### THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners:

Shari Feist Albrecht, Chair Jay Scott Emler Dwight D. Keen

)

)

)

)

In the Matter of An Investigation to Determine the Assessment Rate for the Twenty-Second Year of the Kansas Universal Service Fund, Effective March 1, 2018.

Docket No. 18-GIMT-084-GIT

## ORDER APPROVING TRAFFIC FACTORS FOR CONSUMER CELLULAR INCORPORATED

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:

1. Pursuant to K.S.A. 66-2008(a), the Commission requires "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 to contribute to the [Kansas Universal Service Fund ("KUSF")] based upon the provider's intrastate telecommunications services net retail revenues on an equitable and nondiscriminatory basis." On December 27, 1996, in Docket No. 94-GIMT-478-GIT, the Commission declared that the contribution would be a yearly assessment on each provider's intrastate retail revenues.

2. Pursuant to the Commission's Order of January 24, 2012, and Amended Order of February 1, 2012, in Docket No. 12-GIMT-168-GIT, wireless carriers and interconnected voice over internet protocol (VoIP) providers have three options for identifying their Kansas intrastate retail revenues. First, a provider may utilize the Federal Communications Commission's (FCC)

Safe Harbor percentages to allocate intrastate and interstate Kansas revenues.<sup>1</sup> If a wireless carrier or VoIP provider utilizes the Safe Harbor percentages, no filings regarding the methodology are necessary. Second, a wireless carrier or VoIP provider may utilize a traffic study to determine revenue allocations between jurisdictions. If the wireless carrier or VoIP provider uses the traffic study methodology, it must file to request to use the methodology for KUSF purposes and provide the jurisdictional percentages (also known as "traffic factors") to the Commission, at least annually in the annual KUSF docket, and identify the specific timeframes for which the traffic factors apply. This filing requirement applies even if the traffic factors did not change from the prior year. Third, a wireless carrier or VoIP provider may directly assign revenue between jurisdictions.<sup>2</sup> If the wireless carrier or VoIP provider uses the direct assignment methodology, it does not need to provide the jurisdictional percentages, but it must request approval to use the methodology and inform the Commission at least annually, in the annual KUSF docket, whether it continues to use such methodology. Additionally, if the wireless carrier or VoIP provider uses either the traffic study or direct assignment methodologies, it must provide an affidavit from an officer of the company attesting that it uses the inverse of the intrastate KUSF revenue percentages for interstate, Federal Universal Service Fund (FUSF) remittance purposes. Such affidavit should accompany the filings referenced above.

3. On October 2, 2018, Consumer Cellular, Incorporated (CCI) filed its traffic study factors for the period beginning October 1, 2018 and ending December 31, 2018. The filing was accompanied by an affidavit signed by Jill Leonetti, Treasurer of CCI, stating that the Company

<sup>&</sup>lt;sup>1</sup>See Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd. 7518 ¶65 (June 27, 2006); See also Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues, WC Docket No. 06-122 (November 5, 2010).

<sup>&</sup>lt;sup>2</sup>See Implementation Order Adopting Staff Report and Recommendation and requiring VOIP Providers Operating in Kansas to Report and Remit the Kansas Universal Service Fund by Jan. 15, 2009. ¶14, Docket No. 07-GIMT-432-GIT (Sep. 22, 2008).

uses the traffic factor methodology and calculate its percentage for KUSF reporting purposes from the inverse of the federal percentage.

4. The Commission finds CCI's filing appropriate and approves the traffic study factors submitted for KUSF remittance purposes.

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

A. Consumer Cellular, Incorporated's traffic study factors filed on October 2, 2018, for the period beginning October 1, 2018, and ending December 31, 2018 are approved.

B. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order to petition the Commission for reconsideration or request a hearing, as provided in K.S.A. 77-542.<sup>3</sup>

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

# BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: \_ 11/27/2018

Lynn M. Ref

Lynn M. Retz Secretary to the Commission

AAL

<sup>&</sup>lt;sup>3</sup>K.S.A. 77-537(b); K.S.A. 66-118b; K.S.A. 77-529(a)(1).

### **CERTIFICATE OF SERVICE**

18-GIMT-084-GIT

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

electronic service on <u>11/27/2018</u>

THOMAS J. CONNORS, ATTORNEY AT LAW CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3116 tj.connors@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3116 d.nickel@curb.kansas.gov

DELLA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-2713116 d.smith@curb.kansas.gov

THOMAS E. GLEASON, JR., ATTORNEY GLEASON & DOTY CHTD PO BOX 6 LAWRENCE, KS 66049-0006 Fax: 785-856-6800 gleason@sunflower.com

KIMBERLY GEUDER, COMPLIANCE REPORTING SPECIALIST INTESERRA CONSULTING GROUP 151 SOUTHHALL LANE SUITE 450 MAITLAND, FL 32751 kgeuder@inteserra.com TODD E. LOVE, ATTORNEY CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3116 t.love@curb.kansas.gov

SHONDA RABB CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3116 s.rabb@curb.kansas.gov

MARK DOTY GLEASON & DOTY CHTD 401 S MAIN ST STE 10 PO BOX 490 OTTAWA, KS 66067-0490 Fax: 785-842-6800 doty.mark@gmail.com

CARLY FIOLA, COMPLIANCE REPORTING SPECIALIST INTESERRA CONSULTING GROUP 151 SOUTHHALL LANE SUITE 450 MAITLAND, FL 32751 cfiola@inteserra.com

COLLEEN R. JAMISON JAMES M. CAPLINGER, CHARTERED 823 SW 10TH AVE TOPEKA, KS 66612-1618 Fax: 785-232-0724 colleen@caplinger.net

### **CERTIFICATE OF SERVICE**

18-GIMT-084-GIT

AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov

BRUCE A. NEY, EXEC. DIR.-SENIOR LEGAL COUNSEL NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T MOBILITY 816 CONGRESS AVE SUITE 1100 AUSTIN, TX 78701-2471 Fax: 512-870-3420 bn7429@att.com DIANE C. BROWNING, ATTORNEY SPRINT SPECTRUM L.P. KSOPHN0314-3A459 6450 SPRINT PKWY OVERLAND PARK, KS 66251-2400 Fax: 913-523-0571 diane.c.browning@sprint.com

KEVIN K. ZARLING UNITED TELEPHONE CO. OF KANSAS D/B/A CENTURYLINK 400 W 15TH ST STE 315 AUSTIN, TX 78701-1647 Fax: 913-345-6756 kevin.k.zarling@centurylink.com MARK E. CAPLINGER MARK E. CAPLINGER, P.A. 7936 SW INDIAN WOODS PL TOPEKA, KS 66615-1421 mark@caplingerlaw.net

RACHEL LIPMAN REIBER, ATTORNEY REIBER LAW OFFICE, LLC 214 S CHESTNUT, SUITE 3 OLATHE, KS 66061 Fax: 913-782-4445 rlreiberlaw@gmail.com

DAVID E. BENGTSON, ATTORNEY STINSON LEONARD STREET LLP 1625 N WATERFRONT PKWY STE 300 WICHITA, KS 67206 Fax: 316-265-1349 david.bengtson@stinson.com

/S/ DeeAnn Shupe DeeAnn Shupe