

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

In the Matter of the Joint Application of)
United Telephone Company of Kansas, Inc.,)
United Telephone Company of Eastern)
Kansas, Inc. (United) and Rural Telephone)
Service Company, Inc. (RuralTel) for)
Permission of United to Cease Operating as)
a Telephone Public Utility in Twelve of its)
Kansas Exchanges, to Grant RuralTel a)
Certificate of Public Convenience for the)
Same Twelve Exchanges, and for Authority)
to Transfer Property, Plant and Equipment)
of United Located in the Twelve Exchanges)
to RuralTel and Complete all Matters)
Incident to the Transfer.)

JUL 28 2006

 Docket Room

) Docket No. 06-UTDT-962-CCS

JOINT MOTION TO APPROVE STIPULATION AND AGREEMENT

COME NOW the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) and United Telephone of Kansas, Inc., United Telephone Company of Eastern Kansas, Inc. (United), and the Citizens' Utility Ratepayer Board ("CURB") (collectively "the parties") and request the Commission for an order approving the Stipulation and Agreement (S&A) attached as "Attachment A." In support of this joint motion, the parties state as follows:

1. On March 3, 2006, United and Rural Telephone Service Company, Inc. ("RuralTel"), filed a Joint Application with the Kansas Corporation Commission for (1) an Order, pursuant to K.S.A. 66-101, et seq., allowing United to cease operating as a telephone public utility in twelve of its Kansas exchanges¹; (2) an Order, pursuant to K.S.A. 66-131,

¹ The twelve (12) subject exchanges, as more fully described in the Asset Purchase Agreement are: Burr Oak, Courtland, Esbon, Ionia, Lebanon, Republic, and Webber for the United Telephone Company of Eastern Kansas, and Downs, Luray, Osborne, Paradise, and Russell for the United Telephone Company of Kansas.

issuing a Certificate of Public Convenience and Necessity for RuralTel to operate as a telephone public utility in the twelve exchanges; (3) an Order approving, pursuant to K.S.A. 66-136, to the extent applicable, the assignment or transfer of the designated United franchises, telephone plant, equipment and facilities from United to RuralTel in accordance with the Transfer Agreement, and affirming the validity of contracts and agreements with reference to or affecting those specified United franchises to be assigned to RuralTel; (4) an Order approving the filing of RuralTel's concurrence with the general rules and regulations, general exchange, message toll, and United's access service tariffs with the local rates set forth; (5) an Order relieving United of responsibilities as Carrier of Last Resort in the subject exchanges and designating RuralTel as the successor Carrier of Last Resort therein, subject to the rights and responsibilities attendant thereto and as specified in K.S.A. 66-2009; and (6) an Order, under the Commission's general supervisory powers, if needed, for such other authority to perform or cause to be performed such other acts as will be necessary, advisable and proper that the intended purpose of the transaction may be effectuated as described in the Transfer Agreement.

2. On March 3, 2006, the Commission opened Docket Nos. 06-RRLT-963-COC and 06-UTDT-962-CCS. On March 17, 2006, the Commission granted intervention to the CURB in both dockets, and on March 21, 2006, issued a protective order governing the treatment and handling of confidential information in both dockets.

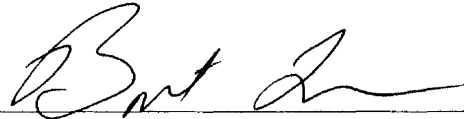
3. The Commission is reviewing, in Docket No. 06-UTDT-962-CCS, whether the sale and transfer complies with applicable Kansas law regarding such transactions, including the regulatory treatment under Kansas law for gain on sale.

4. As a result of negotiations, the parties have reached the stipulations and agreements contained in the S&A. Because all parts of the S&A are interrelated, the parties agree to remain bound by the S&A only if the Commission approves the S&A in its entirety.

5. The parties believe that the S&A represents a fair and equitable resolution of the issues contained in this proceeding. The parties believe that approval of the S&A is in the public interest and will promote settlement among the parties, resulting in administrative efficiency.

WHEREFORE the parties respectfully request the Commission issue an order approving the attached S&A, and for such other and further relief as the Commission deems just and proper.

