2011.06.22 15:30:36
Kansas Corporation Commission
/S/ Patrice Petersen-Klein

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a Review of the Kansas Universal Service Fund, including the Forward-Looking High-Cost Model Used to Determine Cost-Based Kansas Universal Service Fund Support for Price Cap Carriers And Competitive Eligible Telecommunications Carriers Offering Service in Price Cap Carrier Study Areas, the Level of Participation of Interconnected VOIP and Wireless Service Providers, the Effect of Federal Universal Service Fund Reform, the Definition of Universal Service, and Other Matters	)	Docket No. 11-GIMT-420-GIT

Received
on
JUN 2 2 2011
by
State Corporation Commission
of Kansas

COMMENTS OF THE
<u>CITIZENS' UTILITY RATEPAYER BOARD</u>

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following comments in this docket in response to the Kansas Corporation Commission's (KCC or Commission) January 26, 2011, Order Initiating Investigation, Establishing Comment Schedule, and Appointing Prehearing Officer (Order Initiating Investigation) and the related prior December 7, 2010, Notice of Filing Staff Report and Recommendation (Staff's Report). The KCC's Order Initiating Investigation seeks comments on issues identified in Staff's Report and related points. In support of its position, CURB states and alleges as follows:

I. Introduction.

1. In the Order Initiating Investigation, the KCC seeks comments on Staff's Report and six specific points set forth below.[1] The KCC also indicates that each party may develop and submit additional issues for consideration (each issue should be addressed in a thorough manner to provide a basis for consideration by the KCC and for reply comments by other parties) and each party should clearly prioritize the issues it believes should be addressed in this proceeding.[2] Finally, the KCC's March 9, 2011, Order Granting Joint Motion to Modify Comment Schedule and Modifying Schedule (Order Modifying Schedule) extended the due date for comments so that parties could consider the implications of the Federal Communications Commission (FCC) February 8, 2011, Notice of Proposed Rulemaking (NPRM)[3] and related comments by parties in that proceeding which affects some of the issues in this proceeding such as the definition of Kansas universal service, National Broadband Plan, federal universal service fund, intercarrier compensation, separations, and other matters. The previously mentioned six specific issues identified for comment by the KCC include:

1) The level of participation of providers of alternative technologies, such as VOIP and wireless, in the market.

2) Whether costs of Interconnected VOIP and wireless should be included in a cost model, and if so, how those costs should be ascertained and reflected in the cost model.

3) Whether and how the National Broadband Plan and federal USF, intercarrier compensations, and separations reform should be addressed in a review of the KUSF cost model.

4) Whether, in light of pending FCC action with regard to separations, a separations factor should be reflected in the cost model and if so, how that factor should be reflected.

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[1] Order Initiating Investigation, ¶ 15.
[2] Order Initiating Investigation, ¶ 16.
[3] FCC NPRM, *In the Matter of 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 a 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).*

5) Whether the Commission should review the definition of universal service for Kansas. See K.S.A. 66-2002(k). If so, what potential change should be considered. For example, should the Commission include broadband as the FCC is considering doing for supported services for federal universal service? Would this require statutory changes?

6) Whether the Commission should phase out competitive ETC KUSF support, similar to the proposal to phase out federal competitive ETC support in the National Broadband Plan. If so, what kind of a process and timeframe might be appropriate?

2. CURB supports most of the positions of The National Association of State Utility Consumer Advocates (NASUCA) reflected in the April 18, 2011, initial comments and May 23, 2011, reply comments to the FCC's NPRM as it relates to some of the common issues in this proceeding. However, CURB will address how the issues in the NPRM and the national Broadband Plan relate to the KCC's identified issues on a Kansas-specific basis. As requested in the KCC's Order Initiating Investigation, CURB will address in order those issues that are a greater priority, instead of following the order of issues set forth in the KCC's Order Initiating Investigation. In addition to the issues set forth by the KCC in this proceeding (and as allowed by the KCC's Order Initiating Investigation) CURB will propose a change in policy to limit KUSF support to one primary residential service line. As part of its comments CURB will consider the overarching public policy goals of the Kansas Telecommunications Act of 1996 (K.S.A. 66-2001):

(a) ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent service at an affordable price;

(b) ensure that consumers throughout the state realize the benefit of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;

(c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;

(d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet provider, and others; and

(e) protect consumers of telecommunications services from fraudulent business practices that are inconsistent with the public interest, convenience and necessity.

II. Affordable and Universally Available Residential Basic Local Service Should Continue to be the Primary Goal and Underlying Foundation.

3. Prior to addressing the specific issues set forth by the KCC, it is critical to emphasize the continued importance of affordable and universal basic local service for residential consumers. Affordable and universal <u>basic local service for residential consumers</u> (including Lifeline subscribers consisting of poverty level and low-income customers) should continue to be the overarching priority and remain the primary foundation for consideration regarding any new policy or actions taken by the KCC in this proceeding or by the FCC related to issues in the NPRM. Because of the very rural nature of Kansas, FCC reform could negatively impact basic local rates and universal service for Kansas residential consumers. Both the KCC's April 1, 2011, initial comments and April 18, 2011, reply comments to the NPRM provide an excellent background regarding the very rural nature and sparse population density of Kansas - - and these factors make it even more difficult to maintain affordable and universally available basic local service, while also attempting to promote competition and advance the development of a statewide telecommunications infrastructure. Among these statistics, the KCC indicates the following:

- ✓ Kansas is ranked 42nd in population density per the 2010 census data;[4]
- ✓ Kansas average population density of 34.9 persons per square mile is much lower than the national average of 87.4 persons per square mile, and if the three most densely

[4] Commission NPRM reply comments, ¶ 7.

populated counties are removed (Johnson, Shawnee and Sedgwick), the population density falls to 18.4 persons per square mile;[5]

- ✓ Only 1.1% of the total area of Kansas is recognized as "urban";[6] and
- ✓ Almost one-fourth of Kansas counties (mostly those with the lowest densities), lost 10% of their population from 2000-2010 per the 2010 census data.[7]

4. The FCC's NPRM proposes aggressive and comprehensive reform in one concentrated proceeding, consisting of many of the same issues in this Kansas proceeding such as intercarrier compensation reform (ICC), separations reform, and promoting affordable and universal broadband (the FCC proposes to transition federal high-cost fund (HCF) support of local service to a Connect America Fund (CAF) which will provide support for broadband implementation and services). Even the KCC is concerned the FCC may be attempting to do too much in too short of a timeframe.[8] The FCC has had many years to address and resolve the ICC and separations reform issues (and any such reforms could have been phased-in by now). But the FCC's current proposal to implement drastic and significant policy changes at one time (even if some elements are phased-in to some degree) can have far-reaching negative impacts on rates and related affordable and universal basic local service.

