

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

In the Matter of Staff's Motion Requesting)
the Commission Order S & T Telephone)
Coop Association, Inc. to Submit to an) Docket No. 12-S&TT-234 -KSF
Audit for Purposes of Determining its Cost-)
Based Kansas Universal Service Fund)
Support, Pursuant to K.S.A. 66-2008.)

**ORDER OPENING AN AUDIT OF S & T TELEPHONE COOP ASSOCIATION, INC.
TO DETERMINE AN APPROPRIATE AMOUNT OF
COST-BASED KANSAS UNIVERSAL SERVICE FUND SUPPORT**

The above matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and being fully advised of all matters of record, the Commission finds as follows:

Background

1. The Kansas Universal Service Fund (KUSF) was established pursuant to K.S.A. 66-2008. Under K.S.A. 66-2008(b), distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, carriers and providers. K.S.A. 66-2008(c) directs the Commission to periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, carriers and providers to provide local service justify modification of the KUSF. If the Commission determines that any changes are needed, the Commission is to modify the KUSF accordingly.

2. On June 30, 2010, the Commission opened Docket No. 10-GIMT-797-GIT directing all eligible telecommunications carriers (ETCs) to submit certifications verifying each

ETC will utilize their federal universal service fund (FUSF) and KUSF support receipts for 2011 in an appropriate manner. ETCs were also directed to substantiate their past certifications by submitting data in the worksheet format previously approved by this Commission in order to assist Staff and ultimately the Commission in determining that support received was spent in accordance with Section 254(e) of the Federal Telecommunications Act of 1996.

3. Also, in Docket No. 08-GIMT-154-GIT, the Commission determined that companies receiving support from the KUSF should begin to justify the support received similar to the existing justification process for FUSF support.

4. On June 30, 2010, the Commission opened Docket No. 10-GIMT-797-GIT to make its yearly assessment of the support received by ETCs from the FUSF, pursuant to rules established by the FCC and Section 254(e). After receiving companies' worksheet information, Staff submitted its report and recommendation in that docket on September 14, 2010, in which it stated that S & T Telephone Coop Association, Inc. (S&T) could not justify the use of either its FUSF or KUSF support. Staff recommended the Commission issue an order directing Staff to file a motion requiring S&T submit to an audit pursuant to K.S.A. 66-117, K.S.A. 66-2008(c), and K.S.A. 66-2008(e) to determine if its KUSF support should be adjusted by the Commission.

5. On June 28, 2011, the Commission opened Docket No. 11-GIMT-837-GIT directing all eligible telecommunications carriers (ETCs) to submit certifications verifying each ETC will utilize their federal universal service fund (FUSF) and KUSF support receipts for 2012 in an appropriate manner. ETCs were also directed to substantiate their past certifications by submitting data in the worksheet format previously approved by this Commission in order to assist Staff and ultimately the Commission in determining that support received was spent in accordance with Section 254(e) of the Federal Telecommunications Act of 1996.

6. On June 28, 2011, the Commission opened Docket No. 11-GIMT-837-GIT to makes its yearly assessment of the support received by ETCs from the FUSF, pursuant to rules established by the FCC and Section 254(e). After receiving companies' worksheet information, Staff submitted its report and recommendation in that docket on September 26, 2011, in which it stated that S&T could not justify the use of either its FUSF or KUSF support. Staff recommended the Commission issue an order directing Staff to file a motion requiring S&T submit to an audit pursuant to K.S.A. 66-117, K.S.A. 66-2008(c), and K.S.A. 66-2008(e) to determine if its KUSF support should be adjusted by the Commission.

7. On October 07, 2011, Staff filed its motion and stated that in reviewing only the information provided on the worksheets for each individual year, S&T had failed to justify its FUSF support for the years 2005, 2006, 2007, 2008, 2009, and 2010. Staff stated that recognizing investment can vary from year to year Staff reviews investments and expenses for a total of five years to determine whether the cumulative amount of expenditures exceeds the cumulative amount of support received. Staff stated that using this analysis, S&T can not justify its FUSF or KUSF for 2005, 2006, 2007, 2008, 2009, or 2010.

