

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

Received
on

AUG 26 2011

Before Commissioners: Mark Sievers, Chairman
Thomas E. Wright
Ward Loyd

by
State Corporation Commission
of Kansas

In the Matter of the Application of Simple)
Mobile, LLC to Approve the Use of Traffic) Docket No. _____
Study for KUSF Reporting)

**APPLICATION OF SIMPLE MOBILE, LLC
TO THE APPROVE USE OF TRAFFIC STUDIES FOR KUSF REPORTING**

COMES NOW Simple Mobile, LLC (“Simple Mobile”), and requests that the Kansas Corporation Commission (“Commission”) permit Simple Mobile to henceforth utilize the inverse percentage derived by Simple Mobile’s traffic study for its federal universal service fund (“FUSF”) filings to determine the intrastate revenues for its Kansas Universal Service Fund (“KUSF”) assessment. Simple Mobile will use its traffic study, in lieu of the federal safe harbor, to determine the assessable revenues for the FUSF and KUSF starting January 2010 and thereafter.¹

In support of this Application, Simple Mobile states as follows:

1. The Federal Communications Commission (“FCC”) has recognized that it is often difficult for wireless carriers to establish the amount of revenues that are interstate as opposed to intrastate in nature. As such the FCC in 1998 established an interim safe harbor percentage to “approximate the percentage of interstate revenue” that was to be assessed the FUSF charge.² The

¹ Simple Mobile is a fairly new startup that offers wireless resale services purely on a prepaid basis, and has fewer than 30 in-house employees. As a prepaid wireless services provider, Simple Mobile does not maintain or track subscribers by billing address or residence in the state of Kansas and further does not issue bills to subscribers (and cannot collect surcharges and fees from its customers). Thus, Simple Mobile had no clear mechanism for collecting surcharges from its customers. However, it has recently determined that it should file reports and payments for the Kansas Universal Service Fund (“USF”) and accordingly files this application in relation with its USF reports and payments.

² *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21257 ¶ 11 (1998).

initial safe harbor established for commercial mobile radio services (“CMRS”) providers (also referred to herein as “wireless carriers”) determined that 15 percent of total telecommunications revenues were to be considered interstate for FUSF assessment purposes and 85 percent intrastate.³ In 2002 the FCC raised the percentage for the reporting of interstate revenues from 15 percent to 28.5 percent.⁴ In June of 2006 the FCC again raised the wireless safe harbor percentage from 28.5 percent to 37.1 percent for interstate, which is the current safe harbor percentage.⁵ Thus, applying the inverse of the federal safe harbor, 62.9 percent of wireless revenues are considered intrastate.

2. Even though the FCC established the safe harbor percentage for determining interstate revenues, the FCC has continually allowed companies to report a percentage of revenue as interstate that was less than the safe harbor, provided that the company could document the computation method used to make this determination.⁶

3. Accordingly, the FCC permits wireless carriers to use one of three methodologies to determine the interstate revenue on which to assess the FUSF. Specifically, wireless carriers can utilize: (1) the safe harbor percentage set by the FCC (i.e., 37.1 percent); (2) a traffic study to

³ *Id.* at 21259 ¶ 13.

⁴ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanism, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24965 ¶ 21 (2002) (“2002 Order”).

⁵ See *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanism, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7531-32 ¶ 23 (2006) (“2006 Order”).

⁶ *2002 Order*, 17 FCC Rcd at 24966 ¶ 24.

determine their respective interstate revenues for federal universal service contribution purposes; or (3) their actual interstate revenues.

