

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

In the Matter of the Application Totah )  
Communications, Inc. for Additional Kansas ) Docket No. 24-TTHT-343-KSF  
Universal Service Fund Support Pursuant to )  
K.S.A. 66-2008 )

**JOINT MOTION TO: 1) APPROVE SETTLEMENT AGREEMENT;  
2) CANCEL REMAINING PROCEDURAL SCHEDULE; AND 3)  
RENDER A DECISION ON PAPER RECORD**

The Staff of the Kansas Corporation Commission (“Staff” and “Commission,” respectively) and Totah Communications, Inc. (“Totah”) (together, “the Signatories”) jointly move the Commission to: 1) approve the attached Settlement Agreement<sup>1</sup> agreed to by the Signatories; 2) cancel the remaining procedural schedule in this matter; and 3) render a decision in this matter based upon the paper record. In support, the Signatories state as follows:

**I. BACKGROUND**

1. Totah is an Oklahoma corporation holding one or more Certificates of Convenience and Authority to engage in the business of providing local exchange and exchange access telecommunications service in designated geographic areas within the State of Kansas. It is a rural telephone company as defined in K.S.A. 66-1,187(l). Totah has elected to operate under traditional rate of return regulation pursuant to K.S.A. 66-2005(b).

2. On October 18, 2023, Totah filed its Application requesting additional Kansas Universal Service Fund (KUSF) support pursuant to K.S.A. 66-2008(e). Totah requested an increase of \$627,462 in its level of KUSF support per year to its current pro-rated level of \$206,678.<sup>2</sup> Totah’s Application included schedules required by K.A.R 82-1-231, reflecting

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<sup>1</sup>Attached hereto as Attachment “A”.

<sup>2</sup> The level of KUSF recorded in the test year in the amount of \$199,589 differs from Totah’s current pro-rated annual

Total's embedded costs, revenue requirements, investments, and expenses. The schedules were supported by testimony from Mark M. Gailey, Total's President/General Manager, and Jeremiah Raya, Total's JSI consultant.

3. K.S.A. 66-2008(e)(1) states, in part: "For each local exchange carrier electing pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, to operate under traditional rate of return regulation, all KUSF support, including any adjustment thereto pursuant to this section shall be based on such carrier's embedded costs, revenue requirements, investments and expenses, subject to the annual cap established pursuant to section (e)(3)."

4. The Commission suspended the deadline for determination in this matter until June 14, 2024, via an Order issued on October 31, 2023.

5. On December 18, 2023, Blue Valley Tele-Communications, Inc.; Haviland Telephone Co., Inc.; JBN Telephone Co., Inc.; Rural Telephone Service Company, Inc. d/b/a Nextech, S & A Telephone Company, LLC; and Wheat State Telephone, Inc., d/b/a Wheat State Technologies (collectively, the Rural Local Exchange Carriers, or "RLECs") filed their Petition for Limited Intervention. As recipients of Alternative Connect American Cost Model ("ACAM") federal support, the RLECs sought to limit their intervention to the question of how ACAM support is allocated when calculating a rural local exchange carrier's intrastate revenue requirement and annual KUSF subsidy.

6. The Commission issued an Order on December 28, 2023 in which it granted the RLEC's petition for limited intervention and set forth a Procedural Schedule to govern this proceeding. The Procedural Schedule contemplated, among other things, Direct Testimony,

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KUSF draw as of December 1, 2023, which is \$206,678 (Docket No. 24-GIMT-229-GIT Attachment A).

Rebuttal Testimony, Settlement due dates, an Evidentiary Hearing, and Closing Briefs.

7. On February 21, 2024, the RLECs filed Direct Testimony advocating for their preferred method for allocating ACAM.

8. On February 22, 2024, Staff submitted Direct Testimony from four witnesses: Adam Gatewood; Daniel Buller; Katie Figgs; and Roxie McCullar. Staff's investigation ultimately concluded with a recommendation to increase Totah's cost-based KUSF support by \$261,943 annually. After reviewing Staff's Direct Testimony, the Company agreed to Staff's position with the stipulation of updating audit expense though the most recent expenses incurred. After updating audit expense, Staff's new recommendation was an annual increase of \$262,979 to its current pro-rated KUSF support totaling \$469,657.<sup>3</sup> This figure included \$19,023 in annual audit expense, which represents the total of \$95,116 amortized over five years. Staff recommended that in five years, this amount be deducted from Totah's annual KUSF support. The Signatories also agree that the \$469,657 is the total amount of annual KUSF support for Totah prior to any pro-rata reduction mandated by K.S.A. 66-2008(e)(3).

9. The Signatories have subsequently reached agreement with respect to Totah's request for an increase in KUSF Support. To that end, the Signatories have drafted a proposed Settlement Agreement, attached hereto as **Attachment A**. Staff and Totah agree that at the conclusion of the five-year amortization period for audit expense, the annual KUSF support received by Totah will be reduced by \$19,023 (one-fifth of audit expense of \$95,116) to reflect that the audit expense incurred in this docket will be fully recovered.

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<sup>3</sup> The sum of Staff's recommended increase of \$262,979 and Totah's current pro-rated annual KUSF draw as of December 1, 2023 of \$206,678 (Docket No. 24-GIMT-229-GIT Attachment A).

10. The Signatories are in agreement that further proceedings and/or hearings in this matter are unnecessary. The Signatories respectfully request that this matter be submitted for determination upon the paper record, and all outstanding Procedural Schedule due dates be waived, including any and all evidentiary hearings, further testimony, and briefing requirements.

