

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

APR 20 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) )

**REPLY TO "OBJECTION OF STAFF TO PLEADING AND RESPONSE TO REPLY"**

COME NOW the rural local exchange carriers (RLECs) as identified in Attachment A and for their reply to the "Objection of Staff to Pleading and Response to Reply" states as follows:

1. On March 21, 2012, the Commission's staff (Staff) served DR 1 to all of the RLECs, but did not serve any of the RLECs' counsel of record. On that date, even though this docket had been open for over six months, there was not yet a Discovery Order in this docket, issued by either the Commission or any of the prehearing officers. A standard Commission discovery order was later issued by the prehearing officer on March 29, 2012.

2. The Commission's standard discovery order normally contains provisions regarding who should be served with the discovery when it is served, what to do when the party upon whom the discovery is served objects to the discovery, what is required to attempt to resolve discovery disputes, and other matters. As noted in paragraph 1, above, that standard discovery order was NOT in place when Staff served DR 1 on the RLECs, but not counsel of record.

3. On Friday, March 23, 2012, after having been notified by clients and clients' consultants that Staff had issued the DR, counsel for the State Independent Alliance ("SIA") called Staff counsel to express that the RLECs had concerns about what the DR requested and asked to meet with Staff as soon as possible to discuss those concerns. Counsel for SIA was informed an essential member of Staff wasn't available on Friday, March 23, 2012; thereafter, the previously-unavailable Staff member emailed the RLECs' counsels on Monday, March 26, 2012, wanting to know if the afternoon of Tuesday, March 27,

2012 would work as a meeting time. Staff and the RLECs' counsels ultimately agreed to meet on that afternoon.

4. On March 26, 2012, the RLECs filed an objection to the material requested in DR 1. Even though there was no discovery order in place in the docket, and out of an abundance of caution to ensure protection of their due process rights, the RLECs complied with what has been standard Commission practice and filed an objection to the DR within five days after having received the DR. The Discovery Order ultimately issued by the prehearing officer on March 29 contains this standard language requiring objections to be filed within five days. The next day, on March 27, 2012, the RLECs met with Staff and Staff counsel to express the RLECs' concerns with the information requested in the DR and to also request additional time in which to answer the DR, from April 4 to April 18, 2012. Staff told the RLECs that because of the objection to the DR filed by the RLECs the day before, Staff would not discuss the RLECs' concerns substantively. Staff did state that it did not object to the request for an extension of time in which to respond to the DR.

5. The RLECs objected to DR 1 on several grounds – primarily that the RLECs believed the DR sought information that was currently inaccurate or was likely to change within a short period of time. Another objection was that the DR requested information that was not in the possession of the companies and had not yet been generated by the companies, or if it had been generated it had not been generated as far into the future as Staff wanted for all but a very small number of companies. AT&T and CenturyLink ultimately filed joinders in the RLECs' motion.

6. On March 29, 2012, the prehearing officer issued the Discovery Order. In addition to the standard requirement that objections to DRs be filed within five days (anticipated by the RLECs), the Discovery Order also contained the admonition that "Parties shall negotiate in good faith to resolve discovery disputes." This latter requirement for good faith negotiation was also anticipated by the RLECs and was the reason why RLEC counsel made the phone call to Staff requesting a meeting. Nothing in the Discovery Order requires either the objection to discovery, or good faith attempts to resolve discovery, to occur in any particular order.

7. On April 4, 2012, the prehearing officer issued an order which granted the request to extend the time to respond to the DR to April 18, 2012, but denied the remainder of the RLECs', AT&T's, and CenturyLink's objections to DR 1. The prehearing officer's order did not specifically address the RLEC concern that companies, via the DR, were being asked to create information not in their possession. The prehearing officer's order simply stated, at paragraph 5, that "it appears that several carriers have already advised Staff back in January that they were already making projections through 2020. Thus, the request cannot be considered unduly burdensome." The prehearing officer appears to have ordered companies that did not have the information already created or in their possession to create that information and incur costs they would not otherwise have incurred but for the prehearing officer's order.

8. On April 9, 2012, the RLECs jointly filed a petition to the Commission requesting the Commission review the April 4, 2012 prehearing officer's order denying the objection to DR 1. The "nitty gritty" basis for that joint petition was that the information requested by Staff was not entirely in the possession of the RLECs and would have to be generated by the RLECs and its consultants, costing the companies time and money to come up with the information. The RLECs, as indicated in the objection to the DR and as also indicated in the petition requesting Commission review, did not object to being required to generate the information requested by Staff but wanted a *Commission* (instead of a prehearing officer) order clearly directing the RLECs to do so for future assurances for cost recovery in the event the costs of generating that information might be questioned by future Commission Staff in any audit or review of any of the RLECs.

9. On April 18, 2012, Staff filed its "Objection of Staff to Pleading and Response to Reply." Staff "objects" to the RLECs' April 9 petition to the Commission on the basis that it "fails to comply with the requirements relating to pleadings contained in K.A.R. 82-1-21(e) [sic] which requires a prayer containing a concise and complete statement of all relief sought. No prayer appears in the RLECs' Joint Petition." Staff further "objects" to the April 9 petition to the Commission "in that it appears to be a petition for reconsideration but fails to meet the requirements for such pleading. K.S.A. 66-118b and

K.S.A. 77-529 require the pleading to be titled as a petition for reconsideration and to state the specific grounds upon which relief is requested. K.A.R. 82-1-235 requires all petitions for reconsideration to be filed pursuant to appropriate statutory authority relating to them. There is no mention in RLECs' Joint Petition of any statutory basis for its pleading."

