

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

MAR 01 2012

by
State Corporation Commission
of Kansas

In the Matter of a General Investigation into)
the Kansas Universal Service Fund pursuant) Docket No. 12-GIMT-170-GIT
to K.S.A. 2010 Supp. 66-2008(c).)

**COMMENTS OF THE
CITIZENS' UTILITY RATEPAYER BOARD**

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following comments in this docket in response to the Kansas Corporation Commission's (KCC or Commission) January 11, 2012, Prehearing Officer's Report & Order (Prehearing Order). In support of its position, CURB states and alleges as follows:

I. Introduction

1. On January, 9, 2012, an informal conference and a Prehearing Conference were held in this docket and parties present at the conference are listed at Attachment 1 of the Prehearing order. At the informal conference the parties addressed issues related to matters in this docket and the FCC's October 27, 2011, *Report and Order and Further Notice of Proposed Rulemaking* (FCC 11-161) on USF/ICC reform (FCC Omnibus Order).¹ The Prehearing Officer was provided a List of Proposed Issues agreed upon by the parties at the informal conference.²

¹ *Connect America Fund* (WC Docket No. 10-90); *A National Broadband Plan for Our Future* (GN Docket No. 09-51); *Establishing Just and Reasonable Rates for Local Exchange Carriers* (WC Docket No. 07-135); *High Cost Universal Service Support* (WC Docket No. 05-337); *Developing an Unified Intercarrier Compensation Regime* (CC Docket No. 01-92); *Federal-State Joint Board on Universal Service* (CC Docket No. 96-45); *Lifeline and Link-Up* (WC Docket No. 03-109); *Universal Service Reform -Mobility Fund* (WT Docket No. 10-208). Hereinafter referred to as the FCC Omnibus Order.

² Prehearing Order, ¶ 10, Attachment 2.

2. The Prehearing Order seeks comments from parties addressing further identification of the List of Proposed Issues described in Attachment 2, prioritization of these issues, and proposed procedures and timelines for addressing these issues as prioritized. In addition, the issues are to be categorized by how the party proposes to have them addressed procedurally, such as comments, testimony, briefing, and/or a hearing.³

3. CURB proposes to initially address certain Phase I legal issues with briefing, Phase II policy issues with testimony and hearings, and Phase III implementation issues with testimony and hearings. The KCC's schedule for addressing issues should consider certain implementation dates for reform established by the FCC's Omnibus Order (which could impact related KCC issues) and remaining issues that are still being addressed in comments before the FCC.

4. For example, effective July 1, 2012, the FCC plans to implement additional procedures limiting costs that rate-of-return (ROR) carriers can recover from the federal universal service fund (FUSF).⁴ If the KCC intends to implement similar procedures on a state level, this matter should be addressed as soon as possible but not implemented in advance of the FCC's proposed implementation date. Similarly, the FCC's Omnibus Order sought further comments on January 18, 2011 and reply comments on February 17, 2012, related to various issues included in Sections XVII.A-K, and some of these matters could impact Kansas policy in this docket.⁵ Similarly, the FCC's Omnibus Order sought further comments on February 24, 2012 and reply comments on March 30, 2012 related to various issues included in Sections

³ Prehearing Order, ¶ 10.

⁴ FCC Omnibus Order, ¶ 196.

⁵ FCC Omnibus Order, Sections XVII.A-K, addressed at ¶¶ 1028 – 1295.

XVII.L-R, and some of these matters could affect Kansas policy in this docket.⁶ It will be important to consider the timing of final FCC decisions related to these matters that could impact policy in Kansas.

II. Legal Issues to be Briefed in Phase I

5. The reply comments in this proceeding are due April 2, 2012. If the Commission could issue an order on these matters within one month of reply comments, then the legal issues could be briefed and completed within 45-60 days. The initial briefs on legal issues could be due on or about June 15th. Then the reply briefs on legal issues could be due within 2 weeks from the initial briefs, on or about July 2nd. It would be desirable to have a final Commission order on the legal issues within 30 days of receipt of reply briefs, and this results in a Commission order due August 2nd.

6. The Proposed Issues for Briefing set forth at Attachment 2 of the Prehearing Order represent a comprehensive and reasonable list of legal issues. All parties should have the discretion to address some or all of these legal issues depending upon their concerns and priorities. Some of these issues may require further development as policy or implementation issues, but that decision can be made at a future date as this docket progresses.