5. CURB is concerned that many of the decisions on these issues could be railroaded by the FCC's priorities and could foist undesirable impacts on Kansas residential consumers. The FCC unduly focuses on the "end-game" by indicating its final goals, but the FCC ignores the most important, difficult, and divisive details of getting from step A today to step Z in the final end game. The FCC's failure to openly address these important intervening details could mean that affordable residential basic local service will be sacrificed in Kansas along the way, or the

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[5] Commission NPRM reply comments, ¶ 8.
[6] *Id.*, ¶ 8.
[7] Id., ¶ 9.
[8] Commission April 1, 2011, Comments, ¶ 4.

Kansas Universal Service Fund (KUSF) could be significantly increased - - imposing additional burdens on Kansas consumers. It is much easier for the FCC to propose significant reforms, because it is the states (and not the FCC) that will have to deal with the potential harmful consequences of basic local service rate increases for residential customers related to many of these reforms.

6. The FCC proposes to create a CAF to help fund broadband deployment in high cost and under-served areas, and this fund would eventually replace all other explicit support provided by the current HCF for primarily voice local service, as well as claimed "implicit" subsidies from ICC reform. The FCC also claims that the CAF will not eliminate universal service support for communications services in high cost areas of the country but will only improve the efficiency and effectiveness of that support.[9] The FCC claims that inefficiencies can be squeezed out of the current HCF support mechanism and the CAF will be designed to be more efficient. No matter how the FCC describes its proposal, especially without any supporting calculations or specific documentation, it is clear that existing support structures for basic local service will be phased-down with this support transitioned to the CAF to support broadband deployment.

7. NASUCA points out some of the problems regarding the general claims and absence of details in the FCC proposal:[10]

a) the specifications of the broadband service to be funded through the CAF has not yet been determined;

b) the precise amount of inefficiencies to be squeezed out of the current HCF have not been defined;

c) in some areas both high-cost and low-cost voice and broadband service will be provided by the same carriers over the same networks, so it will be extremely difficult and pointless to squeeze inefficiencies out of funding for voice service without addressing the same underlying cost causation problem for broadband services;

[9] FCC NPRM, ¶ 15.

[10] FCC NPRM, pages 8 and 9, Introduction and Executive Summary - D. General USF Principles.

d) the FCC has no idea how much money is needed to preserve current voice service or advance it, although it is determined to be less than the amount currently being paid by the HCF;

e) the FCC has no idea how much money is needed to ensure universal availability of broadband (either one-time or continuing, where there is no business case for providing broadband), or to ensure reasonably comparable broadband rates; and

f) the FCC has no idea how much money is needed to ensure universal availability of mobility (whether broadband or not, and either one-time or continuing, where there is no business case for providing mobility services).

8. Much of the FCC's proposed reform in the NPRM can have a negative impact on affordable and universally available residential basic local telephone service in Kansas depending upon how the details of the reform are implemented. CURB has additional concerns because the FCC has a history of making decisions that favor its jurisdictional interests over the interests of state regulatory agencies, and these matters will be addressed later. The KCC's reply comments in the NPRM support CURB's concerns, where the KCC states,

> The FCC's many proposed rule changes put much at stake for Kansas. Kansas is heavily dependent on federal Universal Service Fund ("FUSF") support to keep rural rates affordable and FUSF support to help fuel broadband deployment on wireless and wireline networks. Kansas ability to absorb cost shifts is limited. Kansans have made up for lowered intrastate access charges through a combination of higher local rates and substantial KUSF contributions for many years.[11]

9. CURB is also concerned with various proposals of the FCC NPRM because:

a) if rural LECs cannot absorb the decline in HCF support (and other support mechanisms) for basic local service, the KCC could be faced with difficult decisions to either increase local rates or increase assessments to consumers by providing increased support to Kansas companies via a larger KUSF, or some combination of both;

b) if rural LECs cannot absorb the decline in federal support structures for access via ICC reform, the KCC could be faced with difficult decisions to either increase local rates, or increase assessments to consumers by providing increased support to Kansas companies via a larger KUSF, or some combination of both;

[11] KCC NPRM reply comments, pp. 2 – 3.

c) the FCC has a long history of shifting interstate costs to the state jurisdiction (or shifting jurisdictional revenues to the interstate jurisdiction) to justify FCC policy decisions and reduce the federal USF, and this approach is not expected to change under the current reforms and this can cause increases in residential local rates or the KUSF.

III. Should the Kansas Definition for Universal Service be Revised to Include Broadband?

10. The KCC's Order Initiating Investigation seeks comments regarding: *"Whether the Commission should review the definition of universal service for Kansas. See K.S.A. 66-2002(k). If so, what potential change should be considered. For example, should the Commission include broadband as the FCC is considering doing for supported services for federal universal service? Would this require statutory changes?"* The focus of Staff's Report was to recommend that the KCC undertake a review of the forward-looking high-cost model used to determine cost-based KUSF support for telecommunications carriers that have elected price cap regulation, and to review related legal and policy issues. Prior to conducting a cost study as proposed by Staff, CURB suggests it is most efficient and important to identify and establish those services that will be subject to a cost review (such as broadband service), and to address legal and policy issues related to those services. Therefore, it is important to address whether the FCC and the states have legal authority to include broadband in the definition of universal service and provide universal service support for broadband.

11. CURB agrees with the conclusion of NASUCA, that it appears neither the FCC nor the states have statutory authority to provide universal service support for broadband, and this is the largest legal barrier to overcome. Staff does not provide its opinion on this specific legal issue in either the Staff Report or in Staff's comments on the NPRM, therefore Staff's specific position on this issue is not known at this time. Similarly, many other state regulatory agencies did not address this legal issue in their NPRM comments. In Section IV of the NPRM, the FCC

discusses its statutory authority to provide universal service support for broadband service,[12] and it concludes that it has such authority.[13] However, NASUCA concludes that broadband is not a universal service under current law because the law defines universal service as a **telecommunications service**, <u>not an advanced or information service</u>, and universal service support goes to **telecommunications carriers** and comes from **telecommunications carriers** and providers of **telecommunications.** The statutory description of universal service does not mention advanced service, and thus does not include broadband. NASUCA makes the following arguments:[14]

a) First, 47 U.S.C. § 254(c)(1) states clearly and unambiguously that "[u]niversal service is an evolving level of **telecommunications services**…" (Emphasis added.) When describing the process of expanding universal service support, 47 U.S.C. §254(c)(1) states that the Joint Board makes recommendations to the FCC regarding **telecommunications services**, which among other factors, are being deployed by **telecommunications carriers in public telecommunications networks.** The law **does not** say that "universal service is an evolving level of telecommunications service and/or advanced services…"

b) Second, universal service support can go only to "telecommunications carriers" as ETCs under §214(e)(1), which must be common carriers. "[O]nly an eligible **telecommunications carrier** designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support…"[15] And "[a] **common carrier** designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title."[16] (Emphasis added.) Thus, NASUCA concludes that non-telecommunications carriers and non-common carriers cannot receive USF.

c) Finally, it must be noted that USF contributions come from telecommunications carriers and services, under §254(d): "Every **telecommunications carrier** that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission [FCC] to preserve and advance universal service… Any other provider of

[12] NPRM, ¶¶ 55-74
[13] *Id.*, ¶ 55.
[14] NASUCA NPRM initial comments, pp. 27 – 28.
[15] 47 U.S.C. § 254(e).
[16] 47 U.S.C. § 214(e)(1).

interstate **telecommunications** may be required to contribute to the preservation and advancement of universal service if the public interest so requires." (Emphasis added.)

