

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

In the Matter of a General Investigation to)
Review the Kansas Universal Service Fund) Docket No. 18-UTDT-356-GIT
Cap for the United Telephone Companies)
of Kansas d/b/a CenturyLink Pursuant)
to K.S.A. 66-2008(d)(2))

CENTURYLINK'S INITIAL COMMENTS

COMES NOW United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas, and Embark Missouri, Inc., (hereafter collectively referred to as "CenturyLink"). The purpose of this docket is to comply with the requirements of K.S.A. 66-2008(d)(2). In response to the Staff's Report and Recommendation ("R&R"), dated February 13, 2018, and the Commission's Order Opening Docket and Soliciting Comments ("Order"), dated February 27, 2018, CenturyLink respectfully submits initial comments on the four questions presented by the Order:

COMMENTS

- 1. Is the Commission to review the amount of the annual cap on CenturyLink's annual KUSF support provided for in K.S.A. 66-2008(c)(1) or is the Commission to review the amount of KUSF support annually disbursed to CenturyLink? What factors should the Commission consider in its review?**

1. A straightforward reading of the plain language of K.S.A. 66-2008(d)(2) is that the Commission's review is limited to determining whether the amount of the cap on annual KUSF distributions to CenturyLink should be lowered for distributions after March 1, 2019. The statute reads: "The commission shall undertake a review of the capped amount of KUSF support" Only if the capped amount happened to equal the amount of KUSF support actually being distributed to CenturyLink would a review of the cap result in, effectively, a review of the

amount of support CenturyLink actually receives. However, CenturyLink currently receives significantly less annual KUSF support than the \$11.4 million cap, and, with an offset for the amount of Connect America Fund II (“CAF II”) support it receives,¹ CenturyLink is currently projected to receive a net \$8.1 million in high-cost support in KUSF Year 22.² Consequently, given that the statutory language refers specifically to reviewing the “capped amount of support available,” and the fact that original cap was not set at or based on the actual amount of KUSF support received, the cap is a discrete statutory element and is all that the Commission is authorized to review.

2. Key factors the Commission should consider in reviewing the cap is whether the current level of KUSF support is above or below the cap. The Commission should also consider the historical trends in CenturyLink’s annual support amounts, such as the steady decline in access lines.³ As of January 31, 2018, CenturyLink’s Kansas access lines have declined 4.7% since September 30, 2017. Another factor the Commission should consider is the potential impact of CAF II funding on CenturyLink’s support levels, such as the possibility that CenturyLink will not bid in the upcoming reverse auction phase of CAF II and the offset to CenturyLink’s KUSF support will disappear. The Staff’s R&R thoroughly describes many of the moving pieces that affect CenturyLink’s Kansas support distributions, and all those pieces should be considered.⁴ Also, an obvious factor, as noted in Commission Question No. 2, is the requirement in subsection (d)(2) for the Commission to consider the forward-looking costs of providing basic voice service using inputs that reflect CenturyLink-specific inputs and variables.⁵

¹ K.S.A. 66-2008(c)(3). The CAF II offset amount is subject to true-up.

² See Staff R&R, pg. 5, Table 1, “Gross KUSF Support” for Year 22 less “FUSF/CAF Offset,” i.e., without Access Revenue Recovery.

³ Staff R&R, pg. 5.

⁴ Staff R&R, pgs. 5-6.

⁵ Inputs that reflect a carrier of CenturyLink’s scale and scope, and that reflect the actual geography being served.

3. Finally, the Commission must consider CenturyLink's carrier of last resort ("COLR") obligation throughout its entire service area. Market changes that have affected the cost of CenturyLink's COLR obligation cannot be overlooked. Although CenturyLink has lost over 55% of its customers since 2000 when KUSF support amounts were determined, and CenturyLink's total KUSF support amount is down nearly 50% from its high, CenturyLink is still required to maintain a network that is capable of providing service to 100% of its service territory. The current KUSF process is to only support existing customers even though the network must be built and maintained for every household, which is the basis of the funding methodology for the FCC's CAF II initiative. The disconnect between the current targeting of KUSF support and CenturyLink's COLR obligation is a factor the Commission should consider when reviewing the KUSF cap.

2. How should K.S.A. 66-2008(c)(3)'s requirement that CenturyLink "shall receive" the same monthly KUSF support per line as that established in the April 2000 Notice in Dockets 99-GIMT-326-GIT (Docket 326) and 00-GIMT-236-GIT (Docket 236) and K.S.A. 66-2008(d)(2)'s requirement that the Commission's review be based on the "forward-looking costs of providing basic voice service" using inputs that [reflect] Century Link's geography, scale, and scope to provide basic local voice service within each exchange be interpreted?

