

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of the Application of Google)
Fiber Kansas, LLC Filing for Kansas Video) Docket No. 12-GFKC-643-VSA
Service Authorization.)

ORDER APPROVING AMENDED VIDEO SERVICE AUTHORIZATION

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. On July 7, 2014, Google Fiber Kansas, LLC (“Google Fiber”) filed an Application to amend its Video Service Authorization pursuant to K.S.A. 12-2023 and K.A.R. 82-15-1.

2. In its Application, Google Fiber requests authority to provide video service to three new service areas in addition to the nine already approved under Google Fiber’s current Video Service Authorization. Google Fiber specifically seeks authority to serve the following areas: the City of Fairway; the City of Mission; and the City of Roeland Park, Kansas.

3. K.S.A. 12-2023 states that the Commission shall issue a video service authorization permitting a video service provider to provide video service in the state, or amend a video service authorization previously issued, within 30 days after receipt of a completed affidavit submitted by the video service applicant and signed by an officer or general partner of the applicant affirming:

(1) The location of the applicant's principal place of business and the names of the applicant's principal executive officers;

(2) that the applicant has filed or will timely file with the federal communications commission all forms required by that agency in advance of offering video service in this state;

(3) that the applicant agrees to comply with all applicable federal and state statutes and regulations;

(4) that the applicant agrees to comply with all lawful and applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the municipalities in which the service is delivered;

(5) the description of the service area footprint to be served within the state of Kansas, including any municipalities or parts thereof, and which may include certain designations of unincorporated areas, which description shall be updated by the applicant prior to the expansion of video service to a previously undesignated service area and, upon such expansion, notice to the state corporation commission of the service area to be served by the applicant; including:

(A) The period of time it shall take applicant to become capable of providing video programming to all households in the applicant's service area footprint, which may not exceed five years from the date the authorization, or amended authorization, is issued; and

(B) a general description of the type or types of technologies the applicant will use to provide video programming to all households in its service area footprint, which may include wireline, wireless, satellite or any other alternative technology.

4. Commission Staff ("Staff") submitted a Report and Recommendation regarding the Application on July 23, 2014, attached hereto and made a part hereof by reference. Staff found that Google Fiber is properly registered with the Kansas Secretary of State's Office. Staff found that the Application provided a list of Google Fiber's key personnel contacts for regulatory matters, and affirmed that Google Fiber's principal place of business is located at 1600 Amphitheatre Parkway, Mountain View, CA, 94043. (*See* K.S.A. 12-2023(a)(1)). Staff found that Google Fiber is not registered as a Cable System Operator with the Federal Communications Commission (FCC) due to the nature of its service offerings, and Staff agrees that registration is not required in this instance. (*See* K.S.A. 12-2023(a)(2)). Finally, Staff found that Google Fiber agreed to follow all applicable federal, state, and municipal rules and regulations. (*See* K.S.A.

12-2023(a)(3)-(4)). For ease of future reference, Staff is identifying the proposed service areas as follows: the City of Fairway, FRWY-10-GFKC-01; the City of Mission, MSSN-11-GFKC-01; and the City of Roeland Park, ROLP-12-GFKC-01.

5. Staff recommended approval of the amended Video Service Authorization.

6. The Commission finds Staff's findings to be reasonable and hereby adopts Staff's recommendation of approving the amended Video Service Authorization.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Application filed by Google Fiber on July 7, 2014 to amend its Video Service Authorization is approved.

B. Google Fiber is granted authority to provide video service as requested in the Application. The grant of authority is subject to lawful operation of the video service by the applicant or its successor in interest.

C. The parties have fifteen (15) days, plus three (3) 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. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Com.; Apple, Com.

Dated: **JUL 31 2014**



ORDER MAILED **AUG 31 2014**

Thomas A. Day
Acting Executive Director

MRN

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Kelly Mabon, Telecommunications Analyst
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: July 23, 2014

SUBJECT: In the Matter of the Application of Google Fiber Kansas, LLC Filing for
Kansas Video Service Authorization.
Docket No. 12-GFKC-643-VSA

EXECUTIVE SUMMARY:

On July 7, 2014, Google Fiber Kansas, LLC (Google Fiber) filed an Amended Application for a state-issued Video Service Authorization, as authorized by K.S.A. 12-2023 and K.A.R. 82-15-1. Staff recommends approval of this Application.

