

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application and Request)
of The Golden Belt Telephone Association,)
Inc. for an Increase in its Cost-Based Kansas) Docket No. 19-GNBT-505-KSF
Universal Service Fund Support.)

**LIMITED PETITION FOR RECONSIDERATION OF EFFECTIVE DATE OF
INCREASE IN KUSE SUPPORT**

COMES NOW The Golden Belt Telephone Association, Inc. (“Golden Belt”) and for its limited petition for reconsideration of the Commission’s January 28, 2020 Order in this docket, states as follows:

1. On November 6, 2019, Golden Belt and Commission Staff (“Staff”) filed a Joint Motion to Approve Settlement Agreement (“Joint Motion”). In that Joint Motion, Golden Belt and Staff agreed that, under traditional rate of return rate-making principles, Golden Belt was underearning based upon a 2018 test year, and agreed that Golden Belt’s KUSF support should be increased by \$1,232,000, annually, in order to afford Golden Belt a reasonable opportunity to recover its Commission-approved revenue requirement.

2. On December 20, 2019, and because no Commission order addressing the Joint Motion had yet been issued, Golden Belt filed a motion requesting that any order approving the Joint Motion be effective January 1, 2020, citing an almost identical situation which occurred before the Commission in Docket No. 17-RNBT-555-KSF. In its Motion, Golden Belt noted that the increase in its KUSF support is just, reasonable, and in the public interest.

3. On January 28, 2020, eight-two days after Golden Belt and Staff filed the Joint Motion, the Commission issued its Order on Settlement Agreement (“Order”) which granted the parties’ Joint Motion, resulting in the agreed-upon increase in KUSF, but effective February 1,

2020. Although the Order mentioned Golden Belt having filed its December 30 Motion, the Order did not address Golden Belt's unopposed Motion in any other manner.

4. Proceedings before the Commission are generally governed by the Kansas Administrative Procedure Act, K.S.A. 77-501 et seq. K.S.A. 77-526(c) states:

A final order or initial order shall include separately stated, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness.

The Commission's Order violates K.S.A. 77-526(c). The Order did not include, separately stated, findings of fact, conclusions of law and policy reasons for the decision. By wholly ignoring Golden Belt's December 30 Motion, the Order fails to render any finding of fact, conclusion of law or policy for that aspect of this docket.

5. K.S.A. 77-526(g) also sets forth time requirements applicable to initial or final orders:

A final order or initial order pursuant to this section shall be rendered in writing and served within 30 days after the conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown. If extended for good cause, such good cause shall be set forth in writing on or before expiration of the 30 days.

Although there was no evidentiary hearing in this matter as a result of the parties reaching an agreement and filing a Joint Motion and Stipulated Settlement Agreement, in effect the Joint Motion and Stipulated Settlement Agreement, coupled with the testimony in support of the Settlement Agreement filed by Staff on November 12, 2019, and Errata Testimony filed by Staff on November 14, 2019, served to act as a conclusion of the evidentiary portion of the proceeding. K.S.A. 77-526(g) requires an order within 30 days after the conclusion of the matter and is evidence that the legislature intended that administrative agencies act in a timely manner.

The Commission's failure to render an Order until eight-two days after the Joint Motion is untimely. Golden Belt notes that K.S.A. 77-526(i) specifically refers to matters before the Commission when the presiding officer is not the agency head:

Notwithstanding the other provisions of this section if the presiding officer in a hearing before the state corporation commission is not the agency head, the presiding officer shall not render an initial order but shall make written findings and recommendations to the commission. The commission shall render and serve a final order within 60 days after the conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown. If extended for good cause, such good cause shall be set forth in writing on or before expiration of the 60 days.

This section, with its limit of 60 days to issue an order from the conclusion of the hearing is further evidence that although the legislature, through K.S.A. 66-1,187 vested the Commission with full power, authority and jurisdiction to supervise and control telecommunications public utilities doing business in Kansas and empowered the Commission to do all things necessary and convenient for the exercise of such power, authority and jurisdiction, the Commission does not have unfettered power and discretion to ignore matters before it, especially to the detriment of the utilities it regulates.

6. By failing to issue an order in this matter in a timely matter consistent with the dictates of justice and the public interest and in keeping with past practice of this Commission, the Commission deprived Golden Belt of over \$102,000 of additional KUSF support, support the Commission has determined that Golden Belt requires in order to have a reasonable opportunity to meet its Commission-approved revenue requirement.

7. Since 2000, in keeping with the legislature's mandate to transition the KUSF from an initial intrastate access charge replacement mechanism to a cost-based fund, the Commission has adjudicated approximately 45 proceedings to determine a rural local exchange carrier's cost-

based KUSF support. Of those approximately 45 proceedings, approximately 35 (including Docket No. 17-RNBT-555-KSF) were adjudicated on the basis of the filing of some form of a Joint Motion to approve a Stipulated Settlement Agreement, followed by a Commission order approving the Joint Motion. Excepting Docket No. 17-RNBT-555-KSF, in the remaining 34 dockets the longest period of time between the filing of the Joint Motion and the issuance of a Commission order approving the Joint Motion was 53 days, and of those 24 received an order issued within 30 days or less.

