

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

OCT 07 2011

by
State Corporation Commission
of Kansas

In the Matter of Staff's Motion Requesting)
the Commission Order S & T Telephone)
Coop Association, Inc. to Submit to an)
Audit for Purposes of Determining its Cost-)
Based Kansas Universal Service Fund)
Support, Pursuant to K.S.A. 66-2008.)

Docket No. **12-S&TT-234** -KSF

**MOTION OF COMMISSION STAFF REQUESTING THE COMMISSION
ORDER S & T TELEPHONE COOP ASSOCIATION, INC. TO SUBMIT TO AN
AUDIT FOR PURPOSES OF DETERMINING ITS COST-BASED KANSAS
UNIVERSAL SERVICE FUND SUPPORT PURSUANT TO K.S.A. 66-2008**

COMES NOW the Staff of the State Corporation Commission of the State of Kansas
(Staff and Commission, respectively) and for its motion to the Commission requesting the
Commission order S & T Telephone Coop Association, Inc. (S&T) to submit to an audit to
determine whether its cost-based Kansas Universal Service Fund (KUSF) support should be
adjusted, pursuant to K.S.A. 66-2008(e), states as follows:

Background

1. On June 30, 2010, the Commission opened Docket No. 10-GIMT-797-GIT
directing all eligible telecommunications carriers (ETCs) to submit certifications verifying each
ETC will utilize their Federal Universal Service Fund (FUSF) and KUSF support receipts for
2011 in an appropriate manner. ETCs were also directed to substantiate their past certifications
by submitting data in the worksheet format provided for by the Commission to aid Staff and the
Commission in determining that support received was spent in the manner in which it is intended
to be spent.

2. On September 14, 2010, Staff submitted its Report and Recommendation that
S&T could not justify the use of either its FUSF or KUSF support given the reporting format

adopted by the Commission. Staff recommended the Commission consider opening a company-specific audit proceeding pursuant to K.S.A. 66-117, K.S.A. 66-2008(c), and K.S.A. 66-2008(e) to determine if its KUSF support should be adjusted by the Commission.

3. On June 28, 2011, the Commission opened Docket No. 11-GIMT-837-GIT directing all ETCs to submit certifications verifying each ETC will utilize their FUSF and KUSF support receipts for 2012 in an appropriate manner. ETCs were also directed to substantiate their past certifications by submitting data in the worksheet format provided for by the Commission to aid Staff and the Commission in determining that support received was spent in the manner in which it is intended to be spent.

4. On September 26, 2011, Staff submitted its Report and Recommendation that S&T could not justify the use of either its FUSF or KUSF support given the reporting format adopted by the Commission. Staff recommended the Commission immediately open a company-specific audit proceeding requiring S&T submit to an audit pursuant to K.S.A. 66-117, K.S.A. 66-2008(c), and K.S.A. 66-2008(e) to determine if its KUSF support should be adjusted by the Commission.

Commission Jurisdiction and Authority

5. The KUSF was established pursuant to K.S.A. 66-2008. Pursuant to K.S.A. 66-2008(c) the Commission is required to periodically review the KUSF to determine if the costs carriers incur to provide local service justify modification of KUSF support. Pursuant to K.S.A. 66-2008(e), for telecommunications carriers opting to operate under traditional rate of return regulation, all KUSF support shall be based on the carrier's embedded costs, revenue requirements, investments and expenses.

6. In order to consider a carrier's embedded costs, revenue requirements, investments and expenses, the Commission conducts a rate of return audit pursuant to K.S.A. 66-117, in which the carrier's receipt of FUSF support is considered in determination of the carrier's overall revenue requirement and ultimate determination and receipt of cost-based KUSF support.

7. The Federal Telecommunications Act of 1996 established the FUSF and pursuant to Section 254(e), ETCs receiving high cost support from the FUSF must use that support only for the purpose for which it was intended. To that end, the Commission must certify to the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) by October 1 of each year for the following year that ETCs have certified to the Commission that they have, and will, use their FUSF for the purposes for which it was intended. In order to ensure that the Commission's certification to the FCC and USAC is accurate, ETCs are required each year to submit forms developed by the Commission for certification. For support being received beginning January 2011, the Commission opened Docket No. 10-GIMT-797-GIT to receive ETCs' forms and Staff's recommendation regarding certification. The Commission submitted certification to the FCC and USAC in September 2010. Also, for support being received beginning January 2012, the Commission opened Docket No. 11-GIMT-837-GIT to receive ETCs' forms and Staff's recommendation regarding certification. The Commission submitted certification to the FCC and USAC in September 2011.