4. If a traffic study is to be used, the FCC has specified that any wireless carrier using a traffic study shall submit such study to the FCC and the Universal Service Administrative Company (“USAC”) “no later than the deadline for submitting the FCC Form 499-Q for the same time period.”⁷

5. In 2003, this Commission found that “[a] wireless carrier may report revenue based on the FCC safe harbor rules or on a documented study accepted by the FCC”⁸ and has allowed other CMRS providers to utilize a traffic study to determine intrastate retail revenues for the purpose of the KUSF assessment.⁹ Specifically, the Commission found that wireless carriers could rely on their carrier-wide traffic studies for determining assessable revenues as it assures that revenues are assessed either for federal USF or the KUSF and that none of its revenues are double-assessed.”¹⁰

6. Pursuant to the FCC’s requirements, Simple Mobile filed a copy of its carrier-wide traffic study with its annual 499 form, with the FCC on April 8, 2011.¹¹ The results of the traffic study are utilized and relied upon by Simple Mobile in reporting assessable revenue to the FCC for FUSF purposes. More recently, Simple Mobile has filed traffic studies with its

⁷ 2006 Order, 21 FCC Rcd at 7535-36 ¶ 32.

⁸ See *In re General Investigation Into Procedures for Recording and Reporting Kansas Universal Service Fund Revenues for Assessment Purposes Order on Reconsideration*, Order on Reconsideration, Docket No. 03-GIMT-932-GIT, at ¶ 2 (rel. October 9, 2003).

⁹ See *Order Granting in Part and Denying in Part Motion of Verizon Wireless to Approve KUSF Assessment Rate* (rel. Mar. 19, 2004) (“Verizon KUSF Order”), *In the Matter of the Investigation to Determine the March 1, 2004 Assessment for the Eighth Kansas Universal Service Fund Year*, Docket No. 04-GIMT-331-GIT; *Order Granting Motion of Cingular Wireless to Report to the Kansas Universal Service Fund Based on Traffic Study* (rel. Oct. 11, 2006), *Order Granting Motion of T-Mobile Central LLC, d/b/a T-Mobile For Use of Traffic Study Data for Kansas Universal Service Fund Reporting* (rel. Nov. 21, 2006), *In re Investigation to Determine the March 1, 2006 Assessment for the Tenth Kansas Universal Service Fund*, Docket No. 06-GIMT-332-GIT.

¹⁰ See, e.g., *Verizon KUSF Order*, at ¶ 5.

¹¹ That traffic study reflects Simple Mobile’s interstate/intrastate traffic balance for the calendar year 2010.

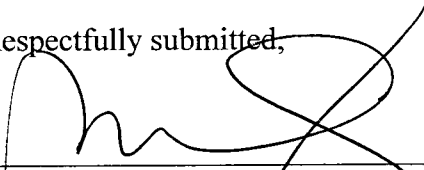
quarterly 499 forms for the First Quarter and Second Quarter 2011. Affidavit of Carl Lakey, General Counsel attached hereto as Exhibit A.

7. Based on the traffic study Simple Mobile submitted to the FCC for 2010, 78.4 percent of Simple Mobile's telecommunications revenues are considered to be intrastate. Simple Mobile has subsequently filed a traffic study supporting its 499 Quarterly filing on May 2, 2011, reflecting that 76.5 percent of its telecommunications revenues were intrastate for First Quarter 2011. Simple Mobile's traffic study filed with the FCC on August 1, 2011, for the Second Quarter 2011 reflects that 76.6 percent telecommunications revenues were intrastate. The percentage of telecommunications revenue considered to be intrastate may change in the future and Simple Mobile will update, as appropriate, the traffic study filed with the FCC and provide notice to this Commission of such update.

8. Consistent with the Commission's past precedent, Simple Mobile asks that the Commission approve its request to utilize an inverse of its federal universal service traffic study to determine the revenues upon which to assess the KUSF and ensure that revenues will only be assessed once for either KUSF or FUSF purposes.

WHEREFORE, for the reasons set forth herein, Simple Mobile requests the Commission enter an order approving Simple Mobile's use of the inverse of the percentage derived by its national traffic study for determining the FUSF assessment base for determination of intrastate revenues for KUSF assessment.

Respectfully submitted,



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August 26, 2011

EXHIBIT A

AFFIDAVIT OF CARL LAKEY

I, Carl Lakey, after first being sworn on oath state:

1. That I am, General Counsel and Executive Vice President of Simple Mobile, LLC. My business address is 111 Pacifica, Suite 160, Irvine, California, 92618.

