

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Proceeding to Conduct a)
Financial and Operational Audit of Kansas)
Relay Service, Inc.'s (KRSI) Administration)
of the Dual Party Relay Service and)
Telecommunications Access Program (TAP))
to Determine that Costs Recovered through)
the Kansas Universal Service Fund (KUSF))
for these Programs are Reasonable and)
Appropriate.)

Docket No. 07-KRSI-143-KSF

ORDER OPENING DOCKET

NOW COMES the above captioned matter for consideration and determination by the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

I. Summary of Commission Orders

A. Telecommunications Relay Service

1. On September 25, 1989, the Commission issued an order in Docket No. 168-334-U establishing Dual Party Relay service (now referred to as Telecommunications Relay Service (TRS)). At that time, TRS was the primary means of providing access to telecommunications service to the speech and hearing impaired.

2. In an order issued November 1, 1989 (November 1989 Order), the Commission determined, among other things, that a "free-standing, non-profit corporation be formed to

perform the day-to day administrative functions” of the TRS.¹ This entity would be incorporated as Kansas Relay Service, Inc. (KRSI).² KRSI was to be governed by a Board comprised of telecommunications companies that would be contributing financially for the provisioning of TRS.³ The Commission determined that KRSI should contract with the Kansas Telecommunications Association (now referred to as the Kansas Telecommunications Industry Association (KTIA)) for the day-to-day managerial functions required for the provision of TRS.⁴ The Commission required KRSI to enter into a contract with KTIA to establish a monthly fee for the use of office space, equipment, personnel and provide for unusual expenses upon occurrence.⁵ The initial contract was to be for one year from the date the TRS center would begin operating. At the end of that year, KRSI could either enter into another contract with the KTIA or negotiate with another entity for the provision of day-to-day managerial functions.⁶

3. In this same order, the Commission determined that the KRSI Board would select the vendor to provide the actual TRS. KRSI was to issue a Commission approved request for proposal (RFP) to entities interested in providing TRS.⁷ The performance of both the vendor and KRSI was to be audited each year. KRSI was to be audited by an outside firm to “assure proper management of the revenues it receives and disburses.”⁸ The Commission also determined that, upon request, KRSI’s books and records would be open to the Commission for review.⁹

4. In the November 1989 Order, the Commission also established the initial funding mechanism for provision of TRS. All jurisdictional telecommunications companies were

¹ *In the Matter of a General Investigation Into Dual Party Relay Service in Kansas*, Order, Docket No. 168,334-U, November 1, 1989 (November 1989 Order) ¶ 13.

² November 1989 Order, ¶ 13.

³ November 1989 Order, ¶ 14.

⁴ November 1989 Order, ¶ 15.

⁵ November 1989 Order, ¶ 15.

⁶ November 1989 Order, ¶ 15.

⁷ November 1989 Order, ¶ 18.

⁸ November 1989 Order, ¶ 17.

⁹ November 1989 Order, ¶ 17.

required to fund TRS and recover the cost through the ratemaking process.¹⁰ The Commission indicated that half of the funding would be provided by local exchange carriers through a fee based on the number of access lines and half of the funding should be provided by interexchange carriers and local exchange carriers that provided intrastate long distance service through a minute-of-use charge.

5. In an order issued March 21, 1990, the Commission determined that KRSI and the TRS vendor should develop a bill insert explaining TRS. At that time, the Commission acknowledged that the KRSI Board had selected Southwestern Bell Telephone Company (SWBT) to be awarded a five year contract to act as the TRS vendor. The bill insert was then to be provided to all local exchange carriers and sent by the local exchange carriers to customers one month prior to the initiation of TRS and once a year thereafter.¹¹ Additionally, the Commission ordered all local exchange carriers to include information in their telephone directories regarding TRS and the information required of a caller placing a call through the relay center.¹² The Commission also required local exchange carriers to publish the TRS 800 number in their business white pages.¹³

6. On July 26, 1990, Congress enacted the Americans with Disabilities Act of 1990 (ADA). Title IV of the ADA mandated the FCC to ensure that interstate and intrastate TRS were available, in the most efficient manner, to individuals with hearing or speech disabilities. On July 26, 1991, the FCC released its Report and Order and Request for Comments amending its rules to require each common carrier providing voice service to provide TRS throughout its service area by July 26, 2003. The FCC also established minimum standards for operational,

¹⁰ November 1989 Order, ¶ 21.