12. Although NASUCA favors support for broadband services, it explains that the FCC and other stakeholders must deal with the law as it is and not as they wish it to be, and CURB concurs with this opinion. NASUCA explains how the FCC and the Joint Board have previously considered adoption of another principle (in addition to the six explicit principles already in the act and the competitive neutrality principle adopted by the Joint Board and the Commission in 1998) that would justify support provided to broadband services, and NASUCA favors the adoption of such a principle to provide support for broadband services. However, NASUCA cautions than even adopting a new principle faces difficulty in application because of a previous Tenth Circuit decision[17] that indicates the FCC is limited to considering only existing principles in § 254(b) and other FCC adopted principles "are only aspirational", and the D.C. Circuit held last year in Comcast[18] that the FCC's authority must be found in more specific provisions of the Act rather than those merely set forth as policy aspirations.[19] The remainder of NASUCA's legal argument is set forth at its comments in the NPRM and CURB concurs with those conclusions without repeating all arguments in these comments.

13. Regarding Kansas treatment of broadband and universal service, K.S.A. 66-2002(k) permits the KCC to: "modify the definition of universal service and enhanced universal service, and KUSF, taking into account advances in telecommunications and information technology and services." Furthermore, K.S.A. 66-1,187 (p) provides a definition of "universal service" which "means telecommunications services and facilities which include: single party, two-way voice

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[17] See *Qwest I*, 258 F.3d 1191, 1199-1200, see also *Texas Office of Public Utility Counsel v. FCC*, 183 F.2d 393, 421 (5th Cir. 1999).
[18] *Comcast Corp. v. FCC,* 600 F.3d 642, 654-655 (D.C. Cir. 2010).
[19] NASUCA NPRM initial comments, pp. 29 – 30.

grade calling; stored program controlled switching with vertical service capability; E911 capability; tone dialing; access to operator services; access to director assistance; and equal access to long distance services." Also, K.S.A. 66-1,187 (q) provides a definition of "enhanced universal service" which "means telecommunications services, in addition to those included in universal service, which shall include: Signaling system seven capability, with CLASS service capability; basic and primary rate ISDN capability, or the technological equivalent, full-fiber interconnectivity, or the technological equivalent, between central offices; and broadband capable facilities to: All schools accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services."

14. The "indirect support"[20] for a wireline or wireless voice network that is also used for broadband (mostly in those rural areas served by rural LECs) has been supported by the KUSF, Kan-ed[21], FUSF and the Rural Utilities Service (RUS)[22] funding in Kansas.[23] Therefore, the KUSF currently supports "indirect" broadband that is also used for providing voice services, but it does not support broadband used exclusively for video, internet or other non-voice applications - - and this seems to be the limited application of broadband as reflected in the universal service definition of Kansas statutes. The KCC acknowledges that broadband is not a supported service in Kansas and it proposes that states be given adequate time to modify their rules to include

[20] "Indirect" support for broadband is identified as KUSF or FUSF support for a voice network that is also used for broadband. This is different than "direct" support for broadband services, because the FCC proposes conditioning federal broadband support to states providing matching support for broadband per the Commission's NPRM reply comments, page 3.

[21] The Kan-ed program was established by the Kansas legislature in 2001, and through the Kan-ed Act, the Kansas Board of Regents was charged with providing a broadband technology-based network to which schools, libraries and hospitals may connect for broadband internet access and intranet access for distance learning. Kan-ed has developed a backbone broadband network through partnerships with private companies and assisted end-user institutions to help stimulate broadband services and provide access to educational and medical services in rural areas. The KUSF has funded this program at $10 million per year in recent years. Commission NPRM reply comments, ¶¶ 21 – 22.

[22] RUS is a federal agency providing low-cost loans to qualifying rural providers of telephone/broadband services.

[23] Commission's NPRM reply comments, ¶¶21 – 23.

broadband as a supported service if the FCC wants to encourage states to provide matching funds to qualify for CAF or Mobility Fund support.[24]

IV. Whether and How the National Broadband Plan, Federal USF, Intercarrier Compensation, and Separations Reform Should be Addressed in the KUSF Cost Model?

15. The KCC's Order Initiating Investigation seeks comments regarding: *"Whether and how the National Broadband Plan and federal USF, intercarrier compensations, and separations reform should be addressed in a review of the KUSF cost model."* The issue of separations reform will be addressed later in these comments because this was also established as a separate issue by the KCC in its Order Initiating Investigation.

16. It is clear from Staff's Report and these KCC comment issues that matters regarding a KUSF cost model are a priority and an extremely important issue - - and CURB agrees. After legal issues are addressed, CURB suggests that determining costs for "cost-based KUSF support for telecommunications carriers that have elected price cap regulation" is the single most important and difficult issue to be addressed in this proceeding. This issue is also likely to be the most contentious issue between parties based on the experience of the KCC's previous cost proceedings establishing a cost model and evaluating the costs of retail local service for AT&T and CenturyLink. CURB agrees with Staff and the KCC's conclusion that it is time to undertake another review of the costs of local service for price cap carriers that are included in the KUSF. The costs of AT&T were last reviewed in the 1998 to 2004 timeframe (Docket 98-SWBT-677-GIT) and the costs of CenturyLink were last reviewed in the 1999 to 2000 timeframe (Docket 00-UTDT-455-GIT).

17. On September 30, 1999, in Docket No. 99-GIMT-326-GIT (Docket 326), the KCC adopted the FCC's High Cost Proxy Model (HCPM) to determine KUSF supported costs for

[24] Commission NPRM reply comments, ¶ 5.

carriers that elected price cap regulation, which are Southwestern Bell Telephone Company d/b/a AT&T and CenturyLink.[25] The KCC recognized that the FCC's HCPM cost model included over 1,400 input variables in an effort to recognize various state conditions, and the parties to Docket 326 agreed to use those inputs with limited exceptions. On December 29, 1999, the KCC adopted an order establishing cost model input variables and assumptions for the HCPM cost model.[26] Although the two previous orders in Docket 326 established the cost study model and cost study inputs to the model, the actual specific cost of local service for AT&T (then SWBT) and CenturyLink were evaluated in separate dockets specific to those carriers in Docket No. 98-SWBT-677-GIT (Docket 677 for AT&T)[27] and Docket No. 00-UTDT-455-GIT (Docket 455 for CenturyLink).[28] The evaluation of AT&T's cost of local service was opened in April 1998 and resulted in a KCC order approving a final stipulation among primary parties on January 8, 2004.[29] The evaluation of CenturyLink's cost of local service was opened in December 1999 and resulted in a KCC order approving a final stipulation among primary parties on August 31, 2000.[30] The KUSF support available to AT&T, CenturyLink, and any designated Eligible Telecommunications Carrier (ETC) serving in AT&T or CenturyLink's study areas is currently based on the KUSF cost model.[31]

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[25] *In the Matter of an Investigation Into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Modifying the KUSF and Establishing a Cost-Based Fund,* Docket No. 99-GIMT-326-GIT (Docket 326), Order No. 10: Adopting a Forward Looking Cost Methodology for Purposes of Determining KUSF Support and Selecting the FCC's Cost Proxy Model (Order 10).