4. How each of the cited statutory provisions should be interpreted seems straightforward. K.S.A. 66-2008(c)(3)'s requirement that CenturyLink "shall receive" the same monthly KUSF support per line as that established in the April 2000 Notice in Dockets 99-GIMT-326-GIT (Docket 326) and 00-GIMT-236-GIT (Docket 236) is a clear statutory mandate specifying the amount of support that CenturyLink is to receive. K.S.A. 66-2008(c)(3) has only two specific qualifying statutory cross-references: 1) to the annual support cap in subsection (c)(1); and 2) to K.S.A. 66-2006 for the purposes of excluding the Kansas lifeline service program from the effect of subsection (c)(3)'s mandate. In no other way is subsection (c)(3)

qualified or limited by other statutory provisions. In addition, subsection (c)(3)'s mandate includes an explicit offset to CenturyLink's KUSF support from CAF II funding received.

5. Similarly, K.S.A. 66-2008(d)(2)'s requirement that the Commission's review be based on the "forward-looking costs of providing basic voice service" using inputs that reflect CenturyLink's geography, scale, and scope to provide basic local voice service within each exchange seems equally clear in its mandate vis-à-vis a review of the annual cap on KUSF support. The only explicit statutory cross-reference is, again, to 66-2006 and the Kansas lifeline service program. There is not even an explicit cross-reference to the cap in subsection (c)(1), although subsection (d)(2) clearly references the "capped amount" of support that a price cap carrier receives. Therefore, it is necessary to reconcile the apparent conflict between subsection (c)(3)'s mandate that CenturyLink's monthly KUSF support per line amount remain fixed at the amount set in the April 2000 Notice in Dockets 326 and 236 and subsection (d)(2)'s mandate that a cap review be based on the forward-looking costs of providing basic voice service using CenturyLink-specific inputs.

6. The legislature clearly knows how to limit the applicability of one statutory provision by cross-referencing to another statutory provision. Yet the mandate in subsection (c)(3) is not limited or qualified by subsection (d)(2) in any way. From CenturyLink's perspective, the simplest and most logical way to reconcile these two provisions is to recognize, as CenturyLink stated in response to Question 1, that subsection (c)(1) only requires a review of the annual support cap, and does not require the Commission to review the actual amount of KUSF support annually distributed to CenturyLink. Thus, any review of forward-looking costs is only for the purpose of determining whether the current cap is appropriate or should be lowered. As further discussed below in response to Question 4, the legislature fixed the amount

of CenturyLink’s monthly KUSF support per line in subsection (c)(3), and any change to that amount, either directly or indirectly, requires a statutory change.

3. If K.S.A. 66-2008(d)(2) requires the forward-looking costs to be based on inputs to reflect the specific geography served, and scale and scope of CenturyLink providing basic local service in a wire center, what KUSF cost model inputs, if any, should be modified? Should modification to the inputs be limited to the Kansas-specific inputs adopted by the Commission?

7. Implicit in the question is the assumption that the current KUSF cost model (the FCC’s Hybrid Proxy Cost Model, or “HCPM”) should be used for the review. K.S.A. 66-2008(d)(2) makes no reference to the current KUSF model that the Commission adopted in Docket 326. Subsection (d)(2) says that the review “shall be based on the forward-looking costs of providing basic voice service.” The statute then specifies that CenturyLink-specific inputs shall be used, but nowhere does the statute specify which forward-looking cost model should be used. The HCPM is now over 19 years old and has serious limitations when compared to state-of-the-art forward-looking cost models, particularly with regard to location accuracy that is critical to accurate costing. The HCPM was last updated in 2009 so that it would work with the Windows XP operating system, and vendor support and security updates for Windows XP were discontinued in 2014. As a result, CenturyLink no longer runs Windows XP and can no longer run the HCPM.⁶

8. Any review of forward-looking costs should use the most up-to-date and accurate cost modeling technology. When the HCPM was introduced, its location clustering and

⁶ The HCPM’s installer does not function on Windows 7 or Windows 10. While it may be technically possible to create a virtual machine with Windows XP (and older versions of Microsoft Office, which is also required for the older cost models), using the older Windows XP operating system is a violation of CenturyLink’s IT security policies as its use introduces potential openings for viruses and other IT intrusions and places CenturyLink’s network at risk. There is also the additional cost of obtaining older versions of the operating system and applications. Between the security issues and cost, using the old technology does not make sense.