¹¹ *In the Matter of a General Investigation Into Dual Party Relay Service in Kansas*. Order, Docket No. 168,334-U, March 21, 1990 (March 1990 Order) ¶ 6.

¹² March 1990 Order, ¶ 9.

¹³ March 1990 Order, ¶ 9.

technical, and functional procedures to be met in carrying out the requirement that carriers provide telecommunications services to persons with hearing or speech disabilities in a functionally equivalent manner to the services received by individuals without a speech or hearing disability.

7. In an order dated October 15, 1992 (October 1992 Order), the Commission determined that the TRS funding mechanism should be modified. The Commission found that the cost of providing TRS should be allocated according to usage associated with local calls, intrastate long distance calls and interstate long distance calls.¹⁴ The cost associated with local usage would then again be allocated among local exchange carriers based on the number of access lines and to long distance providers based on minutes of use. The Commission also found that since TRS is mandated by the ADA and in the public interest, carriers could petition the Commission to pass the costs through to their consumers.¹⁵ The Commission ordered KRSI to recalculate the TRS assessment on an annual basis.¹⁶

8. In the October 1992 Order, the Commission also found that TRS should be provided to cellular carriers when technically and economically feasible. The Commission granted KRSI the authority to recover costs from cellular carriers and directed KRSI to monitor the number of calls relayed from cellular devices.¹⁷ The Commission stated that TRS should also relay calls involving pagers when the call is originated from a teletypewriter.

9. The Commission also provided clarification for the vendor selection process. The Commission concluded that all subsequent vendors of TRS should be selected through a formal bidding process with full disclosure of the content of the winning bid and the contract which

¹⁴ *In the Matter of a General Investigation Into Dual Party Relay Service in Kansas*, Order, Docket No. 168,334-U, October 15, 1992 (October 1992 Order) ¶ 17.

¹⁵ October 1992 Order, ¶ 17.

¹⁶ October 1992 Order, ¶ 17.

¹⁷ October 1992 Order, ¶ 17.

results from the winning bid.¹⁸ The choice of vendor was to be determined by KRSI, subject to Commission approval.¹⁹ The Commission indicated that the new RFP and bid process should be initiated by May 7, 1994.²⁰

10. On January 19, 1995, the Commission issued an order in Docket No. 168,334-U approving the selection of SWBT to again be the vendor of TRS in Kansas. The new contract with SWBT indicated that SWBT would be the vendor through May 6, 2000.²¹

11. The Kansas legislature enacted the State Telecommunications Act of 1996 (State Act). K.S. A. 66-2002 (g) that the Commission to:

initiate and complete a proceeding by January 1, 1997, to establish a competitively neutral funding mechanism or mechanisms to fund: dual party relay services for Kansans who are speech or hearing impaired; telecommunications equipment for persons with other special needs. This funding mechanism or mechanisms shall be implemented by March 1.

Thus the Commission was required to revisit its funding mechanism for TRS. In Docket No. 190,492-U, the Commission addressed issues regarding the implementation of the State Act.

Regarding TRS, the Commission determined that:

[t]o ensure the competitive neutrality of future funding of [Kansas Relay Center (“KRC”)] operations under the State Act, the Commission changes the assessment base for relay services to become an assessment on the retail revenues of all present and future intrastate telecommunications services providers in Kansas. SWBT and Sprint/United propose that KRSI be included in the [Kansas Universal Service Fund (“KUSF”)]. (Harper, Tr. at 2633-45). The economies of administration on a common or centralized basis seem apparent. The Commission finds that these funds shall be collected by the KUSF administrator as part of the KUSF

¹⁸ October 1992 Order, ¶ 17.

¹⁹ October 1992 Order, ¶ 17.

²⁰ October 1992 Order, ¶ 17.

²¹ *In the Matter of a General Investigation Into Dual Party Relay Service in Kansas*, Order, Docket No. 168,334-U, January 19, 1995 (January 1995 Order) ¶¶ 4-6.

assessment and paid out to KRSI for the ongoing operational support of both KRSI and the KRC.²²

12. In an order issued August 1, 2005, the Commission approved changes to KRSI's bylaws. KRSI petitioned the Commission for approval of amendments to address changes that had occurred within the telecommunications industry since the bylaws were last amended in 1993. The amended bylaws simplify and clarify the rules by which the Board of Directors and the Advisory council operate. The bylaws recognize changes in the industry to provide for a wireless carrier and competitive telecommunications carrier presence on the Board. The Board was also broadened to permit greater representation from the disability community to aid in responsiveness of TRS (and TAP). The process for approval of a TRS contract was also clarified.

