

**BEFORE THE STATE CORPORATION COMMISSION    APR 26 2012**  
**OF THE STATE OF KANSAS**

In the Matter of a General Investigation into    )  
the Kansas Universal Service Fund pursuant    )  
to K.S.A. 2010 Supp. 66-2008(c).                )

by  
State Corporation Commission  
of Kansas

Docket No. 12-GIMT-170-GIT

**MOTION OF THE INDEPENDENT TELECOMMUNICATIONS GROUP, COLUMBUS**  
**ET AL., THE STATE INDEPENDENT ALLIANCE, SOUTHERN KANSAS**  
**TELEPHONE COMPANY AND MUTUAL TELEPHONE COMPANY**  
**FORE EMERGENCY ORDER PROHIBITING DISCLOSURE OF**  
**COMPANY-SPECIFIC FINANCIAL INFORMATION**

COME NOW the Independent Telecommunications Group, Columbus, et al., the State Independent Alliance, Southern Kansas Telephone Company and Mutual Telephone Company (collectively the "RLECs") and request an immediate order of the full Commission, on an emergency basis, prohibiting disclosure of company-specific information through discovery herein. In support of this Motion, the RLECs<sup>1</sup> state as follows:

1. The Commission opened this docket on September 13, 2011, "in part to explore the impact that the Federal Communications Commission's (FCC) Universal Service Fund (USF) and intercarrier compensation (ICC) reforms could have on Kansas and the Kansas Universal Service Fund (KUSF)."<sup>2</sup>

2. On March 21, 2012, Commission Staff ("Staff") issued to each of the RLECs its Information Request No. 1 seeking disclosure of detailed company-specific financial information. The specific information sought by Staff is set forth both in the Information request, previously filed as Exhibit 1 to the RLECs' Joint Motion for Limited Deferral of Discovery, Limited Objection and Request for Extension of Time as to Staff Information Request (filed

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1 As required by K.A.R. 82-1-204(i)(C)(2), the RLECs filing this Motion are identified in Attachment A.  
2 March 21, 2012 Order Requesting Prehearing Briefs, para. 1.

March 26, 2012 herein) and in the accompanying cover letter from Staff to each RLEC (attached hereto as Exhibit 1).

3. On March 29, 2012 the Prehearing Officer issued a Discovery Order applicable to information in this Docket. On the same date the Prehearing Officer issued a Protective Order regarding treatment and potential disclosure of confidential information. The Protective Order effectively requires disclosure of confidential information to a party seeking such disclosure, subject only to the requesting party signing a Nondisclosure Certificate.

4. To date eighteen individuals representing multiple entities with interests actually or potentially in competition with one or more RLECs have signed Nondisclosure Certificates.

5. On or before April 18, 2012 each of the RLECs provided to Staff information responsive to Staff's Information Request No. 1 pursuant to Order herein. Generally that information, submitted as confidential and proprietary, disclosed detailed financial information regarding the potential impact on each individual RLEC of universal service and intercarrier compensation (USF/ICC) reform initiated by the Federal Communications Commission.

6. On April 26, 2012, CTIA – The Wireless Association® (“CTIA”) submitted its “First Set of Data Requests” in this proceeding to numerous parties, including Staff and counsel for each of the RLECs. This request seeks “a copy of any data request responses submitted by you to any party in this docket. This request is for any responses provided to date and it is continuing in nature as to any responses submitted in the future in this docket.” A copy of this request is designated Exhibit 2 and accompanies this Motion.

7. The RLECs have established in prior pleadings that the information here at issue is uncertain and subject to change over time. As company-specific data however, the information at any stage of development could be used easily and effectively to identify those RLECs

comparatively more disadvantaged by USF/ICC reform, enabling a competitor to “target” such carriers. The additional request for updates would further serve as a requirement to refine significantly the carriers’ respective information for competitive advantage.