For the Staff of the Corporation Commission of the
State of Kansas



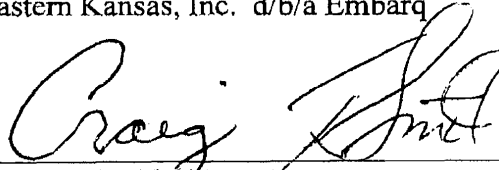
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For United Telephone Company of Kansas, Inc.
d/b/a Embarq

Craig T. Smith, #22333
5454 W. 110th Street

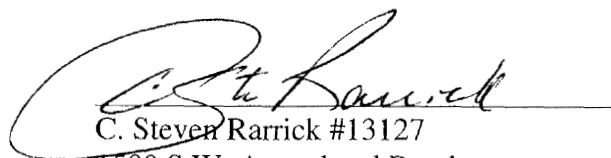
Overland Park, Kansas 66211
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(913) 523-9852 fax

For United Telephone Company of
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United Telephone Company of
Eastern Kansas, Inc. d/b/a Embarq



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For the Citizens' Utility Ratepayer Board

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

C. Steven Rarrick #13127

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Topeka, KS 66604

(785) 271-3200 phone

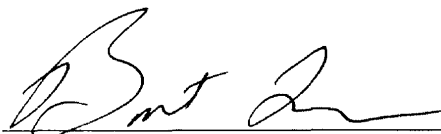
(785) 271-3116 fax

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

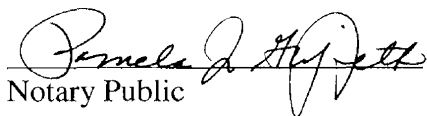
Bret Lawson, of lawful age, being first duly sworn upon oath states:

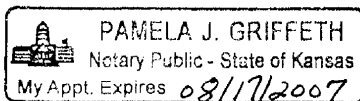
That he is the attorney for the Corporation Commission Staff in this matter; that he has read and is familiar with the foregoing joint motion and that the statements made therein are true and correct to the best of her information, knowledge and belief.



Bret Lawson

Subscribed and sworn to before me this 28th day of November 2005.


Notary Public



My appointment expires: August 17, 2007

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Joint Application of)	Docket No. 06-UTDT-962-CCS
United Telephone Company of Kansas, Inc.,)	
United Telephone Company of Eastern)	
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Service Company, Inc. (RuralTel) for)	
Permission of United to Cease Operating as)	
a Telephone Public Utility in Twelve of its)	
Kansas Exchanges, to Grant RuralTel a)	
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Same Twelve Exchanges, and for Authority)	
to Transfer Property, Plant and Equipment)	
of United Located in the Twelve Exchanges)	
to RuralTel and Complete all Matters)	
Incident to the Transfer.)	

STIPULATION AND AGREEMENT

I. INTRODUCTION

1. On March 3, 2006, United Telephone of Kansas, Inc., United Telephone Company of Eastern Kansas, Inc. (collectively "United"), and Rural Telephone Service Company, Inc. ("RuralTel"), filed a Joint Application with the Kansas Corporation Commission for (1) an Order, pursuant to K.S.A. 66-101, et seq., allowing United to cease operating as a telephone public utility in twelve of its Kansas exchanges¹; (2) an Order, pursuant to K.S.A. 66-131, issuing a Certificate of Public Convenience and Necessity for RuralTel to operate as a telephone public utility in the twelve exchanges;

¹ The twelve (12) subject exchanges, as more fully described in the Asset Purchase Agreement are: Burr Oak, Courtland, Esbon, Ionia, Lebanon, Republic, and Webber for the United Telephone Company of Eastern Kansas, and Downs, Luray, Osborne, Paradise, and Russell for the United Telephone Company of Kansas.

(3) an Order approving, pursuant to K.S.A. 66-136, to the extent applicable, the assignment or transfer of the designated United franchises, telephone plant, equipment and facilities from United to RuralTel in accordance with the Transfer Agreement, and affirming the validity of contracts and agreements with reference to or affecting those specified United franchises to be assigned to RuralTel; (4) an Order approving the filing of RuralTel's concurrence with the general rules and regulations, general exchange, message toll, and United's access service tariffs with the local rates set forth; (5) an Order relieving United of responsibilities as Carrier of Last Resort in the subject exchanges and designating RuralTel as the successor Carrier of Last Resort therein, subject to the rights and responsibilities attendant thereto and as specified in K.S.A. 66-2009; and (6) an Order, under the Commission's general supervisory powers, if needed, for such other authority to perform or cause to be performed such other acts as will be necessary, advisable and proper that the intended purpose of the transaction may be effectuated as described in the Transfer Agreement.

2. On March 17, 2006, the Commission opened Docket Nos. 06-RRLT-963-COC and 06-UTDT-962-CCS. On March 17, 2006, the Commission granted intervention to the Citizens' Utility Ratepayer Board ("CURB") in both dockets, and on March 21, 2006, issued a protective order governing the treatment and handling of confidential information in both dockets.