[26] Docket 326, Order 16: Determining the Kansas-Specific Inputs to the FCC Cost-Proxy Model to Establish a Cost-Based Kansas Universal Service Fund (Order 16), p. 3.

[27] *In the Matter of an Investigation into Southwestern Bell Telephone Company's Cost to Provide Local Service, as required by K.S.A. 1996 Supp. 66-2008(d),* Docket 677.

[28] *In the Matter of an Investigation into the Cost to Provide Local Service of the United Telephone Companies of Kansas d/b/a Sprint, as required by K.S.A. 1998 Supp. 66-2008(d),* Docket 455.

[29] Primary parties to the Stipulation included SWBT, CURB, Staff, and AT&T (AT&T was a separate company at that time providing primarily long distance telephone service in Kansas).

[30] Primary parties to the Stipulation included CenturyLink (then United Telephone Company), CURB, Staff, SWBT, Sprint, Jefferson County, AT&T (AT&T was a separate company at that time providing primarily long distance telephone service in Kansas).

[31] Staff Report, page 3.

18. Although Staff's Report and the KCC comment issues in this proceeding make it clear that cost study issues are a priority and extremely important, the FCC's NPRM virtually ignored the issue of cost studies in addressing reforms for the HCF, ICC and other matters. CURB agrees with NASUCA's conclusion on this matter,

> Unfortunately, in issuing its current various proposals for "reform", the FCC has failed to tackle the most fundamental issue of all: determining what costs are reasonable and necessary for voice service and for broadband service and, thus, are appropriately recovered through ICC and universal service support. Instead, the FCC has largely followed the ideological path set forth by the industry and assumed that "reform" for universal service and ICC is a zero sum game, in which: audits have no place, a true examination of the costs of providing voice, broadband and video service is irrelevant; and accurate and consistent treatment of the costs of the shared plant used to provide interstate and intrastate, regulated and unregulated services is a concept that does not deserve consideration.[32]

19. Although it may be reasonable and possible to use surrogate information to replace detailed cost studies when addressing the costs of local service, intercarrier compensation, and broadband services - - the FCC's approach to uniformly ignore "cost" in all of these cases is not a reasonable solution to these complex issues. Unfortunately, ignoring costs may be the only way that the FCC can accomplish its desired outcomes for reform in all of these areas - - CURB suggests it is more reasonable to thoroughly examine the costs involved with the FCC's proposed reforms.

20. In fact, Kansas statutes require the examination and consideration of costs in addressing the cost of local service of price cap carriers. K.S.A. 66-2008(c) states the Commission shall periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers to provide local service justify modifications of the KUSF.

[32] NASUCA NPRM initial comments, p. 3.

21. Prior to addressing detailed issues regarding cost studies, CURB will generally summarize its positions regarding how the National Broadband Plan, federal USF, and intercarrier compensation should be addressed in general and regarding the implications of a KUSF cost model. CURB will not address these issues in detail at this time, but will provide a summary of its conclusions. CURB generally supports NASUCA's comments on the NPRM regarding most of the following summarized issues:

a) National Broadband Plan – HCF and FUSF support should continue to be used to offset or reduce the cost of local service of all applicable carriers even as it may be phased-down under the NPRM. The CAF (the support mechanism for broadband) should not replace support for voice services via the HCF/USF at this time. And if and when implemented, the CAF should be used to reduce the jurisdictional cost of broadband services, depending on how the cost of broadband services are allocated between the intrastate and interstate jurisdiction subject to separation reform (and assuming that broadband services are included as a universal service to be supported by federal and state USFs).

b) National Broadband Plan – Any phase-down or elimination of HCF support and other support structures should not impose rate increases upon basic local service of residential consumers or impose increases in assessments upon residential consumers (via increasing the size of the KUSF) which will negatively impact affordable local service and universal service.

c) National Broadband Plan – CURB supports the FCC's proposed concept of making the HCF and other federal support structures more efficient and effective. And CURB supports some of the NPRM proposals to phase-down, remove, or cap the related funding, given such proposals do not shift costs (or do not result in reduced revenues/funding to carriers that cause increased rates) to Kansas residential basic local service customers via rate increases or increased assessments from the KUSF.[33] However, these FCC proposals cause CURB to wonder why such efficiencies and improvements were not implemented many years ago by the FCC if they are in fact a reasonable and effective means to control costs of carriers. First, the reduction in federal support structures could cause increases in residential rates of basic local service for both rural LECs (via the KUSF audit process) and price cap carriers (primarily CenturyLink) via the cost model process addressed in this proceeding. Second, the implementation of FCC efficiency measures could reduce the amount of HCF support revenues that CenturyLink receives. Because these HCF revenues are offset against costs as part of the Kansas process to establish costs of local service for price cap carriers, this reduction in HCF revenues could cause increases in rates of residential basic local service customers either directly or through increases in the size of the KUSF. Third, any FCC efficiency

[33] FCC NPRM, ¶ 21.

measures implemented for the HCF at the federal level should be considered for implementation at the state level in a cost model for all price cap carriers (regardless of whether these carriers actually receive HCF support). For example, if the FCC adopts a cap on general and administrative costs for HCF support calculations, then such a cap should be considered for adoption at the state level when calculating the cost of local service for CenturyLink and AT&T. In addition, cost control measures used in other states should be considered for adoption. For example, the Georgia Public Service Commission uses certain cost control measures when calculating costs of carriers in its annual review of requests for changes in Universal Access Funds (UAF) that exceed a *de minimus* level. Although these measures are generally applied to small LEC's request for UAFs in Georgia, it would be reasonable to adopt such measures to apply to all price cap carriers in Kansas when calculating the cost of local service.

d) National Broadband Plan – CURB agrees with NASUCA's comments regarding the concerns of using an auction for implementing Phase I of the CAF, and agrees that the creation of a cost model would have certain advantages.[34]

e) National Broadband Plan – CURB does not agree with the FCC that the CAF is automatically a more efficient means of meeting the nation's universal service goals because the FCC has absolutely no data to rely on such an assertion. The FCC does not know the specifications (upstream and downstream speeds) of the broadband service that will be provided, does not know the cost of providing broadband service, does not know the extent of broadband service that will supported in high cost areas or other areas where broadband is not available, does not know the size or dollar amount of the CAF, does not know now broadband service will be allocated between state and federal jurisdictions via possible separations reform, does not know how much support is necessary to ensure reasonably comparable broadband rates, does not know how much money is needed to ensure universal availability of mobility (whether broadband or not), and does not address specific policies that must be implemented to ensure that the CAF is operated efficiently and effectively and to ensure carriers do not over-collect from the fund. This issue could impact cost models in Kansas in the future depending upon separations reform and how, or if, broadband costs are allocated between the state and interstate jurisdiction for ratemaking purposes. Even if no direct broadband costs are allocated to the intrastate jurisdiction via the separations process, any federal support via the CAF for broadband services should be offset against the local service costs of Kansas carriers during the costing process (consistent with the same approach currently used by the KCC for federal USF support).