8. Disclosure of the information newly requested by CTIA would create the exact harm cited by the RLECs in submitting this information to Staff as confidential and proprietary. Specifically, such disclosure would have a significant and adverse impact on its competitive stance regarding existing or potential competing entities including wireless carriers, competitive local exchange carriers, and incumbent local exchange carriers. Regulatorily mandated disclosure of any or all of the subject information would create a competitive bias in favor of any actual or potential competitor not required to provide comparable information, reducing or eliminating any benefit to consumers otherwise resulting from unbiased competition and damaging the submitting company’s ability to engage in fair competition. Absent a corrective Order, it would be KCC action through existing orders in this proceeding that directly would cause competitive bias and harm.

9. The present Protective Order is wholly inadequate to protect against the harm to public and private interests that would result from disclosure. There is no way to preclude disclosure in contravention of the Nondisclosure Certificates; in fact, given the multiple individuals and parties that readily could become entitled to disclosure by mere signature, there would be no way to identify the source of any unwarranted disclosure. The Protective Order presently in effect provides a “right” to confidentiality without an effective remedy, *i.e.*, no right or protection at all.

10. In recent conversations Staff (including Sandy Reams, Christine Aarnes and Robert A. Fox) expressed to the RLECs its intent to disclose the requested financial information

(if at all) only in the aggregate, thereby protecting each individual RLEC from the significant risk of improper disclosure and competitive misuse of the information. Staff, however, has been unable to assure the RLECs that, as a party subject to discovery, Staff has authority so to restrict disclosure. In light of CTIA's request, it is possible Staff could conclude unilaterally it is required to disclose the information even if the RLECs separately and successfully objected to their own disclosure of information requested by CTIA. Once any such disclosure had occurred, the Commission would have no available remedial action; confidential information cannot be "un-disclosed"

11. There is no legitimate need for a competitive entity to receive company-specific financial information in this proceeding. The purpose of the docket is to review effects on the KUSF as a whole, not to identify individual RLECs that might be at greatest risk from FCC "reform." The potential effect of reform on competitive/wireless entities will come, if at all, from its aggregate impact on the Fund and their respective contribution requirements. Staff is wholly capable of reviewing and verifying the company-specific information provided, without motive for improper disclosure to the competitive advantage of one or more carriers. Availability of Staff's intended aggregated information is an adequate alternative, for the purposes of this proceeding, to the disclosure sought by CTIA.

12. Only the Commission and its Staff have a duty to gather information in order to make determinations regarding the public's interest in this proceeding. There is absolutely no reason, other than improper competitive inquiry, for any other parties to gain access to company-specific information. The Commission has already received substantial data projecting the RLECs' best estimates of the impact of the FCC's Orders that they had in their possession, subject to revision as FCC Orders change. The RLECs have a statutory right under K.S.A.

66-1220a to expect the Commission and its Staff to utilize the information received appropriately in public interest determinations, and not to allow the information preemptively to be disclosed and used for competitive advantage.

13. This commission has repeatedly issued orders restricting disclosure of company-specific financial information in similar proceedings addressing the KUSF generally. The commission's standard protective order in the annual KUSF docket (see, *e.g.*, Protective Order Applicable to Curb, Docket No. 12-GIMT-168-GIT, order issued December 9, 2011) limits disclosure of company-specific information to staff and to the Citizens Utility Ratepayer Board ("CURB"). In that proceeding the interests of wireless and competitive carriers are identical to those in the present docket, *i.e.*, interests in the overall size of the fund and of their respective liability for contribution, not the individual ETCs' respective finances. In the instant case it is questionable whether even CURB needs company-specific information in order to protect its interests and those of its constituents.

14. In this Commission's recent Docket No. 11-KCPE-581-PRE a request for a "two-tier" protective order was denied (See Order of March 25, 2011.) The Commission's denial, however, was predicated on a finding effectively that there was no likelihood of disclosure to a competitive interest. Additionally, in that proceeding the number of parties was significantly more limited; there was a reasonable prospect that any improper disclosure could be traced to its source and effective sanctions applied. By contrast the present proceeding has numerous parties in effective competitive status, any one of which could misuse confidential information with impunity as an improper competitive weapon.