10. Staff continues to "object" to the April 9 petition on the grounds that the RLECs have "made no objection to the DR to the party who posed the DR. No effort to resolve the objection has been made because of the avenue the RLECs have chosen and Staff has not been afforded the opportunity to file a Motion to Compel given the RLECs' filed objection. Staff does not believe the matter ripe for the RLECs to object."

11. With respect to Staff's first "objection" that the April 9 petition "fails to comply with the requirements relating to pleadings contained in K.A.R. 82-1-21(e) [sic] which requires a prayer containing a concise and complete statement of all relief sought" the RLECs note that a regulation numbered "K.A.R. 82-1-21(e)" does not exist so far as the RLECs can find. The RLECs believe Staff may be referring to K.A.R. 82-1-219(e). The RLECs note that although the regulation does require a prayer and the April 9 petition does not contain a prayer, the relief requested is clear, concise, and obvious in the April 9 petition. Further, that same regulation provides when a document may be rejected and "no prayer" is not one of the grounds upon which a document may be rejected. The RLECs submit that the April 9 petition substantially complies with K.A.R. 82-1-219(e) in that the relief requested is clear from the title and body of the pleading, that this Staff objection is placing form over substance, and should be rejected.

12. Staff's next objection is that the April 9 petition "appears" to be a petition for "reconsideration" and alleges that the April 9 petition fails to meet the requirements of K.S.A. 66-118b and 77-529 for petitions for reconsideration. Staff's objection here, is also misplaced. K.S.A. 66-118b specifically refers to petitions for reconsideration of "any order or decision of the *commission*." The April 9 petition requests the full Commission review an order of its prehearing officer, obviously not contemplated by K.S.A. 66-118b. Similarly, K.S.A. 77-529 refers to reconsideration of "final" orders.

The prehearing officer's April 4 order is not a "final order" in that it determines only procedural matters and does not adjudicate any substantive matter at issue in this docket. Finally, Staff misconstrues the language of K.A.R. 82-1-235 in that "filing" a document does not imply a requirement to state within the document the provision pursuant to which it is being filed.

13. Staff next "objects" on the grounds that the RLECs "made no objection to the DR to the party who posed the DR. No effort to resolve the objection has been made because of the avenue the RLECs have chosen and Staff has not been afforded the opportunity to file a Motion to Compel given the RLECs' filed objection. Staff does not believe the matter ripe for the RLECs to object." As indicated above, the RLECs did indeed object to Staff, the party that posed the DR. The RLECs' counsels met with Staff for approximately an hour on the afternoon of Tuesday, March 27, in an attempt to make clear to Staff the RLECs' concerns with the DR and the information it requested. Although Staff listened to the RLECs, Staff made quite clear at the outset of the meeting that Staff would not substantively discuss any of the RLECs concerns because the RLECs had, the day before, filed the objection to the DR. As noted, however, Staff's claimed inability to substantively discuss the DR other than the timing of responses was misplaced; the Discovery Order contains no requirement that informal resolution of discovery disputes precede a formally-filed objection to that discovery, or vice versa, and it has never been Commission practice to mandate that one MUST occur before the other.

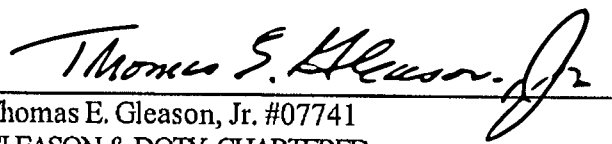
14. Next, with respect to Staff's complaint that it has "not been afforded the opportunity to file a Motion to Compel given the RLECs' filed objection" the RLECs are wholly puzzled. The information requested in the DR was due April 18 and all of the RLECs complied on or before that date. Absent a Commission Order clarifying a more extensive obligation there is nothing to compel.

15. As indicated above, the RLECs have simply requested an order of the Commission that the RLECs have to expend time, money, and scarce resources diverted away from the provision of quality

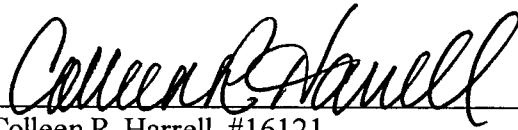
service to their customers to, if necessary, generate information not already in its possession, in an attempt to satisfy Staff's DR 1.

WHEREFORE the RLECs request the Commission consider its response, above, issue an order as requested that the RLECs that have not already done so generate information not in their possession to satisfy Staff's DR 1, or otherwise clarify whether each RLEC is required to incur expenses to develop and provide all information requested by Staff, and for such other and further relief as the Commission deems just and equitable.

Respectfully submitted,



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ATTACHMENT A

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.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was mailed via electronic mail on this 20th day of April, 2012 to the following, with no "hard" copy to follow:

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APR 20 2012

In re: Docket No. 12-GIMT-170-GIT

by  
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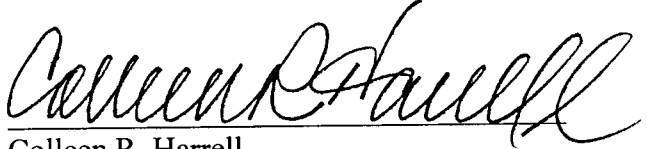
Dear Ms. Petersen-Klein:

We are enclosing the original and seven copies of a Reply to "Objection of Staff to Pleading and Response to Reply" in the above-referenced docket.

If the Commission or Staff have any questions with regard to the filing, please contact this office.

Sincerely,

JAMES M. CAPLINGER, CHARTERED

  
Colleen R. Harrell

CRH/mg

enclosures