

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a Review of the Kansas)
Universal Service Fund, including the) Docket No. 11-GIMT-420-GIT
Forward-Looking High-Cost Model Used to)
Determine Cost-Based Kansas Universal)
Service Fund Support for Price Cap Carriers)
And Competitive Eligible)
Telecommunications Carriers Offering)
Service in Price Cap Carrier Study Areas, the)
Level of Participation of Interconnected)
VOIP and Wireless Service Providers, the)
Effect of Federal Universal Service Fund)
Reform, the Definition of Universal Service,)
and Other Matters)

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by
State Corporation Commission
of Kansas

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

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following reply comments in this docket in response to the Kansas Corporation Commission's (KCC or Commission) January 26, 2011, Order Initiating Investigation, Establishing Comment Schedule, and Appointing Prehearing Officer (Order Initiating Investigation) and the related prior December 7, 2010, Notice of Filing Staff Report and Recommendation (Staff's Report). In support of its position, CURB states and alleges as follows:

I. Introduction

1. CURB filed initial comments in this proceeding on June 22, 2011. As part of its reply comments, CURB has reviewed the June 22nd comments of other parties, including KCC Staff (Staff); Southwestern Bell Telephone Company, TCG Kansas City, Inc., AT&T

Communications of the Southwest, Inc., AT&T Corp., SBC Long Distance, LLC, Bell South Long Distance, Inc., SNET America, Inc. d/b/a AT&T Long Distance East, and New Cingular Wireless PCS, LLC (hereinafter, collectively “AT&T”); United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas, and Embarq Missouri, Inc. doing business as CenturyLink (hereinafter, collectively “CenturyLink” or “CL”); Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners (hereinafter, collectively “Sprint”); Nex-Tech Wireless, L.L.C. and United Wireless Communications, Inc. (hereinafter, collectively “NTW”); Verizon; H&B Communications, Inc. and H&B Cable Service, Inc. (hereinafter, collectively “H&B”); and Independent Telecommunications Group, Columbus *et al.* jointly with the State Independent Alliance (hereinafter, collectively “Columbus”).

2. As part of its reply comments, CURB will address the Federal Communications Commission (FCC) Notice of Proposed Rulemaking (NPRM)¹ and the Commission’s previously specified six issues²:

- 1) The level of participation of providers of alternative technologies, such as VOIP and wireless, in the market.
- 2) Whether costs of Interconnected VOIP and wireless should be included in a cost model, and if so, how those costs should be ascertained and reflected in the cost model.

¹ FCC NPRM, *In the Matter of 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 a 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)*.

² Commission’s January 26, 2011, Order Initiating Investigation, Establishing Comment Schedule, and Appointing Prehearing Officer (Order Initiating Investigation) and the related prior December 7, 2010, Notice of Filing Staff Report and Recommendation (Staff’s Report).

3) Whether and how the National Broadband Plan and federal USF, intercarrier compensations, and separations reform should be addressed in a review of the KUSF cost model.

4) Whether, in light of pending FCC action with regard to separations, a separations factor should be reflected in the cost model and if so, how that factor should be reflected.

5) Whether the Commission should review the definition of universal service for Kansas. See K.S.A. 66-2002(k). If so, what potential change should be considered. For example, should the Commission include broadband as the FCC is considering doing for supported services for federal universal service? Would this require statutory changes?

6) Whether the Commission should phase out competitive ETC KUSF support, similar to the proposal to phase out federal competitive ETC support in the National Broadband Plan. If so, what kind of a process and timeframe might be appropriate?

II. The Commission Should Address Limited Issues Until FCC Decisions are Made

3. Prior to addressing the six technical issues in this proceeding, CURB will address the general issue of how the Commission should proceed in this docket because this matter was raised by some of the commenters. This proceeding was initiated because of the FCC's comprehensive investigation and reform of the federal universal service fund (FUSF) and inter-carrier compensation (ICC) issues, and all related issues addressed in the 300 page NPRM for which Initial and Reply Comments have been received. The FCC has not taken any action to date, but could start making decisions on some of these issues this fall - - although implementation of any reforms will likely take place over at least the next eighteen months. This raises the issue of how the Commission should proceed, and whether the Commission should wait for decisions by the FCC or forge ahead with policy and decisions on some of the issues in this proceeding.