15. The issuance of CTIA's information request subject to the existing Discovery and Protective Orders necessitates immediate action by the Commission. Absent Commission Order,

Staff could interpret its obligations independently and feel itself obliged to provide company-specific confidential information to CTIA. Once any such release has occurred, there would be no effective means to undo the action or prevent resulting harm. Even if the Commission were to require further proceedings to act on a request for continuing protection from disclosure, as discussed in the 11-581 docket, *supra.*, a an intermediate prohibition on disclosure is necessary to protect the parties' interests. In the absence of an emergency Order prohibiting disclosure there would be no opportunity for the Commission to conduct an inquiry into the propriety of individual claims of confidentiality, recognized as the appropriate course in the 11-581 Order, *supra.*

16. There is no showing of immediate need for the requested information by any other party. In fact, CTIA has noted as recently as its Brief of April 16, 2012 in this docket, "CTIA maintains that examination of the issues in this docket is premature and should be delayed until the federal universal service and intercarrier compensation reforms have been implemented and their effects are tangible and verifiable."

WHEREFORE, these participating RLECs request the Commission issue a temporary order forthwith, prohibiting Staff and any other party from disclosing company-specific financial information, and that such Order remain in effect pending Commission analysis, subject to RLECs' due process rights, of factors lawfully affecting confidentiality and disclosure.

Respectfully submitted,

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*by Thomas E. Gleason, Jr.*

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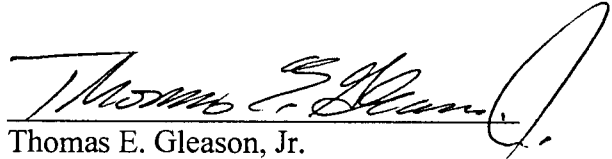
Company

**VERIFICATION**

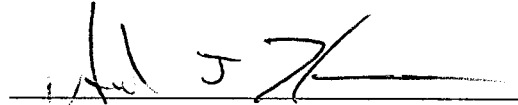
STATE OF KANSAS            )  
  ) ss:  
COUNTY OF DOUGLAS    )

Thomas E. Gleason, Jr., of lawful age, being first duly sworn upon oath states:

That he is an attorney for the Independent Telecommunications Group, Columbus *et al.*, that he has read the above and foregoing Prehearing Brief, and upon information and belief, states that the matters therein appearing are true and correct.

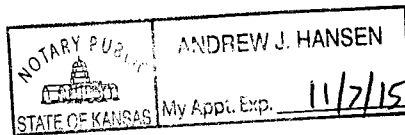
  
\_\_\_\_\_  
Thomas E. Gleason, Jr.

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_th day of April, 2012.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

11/7/15



## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail on this 26th day of April, 2011 to the following, with no "hard" copy to follow:

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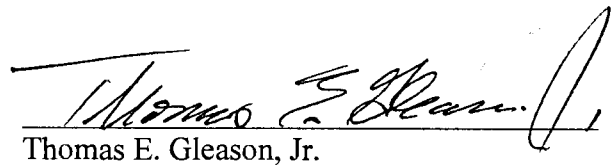
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Thomas E. Gleason, Jr.

**Attachment A – Parties Submitting This Motion**

**Independent Telecommunications Group, Columbus et al. (“Columbus”)**

Columbus Telephone Co., Inc.  
Cunningham Telephone Co., Inc.  
Gorham Telephone Co. Inc.  
H & B Communications, Inc.  
Home Telephone Co., Inc.  
LaHarpe Telephone Co. Inc.  
Moundridge Telephone Co., Inc.  
Totah Communications, Inc.  
Twin Valley Telephone, Inc.  
Wamego Telecommunications Co., Inc.  
Wilson Telephone Co., Inc.  
Zenda Telephone Co., Inc.

**State Independent Alliance (“SIA”):**

Bluestem Telephone Company  
Blue Valley Tele-Communications, Inc.  
Craw-Kan Telephone Cooperative, Inc.  
The Golden Belt Telephone Association, Inc.  
Haviland Telephone Company, Inc.  
J.B.N. Telephone Company, Inc.  
KanOkla Telephone Association  
Madison Telephone, LLC  
MoKan Dial, Inc.  
Peoples Telecommunications, LLC  
The Pioneer Telephone Association, Inc.  
Rainbow Telecommunications Association, Inc.  
Rural Telephone Service Company, Inc.  
S&A Telephone Company, Inc.  
The S&T Telephone Cooperative Association, Inc.  
South Central Telephone Association  
Sunflower Telephone Company, Inc.  
The Tri-County Telephone Association, Inc.  
United Telephone Association, Inc.  
Wheat State Telephone, Inc.

