

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

APR 02 2012

by  
State Corporation Commission  
of Kansas

In the Matter of a General Investigation into )  
the Kansas Universal Service Fund pursuant ) Docket No. 12-GIMT-170-GIT  
to K.S.A. 2010 Supp. 66-2008(c). )

**REPLY COMMENTS OF THE  
CITIZENS' UTILITY RATEPAYER BOARD**

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following reply comments in this docket in response to the Kansas Corporation Commission's (KCC or Commission) January 11, 2012, Prehearing Officer's Report & Order (Prehearing Order). In support of its position, CURB states and alleges as follows:

I. Introduction

1. The eleven parties filing comments in this proceeding include Southwestern Bell Telephone Company ("SWBT"), TCG Kansas City, Inc. ("TCG"), AT&T Communications of the Southwest, Inc. ("ATTSW"), AT&T Corp. ("ATTC"), SBC Long Distance, LLC ("SBCLD"), Bell South Long Distance, Inc. d/b/a AT&T Long Distance Service ("BSLD"), SNET America, Inc. d/b/a AT&T Long Distance East ("SNET America"), and New Cingular Wireless PCS, LLC ("AT&T Mobility"), (herein collectively referred to as "AT&T"); 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, Embarq Missouri, Inc. d/b/a CenturyLink (herein collectively referred to as "CenturyLink"); Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners (herein collectively

referred to as “Sprint”); the Joint Comments of State Independent Alliance, Independent Telecommunications Group (Columbus, et al.), Southern Kansas Telephone and Mutual Telephone (herein collectively referred to as “SIA”); MCI Communication Services, Inc. d/b/a Verizon Business Services, LLC, MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and Cellco Partnership d/b/a Verizon Wireless (collectively referred to as “Verizon”); Cox Kansas Telcom, LLC (“Cox”); Eagle Communications, Inc. (“Eagle”); N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless (“Viaero Wireless”); T-Mobile Central LLC (“T-Mobile”); USCOC of Nebraska/Kansas, LLC, d/b/a U.S. Cellular (“USCOC”); and CURB. These parties filed comments related to both the FCC’s October 27, 2011, *Report and Order and Further Notice of Proposed Rulemaking* (FCC 11-161) on USF/ICC reform (FCC Omnibus Order)<sup>1</sup> and a List of Proposed Issues provided by parties to the Commission’s Prehearing Officer at the informal conference.<sup>2</sup>

## II. Evaluation of Party Positions

2. Of the eleven parties filing comments: a) three incumbent wireline carriers and organizations (AT&T, CenturyLink, RLECs) share a common vested monetary interest of delaying proceedings and limiting the issues to be addressed, and this can be viewed as an attempt to preserve their existing KUSF payments as long as possible pending significant reform from the FCC; 2) two competitors (Sprint and Verizon) share a common vested monetary interest of proceeding forward without delays on important issues and addressing issues that could reduce or eliminate KUSF payments to incumbent carriers and competitors; 3) Eagle’s interests

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<sup>1</sup> *Connect America Fund* (WC Docket No. 10-90); *A National Broadband Plan for Our Future* (GN Docket No. 09-51); *Establishing Just and Reasonable Rates for Local Exchange Carriers* (WC Docket No. 07-135); *High Cost Universal Service Support* (WC Docket No. 05-337); *Developing an Unified Intercarrier Compensation Regime* (CC Docket No. 01-92); *Federal-State Joint Board on Universal Service* (CC Docket No. 96-45); *Lifeline and Link-Up* (WC Docket No. 03-109); *Universal Service Reform -Mobility Fund* (WT Docket No. 10-208). (FCC Omnibus Order).