4. Staff indicates that the Commission should not venture too far down the road in this proceeding, but instead wait for FCC decisions to guide the way. Staff does believe that some policy issues can be reviewed and decisions made by the Commission, such as: a) whether broadband should be a KUSF-supported service; and b) whether any cost model and inputs should be technology agnostic.³ CURB agrees that the Commission should move forward in addressing certain limited issues, but not the issue of whether broadband should be a KUSF-supported service. CURB believes the Commission should wait until it is determined that the FCC has authority to include broadband as a supported service, there may be several obstacles at the federal level as addressed in CURB's initial comments. If the FCC does not have authority for this action, the states will most likely not have this authority.

5. CURB does agree with Staff that the Commission can move forward with determining whether any cost model should be technology neutral. However, CURB does not believe the Commission should make specific detailed decisions about cost models at this time⁴, until the FCC renders a decision or some opinion in this area. If the FCC develops a cost model or addresses related cost policy and assumptions, it would be more efficient for Kansas to wait and evaluate these same cost model issues for implementation in Kansas. However, it may be possible to address some other general cost study policy issues at this time, and these matters are addressed later in these comments.

6. Throughout these comments, CURB will identify other issues which it believes the Commission can move forward with at this time, and these primary issues include: a) evaluate CURB's recommendation to limit KUSF support to the single primary line, because implementation of this policy will reduce the size of the KUSF; b) evaluate whether any future

³ Staff comments, ¶¶ 8 - 10.

⁴ Such detailed decisions include the type of cost model, cost model policy, and cost model assumptions and inputs.

cost model should be technology neutral and incorporate the least-cost and most efficient technologies of VoIP and/or wireless in a surrogate cost model; c) in advance of any decision to include broadband as a supported service, the Commission should evaluate whether broadband demand is already being met, or will be met, by existing and increasing competitors providing universally affordable broadband service - - especially in underserved and rural areas of Kansas; d) in conjunction with the prior issue, the Commission should evaluate whether wireless broadband can more efficiently meet these needs in rural and underserved areas and if this can reduce the size of the KUSF support (i.e., should duplicative wireless investment by incumbent LECs receive KUSF support; and what level of support, if any, should be provided to other wireless and satellite broadband providers); and e) evaluate whether elimination or significant reduction of KUSF payments to incumbent LECs in price-deregulated exchanges (or for those carriers without COLR responsibilities) will cause local rates to increase or whether there is a competitive market that will constrain prices.

7. AT&T believes the Commission should suspend this proceeding in its entirety to avoid potential costly and lengthy proceedings which may require reconsideration - - and wait until the FCC makes decisions and provides some certainty to the process.⁵ CL also proposes to suspend this proceeding until the FCC acts, or at least until the end of this year so the status of this proceeding can be evaluated.⁶ CURB does not agree with the suggestions of both AT&T and CL to suspend this entire proceeding. Both AT&T and CL have a vested interest in delaying this proceeding because they are the two incumbent carriers that will be primarily affected by changes in the cost model as well as by any potentially significant KUSF reform that might result from this proceeding. Therefore, AT&T and CL both favor the status quo to delay any changes

⁵ AT&T comments ¶¶ 7 - 8.

⁶ CL comments ¶ 2.

that could negatively impact them. This is not a valid reason to suspend this proceeding, and the Commission should move forward on limited issues.

8. Verizon believes the Commission should hold off making any decisions that risk inconsistency with potential FCC actions, although Verizon believes the Commission can implement certain reforms that are consistent with the FCC's proposed actions to begin scaling back the KUSF.⁷ CURB believes that some of the general recommendations of Verizon could be impacted by FCC decisions, but CURB does agree that the KUSF should be scaled back without increases in local rates and assessments to residential consumers.

III. Reduction in Support for Wireline Carriers

9. Prior to addressing the Commission's specific issues in this proceeding, Verizon provides general comments about reducing the support to incumbent wireline carriers in order to reduce the size of the KUSF and place less of a burden on consumers. CURB believes these issues are very important and merit reply. Verizon generally indicates that the KUSF is too large and assessments to consumers are excessive. Verizon underscores the need to reduce KUSF support to incumbent wireline carriers, although Verizon's proposals for achieving this are somewhat vague. Verizon indicates that even if Kansas carriers were to receive reduced KUSF support, there has been no showing that those carriers would not be able to recover their costs or that they would cease to provide universal service. Also, Verizon states that given the number of competitors in the market, there is no need to continue to subsidize carriers, especially traditional wireline carriers, at current levels.⁸

10. Verizon indicates that because most of the costs of deploying a traditional voice and broadband network are up-front costs, the justification for ongoing subsidies is diminishing -

⁷ Verizon comments pp. 3 – 4.