7. The only additional legal briefing issue that CURB would propose is a broad issue that asks: "What impact does FCC legal findings to date, and those which may be pending, have on legal issues in this proceeding?"

⁶ FCC Omnibus Order, Sections XVII.L-R, addressed at ¶¶ 1296-1403.

III. Policy Issues to be Addressed in Phase II Testimony and Hearings

8. CURB proposes that policy issues be addressed in Phase II via testimony and hearings, although CURB is not strongly opposed to these issues being addressed in comments without hearings.

9. The Phase II policy proceedings could begin after a reasonable allotment of time for reconsideration requests and a final Commission decision regarding legal issues, and CURB tentatively proposes a 30-day time frame for this process. Therefore, if the Commission's final reconsideration order is issued by September 14th (if the initial legal order is issued by August 2nd), then Phase II policy proceedings would commence on or about September 14th.

10. All prefiled testimony (or comments) in Phase II should be filed simultaneously by all parties. The direct testimony (or initial comments) could be scheduled on or about November 23rd (a little over two months from the September 14th Phase II start date). All rebuttal testimony (or reply comments) should be due about December 7th (two weeks after direct testimony). Hearings for Phase II policy issues would be about two weeks after rebuttal testimony, or on or about December 17th to 19th. Initial and reply briefs would then be required on or about January 9th and January 23rd, respectively. The Commission's order would be issued about thirty days after reply briefs, or approximately about February 20, 2013. A final Commission decision, after reconsideration requests, could be issued about 450 days after the initial Commission order, on or about April 8, 2013.

11. Policy issues addressed in Phase II will focus on the rules or principles to guide subjective and objective decision making to achieve rational outcomes and desired results. In addition the theory and reasons for the various rules and principles should be addressed.

12. The policy issues would consist of two primary categories: 1) explaining the specific policy that each party proposes in regards to the Commission's previous decisions on legal issues; and 2) all other related policy issues that consist of "Issues for Comments/Testimony" at Attachment 2 of the Prehearing Order. All parties should have the discretion to address some or all of these policy issues depending upon their specific concerns and priorities.

13. CURB proposes some additional policy issues in Phase II that could also be implementation matters in Phase III, even though some or all of these issues might be inferred in current issues at Attachment 2 of the Prehearing Order (and which are also considered implementation issues) which include:

- (a) Regarding residential and small business customers, explain all potential positive and negative impacts on basic local service rates, KUSF assessments and charges, service quality, and availability of service related to all proposed new policies. The actual calculations of these policy impacts will be addressed in Phase III implementation.
- (b) Regarding Kansas rural local exchange carriers (RLECs) and all other entities receiving KUSF support based on fiber investment and related costs used to provide broadband/internet service and other services related to an IP-based network⁷ that is not regulated by the Commission, explain why these entities should or should not recover 100% of all such related investment and costs from the federal universal service fund (FUSF) via the Connect America Fund and other federal alternatives instead of recovering any costs from the KUSF that may be used "incrementally" to provide basic local service and other services regulated by the Commission (and because the FCC is further exerting their authority and jurisdiction over all matters related to fiber based broadband and related services in the Omnibus Order, and there may be no reason for this Commission to allow recovery of any fiber/broadband related costs from the KUSF when it has no authority over related prices, terms, conditions and quality for these services). The actual calculations of these policy impacts will be addressed in Phase III implementation.
- (c) Regarding Kansas RLECs and all other entities receiving KUSF support based on copper and fiber investment related to an IP-based network, explain why 100% of common costs of the copper loop (and related fiber) should not be allocated entirely

⁷ This would include, but not be limited to services related to video/television, VoIP, and other services.

to the IP-based network (and not allocated in any manner to basic local and related services), since the IP-based network is being built to primarily provide broadband/internet and other services not regulated by this Commission and basic local services now become an "incremental" service to the IP-based network (certain industry members in Kansas have historically maintained that little or no common loop costs should be allocated to services that are "incremental" to basic local service,⁸ and virtually 100% of common loop costs have been allocated to basic local service - - now this historic logic will shift when basic local service becomes a service that is "incremental" to broadband/fiber-based services that are not regulated by the Commission). The actual calculations of these policy impacts will be addressed in Phase III implementation.