<sup>2</sup> Prehearing Order, ¶ 10, Attachment 2.

lie somewhere between the incumbents and competitors, and it supports a continued proceeding without delays, comprehensive evaluation of issues, but also has a vested monetary interest of reducing or eliminating KUSF payments to incumbents wireline carriers but preserving its interest in receiving support payments for broadband provided in un-served areas of Kansas; 4) a group of three parties represented by common legal counsel (Cox, T-Mobile, Viaero, and USCOC) have a mixed vested monetary interest in the KUSF, and they propose a procedural schedule to address legal issues but recommend that the Commission conduct another roundtable meeting to address the status of FCC issues for purposes of establishing a further procedural schedule if necessary; and 5) CURB favors a continued proceeding without delays and which evaluates a comprehensive list of issues over three phases of proceedings (Phase I regarding legal issues, Phase II regarding policy issues, and Phase III regarding implementation issues).

3. CURB will specifically address some of the party's comments, and will more generally address the remaining party's comments. CURB disagrees with those parties that propose to substantially reduce the list of issues to be addressed, and which propose to delay the review of these issues. CURB believes it is best to remain flexible and allow parties the discretion to address a comprehensive list of issues<sup>3</sup>, and then the individual parties can choose which issues are priorities and they can limit their briefs, comments, and testimony to those priority issues. CURB also believes that its proposal should eventually provide for some narrowing of issues in the Issues List because legal issues addressed in Phase I may narrow policy issues for Phase II, and both the prior legal and policy issues may further narrow implementation issues to be addressed in Phase III. In addition, limiting the issues to be addressed could cause discovery delays and problems as various parties attempt to limit

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<sup>3</sup> Such as those issues at Attachment 2 of the Prehearing Order, and those additional issues identified at CURB's initial comments at ¶ 13.

responses to a reduced scope rather than a broad scope of discovery based on a comprehensive review of issues.

4. Finally, various parties assert “generally”<sup>4</sup> that some of these issues are still pending review before the FCC or are subject to multiple petitions for reconsideration, appeals, and are otherwise incomplete. Again, CURB believes it is reasonable to proceed forward with addressing a comprehensive list of issues. The parties will be able to express their concerns regarding specific unresolved or litigated issues at the FCC in future Commission proceedings. Some of these unresolved and litigated matters at the FCC will be settled during these proceedings in Kansas, so limiting issues to be addressed at the outset of this proceeding does not make sense. As this proceeding progresses, the Commission can make specific determinations regarding which issues can or cannot be addressed due to unresolved or litigated issues at the FCC (or other reasons). It would appear premature to limit the list of issues to be addressed at this time, when the Commission is able to address issues on a case-by-case basis during the course of this proceeding.

5. AT&T believes that because of the ongoing FCC proceedings it is premature to attempt to prepare or address a comprehensive list of issues such as those contained in the Prehearing Order Attachment 2, and indicates for this portion of the proceeding a more limited set of issues should be addressed. AT&T believes that issues to be briefed should be limited to: a) the definition of universal service and KCC jurisdictional issues; b) statutory changes required by the FCC Omnibus Order; c) state statutory or regulatory carrier of last resort (COLR) and eligible telecommunications carrier (ETC) obligations imposed on incumbent local exchange carriers (ILECs) in light of FCC ordered changes; d) any statutory obligation to offset federal

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<sup>4</sup> Some parties only make general assertions about issues that are pending, subject to litigation or are incomplete at the FCC, so the current record does not adequately allow the Commission to determine which Kansas-specific issues to remove, revise, or postpone to a later date.

USF reductions as a result of the FCC's Omnibus Order with funding and increases in the Kansas USF. AT&T supports comments addressing the limited issues of: a) the impact of federal intercarrier compensation (ICC) reform on the KUSF; and b) how the FCC's ETC designation and reporting requirements fit with this Commission's state ETC designation requirements. AT&T supports a briefing/comment cycle of at least 60 to 90 days initial cycle and a 30 to 45 day response cycle for briefs/comments.