8. In Docket No. 08-GIMT-154-GIT the Commission determined that an ETC receiving KUSF support must certify that the ETC uses that support appropriately. If, using the forms approved by the Commission, the ETC fails to show that KUSF support has been used appropriately in prior periods, the Commission determined that it would open a company-

specific docket to address the lawful level of KUSF support available to that ETC. For an independent rural local exchange carrier, a traditional rate-of-return analysis must be conducted. The Commission determined that it would institute such a proceeding as quickly as possible.¹

9. The Commission is given full power, authority and jurisdiction to supervise and control telecommunications public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. See K.S.A. 66-1,187, and K.S.A. 66-1,188. The Commission, upon its own initiative, may investigate all rates, joint rates, tolls, charges and exactions, classifications or schedules of rates or joint rates and rules and regulations of telecommunications public utilities. K.S.A. 66-1,191. All grants of power, authority and jurisdiction to the Commission are to be liberally construed. K.S.A. 66-1,194. The Commission has specific statutory authority to examine and audit any and all books, accounts, papers, records, property and memoranda kept by a public utility. K.S.A. 66-129. As noted above, K.S.A. 66-2008(c) specifically mandates the Commission to periodically review the KUSF and the costs of providing local service and to make any necessary modifications to the KUSF, and K.S.A. 66-2008(e) requires KUSF support to be based on a carrier's embedded costs, revenue requirements, investments and expenses. The review of S&T's KUSF support is properly within the scope of the Commission's jurisdiction.

Staff's Conclusions and Recommendation

10. The data provided in Docket Nos. 10-GIMT-797-GIT and 11-GIMT-837-GIT indicate that S&T has failed to justify its FUSF support for 2005, 2006, 2007, 2008, 2009, and 2010. While not required to justify KUSF support until 2009, S&T's data indicate that the company has not justified its use of KUSF support for 2005, 2006, 2007, 2008, 2009 or 2010.

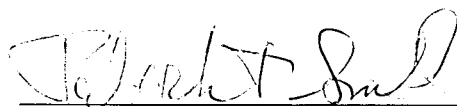
¹ *Order Denying RLECs' Petitions for Clarification and Reconsideration and Motions for Suspension and Evidentiary Hearing and Making Findings of Fact and Conclusions of Law and Modifying Previous Orders*, Docket No. 08-GIMT-154-GIT, dated September 30, 2009, ordering clause A.

Recognizing that investment can vary from year to year, Staff reviews investment and expenses for a total of five years to determine whether the cumulative amount of expenditures exceeds the cumulative amount of support received.² For S&T, this analysis shows that the company cannot justify its use of FUSF or KUSF support for 2005, 2006, 2007, 2008, 2009, and 2010.

11. The data reported for the FUSF and KUSF certification process is not inclusive of all expenditures and revenues that would be included in a KUSF audit. It is also possible that some expenditures included in the data reported for certification would be disallowed or excluded in a KUSF audit. However, the data reported for the FUSF and KUSF certification process provide a probable indication that S&T's KUSF support is greater than can be supported by S&T's cost of service. Considering that this has been the indication in every year from 2005 to 2010 leads Staff to conclude that ordering a KUSF audit would be a reasonable and prudent measure for the Commission to take at this time to ensure that the KUSF support is cost-based.

WHEREFORE Staff requests the Commission consider its motion and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,



Patrick T. Smith, #18275
Assistant Litigation Counsel
1500 S.W. Arrowhead Road
Topeka, KS 66604
(785) 271-3110 phone
(785) 271-3167 fax
For Commission Staff

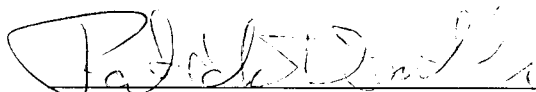
² In years prior to the accumulation of 5 years of data through the submitted forms, Staff would request additional information on investment expenditures only (i.e. no expense data was requested) in order to limit the data gathering burden on the company.

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

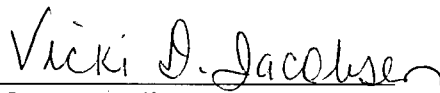
Patrick T. Smith, of lawful age being first duly sworn upon oath states:

That he is the attorney for the Corporation Commission Staff in this matter; that he has read and is familiar with the foregoing Notice and that the statements made therein are true and correct to the best of his information, knowledge and belief.

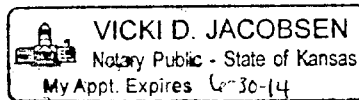


Patrick T. Smith

Subscribed and sworn to before me Friday, October 07, 2011.



Notary Public



My appointment expires: 6-30-14

CERTIFICATE OF SERVICE

12-S&TT-234-KSF

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Motion of Commission Staff Requesting the Commission Order S & T Telephone Coop Association, inc. to Submit to an Audit for Purposes of Determining its Cost-Based Kansas Universal Service Fund Support Pursuant to K.S.A. 66-2008, was placed in the United States mail, postage prepaid, or hand-delivered this 11th day of October, 2011, to the following:

COLLEEN R. HARRELL
JAMES M. CAPLINGER, CHARTERED
823 W 10TH STREET
TOPEKA, KS 66612
Fax: 785-232-0724
colleen@caplinger.net

MATTHEW SPURGIN, ASSISTANT LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
Fax: 785-271-3167
m.spurgin@kcc.ks.gov
Hand Delivered

STEVE RICHARDS, GENERAL MANAGER
S&T TELEPHONE COOPERATIVE ASSOCIATION, INC.
320 KANSAS AVENUE
PO BOX 99
BREWSTER, KS 67732
Fax: 785-694-2750



Vicki Jacobsen