minimum spanning tree cable routing were representative of the computing abilities available in the late 1990s. Since then, however, forward-looking cost models have evolved beyond the straight-line minimum spanning tree methods to use minimum road spanning tree routing to reflect the reality that cables follow road networks. Current models also rely on actual customer locations rather than on customer dispersion assumptions. In further support that the HCPM is an outdated model, the FCC (which created the HCPM) did not use it as part of the CAF II funding process and instead adopted a model that is more technologically current and capable. CenturyLink's own cost modeling has evolved to keep pace with computing abilities and current network engineering requirements and uses a model that is at least as robust as the model used as part of CAF II funding. If the cap is to be reset as part of the review of the annual cap on KUSF support, CenturyLink asserts that it should be able to use its own forward-looking cost model to show the forward-looking costs of providing basic voice service in CenturyLink's territory using appropriate inputs. CenturyLink's own model and inputs will provide the most accurate reflection of forward-looking costs.

9. Beyond the issue of the forward-looking cost model, the inputs that should be modified are not limited to just those "Kansas-specific" inputs that the Commission adopted. There is no limitation in subsection (d)(2) to a review of only the Kansas-specific inputs that the Commission adopted in 1999. Given that the nationwide average input data adopted by the FCC for use in the HCPM was developed in a record preceding the FCC's Nov. 2, 1999 *Inputs Order*,⁷ even the FCC default inputs are 20 years old or more, and it is highly likely that the validity of some, many, or all of those input values have been affected by the passage of time. Some obvious inputs that would need to be changed include, but are not limited to: all labor

⁷ *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-rural LECs*, CC Docket Nos. 96-45, 97-160, Report and Order, FCC 99-304 (rel. Nov. 2, 1999) (*Inputs Order*).

costs, all material costs, all utilization factors, all plant mix factors, and all expense factor related inputs. Just about the only input categories that have not changed in 20 years are related to pole and manhole spacing. The FCC apparently realized that the default inputs in the HCPM were outdated when it developed the CAF II funding process, otherwise, the FCC presumably would have used those inputs for CAF II funding purposes, but the FCC did not. Therefore, continuing to rely on models and inputs that are 20 years old does not make sense as they no longer produce accurate forward-looking costs.

4. If the Commission determines a "lesser amount is appropriate for KUSF distributions after March 1, 2019," is the Commission authorized to implement a new capped amount for CenturyLink's annual KUSF support disbursements or is a statutory change required?

10. Again, a potential statutory conflict exists, so the answer is “possibly, but unlikely.” First, K.S.A. 66-2008(c)(1) provides the current statutory cap to annual KUSF distributions. Although K.S.A. 66-2008(d)(2) authorizes the Commission to determine whether a lower cap is appropriate for KUSF distributions after March 1, 2019, the language in subsection (d)(2) does not clearly give the Commission authority to actually lower the cap established in subsection (c)(1). The Commission could report the findings of its cap review to the legislature, although clearly no changes to the statute will occur by March 1, 2019 as a result of the instant docket. Nevertheless, the results of the Commission’s review could be implemented sometime after March 1, 2019, which may not be precisely what the legislature intended by subsection (d)(2), but that would be consistent with the language of that subsection.

11. Furthermore, given the statutory mandate in K.S.A. 66-2008(c)(3) that fixes the monthly KUSF support per line that CenturyLink is entitled to receive, even if the Commission has the authority to actually lower the cap, it cannot set a new cap lowering CenturyLink’s

annual disbursements if that would have the effect of reducing CenturyLink's monthly KUSF support per line. Currently, CenturyLink's gross KUSF annual distribution is just slightly below the applicable \$11.4 million annual cap by a little more than \$100,000, which doesn't provide the Commission with much room (or, in and of itself, a justification) for recommending a lower cap. As noted above, Staff's R&R ably explains that there are multiple moving pieces to CenturyLink's annual KUSF support amount, with both access lines and access revenue recovery generally declining (contributing to a decline in KUSF support), and the potential for the CAF II offset to fluctuate over the next few years and potentially disappear at the end of 2021 (which could increase the amount of annual support).⁸ The current data in Table 1 of the Staff's R&R demonstrates that there is very little margin for error, if any, for the Commission to lower the cap without creating a scenario where subsection (c)(3) could potentially be violated. For example, assuming, *arguendo*, the Commission has the authority to lower the cap, it is questionable whether it has the authority to lower it to a point that risks CenturyLink eventually receiving less than the monthly KUSF per line support required by subsection (c)(3), e.g., if the CAF II offset ends. Furthermore, the statute does not authorize the Commission to subsequently raise the cap if a reduced cap has the effect of lowering CenturyLink's monthly per line KUSF support.