In accordance with K.S.A. 12-2023(a), Commission action in this matter is required not later than **Saturday, August 2, 2014.**

BACKGROUND:

K.S.A. 12-2023 gives the Commission the authority to review applications for those entities who desire to provide cable service or video service in the state of Kansas.

The Commission must review an application for a video service authorization (VSA) to determine whether:

- 1) The applicant identified the location of its principal place of business and the names of its principal executive officers;
- 2) The applicant has filed or will file all forms required by the Federal Communications Commission (FCC) before offering video service in Kansas;

- 3) The applicant has agreed to comply with all applicable federal and state statutes and regulations;
- 4) The applicant has agreed to comply with all lawful and applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the municipalities in which the service is delivered; and
- 5) The applicant has described the service area footprint to be served within Kansas and provided the period of time, not to exceed five years, in which the applicant will be capable of providing video service to all households in the service area footprint, and a general description of the type or types of technologies the applicant will use to provide the video programming.

These showings by the applicant are to be made in the form of an affidavit signed by an officer or general partner of the applicant. Upon proper showing, the Commission shall approve the VSA.

ANALYSIS:

The Applicant has identified its principal place of business as 1600 Ampitheatre Parkway, Mountain View, CA, 94043, and has previously provided its officers and contact personnel.

The Applicant is registered with the Kansas Secretary of State's office as a Foreign Limited Liability Company and is currently 'Active and in Good Standing' with the Secretary's office.

The Applicant states that it has not filed with the FCC a "Cable Community Registration Form 322" or been assigned any "Community Unit Identification Number (CUID)" as these items are described in federal regulations, 47 C.F.R. § 76.1801. This regulation applies only to a "cable operator" operating a "cable system" as defined at 47 C.F.R. § 76.5, and it does not apply to the service for which Google Fiber seeks authorization. Staff asked for further clarification of this answer to which the Company responded as follows:

Form 322 must be filed by *cable operators* before they can commence operation. *See* 47 C.F.R. §§ 76.1800 - 76.1801. To meet the definition of "cable operator,"¹ "cable service" must be provided. "Cable service" is defined as: "(A) the *one-way* transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service." 47 U.S.C. § 522(6) (emphasis added).

¹ "Cable operator" is defined as: "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." *See* 47 U.S.c. § 522(5).

Form 322 also requires that before commencing operation, a "cable system operator must send registration information for each community to be served" to the FCC.² The FCC assigns a CUID when the registration process is complete.

The FCC has held that the definition of "cable service" is meant to encompass services provided over cable systems, which operate using a one-way, broadcast transmission model in which subscriber interactivity is limited.³ All available linear video programming is simultaneously transmitted, *i.e.*, broadcast, to all households connected to the cable system.

Tuners built into customers' navigation devices (*e.g.*, set-top boxes) select the appropriate channel to display on each customer's television. Cable systems are thus fundamentally one way, passive distribution systems.

Video programming transmission on the Google Fiber network is based on a client-server architecture similar to that used by end users to access the Internet. Google Fiber's IP-enabled video offering thus falls outside of the definition of "cable service" because it is transmitted via a *two-way, interactive* network that involves regular communication with customer premises equipment to deliver content. When a subscriber selects a channel from the programming guide, a message is sent through the navigation device through Google Fiber's IP-based network to a regional head end. In response, the requested programming is encoded and then sent in IP-format over Google Fiber's facilities to the navigation device, where it is decoded and displayed on the subscriber's TV. Nothing is sent to the subscriber until the subscriber communicates and interacts with the IP-enabled network and requests specific content. A subscriber's navigation device is in constant communication with, and signaling to, the Google Fiber network the content they want to access and the network responding with the appropriate IP transport stream.

