

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

SEP 21 2007

In the Matter of a General Investigation to )  
Determine Whether the Commission Should )  
Require Eligible Telecommunications )  
Carriers to Certify That They Have Used )  
Kansas Universal Service Fund Support )  
Appropriately. )

Docket No. 08-GIMT-154-GIT

 Docket  
Room

COMMENTS OF STATE INDEPENDENT ALLIANCE AND  
INDEPENDENT TELECOMMUNICATIONS GROUP

COMES NOW the State Independent Alliance (“SIA”), an informal association of 23 rural incumbent local exchange carriers (“RLECs”), jointly with the Independent Telecommunications Group, Columbus, et al., (“Columbus”), an informal association of twelve RLECs, and offers these comments in the above captioned proceeding.

**I. Introduction and Summary**

1. The RLECs included in SIA and Columbus have been designated eligible telecommunications carriers (“ETCs”) by this Commission and have complied with all applicable state and federal requirements related to such designation. Each carrier serves as the carrier of last resort (“COLR”) in its designated service area. In addition, most if not all of these RLECs have a least one competitive ETC (“CETC”) designated in their respective areas that is receiving Kansas Universal Service Fund (“KUSF”), federal Universal Service Fund (“FUSF”) support, or both. Accordingly, the RLECs represented by SIA and Columbus have an interest in helping the Commission address ETCs’ requirements for certification that they have used KUSF support appropriately.

2. Staff proposes in its Memorandum a process involving both submission of comments by interested parties and a workshop to discuss the issues identified. Columbus and

SIA agree that such a process would be reasonable; these carriers would welcome the opportunity for full and active participation in such a process, subject to reservation of the right to seek opportunities for testimony and hearing if necessary to protect the rights and interests of the parties.

## **II. Direct Issues**

3. Commission Authority. The June 28, 2007 Memorandum by Commission Staff (“Staff”) correctly cite the Commission’s statutory authority addressing the subject matter of this proceeding. K.S.A. 66-1,188 and K.S.A. 66-2002(c) and (h) all provide the Commission authority to consider and impose a KUSF certification requirement. However, this authority should be considered in light of the already burdensome KUSF audit requirements imposed on RLECs to assure that the KUSF is cost-based. However, if the Commission chooses to impose additional KUSF certification requirements, it should be in lieu of, not in addition to, the KUSF audits.

4. Investment and Expenses. The KCC website advises that the purpose of the KUSF is to “assure quality services be made available to all Kansans.” See [http://kcc.state.ks.us/telcom/kusf\\_facts.htm](http://kcc.state.ks.us/telcom/kusf_facts.htm). Specific provisions establishing and controlling the KUSF are set forth at K.S.A 66-2008.

5. The investment and expenses that should be considered as appropriate use of KUSF support should be those made and incurred for provision of universal service and enhanced universal service as defined in K.S.A. 66-1,187(p) and (q). Specifically, universal service and enhanced universal service are defined as follows:

“(p) “Universal Service” means telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services.

(q) "Enhanced universal service" means telecommunications services, in addition to those included in universal service, which shall include: Signaling system seven capability, with CLASS service capability; basic and primary rate ISDN capability, or the technological equivalent; full-fiber interconnectivity, or the technological equivalent, between central offices; and broadband capable facilities to: All schools accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services."

6. Additionally, the appropriate use of KUSF support should be limited to costs and investments made specifically within the geographic area(s) for which the support is received.

The Commission's prior assumption, that the costs of universal service in an area are determined by the incumbent carrier's actual costs, creates an important issue of the possibility of improper cross-subsidization if support determined and paid based on one incumbent LEC service area's costs is applied in a different area having different costs, or for which the recipient is not authorized to receive such support.

7. Modification to FUSF Forms. The Commission's current form for certification of FUSF use would be generally sufficient for certification of KUSF use. To streamline the process and minimize cost, an additional KUSF column could be added next to all the FUSF information sought and for rural LECs it should include all the investment and expenses that were used to calculate the carriers' cost-based KUSF during their respective audits. Provision of all certification forms in electronic format to all parties, and use of forms and submission of required information in such format, would further expedite compliance and minimize administrative expense.

8. Timing of Certification. Any KUSF certification requirement should be scheduled to coincide with FUSF to streamline the process and minimize expense. There is no evident benefit to requiring multiple certifications at different times.