CONCLUSION

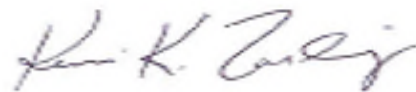
The current cap is serving its purpose to ensure that KUSF support does not exceed levels prescribed by the legislature. K.S.A. 66-2008(d)(2) authorizes the Commission to review the level of the cap and determine if it should be lowered. K.S.A. 66-2008(c)(3) limits the authority of the Commission to reduce the amount of monthly per line KUSF support CenturyLink receives. With these statutory parameters in place, there is little room for the Commission to

⁸ Staff R&R, pgs. 5-6.

adjust the cap and, combined with the various and variable factors that affect the amount of KUSF support CenturyLink receives, CenturyLink believes an exhaustive and detailed examination of CenturyLink's forward-looking costs does not seem warranted. CenturyLink can certainly present evidence of its forward-looking costs in order to satisfy that requirement of the statute, however, given the various statutory constraints in K.S.A. 66-2008 that have just been described, something akin to the status quo is likely to be the outcome. Maintaining the status quo is an acceptable outcome under K.S.A. 66-2008(d)(2) and under the circumstances.

However, if the Commission believes that K.S.A. 66-2008(d)(2) authorizes it to not just lower the cap but also to reduce the amount of KUSF support that CenturyLink actually receives (a position CenturyLink disagrees with), then CenturyLink will insist that it be allowed under subsection (d)(2) to present a detailed analysis of the forward-looking costs of serving its territory. In order to comply with the statute, such an analysis will necessarily be based on current forward-looking cost modeling methodologies and current inputs.

Respectfully submitted,
CENTURYLINK



Kevin K. Zarling, KS Bar No. 27392
Senior Counsel
400 West 15th Street, Suite 315
Austin, TX 78701
Voice: 512-867-1075
Fax: 512-472-0524
kevin.k.zarling@centurylink.com

ATTORNEY FOR CENTURYLINK

VERIFICATION

STATE OF TEXAS)
) ss.
COUNTY OF TRAVIS)

Kevin K. Zarling, of lawful age, being first duly sworn, on oath deposes and states:

That he is an attorney for CenturyLink in the above-referenced matter; that he has read the Initial Comments of CenturyLink in Docket No. 18-UTDT-575-GIT, knows and understands the contents thereof and states that the statements and allegations contained therein are true and correct, according to his knowledge, information and belief.

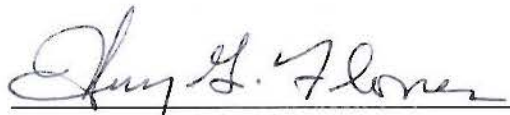


KEVIN K. ZARLING

Subscribed and sworn to before me this 29th day of March, 2018.

My Appointment Expires:





Notary Public in and for said County and State

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of March 2018, a copy of the above and foregoing was served via electronic mail to each of the following:

Diane C. Browning, Esquire
Sprint Communications Company L.P.
6450 Sprint Parkway
Overland Park, KS 66251
Diane.C.Browning@sprint.com

Michael Neeley
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604
m.neeley@kcc.ks.gov

Bruce Ney
AT&T Kansas
816 Congress Avenue
Suite 1100
Austin, Texas 78701
bruce.ney@att.com

Mark E. Caplinger, P.A.
Caplinger Law
7936 S.W. Indian Woods Place
Topeka, Kansas 66615
mark@caplingerlaw.net

Benjamin King
Jive Communications, Inc.
1275 W 1600 N., Ste. 102
Orem, UT 84043
bking@getjive.com

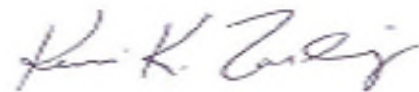
John R. Idoux, Director
United Telephone Company of Kansas d/b/a
CenturyLink
600 New Century Parkway
New Century, KS 66031
John.idoux@centurylink.com

Mark Brown
Vice President, State Regulatory Affairs
Charter Communications
601 Massachusetts Avenue, NW
Suite 400W
Washington, DC 20001
Mark.Brown@charter.com

Susan B. Cunningham, Esquire
Dentons US LLP
7028 SW 69th Street
Auburn, KS 66402
Susan.cunningham@dentons.com

Colleen R. Jamison, Esquire
Caplinger Law
823 S.W. 10th Avenue
Topeka, KS 66612
colleen@caplinger.net

Rob Logsdon
Director, Regulatory Affairs
Cox Kansas Telecom, LLC
11505 W. Dodge Road
Omaha, NE 68154
Rob.Logsdon@cox.com



Kevin K. Zarling