f) Federal USF – HCF and FUSF support should continue to be used to offset or reduce the cost of local service of all applicable carriers in cost model calculations.

g) Intercarrier Compensation – Consistent with NASUCA's position, CURB generally supports the concepts behind the Omaha Plan submitted to the Federal-State Joint Board on Universal Service (Joint-Board).[35]

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[34] NASUCA NPRM initial comments, pp. 57 – 70.

[35] NASUCA NPRM initial comments, pp. 11, 26 and 27.

h) Intercarrier Compensation - CURB disagrees with ICC proposals that make allegations about regulatory arbitrage but have not calculated the impact of such arbitrage, the proper amount that is necessary to reduce access charges for such arbitrage cannot be determined without supporting documentation.[36]

i) Intercarrier Compensation – CURB disagrees with the automatic presumption that phantom traffic and traffic pumping are the result of inter- or intra-jurisdictional differentials in ICC.[37]

j) Intercarrier Compensation – To the extent presumed, reduced ICC/access charges does not automatically lead to improved competition or result in reduced long distance or other retail rates for consumers. This has never been proven by a carrier in a Kansas access charge proceeding.

k) Intercarrier Compensation – There is nothing wrong with pricing ICC above carriers' incremental costs to recover some portion of common costs. The FCC's proposal to price at or below incremental cost for ICC is not reasonable. The FCC's proposal is especially harmful to consumers that reside in states that have passed laws (such as Kansas) which require every lost dollar (or reduced dollar) of an incumbent LEC's access revenue to be rebalanced as an increase in basic local rates or to be included in a state USF and recovered from consumers via an assessment charge.[38] This issue could impact Kansas cost models when calculating the mirroring of interstate access charges and the residual amount to be assigned to the KUSF. If interstate access charges are further reduced (especially if reduced to a zero amount), and Kansas statutes continue to require mirroring of interstate access charges, this would result in larger amounts being rebalanced and included in the KUSF (or result in direct increases in local rates of LECs).

l) Intercarrier Compensation – CURB disagrees with the assumption that because per-minute charges are inconsistent with IP networks, such per-minute charges must be eliminated - which amounts to eliminating charges for interconnection and transport arrangements.[39]

m) Intercarrier Compensation Intrastate Access Charges – CURB does not believe that the FCC has the authority to establish a methodology, or establish ICC rates, to replace or pre-empt state (intrastate) access charge rates.[40]

n) Intercarrier Compensation Early Adopter Benefits – CURB generally agrees with the FCC proposal and the KCC position that if ICC reform is implemented (although CURB may disagree with the specific ICC reform), Kansas should be rewarded for being an early adopter of reducing intrastate access charges and mirroring interstate access

[36] NPRM, ¶ 495 and NASUCA NPRM initial comments pp. 90 – 91.
[37] NASUCA NPRM initial comments, pp. 90 – 91.
[38] NASUCA NPRM initial comments, pp. 96 – 112.
[39] NPRM, ¶ 40 and NASUCA NPRM initial comments pp. 90 - 92.
[40] NASUCA NPRM initial comments, pp. 93 – 95.

charges. This would mean that Kansas would receive priority status in receiving funding for broadband support under the CAF. In addition, CURB agrees with the KCC NPRM comments that no increase in the subscriber line charge (SLC), as a result of any ICC reform, should be passed on to Kansas as a result of its early adopter status. Worse case, any increases in the SLC should be delayed as long as possible. Generally CURB disagrees with the concept of the SLC, but to the extent the SLC continues under ICC reform, Kansas should receive all benefits of being an early adopter.[41]

o) Intercarrier Compensation Reciprocal Compensation – CURB agrees that the FCC has the authority to establish the methodology for setting reciprocal compensation, but it does not have the authority to actually set reciprocal compensation rates. This position is set forth in NASUCA's NPRM comments.[42]

22. CURB will now address detailed issues regarding cost study models in Kansas. The costs of local service for price cap carriers can generally be determined using two primary methods: a) a detailed review of costs and inputs to be included in a cost model for local service, a method used in the prior proceedings for AT&T and CenturyLink in Kansas (specific cost method); or 2) using surrogate costs, rates, or other data (or some combination) to arrive at the best surrogate of costs for local service (surrogate cost method). While there are advantages and disadvantages for both methods, both methods are generally considered to be cost estimates. In the prior local cost proceedings for AT&T and CenturyLink, the FCC's HCPM cost model was used and certain changes were made to inputs to reflect Kansas-specific conditions, but not company-specific conditions (although there were over 1,400 input variables reflected in the model).[43]

23. There are advantages and disadvantages of the specific cost method. The advantages of this method is that it may result in more precise costing, although a good surrogate cost method can be just as accurate depending upon the detailed processes of either cost method. Another advantage is that in many cases a generic cost model is already available (such as the FCC

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[41] KCC NPRM reply comments, pp. 4 – 5.
[42] NASUCA NPRM initial comments, p. 8.
[43] Staff Report, page 3.

HCPM model), or a model can be prepared by the company or by intervenors (regulatory Staff or other carriers, or their respective consultants). In addition, if a specific cost model is available, all parties should have equal access to the model to review calculations, formulas, and inputs to the model. This promotes a fair and objective outcome, when all parties have access to the same information. However, the downside is that the FCC's HCPM has not been updated in many years, so it may not be a viable alternative for the next Kansas cost proceeding.

24. The disadvantages of the specific cost method are that proceedings can be very time consuming and contentious. This is because price cap carriers will object to providing specific financial and operational data to the model because they claim the process is more like a "rate-of-return review" (ROR), and assert that because the company is subject to "price cap regulation" it is not obligated to provide its specific financial data to regulators. AT&T made this claim in the prior cost model proceeding in Docket 677, but the KCC eventually rejected these arguments and required the company to provide specific requested financial and operational data to Staff and intervenors. In Docket 677 for AT&T, the entire cost study proceeding spanned the period of 5.5 years, from initiation in 1998 to a final stipulation among primary parties in January 2004. In Docket 455 for CenturyLink, the entire cost study proceeding spanned the period of about 8 months, from initiation in December 1999 to a final stipulation among primary parties in August 2000. Arguably there would be a shorter learning curve with the next cost study proceeding and the review time could be reduced from the 5.5 years from the prior AT&T cost study proceeding. However, AT&T's legal disputes caused many delays in the prior proceeding.