⁸ Verizon, pp. 9 – 12.

- if there was ever any justification. Verizon notes there is no indication that historical levels of support are necessary today to provide basic local service on a continuing basis. Verizon states that with other revenue streams available to Kansas LECs along with cost-reduction measures and other actions a carrier can take, it cannot be assumed that these carriers will not recover their costs (or not continue providing the same level of service) even after their level of subsidization is reduced.⁹

11. Verizon states that with the significant shift from wireline to other communications options, the “Commission should be increasingly concerned with Kansas wireline LECs continuing to receive excessive historical subsidies through KUSF distributions paid by other providers that are competitors of the LECs.” Verizon concludes there cannot be a level playing field when one set of competitors (wireline LECs) receive excessive subsidies that others do not receive. And these subsidies skew the market, are barriers to entry for competitors, deprive customers of some of the price benefit of competitive choices, and impose additional costs on providers that could result in additional surcharges to end-user customers and thus making service less affordable. Verizon believes that continuing the KUSF at current levels is counterproductive.¹⁰

12. CURB agrees with Verizon that there are various reasons that justify significant cuts in the KUSF payments to incumbent LECs. AT&T has filed applications with the Commission and been granted relief from price regulation in numerous exchanges in Kansas (subject to the Kansas deregulation/competition statute), although CURB does not believe that effective competition exists in all of these price-deregulated exchanges. However, CURB believes in exchanges where AT&T (and CL) have been price-deregulated and where such

⁹ Verizon, p. 9.

¹⁰ Verizon, p. 13.

exchanges have been determined to be *de facto* “competitive”, there is a good argument that incumbent LECs (and all ETCs operating in these exchanges) should receive little or no KUSF support. It is not reasonable for incumbents to enjoy the significant benefits of freedom from price regulation, but then also want to enjoy the benefit of “regulation” from the standpoint of receiving KUSF support for these same deregulated prices. If these exchanges are deemed competitive by virtue of statutory requirements and incumbents have the ability to establish prices without substantive regulatory constraint, then these same carriers should not also receive a benefit over other competitors in the form of KUSF support. Although CURB does not believe that effective competition exists in some of these price-deregulated exchanges, it is reasonable to evaluate whether elimination or significant reduction of KUSF payments to incumbent LECs in these exchanges will cause local rates to increase or whether there is a competitive market that will constrain prices. CURB favors further exploration of this issue.

13. In addition, if an incumbent carrier does not have carrier of last resort obligations (COLR), the carrier should not receive KUSF support. However, it should not be a requirement that an incumbent be relieved from COLR obligations as justification for reducing or eliminating KUSF support to that carrier. The incumbent has even more freedom from regulation if released from COLR obligations, and this means there is less justification for the incumbent to receive benefits from any “regulatory” mechanism, including payments from the KUSF.

IV. Should the Kansas Definition for Universal Service be Revised to Include Broadband

14. The KCC’s order seeks comments on whether broadband should be included in the definition of universal service for Kansas, and thus be a KUSF-supported service. Staff does not make a recommendation or provide any specific analysis regarding this issue, but merely indicates the Commission can proceed forward with evaluating this issue. Staff indicates some

issues to be addressed are: a) whether statutory changes are needed to include broadband as a KUSF-supported service; b) how the term “broadband” should be defined; and c) whether changes in a cost model are necessary to reflect broadband as a supported service.¹¹ CURB believes that Staff raises some valid issues. However, before the Commission invests significant time and effort in this legal issue at the state level, CURB believes it is more efficient to wait and see if the FCC can overcome legal hurdles at the federal level to include broadband as a supported service. CURB does not believe that state authority can exceed any federal authority in this area as addressed in CURB’s initial comments.

15. AT&T does not offer any substantive comment on this issue, but merely states that a review of the definition and concept of universal service must be undertaken in Kansas. AT&T does not state whether broadband should be a KUSF-supported service and AT&T does not address any related legal issues for including broadband in the definition of universal service.¹² It is not clear if AT&T favors the inclusion of broadband as a supported service in Kansas.