9. Consequences for Failure to Use KUSF Appropriately. The Commission should make a determination defining and specifying the appropriate use of KUSF support. Determination of any consequences for failure to use KUSF support appropriately must necessarily depend on that determination; Once it is possible to compare appropriate use to actual use, the appropriate consequence(s) for failure to use KUSF support appropriately should be a scaled adjustment to the level of support, as opposed to an all-or-nothing approach. The Commission may wish to consider additionally whether necessary and reasonable expenses of that determination should be assessed to the subject KUSF recipient rather than becoming a burden on innocent recipients or on ratepayers generally.

### **III. Other Pertinent Issues**

10. Identical Support Rule. The Commission has authority and legislative duty regarding the cost of carriers as it relates to the KUSF by virtue of K.S.A. 66-2008(c), which says:

“The commission shall periodically review the KUSF to determine if the costs of *qualified* telecommunications public utilities, telecommunications carriers and *wireless telecommunications service providers* to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly.” (Emphasis supplied)

While the KCC in its March 7, 2007 Order in Docket No. 06-GIMT-1289-GIT (“1289 Order”) did not mention an Identical Support Rule (ISR) by name, it did opine that the principle of basing a CETCs support on an RLEC’s embedded cost was competitively neutral. The Commission said,

“...the FCC has found that competitive neutrality is preserved when the ILEC’s support is used as the starting point and then converted into a per-line amount that a CETC receives as it gains a line. Staff believes this Interim Method of distributing KUSF support to ETCs in service areas of rate of return regulated companies meets the requirement that support be distributed in a competitively neutral manner consistent with subsection (b). The Commission agrees . . .” (§ 32, p. 28).

11. In a September 6, 2007 public statement on FUSF mechanisms, the Federal-State Joint Board on Universal Service stated, “The equal support rule *will not* be part of future support mechanisms.” See Attachment A; emphasis supplied. This is strong indication to the FCC that maintenance of an ISR for state support purposes is neither required nor appropriate. Kansas ratepayers could be subjected to a ballooning KUSF growth similar to that experienced on a continuing basis by the FUSF. This proceeding affords the KCC a unique opportunity to be proactive on this problem, limiting demands on ratepayers to the levels necessary to satisfy the legitimate purposes of the KUSF.

12. Certifying the Proper Use of KUSF. First the Commission must determine what the appropriate use of the KUSF is. Only then does it make sense to determine if the KUSF is being used properly. The KCC website offers a very generic and broad view of what the appropriate use is. The website says that the purpose of the KUSF, “is to assure quality services be made available to all Kansans.” The KCC should further define this so as to not be so generic.

13. Pursuant to Section 254(c) of the Telecommunications Act of 1996 the KCC already requires certification of the proper use of the FUSF including recipient submission of several detailed forms for review by Staff. Such a similar rigorous review of the use of KUSF funds is not inappropriate if all ETCs undergo the same process in order to preserve competitive neutrality in allocation of the burdens of maintaining and administering the KUSF.

14. Currently, RLECs must undergo expensive and time-consuming audits to determine appropriate levels of KUSF support payable to each, and the Commission has determined in its 1289 Order that CETCs are not required to undergo audits. Imposition on

RLECs of a certification requirement on top of an audit requirement would be giving the RLECs a cumulative regulatory burden that the CETCs do not bear.

15. The Commission has statutory authority to impose audits and audit expenses upon RLECs. It has been the RLECs' experience that each audit may involve expenses in the range of \$200,000. Although the audited companies are allowed to recover these expenses as a portion of their respective revenue requirements over the subsequent five or six years, the expense is initially and solely incurred by RLECs and not by other carriers that receive support based on the results of the individual audits. In practice, this procedure requires RLECs to advance the costs necessary to determine other carriers' per-line KUSF support. This outcome contravenes the statutory requirement of competitive neutrality.

16. RLECs are all subject to annual reporting requirements in forms specified by the Commission. These reports contain substantial financial information in addition to the information required in current USF certification forms. SIA and Columbus suggest this information further enables the Commission and Staff to verify appropriate use of KUSF support without additional imposition of a detailed audit requirement.

17. Apart from company-specific audits, an RLEC's number of supported lines may decrease and/or its recoverable costs and investments may increase. In either case, the result is an increase in the support expressed on a per-line basis. In turn, either or both such changes result in an increase in the actual amount of support payable to a competitive ETC serving the same area in the absence of any change in the costs actually incurred or investments actually made by the receiving competitive ETC. The ultimate result is increased demand on KUSF contributors and Kansas ratepayers without any related preservation or enhancement of universal service. This contravenes the public interest.