6. AT&T has a vested monetary interest to preserve the payments it receives from the KUSF. CURB opposes AT&T's proposal to significantly limit the issues to be addressed for previously stated reasons. In addition, the limited issues proposed by AT&T are most beneficial to its interests and tend to focus on its potential "increased" funding from the KUSF and reducing its statutory or other obligations (such as COLR issues) without any apparent offsetting benefit to consumers or to competition generally. AT&T's limited issues list fails to consider other proper balancing matters that are necessary to mitigate negative impacts on consumers and competition. Most importantly, AT&T fails to address issues prominently raised at the FCC, that if implemented and/or applied on Kansas-specific basis, could instead result in decreased or no funding from the KUSF. Finally, CURB disagrees with AT&T's proposal to limit proceedings to briefs and comments. Some detailed implementation issues will need to be addressed by testimony and additional time will be required for discovery and preparation of testimony in those proceedings. AT&T's list of limited issues should be rejected by the Commission, along with its proposed briefing/comment cycles. Instead, CURB's recommendations should be adopted.

7. CenturyLink, similar to AT&T, believes that it is premature to address most of the issues at the Issues List because of uncertainties with the FCC's Omnibus Order and related

petitions for reconsideration, appeals, and other incomplete matters. CenturyLink instead proposes that only Phase I be initiated at this time, and that Phase I be limited to about five high level legal issues similar to those raised by AT&T.<sup>5</sup> Similar to AT&T, CenturyLink's Phase I legal issues focus on matters primarily important to its financial and competitive interests, including whether COLR should remain in place for voice service and whether carriers without COLR obligations should receive KUSF support. CenturyLink proposes that a second prehearing conference be scheduled in August 2012 to further evaluate the status of matters at the FCC and a schedule for remaining issues in Kansas. CenturyLink claims that many of these impacts cannot be determined at this time and the KCC and parties will not be harmed as a result of its approach because there is nothing in the FCC Omnibus Order that requires immediate action by the KCC.

8. CenturyLink also has a vested monetary interest to preserve the payments it receives from the KUSF. CURB opposes CenturyLink's proposal for essentially the same reasons that it opposes AT&T's proposal, and further elaboration is not necessary on those issues. However, CenturyLink's proposal regarding Phase II would appear to support CURB's recommendation in regards to timing, although CURB would again support a comprehensive review of issues and CenturyLink may not support this expanded list of issues. CenturyLink proposes a second pre-hearing conference on August 1, 2012, to further evaluate the status of matters at the FCC and to discuss a more specific timeframe regarding comments to more fully assess the impacts that FUSF and ICC reforms will have on the KUSF. CURB proposes a Phase II for comprehensive non-legal policy issues that would begin about September 14, 2012, with direct testimony or comments due about November 23, 2012. This timing is in line with

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<sup>5</sup> CURB also proposes a Phase I to begin immediately, except this phase should address comprehensive legal issues, as opposed to CenturyLink's proposal to address limited legal issues.

CenturyLink's proposal for Phase II issues, although CURB proposes a comprehensive review of issues and CenturyLink does not propose a specific list of issues but instead generally refers to impacts that FUSF and ICC reforms would have on the KUSF. CenturyLink's recommendations should be rejected in favor of CURB's proposal.

9. SIA suggests that it is premature to address most of the issues on the Issues List due to essentially the same concerns expressed by AT&T and CenturyLink. SIA suggests that only when there is a final and reliable FCC order, should the Commission implement a briefing schedule to address certain legal issues that it cites to the Issues List - - although SIA provides no timeframe for these matters. SIA proposes a more balanced and comprehensive list of legal issues than those proposed by AT&T and CenturyLink, - - although it does not appear to include all of the legal issues on the Issues List. SIA also indicates various other policy issues are better addressed through comments or testimony. SIA does not propose a timetable for briefing, comments, testimony, or hearings.