Staff stated:

The data reported for the FUSF and KUSF certification process is not inclusive of all expenditures and revenues that would be included in a KUSF audit. It is also possible that some expenditures included in the data reported for certification would be disallowed or excluded in a KUSF audit. However, the data reported for the FUSF and KUSF certification process provide a probable indication that S&T's KUSF support is greater than can be supported by S&T's cost of service. Considering that this has been the indication in every year from 2005 to 2010 leads Staff to conclude that ordering a KUSF audit would be a reasonable and prudent measure for the Commission to take at this time to ensure that the KUSF is cost-based.¹

¹ Motion of Commission Staff, filed October 07, 2011, ¶8.

Jurisdiction

8. The Commission is given full power, authority and jurisdiction to supervise and control telecommunications public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. See K.S.A. 66-1,187 and K.S.A. 66-1,188. All grants of power, authority and jurisdiction to the Commission are to be liberally construed. K.S.A. 66-1,194. The Commission has specific statutory authority to examine and audit any and all books, accounts, papers, records, property and memoranda kept by a public utility. K.S.A. 66-129. As noted above, K.S.A. 66-2008(c) specifically mandates the Commission to periodically review the KUSF and the costs of providing local service and to make any necessary modifications to the KUSF. The review of S&T's KUSF support is properly within the scope of the Commission's jurisdiction.

9. The Commission determines that it is appropriate for S&T to submit to a review of its receipt of FUSF and KUSF support to determine an appropriate amount of KUSF, in that S&T's expenditures over the last five years lag its FUSF and KUSF support received by approximately \$7 million. Although the Commission appreciates and lauds S&T's commitment to its ratepayers and customers, the Commission also has a statutory commitment to Kansans that contribute to the KUSF to ensure that the KUSF is cost-based, in accordance with K.S.A. 66-2008(e). Expenses, investments, and revenues change over time and it has been almost ten years since S&T's initial KUSF audit. The Commission finds it is appropriate for S&T to be audited by its Staff to determine S&T's cost-based KUSF support.

Filing Requirements

10. S&T is a Class B telephone utility having less than 20,000 access lines. K.A.R. 82-1-204(p)(3)(B). Under K.A.R. 82-1-231b(d), the Commission may require a Class B utility to be subject to K.A.R. 82-1-231. Review of S&T's costs and revenues will be expedited if all of the information required by K.A.R. 82-1-231 is provided as part of an initial filing. Including this data in the initial filing should enable the audit to be conducted in a more efficient and timely manner.

11. In order to fully and fairly review the issues in this case, a clear understanding of S&T's activities is necessary. Both non-regulated activities and affiliate transactions present the possibility of improper cross-subsidization or misallocation of costs. To assist with developing a sufficient record, the Commission directs that S&T provide a company witness who is able to speak on behalf of S&T, and who can discuss S&T's corporate structure, cost allocation procedures, affiliate practices and transactions, and facts specific to S&T's operations and policies. The official representative of S&T is to file direct testimony in this docket and to be available as a witness at the evidentiary hearing.

12. The test year utilized will be the twelve months ending December 31, 2011. S&T is to make a filing in compliance with K.A.R. 82-1-231 no later than March 15, 2012, based upon 2011 audited financial information.

13. The filing is to include the following:

- Direct testimony from an officer or employee of S&T.
- The NECA (National Exchange Carrier Association) cost study that is the basis for the separations factors used in the filing.
- A detailed explanation of the proposed capital structure, including a discussion of cost of capital and rate of return requested by S&T in its filing.

- A structural organizational chart for the company, including all affiliates, parents and subsidiaries.
- All allocation information required by K.A.R. 82-1-231(c)(4)(L). This includes the cost allocation manual and a detailed written description of the procedures, rationales and calculations underlying all allocation formulas and ratios, together with references to the source documents and copies of supporting documents.
- For a company that is a subsidiary, the consolidated capital structure and cost of debt for the parent [K.A.R. 82-1-231(c)(4)(G)(iv)] and the most recent annual report for the parent [K.A.R. 82-1-231(c)(M)(i)].

