

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a General Investigation)
Regarding Whether Electric Utilities Should)
be Considered an “Operator” of Private) **Docket No. 17-GIME-565-GIV**
Underground Lines Under the Provisions of)
the Kansas Utility Damage Prevention Act.)

VERIZON’S PETITION FOR RECONSIDERATION OF ORDER ASSESSING COSTS

Verizon¹ respectfully petitions the Kansas Corporation Commission (the "Commission"), pursuant to K.S.A. § 66-118b, K.S.A. 2016 Supp. § 77-529(a)(1), and K.A.R. § 82-1-235, for reconsideration of its July 28, 2017 “Order Assessing Costs” in the above-captioned docket (the “*Assessment Order*”). Specifically, Verizon requests that the Commission reconsider its decision to assess the costs of this docket against “[a]ll jurisdictional . . . telecom companies.” In support of this petition, Verizon states and alleges as follows:

1. This proceeding stems from a customer complaint docket against Kansas City Power & Light Company (Docket No. 15-KCPE-544-COM). Because a question of first impression arose in that docket, in its Final Order, the Commission directed the opening of a general investigation “to determine whether electric utilities should be considered an ‘operator’ of private underground lines under [the Kansas Underground Utility Damage Prevention Act].”²

The instant docket is that general investigation requested by the Commission.

¹ “Verizon” refers collectively to Verizon’s wireline and wireless affiliates operating in Kansas: Alltel Communications, LLC; MCI Communications Services, Inc.; MCImetro Access Transmission Services Corp.; Topeka Cellular Telephone Company; TTI National, Inc.; Verizon Long Distance LLC, Verizon Select Services Inc. and Verizon Wireless (VAW) LLC; and XO Communications Services, LLC (the majority of which were served with the *Assessment Order*). The Commission also served the *Assessment Order* on WWC License LLC, an entity that has not existed since it merged into Alltel Communications, LLC on December 31, 2014, and Cellco Partnership d/b/a Verizon Wireless (VAW), which appears to be an erroneous rendition of Verizon Wireless (VAW) LLC’s name.

² See “Final Order,” *In the Matter of the Complaint Against Kansas City Power & Light Company by Stephen and Karen Gradwohl*, Docket No. 15-KCPE-544-COM (January 10, 2017) at 8.

2. This proceeding is a general investigation involving only *electric* utilities that resulted from a situation in which a customer installed private underground electric lines upstream of an electric company's metering facilities. The Order Opening General Investigation defines the scope of the proceedings as "[a] general investigation . . . to explore the rights, obligations and liabilities that should be expected on the parties regarding the provision of locates and excavation over electric service lines . . ."³ Telecom companies are not the subject of the investigation in this docket. However, the *Assessment Order*, without any explanation, states that "[t]he Commission concludes that the costs of this proceeding should be equally assessed against all *jurisdictional* gas, electric and *telecom companies*" (emphasis added). *Assessment Order* at 1.

3. K.S.A. § 66-1502 authorizes the assessment of costs against the public utility that is the subject of the investigation. The assessment of the costs of this docket against telecom companies is wholly inconsistent with the caption being limited to "electric utilities"; the docketing of this proceeding using the "GIME" (rather than "GIMX") convention; and the fact that the accompanying July 28, 2017 "Order Opening General Investigation" cites only K.S.A. § 66-101d, whose scope is expressly limited to electric public utilities, as the basis for the Commission's jurisdiction in this matter.⁴

4. The Commission served the *Assessment Order* not only on several of Verizon's *wireline* affiliates – including multiple reseller interexchange carriers that do not even own underground facilities – but also on a number of Verizon's *wireless* affiliates, which are *not* "jurisdictional . . . telecom companies." See K.S.A. § 66-104a(c), which states:

The service of a telephone public utility, otherwise authorized to transact business pursuant to K.S.A. 66-131 and amendments thereto, relating to the provision of

³ See Order Opening General Investigation at 3-4.

⁴ See Order Opening General Investigation at 2.

radio communication, *including cellular radio, which is one-way, two-way or multiple, between mobile and base stations, between mobile and land stations, including land line telephones, between mobile stations or between land stations, shall not be subject to the jurisdiction, regulation, supervision and control of the state corporation commission.* (Emphasis added).

5. It is unclear whether the *Assessment Order* inadvertently or intentionally ordered the assessment of the costs of this proceeding against “jurisdictional telecom companies.” It is equally unclear whether service of the *Assessment Order* on Verizon’s wireless affiliates is an indication that the Commission intends to assess costs against them as well, despite the fact that, by law, they are not “jurisdictional telecom companies” and the Commission has no legal authority to do so.

6. Regardless, assessing *any* telecommunications provider for this investigation, whether wireline or wireless, is inappropriate. This proceeding will address an issue that is unique to electric companies and the nuances of the law specific to situations involving privately owned power lines connected to electric meters. Neither “jurisdictional telecom companies” (particularly resellers that do not even own underground facilities) nor wireless carriers should be compelled to bear the costs of a proceeding investigating a matter limited to electric utilities and their specific legal obligations under a unique fact pattern that has no application in the telecommunications context.

7. For all the reason stated herein, Verizon respectfully petitions the Commission for reconsideration of the *Assessment Order* and asks that it issue a corrected order excluding all “jurisdictional telecom companies” and wireless carriers from any liability for assessments for the costs of this proceeding.

Dated: August 14, 2017

Respectfully submitted,



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Communications Services, LLC*

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

David E. Bengtson, of lawful age, being first duly sworn, on oath deposes and states: I am the attorney for Verizon in the above-referenced matter; I have read the above and foregoing document, know and understand the contents thereof, and verify that the statements and allegations contained therein are true and correct, according to my knowledge, information and belief.



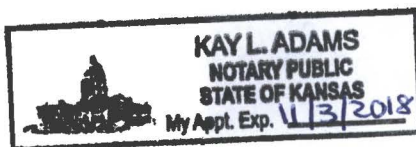
David E. Bengtson

Subscribed and sworn to before me this 14th day of August, 2017.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Verizon's Petition for Reconsideration of Order Assessing Costs was served via U.S. mail this 14th day of August, 2017, to the parties appearing on the Commission's service list as last modified on August 4, 2017.



David E. Bengtson