25. CURB does not believe it is in the public interest to pursue a similar cost study proceeding that will result in significant delays. AT&T is likely to renew its arguments that it

has been under price cap regulation for a long enough period, and also argue it has been further price deregulated, so it is even less obligated to provide specific financial and operational data that approximates the data that would be made available in a ROR review. In addition, a specific cost method may be unduly biased and inaccurate because it reflects the excessive costs, inefficiencies, more expensive older technology (instead of available least-cost technology), significant legacy costs, substantial overheads, and related gold-plating of the price cap carrier instead of more accurately reflecting the costs of an efficient competitive carrier in the industry. The cost of local service should never reflect the costs of the specific price cap company, but should reflect the more efficient, forward-looking, and least-cost technology that is available in the industry. These issues may point to the benefits of adopting a surrogate cost method.

26. There are also advantages and disadvantages of the surrogate cost method. One advantage of a surrogate cost method is that less-specific financial and operational data is needed from the price cap carrier. This eliminates delays and disputes in the proceeding, because the carrier is not asked to provide certain specific financial and operational data that is normally used to populate a cost model. However, it is possible that some specific financial and operational data will be required from the price cap carrier. A surrogate cost method can produce more accurate cost results because it can reflect the more efficient, forward-looking, and least-cost technology that is available in the competitive industry versus reflecting the excessive costs, inefficiencies, more expensive older technology, significant legacy costs, substantial overheads, and related gold-plating of a price cap company. It is not reasonable to use the price cap carrier's costs as a surrogate for establishing the cost of local service, because if the price cap carrier's costs are excessive and inefficient then the resulting costs will be excessive and not reflect competitive industry costs. These excessive costs of the price cap carrier can lead to

unjustified and unreasonable increases in prices of basic local service if the amount of the calculated support (the amount by which costs exceed revenues) is rebalanced to increases in local rates) or excessive increases in the size of the KUSF (if the calculated support is included in the KUSF for recovery from consumers). Another advantage of the surrogate cost method is that surrogate data is usually information that is publicly available to all parties, thus carriers cannot manipulate costs, withhold data, or unduly delay the process through objections to providing confidential or other specific data that might ordinarily be used in a specific cost method. These issues may point to the benefits of adopting a surrogate cost method.

27. The primary disadvantage of the surrogate cost method is that sometimes the surrogate data is difficult to obtain or estimate. For example, it may be difficult to obtain or estimate the costs of carriers providing basic local service using alternative technologies such as an IP-platform provider, wireless provider, VoIP provider, cable provider, or some combination of these carriers or their related technologies. Typically these types of carriers have not been regulated, so there may be limited data from the public record or limited detailed cost data for these types of companies or their related services and technologies.

28. However, surrogate cost methods may use information other than "cost" to arrive at surrogate cost information for a service. For example, surrogate cost data may be calculated or determined from using prices of other competitive carriers in the industry which use alternate technologies for providing local service. In this case, prices of local service (or surrogates for local service) can be obtained from carriers using alternative technologies, such as cable, VoIP, or wireless. In addition, these prices could be obtained from urban, suburban, and rural areas to infer any changes in costs related to less densely populated or high-cost areas. For example, assume the price of a cable company in Kansas providing stand-alone basic local service is

$15.00 per month. It could be assumed that the related "cost" is some amount less than $15, for the company to make a profit and a reasonable contribution to common costs. The $15 retail price could be reduced by some reasonable ROR or mark-up historically used by price cap carriers in the state or federal jurisdiction (such as 10% to 15%). In addition to reducing the $15 retail price by a reasonable ROR/mark-up, the price could be reduced by other amounts to reflect other cost factors that various parties believe are appropriate in order to arrive at a final base level cost for the service. This is a reasonable approach to addressing surrogate costs for local service, and this type of approach could be balanced with other analysis to reach a conclusion regarding the surrogate cost of local service.

29. CURB is also concerned about another issue regarding a refinement of the prior cost study methodology. In prior proceedings in Dockets 677 and 455, the KCC used a specific cost study methodology to determine the cost of local service. If retail costs were greater than retail prices/revenues in a specific rural zone, then the amount of this difference indicates that local service was being "supported" and this difference was placed in the KUSF (or rebalanced to increases in rates of local services). However, the margin, or difference between local service "costs" and "revenues", may vary depending upon costs reflected in the various zones of urban, suburban, and rural. Generally, costs were lowest in the densely populated low-cost urban zones and costs were highest in the sparsely populated higher-cost rural zones, with suburban costs reflected somewhere between these two extremes. In addition, prices/revenues for the price cap carriers generally always exceeded costs in the urban and suburban zones, so there is little or no amount of support reflected in the KUSF for these zones. Most, or all, of the support in the KUSF is related to rural zones where retail costs routinely exceeded retail prices/rates. If an actual cost study is used in the next proceeding to review the cost of local service, then CURB

would propose that any "excess" margins (the amount by which retail revenues/prices exceed retail costs) in urban and suburban zones be used to offset "support" amounts in rural areas. This will reduce the total amount of "support" included in the KUSF and reduce the size of the KUSF.

V. Whether Costs of Interconnected VoIP and Wireless Should be Included in a Cost Model?

30. The KCC's Order Initiating Investigation seeks comments regarding: *"Whether costs of Interconnected VoIP and wireless should be included in a cost model, and if so, how those costs should be ascertained and reflected in the cost model."* For purposes of estimating the cost of providing local service in a cost study, it is reasonable to use costs of the most efficient, forward-looking, and least-cost technology. Such costs may include VoIP, wireless, cable or other technology/platform options. Also, such costs could be used in either a "specific" cost study method or a "surrogate" cost study method, the two options that CURB previously addressed in these comments. CURB does not believe it is reasonable to use embedded or legacy costs of a copper loop for purposes of estimating the cost of local service. Such technology is outdated, not least-cost, not forward-looking, and not the most recent technology available. In fact, the FCC's statistics for service quality show significant declines in service quality for local service provided via copper loops, an indication that maintenance of copper loops is not a priority among certain incumbent carriers pursuing implementation of an IP platform.

31. Historically, it has been the position of certain incumbent LECs, including AT&T, to assign 100% of the common cost of the loop to basic local service instead of recovering any of these common costs from other services that could not be provided without the copper loop, such as vertical services, long distance, access, DSL, and other services. Historically, certain incumbent LECs relied on the theory that the common loop was placed foremost to provide and

support basic local service and all other services are "incremental" to this common loop cost and should not have to share any cost of the common loop. However, with these same LECs now migrating to an IP-based platform, the historic logic of the incumbent LECs is now reversed. The IP-based platform is clearly being implemented and used to support advanced services such as broadband/internet, video, and other services - - and basic local service (and its related costs) is now an "incremental" service in the IP platform. Clearly, the impetus for incumbent LECs implementing an IP-based platform is not to provide basic local service. Therefore, the previous logic used by the incumbent LECs is now reversed under an IP platform. This same logic would now support the conclusion that an IP-based platform is primarily used as the foundation for providing advanced services, so all common costs should be recovered from these advanced services and not basic local service. Basic local service is now an "incremental" service to the IP-based platform, and thus basic local service should not incur any related common costs of the LEC. Again, using the historical logic of certain incumbent LECs, the cost of local service derived from using VoIP or an IP-based platform/technology should not include the recovery of any common loop type costs of that particular technology. And this technology is reasonable to use in determining the cost of local service on a forward-looking basis because it is the most efficient and least-cost technology that is currently available.