## **II. REQUEST FOR APPROVAL OF THE AGREEMENT**

11. The attached Settlement Agreement represents a full and complete resolution of the issues raised by Totah's Application. The RLECs were granted limited intervention with respect to ACAM; and, while the Settlement Agreement does not specifically state a preferred ACAM allocation methodology, the Commission still has the opportunity to select a methodology in Docket No. 23-GIMT-392-GIT, where the RLECs have requested a general investigation be opened into this matter.

12. K.A.R. 82-1-230a(a)(2) defines "unanimous settlement agreement" as an agreement that is entered into by all parties to the proceeding or an agreement that is not opposed by any party that did not enter into the agreement. Accordingly, the Settlement Agreement here qualifies as "unanimous" under the Commission regulations.

13. When approving a settlement, the Commission must make an independent finding that the settlement (a) is supported by substantial competent evidence in the record as a whole; (b) establishes just and reasonable rates; and (c) is in the public interest.<sup>4</sup>

14. The terms of the Settlement Agreement are based upon the recommendations included in the Staff's Direct Testimony and will resolve all outstanding issues in this matter. The

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<sup>4</sup> *Citizens' Util. Ratepayer Bd. v. Kansas Corp. Comm'n*, 28 Kan. App. 2d 313, 316 (2000) rev. denied March 20, 2001.

terms are fair, reasonable and fully supported by the Application, direct testimony, exhibits, and verified pleadings filed in this docket. The terms were fully and fairly negotiated by the Signatories in good faith and with the opportunity for both parties to the proceeding to participate and represent their unique interests. Therefore, the Signatories submit the terms of the Agreement promote the public interest and should be approved by the Commission.

### **III. REQUEST TO MODIFY THE PROCEDURAL SCHEDULE**

15. The Signatories have requested as part of the Settlement Agreement that the Procedural Order be modified. The Signatories do not believe that further testimony nor a hearing in this matter is necessary. The Signatories respectfully request as part of this Joint Motion that the Procedural Order be modified to allow the Commission to make a decision on the Agreement attached to this Joint Motion based upon the written records already submitted in this docket and without the necessity of a hearing.

WHEREFORE, the Parties respectfully jointly request that the Commission issue an order: 1) adopting the attached Settlement Agreement; 2) cancelling the remainder of the procedural schedule; and 3) rendering its decision in this matter upon the paper record.

Respectfully submitted,

*1st Carly R. Masenthin*

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COMMUNICATIONS, INC.**

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Communications, Inc. for Additional Kansas ) Docket No. 24-TTHT-343-KSF  
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**SETTLEMENT AGREEMENT**

The Staff of the State Corporation Commission of the State of Kansas (“Staff”), and Totah Communications, Inc. (“Totah” or “Company”) (hereafter referred to together as “Signatories”), pursuant to K.A.R. 82-1-230a, hereby submit the following terms of settlement to the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) to resolve all disputed matters in this proceeding.

**TERMS OF AGREEMENT**

1. The Signatories agree that Totah’s annual cost-based KUSF support shall be set at \$469,657. The Signatories also agree that the \$469,657 is the total amount of annual KUSF support for Totah prior to any pro-rata reduction mandated by K.S.A. 66-2008(e)(3).
2. Five (5) years after Totah’s annual KUSF support increases as a result of approval of this Stipulated Settlement Agreement, it shall be reduced by \$19,023 to reflect the complete recovery of amortized audit expense over 5 years.

**GENERAL PROVISIONS**

3. This Agreement represents a negotiated settlement that resolves the issues in this docket as between the Signatories. The Signatories represent that the terms of the Agreement constitute a fair and reasonable outcome and comport with the statutory requirements of K.S.A. 66-2008(e) for purposes of calculating Totah’s KUSF support. However, the Signatories agree

that neither shall be bound by any of the specific determinations, recommendations, or adjustments proposed via Application or in testimony presented in this matter. Except as specified herein, the Signatories shall not be prejudiced by, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Signatories shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues. The Signatories recognize that, pursuant to K.A.R. 82-1-230a(b), the Commission may approve, reject, or modify any Settlement Agreement. Should the Commission not approve the terms of this Settlement Agreement in full, the Signatories agree that by entering into this Settlement Agreement, they are not waiving any arguments.

4. Nothing in this Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information.

5. The provisions contained in this Agreement have resulted from negotiations among the Signatories and are interdependent. In the event the Commission does not approve and adopt the terms of this Agreement in total, it shall be voidable and none of the Signatories shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

#### **PROCEDURAL MATTERS**

6. In an effort to expedite a determination in this matter and prevent any further administrative costs, the Signatories have agreed to waive any further testimony, evidentiary

hearings, and/or briefing requirements adopted pursuant to the Procedural Schedule in this matter. The Signatories request that the Commission rule upon this matter based upon the paper record in this proceeding and posit that the Application and supporting Testimony with exhibits, as well as Staff's Direct Testimony with exhibits and Schedules, contain sufficient evidence to conclude that the Settlement Agreement in this matter complies with the statutory directives for KUSF support determinations and sets an appropriate level of annual cost-based KUSF support for Totah.

Respectfully submitted,

*/s/ Carly R. Masenthin*

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**Attorney for Totah Communications, Inc.**

## CERTIFICATE OF SERVICE

24-TTHT-343-KSF

I, the undersigned, certify that a true and correct copy of the above and foregoing Settlement Agreement was served via electronic service this 27th day of March, 2024, to the following:

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*/s/ Ann Murphy*

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