B. Telecommunications Access Program

13. On March 6, 1996, the Commission issued an order opening Docket No.194,283-U to investigate a request by the Kansas Commission for the Deaf and Hard of Hearing (KCDHH) to fund a program to distribute telecommunications devices to persons with disabilities to aid in achieving functional equivalency to telecommunications services. During the course of this proceeding, the Kansas legislature enacted the State Telecommunications Act of 1996 (HB 2728). K.S. A. 66-2002(g) requires the Commission to:

initiate and complete a proceeding by January 1, 1997, to establish a competitively neutral funding mechanism or mechanisms to fund: dual party relay services for Kansans who are speech or hearing impaired; telecommunications equipment for persons with other special needs. This funding mechanism or mechanisms shall be implemented by March 1;

²² *In the Matter of a General Investigation Into Competition within the Telecommunications Industry in the State of Kansas*, Order, Docket No. 190,492-U, December 27, 1996 (December 1996 Order) ¶ 135.

In a separate proceeding the Commission determined that telecommunications equipment for persons with disabilities should be funded through the KUSF.²³

14. In an order issued on January 24, 1997, in Docket No. 194,283-U (January 1997 Order), the Commission established the Telecommunications Access Program (TAP). The Commission determined that KRSI had the appropriate expertise to manage the program funding and distribution of equipment.²⁴ The Commission required KRSI to increase the size of its advisory council to fifteen members, with the additional members representing disability groups not previously served by KRSI.²⁵ Additionally, the Commission determined that KRSI should hire a director for TAP and support staff.²⁶ The Commission indicated that these employees could be hired pursuant to an adjustment to the then current contract arrangement KRSI had with KTIA for the provision of TRS.²⁷ The initial TAP budget was set at \$450,000.²⁸ However, KRSI was to inform the KUSF administrator of its monthly financial needs rather than simply drawing one-twelfth of its yearly budget.²⁹ The Commission also determined that TAP should be audited annually in conjunction with the annual audit of KRSI.³⁰ The Commission indicated that the TAP budget could then be adjusted as needed.³¹

15. In the January 1997 Order, the Commission also established parameters for determining eligibility for equipment from TAP. A voucher for equipment would be available to persons that are a resident of Kansas; are subscribed to telephone service at his or her residence;

²³ December 1996 Order, ¶ 137.

²⁴ *In the Matter of a General Investigation into a Request by the Kansas Commission for the Deaf and Hard of Hearing to Fund a Telecommunications Devices for the Disabled Distribution Program*, Order, Docket No. 194,283-U, January 24, 1997 (January 1997 Order) ¶ 70.

²⁵ January 1997 Order, ¶ 70.

²⁶ January 1997 Order, ¶ 70.

²⁷ January 1997 Order, ¶ 70.

²⁸ January 1997 Order, ¶ 71.

²⁹ January 1997 Order, ¶ 72.

³⁰ January 1997 Order, ¶ 73.

³¹ January 1997 Order, ¶ 73.

have certification from a trained and licensed professional indicating a disability or impairment that limits or affects the applicant's ability to access and/or communicate over the telephone without assistance; and, have signed an affidavit indicating the person's income is less than the income eligibility requirement specified in K.S.A. 79-32,176 for receipt of full or partial tax credits.³² The Commission indicated that the professional completing the certification form could also recommend a type of equipment for meeting the applicant's needs; however, KRSI could consider additional information in determining the type of equipment voucher to provide.³³ The voucher could be used by the recipient to purchase the equipment specified on the voucher from an authorized vendor.³⁴ Finally, the Commission indicated that KRSI should file an application with the Commission if changing policies approved by the Commission or initiating new policies.³⁵

16. KRSI began accepting applications for TAP vouchers in October 1997. Based on initial experience in operation, KRSI requested the Commission revise several aspects of TAP. First, KRSI suggested that each household be limited to two vouchers for the same type of equipment, unless there was evidence of differing disabilities within the household which would necessitate distinct equipment.³⁶ Next, KRSI requested that the definition of Kansas residency be broadened to permit equipment to be distributed to a student attending an out-of-state university or other educational institution. KRSI also requested that the limitation to two pieces of equipment be waived in this instance to provide equipment to the student for use out-of –

³² January 1997 Order, ¶ 74.