Southern Kansas Telephone Company and  
Mutual Telephone Company

## (RLEC EXHIBIT 1)

March 20, 2012

Dear Incumbent Local Exchange Carrier,

Enclosed is Staff Data Request (DR) No. 1 in Docket No. 12-GIMT-170-GIT requesting information about your Company's current Federal Universal Service Fund (USF) support and the estimated impacts the Federal Communication Commission's (FCC) USF and Intercarrier Compensation (ICC) reforms may have on your Company.

Enclosed with this letter is Excel file containing two tabs:

- The first tab, entitled *Summary of FCC USF/ICC Reform Impacts*, seeks information of the total Federal USF support, by program, that your Company received for 2010 and 2011 and the projected amounts your Company will receive for 2012 – 2020. This tab also seeks an overall summary of how the FCC's USF/ICC reforms may impact those revenues.
- The second tab, entitled *USF/ICC Impacts*, requests the impacts, by each specific USF and ICC reform adopted by the FCC. For the ICC impacts, provide the actual 2010 and 2011 data and the estimated impacts for 2012 – 2020. Please also provide the requested 2011 data used to determine your Company's Recovery Baseline. Please note the following for this tab:
  - Several assumptions must be used when preparing the estimates for your Company. Please note all assumptions used by your Company, including:
    - The calculation of the Access Recovery Charge should include a note as to the date of the line counts used (e.g. December 31, 2011, February 20, 2012, etc.)
    - To determine the projected revenues before the FCC reforms, Staff suggests it is reasonable to reflect a reduction in Minutes of Use (MOU) based on the most recent 2-year average. However, list the actual assumption used by your Company.

The amounts calculated in the *USF/ICC Impacts* are linked to the *Summary of FCC USF/ICC Reform Impacts* tab.

Please note that the due date for DR 1 is **Wednesday, April 4, 2012**. Please note the Commission has authority under K.S.A. 66-168 to fine any common carrier or public utility holding a certificate or license a sum of not less than \$100 and no more than \$5,000 for failing or neglecting to obey any lawful requirement or Order of the Commission.

Please send a signed, electronic copy of your response, including the electronic Excel worksheet, to:

Sandy Reams at [s.reams@kcc.ks.gov](mailto:s.reams@kcc.ks.gov) and Christine Aarnes at [c.aarnes@kcc.ks.gov](mailto:c.aarnes@kcc.ks.gov)

Information designated as confidential should be marked accordingly and contain a statement as to why the information should be accorded such treatment. Please refer to K.S.A. 66-1220a and K.A.R. No. 82-1-221a with regards to the designation of confidential information.

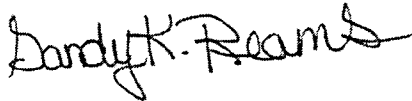
Staff understands this information is subject to change and that updates will be necessary as the FCC further clarifies or modifies its proposed reforms. Therefore, please provide updates as new information becomes available, or alternatively, Staff will request your Company to provide updates as deemed necessary.

Your assistance in this matter is appreciated. If you have any questions, please do not hesitate to contact us at the following:

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Christine Aarnes  
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Sincerely,



Sandy K. Reams  
Assistant Telecommunications Chief  
Utilities Division  
Kansas Corporation Commission

Enc.

cc: Jeff McClahanan  
Bob Fox

**Exhibit 2**  
**FIRST SET OF DATA REQUESTS**  
**FROM CTIA TO ALL PARTIES TO DOCKET**

**Docket No. 12-GIMT-170-GIT**

Date submitted: April 26, 2012

Response due: May 10, 2012

CTIA DR No. 1:

Please provide to CTIA a copy of any data request responses submitted by you to any party in this docket. This request is for any responses provided to date and it is continuing in nature as to any responses submitted in the future in this docket. Copies of responses may be sent electronically and should be served upon the following individuals:

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Submitted by: Glenda Cafer