VI. The Level of Participation of Providers of Alternative Technologies, such as VoIP and Wireless.

32. The KCC's Order Initiating Investigation seeks comments regarding: *"The level of participation of providers of alternative technologies, such as VoIP and wireless, in the market."* It is not completely clear to CURB which issues the KCC anticipated to be addressed for VoIP and wireless carriers. However, CURB has previously addressed issues related to VoIP and

wireless technology in relation to developing the surrogate cost of local service. CURB will confine its comments at this time to the matters that were previously addressed.

VII. Whether a Separations Factor Should be Reflected in the Cost Model and How that Factor Should be Reflected?

33. The KCC's Order Initiating Investigation seeks comment regarding: *"Whether, in light of pending FCC action with regard to separations, a separations factor should be reflected in the cost model and if so, how that factor should be reflected."* It would be most appropriate to use a separations factor in the "specific" cost method previously addressed by CURB, although a separations factor may not be necessary when using a "surrogate" cost method. A specific cost method would resemble the same costing method that used the HCPM in the KCC's prior cost proceedings to determine the cost of local service for AT&T and CenturyLink. Historically, the separations factor has represented about a 75% allocation of costs to the intrastate jurisdiction and 25% allocation of costs to the interstate jurisdiction. And to date, there has never been a specific separations factor for broadband/deregulated services.

34. Using the specific cost method, it would be helpful to have a separations factor identifying intrastate costs, interstate costs, and broadband/deregulated costs. Or more specifically, it would be helpful to have a separations factor that allocated broadband costs between the intrastate and interstate jurisdiction.

35. The KCC, and state regulatory agencies in general, have not historically had any jurisdiction over establishing costs, prices, or policy for broadband and other deregulated services - - the FCC has retained this jurisdiction or such services have been deregulated in their entirety without any (or little) FCC oversight. Although there is currently no separations factor applicable to broadband and other deregulated services, the KCC still retains the jurisdictional authority to remove these related costs in a rate case or cost proceeding as a "deregulated cost."

36. The KCC cannot technically allocate these costs to the "interstate" jurisdiction (and this additional step of allocating such broadband/deregulated costs to the interstate jurisdiction is not even necessary in a rate case or cost proceeding). It is extremely difficult to identify, quantify, and allocate the "cost" of broadband and deregulated services that are included in the costs of a LEC. Part of these broadband or deregulated costs may be used to provide basic local service, so it is extremely difficult to allocate these type of costs between intrastate costs of basic local service (that are justifiably included in the cost of providing local service) and deregulated costs that are related to internet, video and other services which should not be included in the cost of providing local service. Therefore, a specific separations factor for broadband (or a separations factor that allocates broadband costs between the state and interstate jurisdictions) would be advantageous from the standpoint it would simplify, add more certainty, and help eliminate disputes regarding the cost allocation process used in state-related rate cases and cost proceedings.

37. If a separations factor is developed that allocates a significant amount of broadband costs to the intrastate jurisdiction, this would cause concerns for CURB. It is not reasonable to allocate a significant amount of broadband costs to the intrastate jurisdiction if the KCC has no other regulatory control or oversight over broadband prices, costs, or other broadband-related policy. If a significant amount of broadband costs are assigned to the intrastate jurisdiction by the FCC via a separations factor (without the KCC having some reasonable oversight of this service), this could be an attempt by the FCC to force funding of its broadband initiatives through increases in basic local rates. If a significant amount of broadband costs are assigned to the state jurisdiction via a separations factor, the FCC may try to rationalize that such costs are used to provide basic local service. However, this could lead to significant increases in prices of

basic local service or significant increases in the size of the KUSF (and related significant increases in assessments to consumers).

38. CURB can envision that the FCC would favor an approach to allocate part of broadband costs away from the interstate jurisdiction to the intrastate jurisdiction if this benefitted the FCC's interests. Historically, the FCC has been consistent in shifting costs to the intrastate jurisdiction over the passage of time so that it can justify additional cost reductions, and related price reductions, for long distance services which fall under its jurisdiction. Or the FCC may determine that it is more favorable to allocate 100% of the costs of broadband service to the interstate jurisdiction if the FCC comes out ahead by this approach that allows them to include 100% of the related broadband revenues in its assessable base for the FUSF. Historically, the FCC has increased the allocation of various service revenues (such as for wireless or VoIP) to the FCC's jurisdiction under the "safe harbor" provisions, so that the FCC can justify the inclusion of more revenues in its FUSF assessable base. This is advantageous to the FCC because it allows them to either hold the line on increases in assessments (or to reduce the assessment) to consumers for the federal USF. Over time, the safe harbor provision, under the auspices of the FCC, has shifted more revenues to the interstate jurisdiction to favor the interests of the FCC over the interests of state regulatory agencies.

39. Previously CURB explained how certain incumbent LECs have historically endorsed a policy that supported recovery of 100% of common loop costs from basic local service. The FCC has endorsed this rationale to a certain degree for purposes of pricing "access" of long distance carriers to the local monopoly bottleneck at least-cost prices in order to justify reductions in prices of long distance services to support the FCC's historical agenda of promoting long-distance competition. Competition for long distance services was created by

divesting AT&T of its "basic local service" in the 1970's period- - so AT&T primarily became a long distance company and the baby Bells (seven Bell companies) were created to primarily provide basic local service. Regulating long distance service was the FCC's primary focus, because state regulatory agencies were primarily responsible for regulating the much larger basic local service industry. The best way to promote long distance competition was to reduce prices for long distance service and the related significant cost of "access" incurred by long distance carriers, and the best way to reduce prices for long distance services was to reduce the amount of costs allocated to long distance service and access, and the largest cost to remove or allocate away from access costs of long distance carriers was the common cost of the loop. The FCC agenda over the years has been painfully obvious, reduce the cost of access and long distance service by using the jurisdictional authority at their disposal.

40. Now with the FCC's agenda regarding long distance competition essentially complete, the FCC has now shifted its regulatory focus to broadband. CURB believes the FCC may now focus on promoting broadband competition and attempt to justify reductions in broadband costs and related prices. This will likely include the same path it followed for promoting long distance competition, shifting costs to the intrastate jurisdiction when possible and continuing to recover common loop costs from local service and not from broadband or long distance services. CURB is concerned that current reforms proposed by the FCC are consistent with the historical path paved by the FCC and will ultimately lead to increased basic local service rates or increases in the size of the KUSF.