- (d) If KUSF support for all Kansas non-ROR/price cap incumbent LECs has not been eliminated by other means in this proceeding, then parties should explain why any explicit support/subsidies for high-cost rural and suburban zones included in the current KUSF (or identified in a new cost study for basic local service, and which possibly any new definition of universal service) should not be offset by explicit "excess" margins (the excess of retail revenues/prices over incremental retail costs, where an explicit support/subsidy does not exist) in other low-cost urban and suburban zones. The actual calculations of these policy impacts will be addressed in Phase III implementation.
- (e) Whether all (or some) KUSF support should be removed for all Kansas RLECs and other non-ROR/price cap incumbent LECs that have received offsetting benefits, such as any relief from carrier of last resort (COLR) obligations or other beneficial policy that has a quantitative or qualitative benefit to the carrier. The actual calculations of these policy impacts will be addressed in Phase III implementation.
- (f) Regarding RLECs, identify each location where circuit switched technology and an IP-based network is used, describe plans for transitioning to an IP-based network and the triggers that will cause this transition. In all cases, explain how the switch from a circuit based technology to an IP-based network will impact the Company from the standpoint of the federal policy reforms in the FCC Omnibus Order and related policy impacts in Kansas. The actual calculations of these policy impacts will be addressed in Phase III implementation.

IV. Implementation Issues to be Addressed in Phase III Testimony and Hearings

14. CURB proposes that implementation issues be addressed in Phase III via testimony and hearings.

⁸ This includes services such as Commission regulated intrastate "access" service, and those services not regulated by the Commission and which include "interstate" access, DSL, and other services.

15. The Phase III implementation proceedings would commence on or about April 8, 2013. All prefiled testimony in Phase III should be filed simultaneously by all parties. The direct testimony should be due about June 17, 2013 (about 70 days from April 8, 2013 Phase III start date). All rebuttal testimony should be due about July 1, 2013 (two weeks after direct testimony). A hearing could be scheduled on or about July 15-19, 2013.

16. Implementation issues addressed in Phase III will primarily provide quantitative and qualitative impacts for the same policy issues addressed in Phase II (including all related supporting documentation, assumptions, and calculations), and show these respective impacts upon residential and business consumers, the market generally, carriers, and parties paying into and receiving funds from the KUSF. All parties should have the discretion to address some or all of these implementation issues depending upon their specific concerns and priorities.

17. The same additional policy issues that CURB proposed for Phase II would be applicable for addressing in Phase III implementation, and it is not necessary to list these same issues again.

V. Other Issues to be Addressed by the Commission

18. CURB believes the Commission should issue a decision as soon as possible regarding interim policy related to matters impacting the KUSF prior to any final decision regarding the policy and implementation issues related to this proceeding. CURB is concerned that Kansas RLECs (or possibly any other parties obtaining KUSF support) may have an incentive to increase or accelerate their requests for supplemental or additional funding from the KUSF in advance of any final decisions in this proceeding. These parties may attempt to substantially increase their KUSF support payments in advance of any final decisions in this

proceeding which could actually decrease or eliminate these same kinds of KUSF support payments. Therefore, CURB recommends that the Commission either suspend all requests for KUSF supplemental or additional funding until a final decision in this proceeding, or all supplemental and additional requests should be considered "interim" and subject to true-up depending upon the Commission final decision in this proceeding. Also, all entities requesting additional KUSF support prior to a final Commission decision should be required to show that unique conditions exist and that substantial financial and operational harm will be imposed without such supplemental or additional funding

VI. Conclusion

19. CURB appreciates the opportunity provided in this docket to submit these comments on behalf of Kansas small business and residential ratepayers, and urges the Commission to adopt CURB's positions in this proceeding as it relates identification and scheduling of legal, policy, and implementation issues which impact the KUSF and Kansas consumers.

Respectfully submitted,



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VERIFICATION

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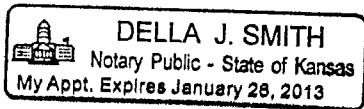
I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

C. Steven Rarrick

C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 1st day of March, 2012.



Della J. Smith
Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

12-GIMT-170-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, electronic or hand-delivered this 1st day of March, 2012, to the following:

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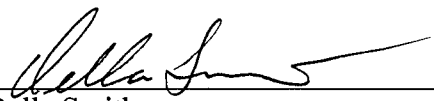
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