The degree of interactivity inherent in Google Fiber's network, as well as interactive features that Google Fiber provide, make the offering fundamentally different from cable

² See *Instructions for FCC Form 322, Cable Community Registration*, available at <ftp://ftp.fcc.gov/pub/Forms/Form322/322.pdf>. "Cable system" is defined as a "facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community." See 47 C.F.R. § 76.5(a). The term does not include: (1) facilities that serve "only to retransmit the television signals of one or more television broadcast stations;" (2) facilities that serve "subscribers without using any public right-of-way;" (3) facilities of common carriers subject to "Title II of the Communications Act of 1934 . . . except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;" (4) open video systems that "compl[y] with Section 653 of the Communications Act;" or (5) facilities of "any electric utility used solely for operating its electric utility systems." See *id.* § 76.5(a)(1-5).

³ See, *e.g.*, *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd. 4798, ~ 61 (2002) (subsequent history omitted) (the "phrase 'one-way transmission to subscribers' in the definition [of cable service] reflects the traditional view of cable as primarily a medium of mass communication, with the same package or packages of video programming transmitted from the cable operator and available to all subscribers."); *Telephone Company-Cable Television Cross Ownership Rules*, Sections 63.54-63.58, Second Report and Order, Recommendation, Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd. 5781, ~ 75 n.194 (1992) ("Congress emphasized that services enabling subscribers to interact with or manipulate information typically would not be considered cable service.").

service. Google Fiber's service is provided in a digital, IP-packet format. The offering also includes an array of interactive features that go far beyond those "required" simply to access channels. These features permit each end user to tailor content and viewing experiences to their individual tastes and needs. Unlike a cable system, it is not possible for a user to access the Google Fiber service without having a broadband Internet connection. The service simply is one of many Internet applications that flow over the Internet connection.

For these reasons, Google Fiber asserts it is not required to file FCC Cable Community Registration Form 322 or be assigned a CUID by the FCC. These requirements apply to a "cable operator" operating a "cable system." Because the Google Fiber offering is not a "cable service," these definitions are not applicable to Google Fiber.

By initialing, the Applicant has agreed to comply with all applicable federal and state statutes and regulations and agrees to comply with all lawful and applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of video services, including the police powers of the municipalities in which the service is delivered. (Application item #5).

The Applicant is seeking additional authority in the cities of Fairway, Mission, and Roeland Park, Kansas, and has provided the following description:

The Applicant has provided a Legal Description of the Service Area Footprints in an electronic format, compatible with the Commission's mapping system.

For ease of future reference, Staff is identifying⁴ the proposed footprint as follows: the City of Fairway FRWY-10-GFKC-01, the City of Mission MSSN-11-GFKC-01, and the City of Roeland Park ROLP-12-GFKC-01.⁴

The Applicant states that it will become capable of serving 100% of the service area within five years of the date of Commission approval of the Application.

The Applicant has provided a high level drawing of its IPTV/Regional IP network ending in fiber to the home.

⁴ For ease of future referencing, staff assigns a four field footprint number using the following convention: ABCD-xx-EFGH-yy, where ABCD is the four character abbreviation of the major city encompassed by the service area, xx is a two digit sequentially assigned number of the provider's service areas, EFGH is the four alpha character company code and yy indicating the version of the company's footprint where 01 is the initial version, 02 the first revision, etc.

RECOMMENDATION:

Staff recommends Commission approval of Google Fiber's Amended Application with a service area footprint to be identified and known as Fairway FRWY-10-GFKC-01, Mission MSSN-11-GFKC-01, and Roeland Park ROLP-12-GFKC-01.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
MILO MEDIN, MANAGER GOOGLE FIBER KANSAS, LLC 1600 AMPHITHEATRE PARKWAY MOUNTAIN VIEW, CA 94043		
ROBERT A. FOX, CHIEF LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
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FRANK A. CARO, JR., ATTORNEY POLSINELLI PC 900 W 48TH PL STE 900 KANSAS CITY, MO 64112		

ORDER MAILED AUG 01 2014

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.