2. In my capacity as General Counsel and Executive Vice President, I am authorized to make this statement on behalf of Simple Mobile. I have read Simple Mobile's Application to Approve the Kansas Universal Service Fund ("KUSF") Assessment Rate and believe that the information contained therein is true and correct to the best of my knowledge.

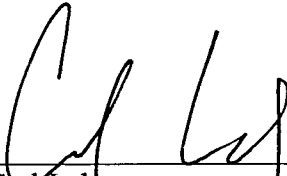
3. The Federal Communications Commission ("FCC") allows wireless carriers, such as Simple Mobile, to utilize a traffic study in lieu of the federal safe harbor to determine the percentage of revenue that should be considered interstate for the purpose of Federal Universal Service Fund ("FUSF") assessment. Wireless carriers utilizing a traffic study are required to submit such study to the FCC. The FCC, however, does not issue a decision approving the carrier's individual traffic study. Instead, the FCC has stated that carriers may use a traffic study to determine interstate revenues, but such study must be filed with the FCC.

4. On April 8, 2011, Simple Mobile submitted its traffic study to the FCC for use during the calendar year 2010. Simple Mobile also submitted traffic studies on May 2, 2011 and August 1, 2011 with its quarterly 499 forms. The results of these traffic studies are utilized and relied upon by Simple Mobile in reporting assessable revenue to the FCC for FUSF purposes.

5. Based on the traffic studies that Simple Mobile submitted to the FCC, 78.4 percent of assessable revenues were considered intrastate for calendar year 2010 and thus subject to KUSF assessment; 76.5 percent of its telecommunications revenues were intrastate for the First Quarter 2011; and for Second Quarter 2011 76.6 percent of its telecommunications revenues were intrastate. The percentage of revenue considered to be intrastate may change in the future and Simple Mobile will update, as appropriate, the traffic study filed with the FCC.

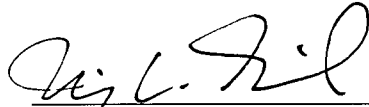
I hereby certify under penalty of perjury that the forgoing I true and correct to the best of my knowledge.

Executed on 8-17, 2011.



Carl Lahey
General Counsel and Executive Vice President

Subscribed and sworn before me this 17th day of August, 2011.



Notary Public





VIA FACSIMILE FILING

August 26, 2011

Ms. Patti Petersen-Klein
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

RE: Application of Simple Mobile, LLC to Approve Use of Traffic Studies

Dear Ms. Petersen-Klein:

Please find enclosed the original plus 8 copies of the Application of Simple Mobile, LLC ("Simple Mobile"), to Approve the Use of Traffic Studies for KUSF Reporting.

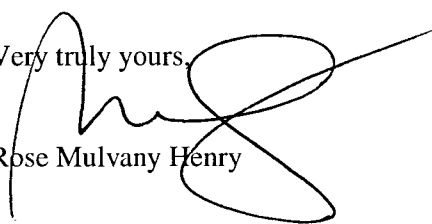
Simple Mobile is a fairly new startup that offers wireless resale services purely on a prepaid basis, with fewer than 30 in-house company employees. As a prepaid wireless services provider that primarily offers its services over the Internet and through third party distributors, Simple Mobile does not maintain or track subscribers by billing address or residence in the state of Kansas. Because Simple Mobile does not issue bills to subscribers (and cannot collect surcharges and fees from its customers), Simple Mobile had no clear mechanism for collecting surcharges from its customers. However, it has recently determined that it should file reports and payments for the Kansas Universal Service Fund ("USF") and accordingly, has made such payments on August 23, 2011.

As noted, because Simple Mobile does not track revenues to subscribers based on their residence in the state, Simple Mobile has estimated revenues associated with the customers based on the amount of active phone numbers in Kansas.

Please date stamp the additional copy and provide to the undersigned in the self addressed stamped envelope.

Please do not hesitate to contact me with any questions.

Very truly yours,


Rose Mulvany Henry