

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

MAY 11 2012

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

by
State Corporation Commission
of Kansas

**THE S&T TELEPHONE COOPERATIVE ASSOCIATION, INC.'S REPLY TO
"OBJECTION" OF STAFF TO S&T MOTION AND IF
NECESSARY REQUEST FOR ALTERNATIVE RELIEF**

COMES NOW The S & T Telephone Cooperative Association, Inc. (S&T), by and through its attorney Colleen R. Harrell of JAMES M. CAPLINGER, CHARTERED, and respectfully provides the Commission its reply to the "Objection" of Commission Staff to S&T's May 1, 2012 Motion for Order Directing KUSF Administrator to Distribute Increase KUSF Support.

1. Staff "objects" to S&T, in its May 1 motion, occasionally referring to its March 23, 2012 filing made pursuant to K.A.R. 82-1-231 an "application." The fact of the matter is that whether the term "application" is strictly accurate wholly misses the point. The March 23, 2012 filing was made pursuant to K.A.R. 82-1-231 as ordered by the Commission and it contains the information required by the Commission. When the Commission first undertook KUSF audits of rural LECs, beginning in the year 2000, the Commission ordered the filings to be made and then the Commission applied K.S.A. 66-117(c) to the filings, and suspended operation of the filings 240 days from the date the filing was filed. S&T should be treated no differently than any of the prior twelve years of proceedings where this has occurred.

2. In paragraph 2 Staff seems to allege that in order for a particular statute to apply – or by extension, not apply – the Commission must so state. Jurisdiction of a certain type cannot be ordered – or not ordered – by the Commission by omission. Jurisdiction is controlled by the

facts of a matter and by the statute applicable to the facts of that matter, and whether or not the Commission said specifically or not in its order opening this proceeding is of no force and effect.

3. Unfortunately, Staff wholly misreads the Court of Appeals' holding in *Columbus Telephone Co., Inc. et al v. Kansas Corporation Commission*, 31 Kan. App. 2d 828, 75 P.3d 257 (2003). In that proceeding, it was Columbus Telephone which argued that an appeal from an identical proceeding such as the one in the instant docket – a KUSF audit – should be taken to the District Court under the Kansas Judicial Review Act and the Commission which argued that such an appeal should be taken pursuant to the appeal process set forth in K.S.A. 66-118b and applicable to rate proceedings. The Court of Appeals, in concluding that appeals from KUSF audits are properly under K.S.A. 66-118b, and taken to the Court of Appeals and not the district court, stated:

This case arises from an audit proceeding initiated by the KCC to determine Wilson's revenue requirement under K.S.A. 66-2008(e). Wilson is a Class B telephone utility which operates under traditional rate-of-return regulation. The KCC issued an order initiating the audit in September 2001. In this order, Wilson was directed to provide detailed information as required by K.A.R. 82-1-231 for a test year ending December 31, 2000. In a subsequent order, a procedural schedule was established and evidentiary hearing dates set. Thereafter, Wilson and the KCC's Staff (Staff) vigorously pursued documents and information to address the numerous legal issues inherent in determining a utility's revenue requirement *i.e.*, rate base, operating income, rate of return, plant investments, depreciation, working capital, cost of capital, and taxes.

What has occurred to date in this docket is identical to the Court of Appeals' recitation.

4. The Court of Appeals went on to state:

The statute governing the appeal of KCC decisions vests the Court of Appeals with "exclusive jurisdiction to review any agency action . . . arising from a rate hearing Proceedings for review of other agency actions . . . shall be in accordance with K.S.A. 77-609 and amendments thereto." (Emphasis added.) K.S.A. 66-118a(b). The term "rate hearing" is not defined in the relevant statutes.

We recognize that a KUSF audit does not fall within what is traditionally viewed as a rate case because it does not directly involve determining rates a regulated utility can charge to its customers. However, this court has repeatedly utilized a common sense approach to defining the parameters of its jurisdiction in atypical KCC proceedings.

Recently, this court concluded K.S.A. 66-118a(b) gave this court jurisdiction over cases that only indirectly impacted on consumer rates.

The present case is sufficiently like a standard rate hearing to serve the purposes of the statute. As in CURB 1, this case was handled before the KCC using the same procedures that would apply in a traditional rate case. The prefiled testimony included evidence of Wilson's rate base, operating income, rate of return, plant investment, depreciation, working capital, cost of capital, and taxes. Moreover the ultimate determination of a revenue requirement in a KUSF audit will indirectly impact on ratepayers across the State who pay into the KUSF. See K.S.A. 66-2008(a).