10. SIA also has a vested monetary interest to preserve the payments it receives from the KUSF. CURB opposes SIA's proposal for essentially the same reasons that it opposes the AT&T and CenturyLink proposal, and further elaboration is not necessary on those issues. However, CURB does believe that SIA is more receptive to an expanded list of legal and policy issues, compared to the limited issues proposed by AT&T and CenturyLink. Unfortunately, SIA provides no timetable for legal or policy proceedings to begin, and this is not acceptable. SIA's recommendations should be rejected in favor of CURB's proposal.

11. Sprint proposes a priority list addressing matters in three stages. First, as a threshold issue, Sprint proposes that parties address whether the KUSF should be phased out or eliminated and the related impact on industry and consumers, in light of the FCC's decisions - -

with a Commission Order by end of summer 2012. Second, in the event the KUSF is not eliminated or phased out entirely, Sprint proposes addressing what changes to the KUSF are necessary or appropriate to complement the FCC's initiatives and identifies six underlying legal and policy issues to address - - and recommends a Commission Order be issued by early spring 2013. Finally, following a Commission ruling on the first two stages, Sprint suggests that parties address whether the KCC has authority to implement the proposed changes addressed in stages one and two and what changes are needed to Kansas laws to implement the proposed changes - - and recommends a Commission Order be issued by end of summer 2013.

12. Sprint also has a vested monetary interest, not in the amount of KUSF it receives but rather to reduce or eliminate KUSF payments to its competitors and to reduce or eliminate KUSF assessments upon its customers. CURB favors Sprint's proposal over those of AT&T, CenturyLink, SIA, and others because it appears to support an immediate and continuing review of important issues and does not recommend delays or deferral of these issues. In addition, Sprint's proposed procedural timetable for three phases is almost the same timetable that CURB proposes for its three phases. However, CURB does have some concerns with Sprint's proposal. First, CURB is concerned that Sprint's proposal calls for a broad evaluation of issues at the front-end of the procedural schedule, but then asks at the very back-end of the procedural schedule whether the final proposed policy issues are legal to implement in Kansas, or what changes are necessary to Kansas laws to implement such policy. CURB disagrees with this approach because it appears to be backwards and less efficient. Instead, it would appear to be more efficient to evaluate legal issues first and then use that information to narrow or further define related policy issues to be addressed. Second, Sprint has unduly narrowed the Issues List to a few very broad and encompassing threshold issues. Although Sprint's few broad threshold



issues may be intended to address most or all of the detailed issues at the Issues List, CURB believes it would be better to provide a comprehensive list of issues to be addressed. If a comprehensive list of issues is set forth, parties can choose to address those issues it determines to be necessary to protect its interests. Limiting the issues to only broad issues is more likely to lead to discovery disputes, delays and inefficiencies, whereas identifying comprehensive and specific issues will result in less discovery obstacles and delays. Sprint's recommendations have some merit, but should be rejected in favor of CURB's proposal.

13. Verizon appears to support an approach more in line with Sprint, suggesting implementation of the FCC Order and addressing necessary issues without further delay. However, Verizon suggests that the only issues on the Issues List that need to be addressed are those related to either the reduction or elimination of the KUSF or the implementation of the FCC Order. More specifically, Verizon states the Commission should consider issues relating to the scope of the Commission's authority to reduce and eliminate the KUSF, whether there is any ongoing need for the KUSF, and whether the KUSF should be eliminated on a flash-cut basis or over a relatively brief transition period.

14. Verizon, like Sprint, also has a vested monetary interest in reducing or eliminating KUSF payments to its competitors and reducing or eliminating KUSF assessments upon its customers. CURB favors Verizon's proposal to the extent it seeks to address necessary issues without further delays. However, Verizon unduly restricts the issues to be addressed to those related to reducing or eliminating the KUSF, and CURB believes that other parties should be able to present their positions regarding the continuation or transition of the KUSF. Verizon's proposal should be rejected in favor of CURB's proposal.