3. The Commission is reviewing, in Docket No. 06-UTDT-962-CCS, whether the sale and transfer complies with applicable Kansas law regarding such transactions, including the regulatory treatment under Kansas law for gain on sale.

4. The Commission's staff ("Staff"), CURB, and United (collectively, "the Stipulating Parties") have agreed to settle all disputes, claims, and issues arising out of or related to the Joint Application, the Transfer Agreement, and Docket No. 06-UTDT-962-CCS, and have memorialized such agreements in this Stipulation and Agreement ("S&A").

II. TERMS

5. This S&A is a joint recommendation of the above parties to settle and resolve any and all disputes, claims, and issues arising out of or related to the Joint Application, the Transfer Agreement, and Docket No. 06-UTDT-962-CCS. This S&A is intended to be the basis for a Commission order to resolve all issues for United in Docket No. 06-UTDT-962-CCS.

6. The Stipulating Parties agree to use reasonable efforts to support this S&A before the Commission, including any necessary witnesses, testimony, briefs, and any other reasonable efforts in order to gain prompt Commission approval of this S&A.

Kansas Universal Service Fund (KUSF)

7. United agrees that its net KUSF support associated with these 12 exchanges will transfer to RuralTel following the sale closing in accordance with the provisions found in Article 9 of the Asset Transfer Agreement between United and RuralTel.

Access Minutes of Use (MOU)

8. United agrees to furnish the intrastate switched access MOU for each of the 12 sold exchanges for the 12 months ending June 30, 2006, to Staff and to RuralTel by September 11, 2006. This MOU information will be used to calculate the effect of the

biennial access reduction for the rural local exchange carriers, and to determine the related KUSF support available to RuralTel.

Continuation of Long Distance Discount Plans

9. At the time of customer transfer to RuralTel, Embarq Communications, Inc. ("Embarq LD"), which now offers long distance service as an IXC, will offer all retail customers in the 12 subject exchanges who currently subscribe to an Embarq LD toll plan that is only available in conjunction with a United local service bundle, and who are PIC'd to Embarq LD at the time of transfer, a long distance calling plan for which they qualify that will meet their individual calling patterns and needs. Embarq LD will make its 7 Cents All the Time Residential Toll Plan available to residential customers and will waive the current \$4.95 MRC for a period of six months following the transfer. Further, for Business customers of Embarq LD, the Business Anytime Toll Plan will be made available and the \$5.00 MRC will be waived for a period of six months following the transfer. Embarq will notify all affected customers in the 12 exchanges at least 30 days prior to the sale transfer, provide them with transfer information, including the terms/conditions of the above toll plans, and ask customers to contact Embarq LD so that they may arrange for continuation of long distance service with Embarq LD. As of the effective date of transfer of their local services to RuralTel, customers that do not contact Embarq LD after receiving this notification, or that do not subscribe to another long distance provider, will be moved to these toll plans automatically. The parties agree that Staff and CURB have the right to review and approve the notification letters to Embarq LD's long distance customers. The parties further agree that Staff and CURB have the

right to review and approve the letter sent to the subscribers of Embarq LD's unlimited long distance service, and that the letter will include contact information for KCC Office of Public Affairs and Consumer Protection and CURB to allow them to assist customers in finding providers of unlimited long distance calling plans.²

Gain on Sale

10. As a result of this transaction, United will realize a gain on sale due to the selling price being higher than the net book value of the sold exchanges. The net book value is the original cost of the telecommunications plant in service located in the exchanges, less the related accumulated depreciation as recorded on United's books for the sold exchanges. While it is acknowledged that the general rule is that shareholders retain capital gains, Kansas case law and Commission rulings have addressed the issue of regulated utilities selling assets and returning a portion of the gain on sale to the ratepayers. Such precedents have differed on the treatment and actual amounts of the gain on sale to the ratepayers. Generally, Kansas courts and the Commission have looked at five factors when determining whether, and to what degree, a regulated utility must distribute to its ratepayers any gain on sale. The five factors come from *Kansas Power & Light v. KCC*, 5 Kan. App. 2d 514,620 P.2d 329 (1980) rev. denied 228 Kan. 806 (1981) and generally involve an analysis of: 1) risk of loss of investment capital; 2) contribution by ratepayers to the value of the property; 3) financial integrity of the seller; 4) increase in value of the property due to inflation; and, 5) increase in value of the property due to neighborhood improvements paid for by ratepayers. These factors are collectively referred to herein as the "Gain on Sale Factors".

² This does not mean that the letter will name specific long distance providers.