16. CL favors inclusion of broadband as a KUSF-supported service, but indicates the KCC does not have authority to define universal service or to include broadband service. CL recommends that the Commission work with the industry to develop a legislative proposal for the 2012 legislative session.¹³ CURB believes the statutory authority for including broadband as a supported service needs to be addressed at the federal level initially before any potential legislation is crafted for the 2012 Kansas legislative session. However, CURB would want the opportunity to participate in any process crafting a legislative proposal for broadband in Kansas.

¹¹ Staff comments, ¶ 18.

¹² AT&T comments ¶ 4.

¹³ CL comments, ¶¶ 7 – 9.

17. Sprint does not support the inclusion of broadband as a supported service under the current KUSF due to the following concerns: a) questionable statutory authority for diverting KUSF funds to support an interstate service with an intrastate tax; b) further increases in an already bloated fund, unless the addition of broadband is accompanied by significant reductions to reflect more efficient and productive network technologies; and c) eliminating subsidies in areas where unsubsidized carriers provide service. If broadband is included as a supported service, Sprint believes the Commission should consider (among various proposals) increased retail pricing benchmarks based on an assumption that a broadband-capable network is more valuable to consumers.¹⁴

18. CURB agrees and disagrees with some of Sprint's comments. CURB generally supports broadband availability at reasonable prices, but does not believe broadband should be included as a supported service if this will jeopardize universal and affordable service for residential customers of basic local service. CURB believes the Commission should further evaluate those specific areas in Kansas where broadband is not available, and evaluate where broadband is not available at reasonable prices, and then determine whether the marketplace or regulation (via KUSF support for broadband service) is more efficient at addressing these issues. Clearly, not all residential customers of basic local service want or need broadband, and these customers should not be required to provide support (in the form of increased KUSF assessments or increased basic local rates) to consumers and businesses that do want or use broadband services. Verizon takes this a step further and indicates it is not correct policy for some competitors to subsidize the broadband development of others.¹⁵ CURB agrees with Sprint's concerns that broadband should not be a supported service unless significant and meaningful

¹⁴ Sprint comments, ¶¶ 18 – 19.

¹⁵ Verizon comments, p. 8.

reductions can be made to the existing KUSF, because otherwise this could lead to further increases in the existing KUSF.

19. If adding broadband as a supported service did not result in net increases in basic local rates or KUSF assessments to residential consumers, then CURB would likely support this policy - - assuming there are no other underlying negative policies or impacts. However, in order to avoid increases in these rates and assessments, any increase in the KUSF for supporting broadband services would have to be offset by equivalent decreases in the KUSF related to existing universal services and other policy changes resulting from this proceeding. CURB believes it is important to know with more certainty how the FCC actions on all major proposed issues and reforms in its NPRM will impact residential consumers. The FCC broadband proposal may be too ambitious and comprehensive at this time because it includes costly support for broadband expansion in rural and underserved areas and support for providing affordable broadband service to many consumers.

20. CURB does not agree with Sprint's proposal that increases in the retail pricing benchmarks are justified if broadband is included as a supported service (along with residential basic local service). Sprint says a broadband-capable network is more valuable to consumers, therefore Sprint appears to conclude that "all" consumers should pay increased prices (via an increased retail pricing benchmark) for this broadband-capable network regardless of whether they actually use broadband service. CURB does not agree. The current KUSF mechanism does require some customers in low-cost more densely populated urban and suburban areas (where support for basic local service is not necessary) to help pay for the high cost of basic local service in rural areas, so arguably there is cross-support for the existing KUSF mechanism as it applies to basic local service. However, CURB believes it is a substantially different policy

decision to require consumers that do not want or use a highly competitive advanced service such as broadband to help pay for universal and affordable broadband service used by other consumers and businesses - - and to require some broadband competitors to pay for broadband expansion of other competitors.

21. The FCC has previously determined that basic local service should be “supported” as a universally available and affordable service because it is an “essential” service that is important for all consumers (and especially the elderly, those on fixed incomes, and the disabled) to contact doctors and medical facilities, make emergency calls, receive telephone calls from almost anyone, contact government or assistance agencies, search for jobs, and to stay in contact with friends and family (especially for those who are disabled or elderly and do not have the mobility to travel). While useful, CURB does not view broadband service as being an “essential” service under these same criteria at this time, and so the potential public interest is not as great. Therefore, residential consumers should not be required to support broadband services that are primarily used as a “discretionary” service by other consumers and businesses - - unless the net impact on the KUSF and residential consumers can remain relatively neutral and not impose any rate increases on residential consumers.