8. It is fundamentally unfair for the Commission to deny Golden Belt an additional month of its Commission-approved increase in cost-based KUSF support via the failure or refusal to issue an Order in a timely manner. Furthermore it is prejudicial to Golden Belt in that it deprives Golden Belt of the ability to conform to K.S.A. 66-1,189 requiring Golden Belt to “furnish reasonably efficient and sufficient service.”

9. The Commission’s failure to issue an order on this docket in a timely manner also violates the telecommunications public policy of the state of Kansas pursuant to K.S.A. 66-2001. The Commission’s failure to issue an order in a timely manner does not:

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

(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; and

(d) advance the develop 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 providers and others.

WHEREFORE, for the reasons stated above, Golden Belt requests the Commission reconsider the portion of its January 28 Order making the increase in Golden Belt's Commission-approved KUSF support effective February 1, 2020, grant Golden Belt's Motion to set the effective date of Golden Belt's increase effective January 1, 2020, all in keeping with past Commission practice and the requirements of the Kansas Administrative Procedure Act and legislative mandate that administrative agencies act in a timely manner, and to afford Golden Belt its right under traditional rate of return regulation the reasonable opportunity to recover its Commission approved revenue requirement.

Respectfully submitted,

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VERIFICATION

I, the undersigned, hereby certify under penalty of perjury pursuant to K.S.A. 53-601 that I am an attorney for the companies listed above and that the foregoing is true and correct. Executed on February 12, 2020.



Colleen R. Jamison

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the above and foregoing was sent via electronic mail this 12th day of February, 2020, addressed to:

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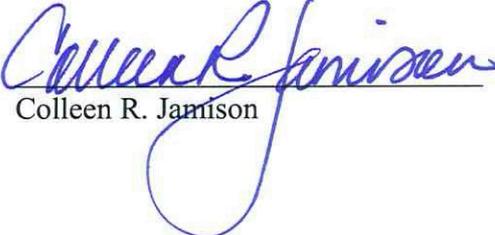

Colleen R. Jamison

EXHIBIT A

DOCKET	DATE JOINT MOTION/STIPULATED SETTLEMENT AGREEMENT FILED	DATE ORDER APPROVING JOINT MOTION/SETTLEMENT AGREEMENT ISSUED	DAYS
01-CRKT-713-AUD	10/24/01	11/5/01	12
01-BSTT-878-AUD	11/28/01	1/17/02	50
01-SFLT-879-AUD	11/28/01	1/17/02	50
01-PNRT-929-AUD	12/21/01	2/14/92	55
01-WLST-210-AUD	7/12/02	7/16/02	4
02-JBNT-846-AUD	11/26/02	12/10/02	14
03-S&AT-160-AUD	3/31/03	4/4/03	5
03-TWVT-1031-AUD	2/11/04	2/24/04	13
03-MRGT-1117-AUD	6/27/03	7/7/03	10
04-MKNT-364-AUD	1/8/04	1/12/04	4
05-CNHT-020-AUD	4/29/05	5/5/05	6
05-KOKT-060-AUD	3/21/05	3/25/05	4
05-TTHT-895-AUD	10/20/05	11/21/05	32
05-SCNT-1048-AUD	2/1/06	2/3/06	2
06-ELKT-365-AUD	5/3/06	5/19/06	16
06-H&BT-1007-AUD	10/20/06	10/25/06	5
06-WTCT-1020-AUD	12/15/06	12/21/06	6
06-RNBT-1322-AUD	3/7/07	3/13/07	6
07-PLTT-1289-AUD	12/5/07	12/19/07	14
08-CBST-500-KSF	3/14/08	3/27/08	7
09-TWVT-069-KSF	1/14/09	1/21/09	7
09-MTLT-091-KSF	12/15/08	12/19/08	4
09-BLVT-913-KSF	10/20/09	10/30/09	10
10-HVDT-288-KSF	8/2/10	9/9/10	38
10-GBNT-526-KSF	10/21/10	10/27/10	6
10-UTAT-525-KSF	3/18/11	3/30/11	12
11-RNBT-608-KSF	8/23/11	10/5/11	43
11-CNHT-659-KSF	10/17/11	12/7/11	51
12-S&TT-234-KSF	9/13/12	11/5/12	53
12-GRHT-633-KSF	11/8/12	12/5/12	29
13-ZENT-065-AUD	6/13/13	7/13/13	30
14-WTCT-142-KSF	2/14/14	2/25/14	11
14-S&TT-525-KSF	10/20/14	11/20/14	31
15-TWVT-213-AUD	10/16/15	10/27/15	11