11. The Stipulating Parties have previously agreed on the formula, methodology, logic, and consideration of the Gain on Sale Factors. Specifically, the Stipulating Parties reached a settlement in a similar docket in 2004 where United sold two of its exchanges to Blue Valley Telecommunications, Inc. (Docket No. 04-UTDT-781-CCS), and in 2005 where 13 exchanges were sold to Twin Valley Telephone Company (06-UTDT-115-CCS). In both Docket Nos. 04-UTDT-781-CCS and 06-UTDT-115-CCS, the Stipulating Parties agreed to settle all disputes, claims, and actions surrounding the treatment of the gain on sale issue and, in the event United entered into an agreement to sell additional assets before January 1, 2008, the Stipulating Parties further agreed to utilize the same formula, methodology, logic, and consideration of the Gain on Sale Factors that were utilized in the S&As filed and approved by the Commission in those proceedings.

12. Staff's position generally in this docket has been that, regardless of the form of regulation selected by the utility, some portion of the gain on sale should be shared with ratepayers. It is Staff's position that price cap regulation does not insulate a company from the Commission's and the Court's prior decisions that gain on sale should be shared with ratepayers.

13. CURB's position generally in this docket has been that, regardless of the form of regulation selected by the utility, a greater portion of the gain on sale should be shared with ratepayers. It is CURB's position that price cap regulation does not insulate a company from the Commission's and the Court's prior decisions that gain on sale should be shared with ratepayers.

14. United's position generally in this docket has been that gain on sale treatment is not applicable to price cap regulated companies selling assets and that the application of the Gain on Sale Factors is not appropriate for price cap regulated companies selling assets. United is a price cap regulated company pursuant to K.S.A. 66-2005, granted such status in a Commission order dated October 28, 1998, in Docket No. 98-UTDT-401-MIS. The Gain on Sale Factors discussed above have only been applied by the Kansas courts and the Commission to rate of return regulated utilities and it is United's position that any gain on sale treatment is fundamentally inconsistent with the basic principles of price cap regulation.

Agreement

15. Based upon agreements reached in Docket Nos. 04-UTDT-781-CCS and 06-UTDT-115-CCS, the Stipulating Parties agree that the analysis of the Gain on Sale Factors for United will be bifurcated based upon when the company transitioned from rate of return regulation to price cap regulation. For purposes of this S&A, and to resolve this disputed issue, the five-factor gain on sale analysis included as **Confidential Attachment B** to this S&A contains a gain attributable to ratepayers ("Shareable Gain") that takes into consideration both Staff's and CURB's position that gain on sale is appropriate and United's position that gain on sale is not applicable to price cap companies.

16. The amount of the sale, the gain on sale, the formula agreed to by United CURB, and Staff, the amount of the gain attributable to ratepayers pursuant to the agreed

upon formula, and the precise methodology of distribution are described in **Confidential Attachments B and C** in this S&A. Information contained in these Attachments is confidential and subject to the terms of the protective order issued by the Commission in this proceeding.

17. In exchange for the mutual promises in this S&A, the Stipulating Parties agree to United distributing the Sharable Gain as set forth in **Confidential Attachment C** to this S&A³.

18. The S&A varies from the individual positions that would have been presented by the parties in this docket. Subject to the limitation described in this Paragraph 15, a willingness to be a party to the S&A is not precedent setting and does not bind any party from taking other positions in future proceedings. The Stipulating Parties believe that the S&A is a reasonable compromise that should be recommended to the Commission in matters relating to the sale of the above-referenced certificated areas by United.

19. The Stipulating Parties believe this S&A is in the public interest of ratepayers of the sold exchanges and those customers remaining with United, while also serving the interests of the companies involved and their shareholders.

20. The above provisions and **Confidential Attachments B and C** contemplate the closing of the transfer agreement between United and RuralTel in accordance with the transfer agreement and amendments thereto.

Reservations

³ The parties fully recognize that the Sharable Gain amount and distribution thereof, as set forth in Attachments B and C of this S&A, are incremental and in addition to those set forth, and approved by the Commission, in Docket Nos. 04-UTDT-781-CCS and 06-UTDT-115-CCS, respectively.

21. This S&A fully resolves issues specifically addressed in this docket between the Stipulating Parties. The terms of this S&A constitute a fair and reasonable resolution of the issues addressed herein.

22. The terms and provisions of the S&A have resulted from extensive negotiations among the Stipulating Parties and are interdependent. In the event the Commission does not approve and adopt the terms of this S&A in total, any party has the option to terminate this S&A and, if so terminated, none of the Stipulating Parties will be bound by, prejudiced by, or in any way affected by any of the agreements or provisions hereof, unless otherwise provided herein.