22. In addition, the “value” of the broadband network to “all” consumers is questionable when compared to existing policies supporting universal and affordable basic local service. The Commission has always had significant jurisdiction over basic local service, so the Commission has been able to regulate basic local service rates, service quality, and other policy matters in a way that is more beneficial to Kansas-specific needs. This has caused more “value” to be attributed to the network providing basic local service in Kansas. In contrast, the Commission has never had any jurisdiction (and will likely never have) over the “interstate-

regulated” competitive broadband service. The Commission cannot exercise jurisdiction over prices, service quality, and other policy matters related to broadband service in Kansas. Unless there are changes in federal statutes, and unless the FCC gives some regulatory authority to state regulatory agencies for broadband services, it is not reasonable to compare “value” of broadband service to basic local service from this perspective. Therefore, CURB has concerns with including broadband as a state supported universal service which could significantly increase the size of the KUSF, when the Commission has no corresponding authority over rates, service quality, or other regulatory policy decisions for broadband service.

23. Verizon does not believe it is necessary to provide support for broadband service because broadband objectives are already being met by sufficient broadband competitors in Kansas that are expanding service. Verizon indicates that it and other carriers are already engaged in massive expansion of “virtually ubiquitous” 4G networks to provide greater broadband availability in Kansas and other locations, with satellite providers filling in the gaps. Verizon also relies on the Commission’s statement that “wireline and wireless broadband development has occurred in much of Kansas.”¹⁶ Verizon believes that satellite broadband service can be very effective in reaching remote locations too expensive to serve with fixed wireline or traditional wireless service, and that this broadband service is already available at affordable prices.¹⁷ .

24. CURB agrees with some of the premises of Verizon, but not necessarily with the conclusions. CURB is not sure if wireline and wireless broadband competitors in Kansas are already expanding service sufficiently to meet broadband objectives or whether they are providing this service at universally affordable prices. Therefore, before the Commission takes

¹⁶ Verizon comments, pp. 18 - 19.

¹⁷ Verizon comments, pp. 10 - 11.

any actions to provide support for broadband service in Kansas, the Commission should determine if broadband demand is being met, or will be met, by existing and growing expansion in Kansas - - and whether such broadband is being provided at universally affordable prices. Also, the Commission should determine if wireless broadband can sufficiently meet the needs of underserved areas, and if it is being provided (or will be provided) in those areas at universally affordable prices. CURB does agree with what appears to be an underlying concern of Verizon; it is not necessary to provide significant additional KUSF funding to wireline carriers (and especially rural wireline carriers) to provide duplicative wireline broadband networks in underserved and rural areas if wireless and satellite broadband can sufficiently (and more efficiently) fill this void at universally affordable prices. CURB is not sure if it is Verizon's intent to shift KUSF funding from wireline broadband carriers to wireless broadband carriers, but CURB does not support this proposal either. Limited support should be available for all wireless carriers, and only if they can more efficiently provide broadband service in underserved areas and only if they provide documentation for their costs and related KUSF support levels. This type of detailed analysis can be undertaken in this proceeding at this time without waiting on the FCC.

25. CURB also believes that some of this broadband analysis and mapping may already be available from various sources in Kansas. For example, on January 14, 2011, the Commission provided its report to the legislature regarding the availability of broadband services in Kansas (legislative broadband report). In addition (and as part of the legislative broadband report), there is data being compiled by Connect Kansas in cooperation with the Kansas Department of Commerce, using funding from the federal government for part of this work.¹⁸

¹⁸ Additional information is available at <http://www.connectkansas.org/index.php>

26. Columbus does not believe there is a need to expand the definition of universal service to include broadband because it has already demonstrated the ability to provide broadband-capable facilities in its rural areas under the current definition. Columbus and many of the Kansas rural carriers already receive significant KUSF funding that arguably is used to support broadband facilities that are “jointly” used to provide both local service and broadband service. In audits of these rural carriers for purposes of establishing KUSF support levels, it is currently very difficult for Staff and intervenors to identify, calculate, and allocate the broadband investment between KUSF supported “local” services versus other “interstate” regulated broadband services not intended to be supported by the KUSF - - such as video/television, internet, and other services. Since these rural carriers already receive significant KUSF funding, whether intended or not, the KUSF is indirectly funding broadband facilities in Kansas and it is easy to understand why these carriers do not support making any changes. CURB does believe that the issue of “separations reform” could help define and provide an allocation factor to be used for allocating broadband costs between the “local” and “interstate” jurisdiction.