³³ January 1997 Order, ¶ 76.

³⁴ January 1997 Order, ¶ 78.

³⁵ January 1997 Order, ¶ 82.

³⁶ *In the Matter of the General Investigation into a Request by the Kansas commission for the Deaf and Hard of Hearing to Fund a Telecommunications Devices for the Disabled Distribution Program*, Order Soliciting Comments on Proposed Telecommunications Access Program Budget, Docket No. 96-GIMT-435-MIS, May 14, 1998 (May 1998 Order) ¶ 4.

state.³⁷ KRSI noted that the Commission did not approve funding for training in its initial order creating TAP. However, during its initial operations, KRSI's TAP staff found there was significant need for training and assistance in selecting the appropriate piece of equipment. KRSI requested \$25,000 be added to its budget to permit TAP to contract with individuals and agencies across the state to provide needs assessments and training assistance.³⁸ Finally, KRSI provided an estimate of the budget for TAP for its second year of operation. KRSI estimated administrative expense of \$87,000, training expense of \$25,000, and equipment expense of \$991,432 for a total budget of \$1,103,432.³⁹ In an order issued July 20, 1998, the Commission adopted all of the recommendations of KRSI. The Commission determined that evaluation of the TAP budget might best be accomplished with ongoing quarterly or semi-annual joint reviews by Staff and KRSI's TAP staff.

17. On April 6, 1999, KRSI requested that the income eligibility requirement be removed from the TAP eligibility criteria and that the list of certifying authorities be expanded to include optometrists. In an order issued August 2, 1999, the Commission found that it was reasonable for the TAP staff to gather information regarding the number of applicants whose income exceeds the income eligibility criterion over a six month period. The Commission reasoned that this data would permit it to make an informed decision on removal of the income eligibility criterion.⁴⁰ The Commission granted the request to expand the list of certifying authorities to include optometrists.⁴¹ Envison and KRSI requested reconsideration of the Commission's order regarding the income eligibility criterion. In its order on reconsideration

³⁷ May 1998 Order, ¶ 4.

³⁸ May 1998 Order, ¶ 4.

³⁹ May 1998 Order, ¶ 4.

⁴⁰ *In the Matter of a General Investigation into a Request by the Kansas Commission for the Deaf and Hard of Hearing to Fund a Telecommunication Devices for the Disabled Distribution Program*, Order on Motion for Modification, Docket No. 96-GIMT-435-MIS, August 2, 1999 (August 1999 Order) ¶ 15.

⁴¹ August 1999 Order, ¶ 16.

dated September 20, 1999, the Commission noted that no party had requested reconsideration of its initial order establishing TAP with an income criterion.⁴² Further, the Commission stated that the income criterion “. . . had its basis in the belief that individuals who can afford to purchase their own telecommunications equipment should do so.”⁴³ The Commission determined that it was not equitable to provide assistance to those who could afford to purchase telecommunications equipment when TAP is funded through the KUSF – a fund to which all Kansans subscribing to telecommunications services, including those Kansans with incomes below the poverty level, contribute.⁴⁴ The Commission acknowledged that the then current TAP application process would not permit TAP staff to gather the data requested by the Commission in its order dated August 2, 1999 and withdrew its request for the data.⁴⁵

18. In an order issued January 11, 2006, the Commission approved a request from KRSI to expand the list of equipment that could be distributed through TAP.⁴⁶ KRSI had formed a TAP Equipment Committee to review the equipment eligible for distribution from TAP, review the needs of the communities served, and make recommendations to KRSI for equipment that should be added to the distribution list. KRSI took the committee’s recommendations and requested the Commission approve the additions to the equipment list. KRSI requested that CapTel equipment be added to the distribution list. CapTel equipment consists of a telephone handset that is amplified and also contains a built-in screen that contains captioning text. The text is supplied by an operator who listens but does not actively participate in the conversation.