14. In order to help limit the time expended in discovery, the Commission finds that certain standard audit items should be provided at the time the initial filing is made. When its filing is made, S&T is to provide the following documents and records to Staff:

- A complete, fully indexed and cross-referenced set of the work papers, source documents and calculations (including any electronic medium with links and formulas intact) that support the testimony, exhibits, schedules and adjustments filed by S&T.
- An organizational chart of the utility company, identifying various departments, job titles and positions for all employee levels.
- A complete set of the company's accounting manuals, policies and procedures, with a detailed description of the company's accounts and sub-accounts.
- The general ledger, both in hard copy and electronic format.
- Documents to explain and support all allocations, including contracts, leases, work papers and calculations.
- A detailed description, with supporting documentation, of the procedures and criteria used to allocate company personnel time (a) between regulated and non-regulated activities provided by the company; and (b) between Kansas regulated operations and activities for parents, affiliates or subsidiaries.
- A detailed explanation, with supporting documentation, of the methodology used for allocating joint costs and expenses: (a) between regulated and non-regulated activities; and, (b) between Kansas regulated

operations and activities for parents, affiliates or subsidiaries.

- For each parent, subsidiary or affiliate of S&T, state its relationship to the utility and provide the following:
 - a. copies of any leases, contracts, joint service agreements, management or other agreements between the utility and its parent, affiliates or subsidiaries;
 - b. the location and number of employees of each subsidiary or affiliate, with a list of the services offered by the parent, subsidiary or affiliate;
 - c. a complete list of any services provided by an affiliate to the utility, with a description of how the pricing of the service or product is calculated, the amounts charged to the utility during the test year, and all supporting documentation; and,
 - d. a complete list of any services provided by the utility company to an affiliate, with a description of how the pricing of the service is calculated, the amounts received by the utility during the test year, and all supporting documentation.

All of this information should have been used by S&T in preparing its filing and should be readily available. If making copies in a timely manner is unduly difficult for S&T, the company may bring the original documents to the Commission's offices and copies will be made by the Commission.

15. Staff will be utilizing consultants to conduct part of this audit. The consultants are William Dunkel, William Dunkel & Associates, 8625 Farmington Cemetery Road, Pleasant Plains, IL. 62677, telephone number (217) 626-1476, fax number (217) 626-1934, and Ann Diggs Herman, Ann Diggs CPA, 321 S. 3rd Street, Wilmington, NC. 28401, telephone number (910) 772-8057, fax number (910) 763-4354. S&T must serve the consultants with copies of its initial filing and any further testimony that may be filed by S&T in this docket.

Discovery

16. Some of the information reviewed in this proceeding may be considered to be confidential under K.S.A. 66-1220a. The Commission will issue a separate Protective Order to protect the confidential nature of information that would fall within K.S.A. 66-1220a.

17. Staff may provide initial data requests to S&T before the company makes its filing. Responses to these data requests are due within 7 days of the date the filing is made, not counting Saturdays, Sundays or legal holidays, unless otherwise specified. Responses to other Staff discovery requests are due within 7 days, not counting Saturdays, Sundays, or legal holidays. K.A.R. 82-1-234a(b). Responses to data requests from other parties are due within 10 days, not counting Saturdays, Sundays, or legal holidays. In computing the period of time for responding, the day on which the data request is issued is not counted. Discovery conducted after the filing of rebuttal testimony will be subject to greater time constraints due to the closeness of the hearing date. Staff may specify a shorter time period for responding to data requests after rebuttal or for responding to follow-up data requests when the initial responses were incomplete. The Commission finds that the following discovery procedures should also be ordered at this time:

(a) All data requests shall be served electronically upon counsel, consultants and designated contacts for each party.

(b) Responses to data requests shall contain the name of the person providing the information needed to answer the request and the name of the person who can answer any follow-up questions.

