitted.

Further, to fully explore the “rights, obligations and liabilities to be expected of the parties regarding the provision of locates and excavation over underground electric service lines,” the Commission posed a series of seven (7) questions with subparts for comments from interested parties.⁸ The Commission ordered that a person or entity shall become a “party to the proceeding” by filing an entry of appearance.⁹ The Commission served the *Opening Order* upon numerous “utilities”, including Kansas wireline and wireless telecommunications carriers, and some individuals.¹⁰

3. Concurrent with the issuance of the *Opening Order*, the Commission issued the *Costs Order*. In the *Costs Order* the Commission held that “the costs of this proceeding should be equally assessed to all jurisdictional gas, electric and telecom companies.”¹¹

Request for Reconsideration

4. The *Opening Order* makes clear that the jurisdictional basis for the investigation in the instant proceeding is grounded in the Commission’s statutory authority to investigate the rates, rules and regulations of electric public utilities in the state of Kansas.¹² K.S.A. 66-101d does not bestow the Commission with any jurisdiction over telecommunications public utilities or telecommunications carriers; it pertains only to electric public utilities.

⁸ *Id.* at ¶5.

⁹ *Id.* at Ordering Paragraph D.

¹⁰ The Commission’s *Opening Order*, in addition to some of the AT&T-affiliated entities named herein as joint petitioners, was served upon two (2) formerly AT&T-affiliated entities that were previously merged out of existence: AT&T Communications of the Southwest, Inc.; and, Cricket Communications, Inc. Cricket Wireless, LLC is the successor to Cricket Communications, Inc. AT&T Communications of the Southwest, Inc. was merged into AT&T Corp., as recognized by the Commission’s *Order Approving Transfer of Certificates and Change of Corporate Structure and Certificated Name* in Docket No. 13-AT&T-105-MER, issued Aug. 29, 2012.

¹¹ *Costs Order* at ¶1; Ordering Paragraph A.

¹² *Opening Order* at ¶ 3 (citing K.S.A. 66-101d).

5. The Commission Staff's Report and Recommendation, which is incorporated into and made a part of the *Opening Order*, reinforces the facts underlying the jurisdictional assertion. In the Report and Recommendation, only electric utility facilities and obligations are discussed; in fact, only electric utilities were surveyed for the Report and Recommendation.¹³ There is notably no mention of telecommunications companies in the *Opening Order* or any discussion of the telecommunications companies' facilities in the Staff Report and Recommendation underlying the Order.¹⁴

6. The *Opening Order* also notes the Commission's aspirational desire for "broad participation from operators of underground utilities, excavators and commercial customers that explores the rights, obligations and liabilities to be expected of the parties regarding the provision of locates and excavation over underground electric service lines."¹⁵ To that end, the *Opening Order* seeks comment from "interested parties" on a series of seven (7) questions with subparts all related to underground electric service lines or customer owned/installed underground electric facilities.¹⁶

7. Ironically, despite the Commission's desire for "broad participation" in the proceeding, no entity or individual is made a party to the proceeding by the *Opening Order*, not even those Commission regulated electric public utilities whose rights, obligations or duties regarding the provision of locates and excavation of third-party or customer-owned underground electric facilities are clearly the subject of the general investigation. The only "broad participation" specifically ordered by the Commission in

¹³ *Id.* at ¶2.

¹⁴ The docketed caption for the instant proceeding further reinforces the electric specific nature of the proceeding. Historically, Commission practice reflects that multi-industry general investigations are docketed and denoted as "GIMX", this proceeding is docketed as "GIME" denoting an electric general investigation.

¹⁵ *Opening Order* at ¶ 5

¹⁶ *Id.*

the instant proceeding is the broad assessment of its costs to “all jurisdictional gas, electric and telecom companies” whether or not they choose to actively participate in the proceeding.¹⁷

8. The *Costs Order* is unreasonably vague in its use of the term “jurisdictional” as applied to telecom companies. The *Costs Order*, as is evidenced by the lengthy and sizeable service list in this proceeding, was served on a broad spectrum of telecommunications companies/carriers. It is unclear which of these companies the Commission considers “jurisdictional” for assessment purposes. The Commission may consider a company jurisdictional on several different bases: eligible telecommunications carrier status; Kansas Universal Service Fund purposes; rate of return/price cap carrier status, for example. A telecommunications company that may come within the scope of one of these specific types of “jurisdiction” does not, however, necessarily fall within Commission “jurisdiction” for the purposes of the instant proceeding.

9. In addition to being vague, nothing in the *Costs Order* can reasonably be read to justify the arbitrary assessment of the costs of this proceeding to any telecom company, be they telecommunications public utilities or telecommunications carriers. The *Costs Order* is unsupportable as it contains no findings of fact or conclusions of law that either “jurisdictional” or any other telecom companies in Kansas: own or operate the underground electric facilities at issue in this proceeding; provision customer-owned underground electric facilities; or, have any rights, obligations or duties regarding the provision of locates or excavation over underground electric service lines under

¹⁷ See *supra* fn.11. (Emphasis added).

KUUDPA, other statutory provisions of Kansas law or Commission administrative rules, regulations or Orders.

WHEREFORE, for all of the above and foregoing reasons Joint Petitioners respectfully request the Commission grant their timely filed Joint Petition for Reconsideration and reconsider that portion of the Commission's July 27, 2017 Order Assessing Costs to all "jurisdictional" telecom companies and determine that no costs should be assessed to any telecommunications company in the instant proceeding.

Respectfully submitted,



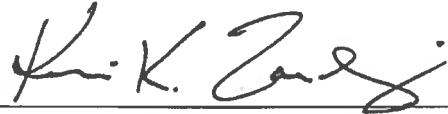
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Attorney for AT&T

JOINT PETITION FOR RECONSIDERATION OF ORDER ASSESSING COSTS

Docket No. 17-GIME-565-GIV

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin K. Zarling". The signature is written in a cursive style with a horizontal line underneath it.

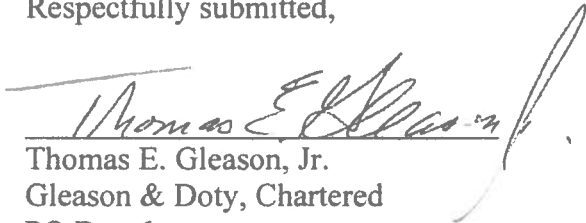
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JOINT PETITION FOR RECONSIDERATION OF ORDER ASSESING COSTS

Docket No. 17-GIME-565-GIV

Respectfully submitted,



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JOINT PETITION FOR RECONSIDERATION OF ORDER ASSESING COSTS

Docket No. 17-GIME-565-GIV

Respectfully submitted,



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Respectfully submitted,

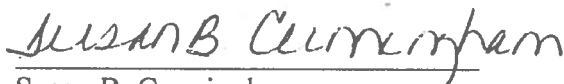

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JOINT PETITION FOR RECONSIDERATION OF ORDER ASSESING COSTS

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Respectfully submitted,



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T-Mobile Central LLC

VERIFICATION

I, Janet L. Arnold, of lawful age, and being first duly sworn, now state: I am Area Manager-External Affairs, AT&T, and have read the Joint Petition for Reconsideration of Order Assessing Costs, and verify the statements contained herein to be true and correct to the best of my knowledge and belief.

Janet L. Arnold

Janet L. Arnold

Subscribed and sworn to before me this 14th day of August, 2017.

Donna J. Sowers

Notary Public

My appointment expires:



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Joint Petition for Reconsideration of Order Assessing Costs was electronically served this 14th day of August, 2017 to:

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