15. Cox, T-Mobile, Viaero Wireless, and USCOC are all represented by common counsel in these proceedings. All of these parties have a vested monetary interest in the KUSF, although some of these parties may have an interest in preserving payments they receive from the KUSF and other parties may have an interest in seeing KUSF payments to competitors reduced or eliminated. However, all parties propose the same procedural schedule for filing two rounds of briefs on the Commission legal issues by July 2, 2012. In addition, each of these parties also propose that the Commission conduct a round table meeting to discuss the status of the FCC's order in late summer or early fall 2012 for purposes of establishing a more comprehensive procedural schedule if necessary. The proposal of these parties is relatively vague, although it appears that they do not oppose addressing the Commission's current comprehensive Issues List. Because there is uncertainty regarding their proposal for moving forward after legal issues are addressed, CURB opposes the position of these parties and recommends adopting CURB's proposal.

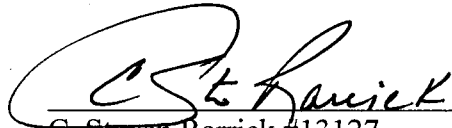
16. Eagle's interests lie somewhere between those of AT&T, CenturyLink and SIA versus those of Sprint and Verizon. While Eagle appears to support reduction or elimination of KUSF payments to competitors and primarily incumbent wireline carriers, it favors the development of broadband with related support funding limited to un-served areas of Kansas. Eagle appears to support a continuing procedural schedule without delays, including a fairly comprehensive evaluation of issues. CURB believes there is some merit to Eagle's proposals, but again favors adoption of the CURB position.

### III. Conclusion

17. CURB appreciates the opportunity provided in this docket to submit these comments on behalf of Kansas small business and residential ratepayers, and urges the

Commission to adopt CURB's positions in this proceeding as it relates identification and scheduling of legal, policy, and implementation issues which impact the KUSF and Kansas consumers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line.

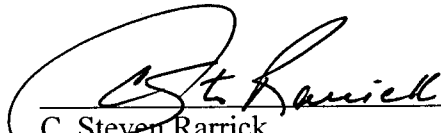
C. Steven Rarrick #13127  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Road  
Topeka, KS 66604  
(785) 271-3200  
(785) 271-3116 Fax

VERIFICATION

STATE OF KANSAS )  
 ) ss:  
COUNTY OF SHAWNEE )

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 2<sup>nd</sup> day of April, 2012.



  
Notary Public

My Commission expires: 01-26-2013.

**CERTIFICATE OF SERVICE**

12-GIMT-170-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, electronic or hand-delivered this 2<sup>nd</sup> day of April, 2012, to the following:

ROBERT A. FOX, SENIOR LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

BRIAN G. FEDOTIN, ADVISORY COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 SOUTH HICKORY  
PO BOX 17  
OTTAWA, KS 66067

ROSE MULVANY HENRY, ATTORNEY  
BRADLEY ARANT BOULT CUMMINGS LLP  
1600 DIVISION ST STE 700  
PO BOX 340025  
NASHVILLE, TN 37203-0025

GLENDIA CAFER, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606

TERRI PEMBERTON, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606

JACKIE MCCARTHY, DIR OF STATE REGULATORY AFFAIRS  
CTIA-THE WIRELESS ASSOCIATION  
1400 16TH STREET NW, STE. 600  
WASHINGTON, DC 20036

KURT DAVID, CFO  
EAGLE COMMUNICATIONS, INC.  
2703 HALL, STE. 15  
P.O. BOX 817  
HAYS, KS 67601

TINA GAINES, Director of Telecommunications  
EMPIRE DISTRICT ELECTRIC COMPANY  
720 S SCHIFFERDECKER AVE  
JOPLIN, MO 64801-3525