VIII. Whether the Commission Should Phase Out Competitive ETC KUSF Support Similar to the Proposal for Federal Competitive ETC Support in the National Broadband Plan?

41. The KCC's Order Initiating Investigation seeks comment regarding: *"Whether the Commission should phase out competitive ETC KUSF support, similar to the proposal to phase out federal competitive ETC support in the National Broadband Plan. If so, what kind of a process and timeframe might be appropriate?"* The FCC's NPRM states, "we propose to eliminate the "identical support" rule and to rationalize funding for competitive Eligible Telecommunications Carriers (ETCs) over a several-year period."[44] The FCC also provides additional information regarding its proposal. The FCC explains that under the identical support rule, competitive ETCs (mostly wireless carriers) receive the same amount of support (subject to an interim cap) as the incumbent wireline carrier regardless of the actual costs or needs. The FCC notes that funding is poorly targeted and in some areas as many as four or more providers are receiving redundant ETC funding, although other areas lack even a single provider of broadband or mobile voice service.

42. Although there are some details of the FCC proposal that are not clear, CURB agrees with the FCC's proposal and related concept. This policy should be implemented at the federal level as proposed by the FCC, but this concept should be adopted at the state level as it impacts the KUSF. Kansas ETCs should not receive identical support as the incumbent wireline carrier unless the ETC can provide documentation to show that its costs to provide local service are similar to the costs of the incumbent wireline carrier for which the support amount is based. All redundant support should be eliminated as much as possible. Furthermore, CURB does not believe it is necessary to provide any identical support funding for wireless carriers - - although CURB may agree with some level of support for wireless service provided in areas where there is no landline basic local service being provided in Kansas. Wireless service is not regulated at the state jurisdiction, it is difficult to prove that wireless service is enhancing or promoting

[44] NPRM, ¶ 21.

universal "local" service, and it would appear that identical support is especially redundant for this service.

IX. Whether the Commission Should Limit Support to the Single Primary Line?

43. CURB has introduced this issue as allowed by the KCC's Order Initiating Investigation. In Docket 99-GIMT-326-GIT (Docket 326) the KCC addressed the issue of whether limiting KUSF support to the primary line will ensure the availability of universal service. The KCC concluded that availability of universal service could be ensured by limiting support to a primary line, but the KCC did not limit support to the primary line because the KUSF was declining in size at that time and it was not cost efficient (and would involve significant cost) to change the procedure at that time.[45] In Docket 326, CURB supported limiting support to the single primary line, but because of cost concerns ultimately supported what was identified as Proposal #2, which would cap the KUSF at the current level at that time and share the support in high cost exchanges between eligible carriers.[46] In Docket No. 10-GIMT-667-KSF (Docket 667) the KCC addressed various KUSF issues, but only implemented a change in definition of an eligible line without any other changes in line support policy.[47]

44. CURB now proposes two potential alternatives to the current policy: 1) to either limit KUSF support to the single primary line; or 2) implement Proposal #2 which was addressed in Docket 326 and which would cap the KUSF support level for lines and share this support in high cost exchanges between eligible carriers. One of the reasons the KCC cited for rejecting single line support in Docket 326 was the KUSF was declining in size at that time. However, subsequent to the KCC's decision on this issue in 2002, the size of the KUSF has increased as

[45] *In the Matter of an Investigation into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Modifying the KUSF and Establishing a Cost-based Fund,* order dated February 25, 2002, ¶¶ *4,*
[46] CURB Reply Comments, December 14, 2001, Docket 326.
[47] *Generic Proceeding to Address Kansas Universal Service Fund Support Supplemental Funding Procedures, as Adopted by the Commission in Docket No 00-GIMT-842-GIT,* order dated September 24, 2010.

well as the amount collected from consumers. The growth in the KUSF fund justifies revisiting this issue at this time.

45. The other reason that the KCC cited for rejecting single line support in Docket 326 was that such a change was not efficient and would involve significant costs. CURB does not have the information available to address this specific issue, although Staff and carriers may be able to identify the current cost of limiting KUSF support to the single primary line. Limiting KUSF support to the single primary line is in the public interest and would reduce the size and related assessment of the KUSF.

X. Conclusion.

46. CURB appreciates the opportunity provided in this docket to submit these comments on behalf of Kansas small business and residential ratepayers, and urges the KCC to adopt CURB's positions in this proceeding as it primarily relates to issues impacting costing issues for basic local service.

Respectfully submitted,

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

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

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 22nd day of June, 2011.

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2013

Notary of Public

My Commission expires: 01-26-2013

CERTIFICATE OF SERVICE

11-GIMT-420-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, or hand-delivered this 22nd day of June, 2011, to the following:

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

ROBERT A FOX, LEGAL COUNSEL
COX COMMUNICATIONS, INC.
2107 SW VILLAGE HALL RD
TOPEKA, KS 66614

CURT STAMP, DIRECTOR REGULATORY
COX COMMUNICATIONS, INC.
6301 WATERFORD BLVD, STE 200
OKLAHOMA CITY, OK 73118

BOB BOALDIN, PRESIDENT & GENERAL MANAGER
ELKHART TELEPHONE COMPANY, INC.
610 SOUTH COSMOS
PO BOX 817
ELKHART, KS 67950

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

CERTIFICATE OF SERVICE

11-GIMT-420-GIT

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

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

COLLEEN HARRELL, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

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

JOHNIE JOHNSON, CEO/GEN MGR
NEX-TECH WIRELESS, L.L.C
218 VINE ST
HAYS, KS 67601

JEFF WICK, COO
NEX-TECH, INC.
2418 VINE STREET
PO BOX 339
HAYS, KS 67601

BRUCE A. NEY, ATTORNEY
SOUTHWESTERN BELL TELEPHONE CO. D/B/A AT&T
220 SE 6TH AVE, STE 515
TOPEKA, KS 66603-3507

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

CERTIFICATE OF SERVICE

11-GIMT-420-GIT

KENNETH A. SCHIFMAN, ATTORNEY
SPRINT COMMUNICATIONS COMPANY L.P.
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

LINDA K. GARDNER, ATTORNEY
UNITED TELEPHONE CO. OF KANSAS D/B/A CENTURYLINK
5454 W 110TH STREET
OVERLAND PARK, KS 66211-1204

KEVIN K. ZARLING
UNITED TELEPHONE CO. OF KANSAS D/B/A CENTURYLINK
400 W 15TH STREET, SUITE 315
AUSTIN, TX 78701

CRAIG MOCK, GENERAL MANAGER
UNITED WIRELESS COMMUNICATIONS, INC.
1107 MCARTOR ROAD
PO BOX 117
DODGE CITY, KS 67801

CHARLES H. CARRATHERS
VERIZON
600 HIDDEN RIDGE
IRVING, TX 75015-2092

GREGG DIAMOND, REGULATORY POLICY & PLANNING
VERIZON
600 HIDDEN RIDGE
IRVING, TX 75015-2092

Della Smith
Administrative Specialist