⁴² *In the Matter of a General Investigation into a Request by the Kansas Commission for the Deaf and Hard of Hearing to Fund a Telecommunication Devices for the Disabled Distribution Program*, Order on Reconsideration, Docket No. 96-GIMT-435-MIS, September 20, 1999 (September 1999 Order) ¶ 9.

⁴³ September 1999 Order, ¶ 10.

⁴⁴ September 1999 Order, ¶ 14.

⁴⁵ September 1999 Order, ¶ 17.

⁴⁶ *In the Matter of the Application of Kansas Relay Service, Inc. to Include CapTel Service in the RFP for a Telecommunications Relay Service Agreement and, as TAP to Distribute CapTel and Text Messaging Equipment*, Order Granting Application, Docket No. 06-KRST-250-DPR, January 11, 2006 (January 2006 Order)

The text appears almost simultaneously with the spoken word. KRSI also requested that text messaging equipment, in the form of personal digital assistants (PDAs), be added to the distribution list. A PDA provides functionality similar to that provided through a portable TTY. KRSI also requested that the Commission add equipment to accommodate video relay service. The Commission approved all requests. The Commission ordered Staff and KRSI to work together to determine which PDAs to include on the equipment list and adopt an application process that ensures consumers who elect to utilize a PDA have access to 911 service.⁴⁷ Additionally, the Commission ordered Staff and KRSI to work together to identify web cameras and software to provide video relay service for addition to the list and to develop an application that ensures consumers take advantage of equipment that is provided by vendors at no cost.⁴⁸

II. Cost Based KUSF

19. K.S.A. 66-2002(h) required the Commission to establish the KUSF, given the parameters found in K.S.A 66-2008, and make determinations regarding its implementation. In Docket No. 090-492-U, the Commission determined that dual party relay service and the telecommunications equipment program should be funded through the KUSF.⁴⁹ K.S.A. 2008(c) directs the Commission to periodically review the costs of qualified telecommunications public utilities to determine if such costs justify modification of the KUSF.

20. Starting with SWBT in Docket No. 98-SWBT-677-GIT, the Commission began its review of the KUSF to ensure that it is cost-based. Since that time, the Commission has conducted audits of Sprint/United and many of the rural independent telephone companies in descending order of the size of support they receive from the KUSF. The Commission reasons that since the dual party relay service and TAP are also funded through the KUSF, the

⁴⁷ January 2006 Order, ¶ 19.

⁴⁸ January 2006 Order, ¶ 23.

⁴⁹ December 1996 Order, ¶¶ 135 & 137.

Commission should also examine the operations of KRSI to determine that cost recovered through the KUSF are reasonable and appropriate. KTIA has contracted to manage the KRSI and TAP programs with the resulting management fees being recovered through the KUSF; therefore, records of KTIA must also be examined to determine that the management fee recovered through the KUSF is appropriate. The Commission has previously determined that an audit of KRSI may be undertaken. In Docket No. 168,334-U the Commission determined that KRSI would open its records for Commission review.⁵⁰

III. Conclusion

21. The Commission concludes that a financial and operational audit of KRSI is necessary to ensure the costs recovered through the KUSF are reasonable. Staff is directed to conduct the audit. The audit will require a review of KRSI's financial records as well as financial data of the KTIA. Again, since KTIA has contracted to manage the KRSI and TAP programs with the resulting management fees being recovered through the KUSF, those fees and associated financial records must be reviewed. Beyond financial records, Staff is directed to examine the operations of KRSI to determine the reasonableness of costs incurred to manage the programs. Staff should review compliance with Commission orders, efficiency of TAP's voucher system, outreach efforts, etc. to determine whether the cost incurred is reasonable. Staff will utilize David Dittemore to conduct part of this audit. Mr. Dittemore is a consultant with Strategic Regulatory Solutions LLC, P.O. Box 51, Owasso, Oklahoma, 74055. Staff is directed to prepare and file an audit report upon the completion of its financial and operational audit.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

⁵⁰ November 1989 Order, ¶ 17.

A. This docket be opened for the purpose of conducting a financial and operational audit of Kansas Relay Service, Inc.

B. Staff will prepare and file and audit report upon completion of its financial and operational audit.

C. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein.⁵¹

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com.

Dated: AUG 10 2006

ORDER MAILED

AUG 10 2006

 Executive
Director

Susan K. Duffy
Executive Director

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⁵¹ K.S.A. 66-118; K.S.A. 2005 Supp. 77-529(a)(1).