For the above reasons, we conclude this court has jurisdiction to consider appeals from KUSF audits.

5. It is clear that the Court of Appeals held that KUSF audits are sufficiently like a rate hearing to apply K.S.A. 66-118a. Staff cannot claim that "This is an audit and not a rate proceeding" when the Court of Appeals held nine years ago that it IS.

6. Staff also argues that "in order to resolve these audits in a timely manner, Staff has applied a 240 day time frame so that the matter does not languish." In fact, in 40 prior KUSF audits, whether initiated by the company or by the Commission, it was the Commission, not Staff, that applied the 240 day clock by its issuance of a Suspension Order. Staff goes on to state that "it is curious that S&TT did not file its Motion on April 23, 2012 if it truly believed that a K.S.A. 66-117(c) time frame applied." S&T finds it difficult to respond to a statement suggesting that S&T should have to remind the Commission and its Staff of the statutes applying to Commission procedures and remind the Commission to act pursuant to those statutes – and then be penalized when it does not remind the Commission to act and by acting exercise its legislatively-delegated

authority. Further, in 40 prior KUSF proceedings, and in every other rate type proceeding before the Commission, including proceedings setting natural gas, electric, and water rates, the Commission issues a Suspension Order without prompting from the regulated utility. In no known Commission proceeding has a regulated entity been charged with the responsibility of requesting the Commission issue a suspension order.

7. As “alternative relief” Staff asks the Commission to “open an investigation into whether S&T’s receipt of FUSF and KUSF support is justified for the years 2005 through 2011.” What Staff is asking for, shockingly, is for the Commission to engage in retroactive ratemaking by requesting the Commission look back over a period of seven years to review S&T’s receipt of authorized KUSF support. The Commission last issued an order setting S&T’s receipt of cost-based KUSF support in Docket No. 02-S&TT-390-AUD and that level of support remains S&T’s cost-based KUSF support, and appropriately based on S&T’s embedded costs, revenue requirements, investments and expenses unless and until modified by this Commission after a thorough review pursuant to K.S.A. 66-117(c) and K.A.R. 82-1-231.

WHEREFORE S&T files its reply to Staff’s “objection” to its May 1, 2012 Motion for the Commission to issue an order directing the KUSF administrator to pay to S&T the amount of cost-based KUSF support demonstrated in the filing made by S&T in this docket on March 23, 2012, the effectiveness of which was not suspended by the Commission pursuant to K.S.A. 66-117(c) and which because effective by operation of law as a result, and for such other and further relief as the Commission deems just and equitable.

Respectfully submitted,

JAMES M. CAPLINGER, CHARTERED

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VERIFICATION

STATE OF KANSAS)
) SS:
COUNTY OF SHAWNEE)

Colleen R. Harrell, of lawful age, being first duly sworn upon oath states:

That she is the attorney for The S&T Telephone Cooperative Association, Inc. in this matter; that she has read and is familiar with the foregoing Reply to Staff "Objection" and that the statements made therein are true and correct to the best of her information, knowledge and belief.

Colleen R. Harrell

Colleen R. Harrell

Subscribed and sworn to before me this 11th day of May, 2012.

Marsha Givens

Notary Public

My appointment expires:

March 2, 2013



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Motion was placed in the United States mail, postage prepaid, or hand-delivered this 11th day of May, 2012 to the following:

Robert A. Fox, Senior Litigation Counsel
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Topeka, KS 66604-4027

Andrew French, Advisory Counsel
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Colleen R. Harrell

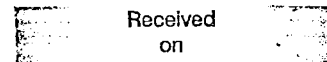
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May 11, 2012

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MAY 11 2012

In re: Docket No. 12-S&TT-234-KSF

by
State Corporation Commission
of Kansas

Dear Ms. Petersen-Klein:

We are enclosing the original and seven copies of The S&T Telephone Cooperative Association, Inc.'s Reply to "Objection" of Staff to S&T Motion and if Necessary Request for Alternative Relief in the above-referenced docket.

If the Commission or Staff have any questions with regard to the filing, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Colleen R. Harrell".
Colleen R. Harrell

CRH/mg
enclosures

cc: Steve Richards