(c) If a party wishes to object to a data request, the party shall serve the opposing party with a written objection to the data request within 5 business days of service of the data

request. Failure to make a timely objection will result in the party being deemed to have waived its objection, except for good cause shown.

(d) An officer or employee of S&T who is knowledgeable about S&T's operations is to verify any company-specific data or information relied upon by S&T's consultant or provided in discovery. Discovery responses are to include the name and title of the S&T representative who performs this verification.

(e) Information deemed to be confidential must be so deemed consistent with K.S.A. 66-1220a.

Other Matters

18. Communication Between Parties. For an audit to proceed smoothly, the parties must have regular communications. However, consistent with Kansas Rule of Professional Conduct 4.2, Staff counsel will communicate only with counsel for the company, and counsel for the company is to communicate with Staff counsel and not directly with Staff witnesses unless Staff counsel consents to direct communications. Company personnel, technical staff, including witnesses, and consultants may at all times communicate directly with each other.

19. Burden of Proof. In Docket No. 01-SKNT-544-AUD, a prior rural audit, the Order was served on all rural telephone companies operating in Kansas to assure that they were aware of decisions made that would affect all rural audits. [September 10, 2001 Order, page 52, paragraph (D).] On the issue of the burden of proof and persuasion, the Commission found that regardless of how a proceeding is initiated, it is the company that has the burden of producing the evidence necessary to conduct the investigation and must provide the information needed to establish that its KUSF support is appropriate. (Order, page 11, ¶26.) The company also has the obligation to show that its KUSF support is justified and reasonable. (Order, page 12, ¶28.)

20. Allocations. The Order in Docket No. 01-SNKT-544-AUD also addressed the need for utilities to include evidence in the record regarding allocations. The Commission found that utilities had the burden of affirmatively proving that expenditures were reasonable and necessary for regulated operations, and that if common costs are shared by regulated and unregulated operations, the company must propose a fair and reasonable allocation method for dividing the costs. (Order, page 17, ¶¶41-42.)

21. Pre-Hearing Conference. After S&T's filing is made, the Commission may schedule a pre-hearing conference in order to establish a procedural schedule and hearing date, and to consider any other matters that may promote the orderly and prompt conduct of the hearing. K.A.R. 82-1-222 and K.S.A. 77-517.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) This docket opens an audit of S & T Telephone Cooperative Association, Inc., in order to determine the cost-based amount of KUSF support for S&T.

(B) S&T shall file the information required by K.A.R. 82-1-231 by **March 15, 2011**, based on a 2011 test year. The filing is to include the information specified in Paragraphs 13 and 14. When the filing is made, S&T shall provide Staff with the documents and information listed in Paragraph 14. Copies of the initial filing and of other testimony and pleadings in this docket shall be served on Staff's consultants.

(B) A party may petition for reconsideration of this Order within 15 days of the date of the Order. If service is by mail, service is complete upon mailing, and 3 additional days may be added to the 15-day time limit to petition for reconsideration. K.S.A. 66-118b and K.S.A. 2008 Supp. 77-529(a)(1).

(C) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Loyd, Com.; Wright, Com.

Dated: DEC 09 2011


ORDER MAILED DEC 09 2011

Patrice Petersen-Klein
Executive Director

RAF

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
JAMES M. CAPLINGER, ATTORNEY JAMES M. CAPLINGER, CHARTERED 823 W 10TH STREET TOPEKA, KS 66612		
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STEVE RICHARDS, GENERAL MANAGER S&T TELEPHONE COOPERATIVE ASSOCIATION, INC. 320 KANSAS AVENUE PO BOX 99 BREWSTER, KS 67732		
CAROLYN R. SOMERS, CFO S&T TELEPHONE COOPERATIVE ASSOCIATION, INC. 320 KANSAS AVENUE PO BOX 99 BREWSTER, KS 67732		
KEVIN KELLY, DIRECTOR OF REGULATORY TCA INC 526 CHAPEL HILLS DR STE 100 COLORADO SPRINGS, CO 80920-1030		

ORDER MAILED DEC 09 2011

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.