18. A practice of continuing audits only of certain KUSF recipients creates a competitive disadvantage for the audited carriers, through a requirement to divert resources away from customer service and facilities maintenance or improvement. If verification of KUSF usage can be accomplished in the public interest as to any recipient through submission and review of certification reports like those proposed, the same level of scrutiny of all recipients can satisfy the public interest.

19. The KCC should impose on the RLECs a requirement of either a substantially simplified audit or KUSF certification, but not both. This would provide a more even regulatory burden as compared to the CETCs, which presently are subject neither to a requirement for certification nor for an audit.

#### **IV. Conclusion**

20. The Commission should initially determine that the costs and investments for which KUSF may be used appropriately include (a) those attributable to the statutorily enumerated universal and enhanced universal services; (b) those incurred necessarily for the provision of such services within the areas for which the support is payable; and (3) those incurred subsequent to certification as an Eligible Telecommunications Carrier.

21. Any question of certification requirements related to the KUSF necessarily gives rise to the issue of competitive neutrality mandated by K.S.A. 66-2008. It cannot be competitively neutral to place disparate burdens for administration of a fund on different support recipients; any such disparity would result in a disparity in the net support received, however that support is otherwise determined. The Commission's consideration of certification requirements by recipients of KUSF support should include adoption of competitively neutral requirements

that equitably allocate the burdens of administration while protecting Kansas ratepayers from unnecessary support burdens generally.

Respectfully submitted,

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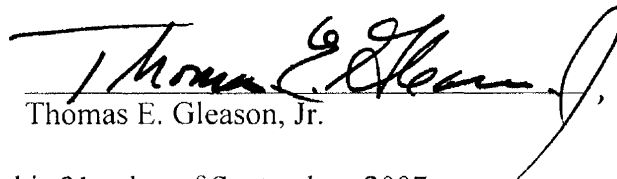
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**VERIFICATION**

STATE OF KANSAS                    )  
  ) ss:  
COUNTY OF SHAWNEE            )

I, Thomas E. Gleason, Jr., of lawful age, being first duly sworn upon my oath, state: I am an attorney for the Independent Telecommunications Group, Columbus *et al.* I have read the foregoing Comments of the State Independent Alliance and the Independent Telecommunications Group, Columbus, *et al.* and, upon information and belief, state that the matters therein appearing are true and correct to the best of my knowledge and information.

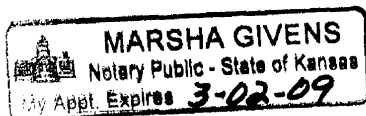
  
Thomas E. Gleason, Jr.

Subscribed and sworn to before me this 21st day of September, 2007.

  
Notary Public

My Commission Expires:

March 2, 2009



**CERTIFICATE OF SERVICE**

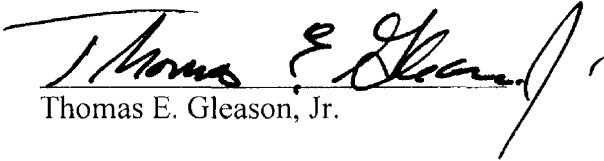
I, Thomas E. Gleason, Jr., hereby certify that a true and correct copy of the above and foregoing document was mailed to the following, by placing the same, postage prepaid, in the United States mail on this 21st day of September, 2007.

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**FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE  
STATEMENT ON LONG TERM, COMPREHENSIVE HIGH-COST UNIVERSAL SERVICE  
REFORM**

**WC Docket No. 05-337**

**CC Docket No. 96-45**

The Federal-State Joint Board on Universal Service (Joint Board) releases the following statement:

The Joint Board is taking a fresh look at high-cost universal service support. The Joint Board has tentatively agreed that:

1. Support mechanisms for the future will focus on:
  - a. Voice
  - b. Broadband
  - c. Mobility
  
2. In addition to the principles set forth in the statute, support mechanisms for the future will be guided by the following principles:
  - a. Cost control
  - b. Accountability
  - c. State participation
  - d. Infrastructure build out in unserved areas
  
3. The equal support rule will not be part of future support mechanisms.

For further information regarding this proceeding, contact David Fiske, Office of Media Relations, at 202-418-0500.