V. Whether and How the National Broadband Plan, Federal USF, Inter-carrier Compensation, and Separations Reform Should be Addressed in the KUSF Cost Model

27. AT&T states that KUSF modifications, including the cost model, should reflect today’s communications market with next generation networks and IP-based services and related definitions should be technologically neutral and not reflect legacy ILEC technologies or business plans.¹⁹ These AT&T statements support CURB’s position as set forth in initial comments regarding cost models²⁰ identifying the advantages of a “surrogate” cost model that does not rely on specific embedded legacy costs of the incumbent carrier but instead focuses on

¹⁹ AT&T comments, ¶ 3.

²⁰ CURB comments, ¶¶ 26 – 29, 31, and 33-39.

least-cost most efficient technology (such as IP-based). This type of model may help avoid addressing difficult issues such as allocation of common loop costs and which treat “basic local service” as an incremental service to a network that is built to primarily provide advanced broadband services.

28. Verizon indicates that cost models and policy should seek to reduce the current KUSF in order to reduce the contribution burden on consumers and promote a more level playing field among telecom providers in Kansas.²¹ CURB agrees with this premise and believes that a surrogate cost model as proposed by CURB will contribute to a smaller sized KUSF.

29. H&B believes the Commission should consider a hold harmless policy to assure continuation of current support levels or allowing H&B and similar CETCs to receive KUSF support based on its embedded costs, investments, and revenue subject to Commission verification.²² Columbus assumes that it and similar CETCs would not experience any change in its level of universal service support because it does not operate under price cap regulation and any changes to the existing High Cost Proxy Model (HCPM) would not have any impact on Columbus and similar CETCs.²³

30. CURB believes the FCC and states must start looking at costing and other reforms for traditional rate-of-return based rural wireline carriers (and CETCs) such as H&B and Columbus, although this may require some statutory changes. Any policy that supports hold harmless policies or that simply preserve existing levels of support or revenues is likely not sustainable in the future. The FCC is considering proposals that will reduce support revenues for these carriers - - and these changes could raise questions whether state regulatory agencies should replace some or all of these lost revenues with increases in local rates. However, instead

²¹ Verizon comments, p. 17.

²² H&B comments, ¶ 11.

²³ Columbus comments, ¶ 2.

of allowing these carriers to remain “revenue neutral” and simply replace interstate support revenues with increases in basic local rates, the Commission should be more proactive in allocating some common costs to broadband services through separations reform or some other measure, developing new cost methods that only allow efficient recovery of costs, and considering other necessary measures.

VI. Whether Costs of Interconnected VoIP and Wireless Should be Included in a Cost Model

31. Staff indicates that it is now appropriate to include the most efficient costs of alternative technology providers in the determination of a cost model, such as interconnected VoIP or wireless.²⁴ CURB’s initial comments in this proceeding, along with other additional comments in this reply document, support this same position. CURB’s proposed surrogate cost method could use VoIP, wireless, or some hybrid of other least-cost efficient technology instead of the embedded and inefficient legacy costs of wireline incumbents such as AT&T and CL. I

32. CL states that it is premature to determine or debate whether costs of interconnected VoIP or wireless should be reflected in a KUSF cost model at this time, because a cost model has not been determined yet and this will require a separate procedural phase and consume substantial time and resources.²⁵ CURB disagrees and believes the Commission can make some preliminary decisions supporting a cost model that is technology neutral and which reflects VoIP, wireless, or some hybrid of other least-cost efficient technology. CURB does agree that the specific cost modeling process will be time consuming.

²⁴ Staff comments, ¶¶ 11 – 12.

²⁵ CL comments, ¶ 4.