23. Unless (and only to the extent) otherwise specified in this S&A, the stipulating parties are not prejudiced by, bound by, or affected in any way by the terms of this S&A: 1) in any future Commission or court proceeding; 2) in any proceeding currently pending under a separate docket; and/or, 3) in this proceeding, if the Commission decides not to approve this S&A in total or in any way conditions its approval of the same. The Commission's approval of this S&A has no precedential effect in any other proceeding except to the extent provided herein.

24. This S&A does not prejudice or waive any party's legal rights, positions, claims, assertions, or arguments in any proceedings in this docket, or any other proceedings before this Commission or in any court. If the Commission accepts this S&A in its entirety and incorporates the same into its final order in this docket, the Stipulating Parties intend to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order on those issues.

25. By the signature of the parties, each warrants that he/she is authorized to sign this S&A on behalf of the participant or representative. This S&A may be signed in multiple counterparts, each when taken together may constitute one and the same S&A.

WHEREFORE the Stipulating Parties respectfully request the Commission to issue: (1) an order, pursuant to K.S.A. 66-101, et seq., allowing United to cease operating as a telephone public utility in twelve of its Kansas exchanges; (2) an order, pursuant to K.S.A. 66-131, issuing a Certificate of Public Convenience and Necessity for RuralTel to operate as a telephone public utility in the twelve exchanges; (3) an order approving, pursuant to K.S.A. 66-136, to the extent applicable, the assignment or transfer of the designated United franchises, telephone plant, equipment and facilities from United to RuralTel in accordance with the Transfer Agreement, and affirming the validity of contracts and agreements with reference to or affecting those specified United franchises to be assigned to RuralTel; (4) an order relieving United of responsibilities as Carrier of Last Resort in the subject exchanges and designating RuralTel as the successor Carrier of Last Resort therein, subject to the rights and responsibilities attendant thereto and as specified in K.S.A. 66-2009; and (5) an order, under the Commission's general supervisory powers, if needed, for such other authority to perform or cause to be performed such other acts as will be necessary, advisable and proper that the intended purpose of the transaction may be effectuated as described in the Transfer Agreement.

IN WITNESS WHEREOF, the parties have executed and approved this S&A by
subscribing their signatures below.

For Commission Staff:

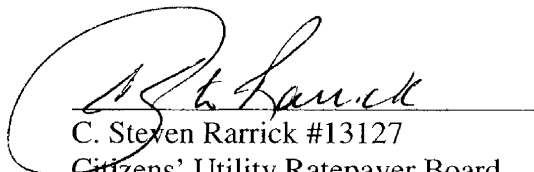


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For United Telephone Company of
Kansas, Inc. dba Embarq
United Telephone Company of
Eastern Kansas, Inc. dba Embarq

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KSOPHN0214-2A671
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For Citizens' Utility Ratepayer Board:



C. Steven Rarrick #13127
Citizens' Utility Ratepayer Board
1500 S.W. Arrowhead Road
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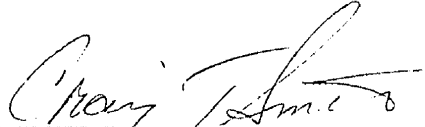
Attachments

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For United Telephone Company of
Kansas, Inc. dba Embarq
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Eastern Kansas, Inc. dba Embarq



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Attachments

Confidential Attachment B
Docket No. 06-UTDT-962-CCS

Confidential Attachment C
Docket No. 06-UTDT-962-CCS

CERTIFICATE OF SERVICE

06-UTDT-962-CCS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Joint Motion To Approve Stipulation and Agreement was placed in the United States mail, postage prepaid, or hand-delivered this 28th day of July, 2006, to the following:

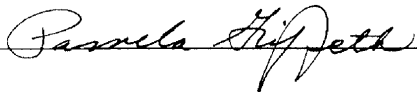
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CONFIDENTIAL INFORMATION

(Located in Docket Room)

In the Matter of the Joint Application of United Telephone Company of Kansas, Inc., United Telephone Company of Eastern Kansas, Inc. (United) and Rural Telephone Service Company, Inc. (RuralTel) for Permission of United to Cease Operating as a Telephone Public Utility in Twelve of its Kansas Exchanges, to Grant RuralTel a Certificate of Public Convenience for the Same Twelve Exchanges, and for Authority to Transfer Property, Plant and Equipment of United Located in the Twelve Exchanges to RuralTel and Complete all Matters Incident to the Transfer.

06-UTDT-962-CCS

Confidential Attachments B and C to Joint Motion to Approve Stipulation and Agreement.

**FILE DATE:
JULY 28, 2006**