CERTIFICATE OF SERVICE

12-GIMT-170-GIT

THOMAS E GLEASON JR, ATTORNEY  
GLEASON & DOTY CHTD  
PO BOX 6  
LAWRENCE, KS 66044-0006

JAMES M. CAPLINGER, ATTORNEY  
JAMES M. CAPLINGER, CHARTERED  
823 W 10TH STREET  
TOPEKA, KS 66612

COLLEEN R. HARRELL  
JAMES M. CAPLINGER, CHARTERED  
823 W 10TH STREET  
TOPEKA, KS 66612

GREG T. DIAMOND, CORPORATE COUNSEL-REGULATORY  
LEVEL 3 COMMUNICATIONS, LLC  
1505 5TH AVE STE 501  
SEATTLE, WA 98101-1678

MARK E. CAPLINGER  
MARK E. CAPLINGER, P.A.  
7936 SW INDIAN WOODS PL  
TOPEKA, KS 66615-1421

DAVID HAGA, ASSISTANT GENERAL COUNSEL  
MCI COMMUNICATIONS SERVICES D/B/A VERIZON BUSINESS SERVICES  
1320 N COURTHOUSE RD.  
ARLINGTON, VA 22201

LYLE WILLIAMSON, DIRECTOR - STATE GOVERNMENT RELATIONS  
MCI COMMUNICATIONS SERVICES D/B/A VERIZON BUSINESS SERVICES  
8350 E CRESCENT PKWY STE 200  
GREENWOOD VILLAGE, CO 80111-2858

LUKE A. SOBBA, ATTORNEY  
MORRIS LAING EVANS BROCK & KENNEDY CHTD  
SUITE 1310  
800 SW JACKSON  
TOPEKA, KS 66612-1216

RACHEL LIPMAN REIBER, ATTORNEY  
RACHEL LIPMAN REIBER LLC  
11032 S WHITETAIL LN  
OLATHE, KS 66061-8409

SUSAN B. CUNNINGHAM, COUNSEL  
SNR DENTON US LLP  
7028 SW 69TH ST  
AUBURN, KS 66402-9421

CERTIFICATE OF SERVICE

12-GIMT-170-GIT

BRUCE A. NEY, GENERAL ATTORNEY  
SOUTHWESTERN BELL TELEPHONE CO. D/B/A AT&T KANSAS  
220 SE 6TH AVE RM 515  
TOPEKA, KS 66603-3596

DIANE C. BROWNING, ATTORNEY  
SPRINT COMMUNICATIONS COMPANY L.P.  
KSOPHN0314-3A459  
6450 SPRINT PKWY  
OVERLAND PARK, KS 66251

PAMELA SHERWOOD, VICE PRES REGULATORY  
TW TELECOM OF KANSAS CITY LLC  
4625 W 86TH ST STE 500  
INDIANAPOLIS, IN 46268-7804

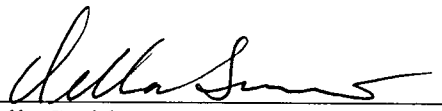
MICHAEL J. FOSTER, CHIEF EXECUTIVE OFFICER  
TWIN VALLEY TELEPHONE, INC.  
22 SPRUCE  
PO BOX 395  
MILTONVALE, KS 67466

TORRY SOMERS, ATTORNEY AT LAW/NVLSVBO207  
UNITED TELEPHONE CO. OF KANSAS D/B/A CENTURYLINK  
6700 VIA AUSTI PKWY  
LAS VEGAS, NV 89119

CHARLES H. CARRATHERS  
VERIZON  
HQE03H52  
8350 E CRESCENT PKWY STE 200  
GREENWOOD VILLAGE, CO 80111-2858

DEBORAH KUHN, Assistant General Counsel  
VERIZON  
205 N MICHIGAN AVE., 7th Floor  
CHICAGO, IL 60601

ARCHIE MACIAS, GENERAL MANAGER  
WHEAT STATE TELEPHONE COMPANY, INC.  
PO BOX 320  
UDALL, KS 67146

  
Della Smith  
Administrative Specialist