VII. The Level of Participation of Providers of Alternative Technologies, such as VoIP and Wireless

33. This matter is adequately addressed in the prior section and in CURB's initial comments.

VIII. Whether a Separations Factor Should be Reflected in the Cost Model and How that Factor Should be Reflected

34. Staff indicates it would not be reasonable to adopt a specific separations factor in this proceeding pending FCC reforms. Further, any new cost model will need to consider separations reform and the allocation of costs for services such as broadband (broadband services were not considered in the prior cost model because these services were not being provided).²⁶ CURB agrees for the most part with Staff on these issues. However, it is not a certainty that separations reform will identify a separations factor that may be applicable to a cost model that uses costs of VoIP or wireless technology, because separations factors have historically only been applicable to the embedded legacy costs of incumbent wireline carriers such as AT&T and CL. For these alternative technologies, it may be necessary to use an existing FCC safe-harbor allocation percentage or some other reasonable surrogate. Historically, the FCC has used a separations factor for incumbent carriers which shifts more costs to "local" services that are under the jurisdiction of state regulatory agencies. This increasing shift of costs to the state jurisdiction supports an FCC agenda to minimize costs allocated to long distance services (which results in lower prices) which were under the FCC's jurisdiction. Conversely, the FCC has used the opposite approach with safe-harbor allocation factors for purposes of allocating revenues of VoIP and wireless carriers between the intrastate and interstate jurisdiction for universal service fund purposes. The FCC has assigned a greater (and increasing) allocation percentage to the

²⁶ Staff comments, ¶ 15.

interstate jurisdiction because this allows the FCC to include a greater amount of VoIP and wireless revenues in the revenue base for FUSF calculations, and this allows the FCC to calculate a lower assessment for FUSF purposes. Thus, it would appear that a safe-harbor allocation percentage may be more appropriate if VoIP or wireless technologies are used in a KUSF cost model.

IX. Whether the Commission Should Phase Out Competitive ETC KUSF Support Similar to the Proposal for Federal Competitive ETC Support in the National Broadband Plan

35. Staff indicates that the FCC is now proposing and considering two high-level approaches to reforming funding for CETCs, and both proposals will eliminate the identical support rule. Staff does not believe the Commission should make any decisions on this issue pending an FCC decision. Staff indicates the Commission should seek comments on whether it is necessary to revise or eliminate the Kansas “identical support rule” (if modified by the FCC) to avoid federal preemption of the KUSF operations.²⁷

36. CURB agrees with Staff. It is premature for the Commission to make decisions regarding these matters pending a final decision by the FCC. CURB believes it will be necessary to know the FCC’s final determination and specific language regarding changes in the identical support rule before it can comment on preemption or impacts for Kansas. CURB does not believe all of these issues are of a preemptive nature; the issues related to this matter may be different for the FUSF versus the KUSF. For example, the FCC measures would shift remaining ETC funding (assuming this includes some identical support amounts) to the CAF to support broadband universal service. CURB does not believe it is necessary to follow this same process for shifting KUSF ETC funding to a state USF for broadband services, and this would not appear to be a preemptive issue.

²⁷ Staff comments, ¶¶ 20 – 21.

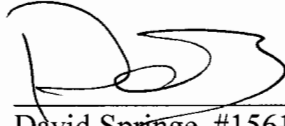
37. CURB generally supports the FCC's underlying premise for changing the identical support rule, which currently requires that competitive wireline and wireless ETCs receive the same amount of per line dollar amount of KUSF support as the related incumbent carrier would receive. CURB agrees that reform is needed to change this rule such that duplication of payment is not required for ETCs, and carriers should be required to provide documentation justifying the level of KUSF support. This reform should lead to the reduction of the size of the KUSF.

38. CL indicates that in 2000 (Year 4 of the KUSF) there were no wireless ETCs receiving KUSF support, but in 2002 competitive wireless carriers began seeking KUSF support based on the "identical support" rule. In the past eight years, the amount of wireless ETC support has grown from \$26,000 to over \$5 million in 2010. In 2002, the KUSF assessment charge was 3.7% and 3.4% for wireline and wireless carriers, and today the assessment is 6.64%. CL notes that wireless ETCs are not required to support their costs and are not subject to cost reviews by the Commission. CURB agrees that this increase in KUSF support for wireless ETCs is alarming and requires immediate attention and reform as recommended by CURB in this proceeding.

X. Conclusion

39. CURB appreciates the opportunity provided in this docket to submit these reply comments on behalf of Kansas small business and residential ratepayers, and urges the KCC to adopt CURB's positions in this proceeding as it relates to important policy regarding the KUSF and related reforms being addressed by the FCC.

Respectfully submitted,



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CERTIFICATE OF SERVICE

11-GIMT-420-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, or hand-delivered this 22nd day of July, 2011, to the following:

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