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May 19, 2014

Kim Christiansen
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Re: KCC Docket No. 13-CRCZ-712-KSF

Dear Ms. Christiansen:

Attached you will find *Cricket Communications, Inc.'s Response to Kansas Universal Service Fund Audit Report* for filing in the above referenced docket.

Sincerely,

Bruce A. Ney
General Attorney

Attachment

cc: Parties of Record, via email

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

In the Matter of the Audit of Cricket)	
Communications, Inc. by the Kansas)	
Universal Service Fund (KUSF))	
Administrator Pursuant to K.S.A. 2012)	Docket No. 13-CRCZ-712-KSF
Supp. 66-2010(b) for KUSF Operating Year)	
16, Fiscal Year March 2012-February 2013.)	

**CRICKET COMMUNICATIONS, INC.'S RESPONSE TO
KANSAS UNIVERSAL SERVICE FUND AUDIT REPORT**

COMES NOW Cricket Communications, Inc. ("Cricket"), pursuant to the Commission's *Order to Kansas Universal Service Fund Administrator to Commence Audit of Cricket Communications, Inc. and Order Setting Procedural Schedule* dated May 31, 2013 in the above captioned matter, and submits its written response to the Kansas Universal Service Fund Audit Report, filed April 17, 2014. For its response, Cricket shows the Commission as follows:

Background

1. On May 31, 2013, the Commission issued its *Order to Kansas Universal Service Fund Administrator to Commence Audit of Cricket Communications, Inc. and Order Setting Procedural Schedule* [hereinafter the "*Audit Order*"] in the above captioned proceeding directing the KUSF Administrator to include Cricket in the companies selected for KUSF Operating Year 16 carrier audits. The auditor was directed to file its audit report and recommendations no later than June 30, 2014, with Cricket to file its response, if any, no later than 13 days from the date on which the audit report is filed with the Commission. *Audit Order* at ¶ 8.

2. On April 17, 2014, the Kansas Universal Service Fund Audit Report on Cricket (hereinafter the “*Audit Report*”) was filed with the Commission by the auditor. The *Audit Report* includes two audit findings to which Cricket believes it needs to respond for the Commission’s consideration. According to the *Audit Order*, Cricket had until Wednesday, April 30, 2014, to file its response to *Audit Report*.

3. The *Audit Report* concludes that Cricket is current with its KUSF obligations. *Audit Report* at p. 1. The *Audit Report* also makes one specific audit finding and also discusses one “other KUSF-related issue”:

- Audit Finding No. 1 – The *Audit Report* states that Cricket does not report gross revenue, prior to any service discounts, to the KUSF in accordance with Commission orders and makes recommendations regarding penalties to be applied to Cricket. *Audit Report* at pp. 2-3.

- Other KUSF-Related Issue – The *Audit Report* notes Cricket identifies both the KUSF and FUSF surcharges on a customer’s bill as “Universal Service Fund Surcharge” but does not clearly identify whether the charge is Kansas or the Federal jurisdiction. The audit report suggests that Cricket be made to clearly identify the KUSF surcharge to comply with the Federal Truth-in-Billing requirements. *Audit Report* at pp. 3-4.

The *Audit Report* also finds that Cricket is in compliance with all outstanding issues and findings from the audit conducted in KCC Docket No. 10-CRCZ-078-KSF.

4. On April 17, 2014, Cricket filed its Motion for Enlargement of Time to File its Response to Kansas Universal Service Fund Audit Report. Because Cricket was acquired by AT&T, Inc. in March 2014, shortly before the filing of the *Audit Report*, the

new management of Cricket requested additional time to review the *Audit Report* and recommendations, as well as any changes being made operationally as a result of the acquisition before being required to respond to the *Audit Report* and the auditor's recommendations.

5. On May 8, 2014, the Commission issued its Order granting Cricket's motion and enlarged Cricket's time to file its response to and including Monday, May 19, 2014.

Cricket's Response

Audit Finding No. 1

6. The *Audit Report's* Audit Finding No. 1 finds that Cricket does not report gross revenue, prior to any service discounts, to the KUSF in accordance with Commission orders and makes recommendations regarding penalties to be applied to Cricket. Cricket does not dispute Audit Finding No. 1 to the extent it concludes that Cricket does not report gross revenue prior to any service discounts. Cricket strongly disagrees with the *Audit Report's* suggestion that it has violated long standing Commission Orders on the issue and that the Commission should impose any penalties for the manner in which it reports revenues for KUSF assessment purposes.

7. Audit Finding No. 1 states that "[g]ross revenues, prior to any service discounts are to be reported to the KUSF." *Audit Report* at p. 2. In support of that proposition, in footnote 8, the auditor cites to the Commission's August 13, 1999 *Order On Issue of Uncollectible Revenue and Additional KUSF Revenue Reporting Issues*, Docket No. 94-GIMT-478-GIT (hereafter the "*1999 Uncollectibles Order*"). While the *Audit Report* provides no pin point citation for the proposition on which the auditor relies,

Cricket suggests, upon review of the *1999 Uncollectibles Order*, that may be because the Order does not actually address the issue. The Commission's findings and conclusions address only: uncollectibles; reporting of wireless revenues; and, accounts to be Included and services to be excluded for reporting purposes. There is simply no reference, discussion, finding or conclusion in the *1999 Uncollectibles Order*, or on the attached list of revenues to be reported for KUSF purposes, explicitly finding, concluding or ordering that "[g]ross revenues, prior to any service discounts are to be reported to the KUSF." If the *1999 Uncollectibles Order* did in fact explicitly address this issue, Cricket does not believe the Commission would now – almost 15 year later – be considering the issue as it is in Docket No. 14-GIMT-105-GIT where the majority of comments filed disagree with the concept of reporting "gross revenue" prior to the application of service discounts.

8. Audit Finding No. 1 also relies upon the Commission's *Order Adopting KUSF Assessment Rate for Year Eighteen of KUSF Operations*, Docket No. 14-GIMT-105-GIT, to support the proposition of reporting gross revenue prior to the application of service discounts. Because that Order was issued after the audit period, neither the auditor nor the Commission should rely upon it or retroactively apply it to the audit period or Cricket for the purposes of concluding that Commission orders were violated or that any penalty should be assessed.

9. Cricket reports KUSF assessable revenue in a manner consistent with the Federal Communications Commission ("FCC") directions given to federal universal service contributors for purposes of calculating federal USF ("FUSF") contributions. It reports "gross billed revenues":

Gross revenues consist of ***total revenues billed to customers*** during the filing period¹

The federal approach requires the reporting of revenues actually billed to an end user customer. For example, the FCC's rules require contributors to calculate FUSF line-item recovery charges inclusive of any discount of the customer's interstate telecommunications charges.² The approach being pursued by the KUSF auditor for which Cricket is cited in this proceeding would require the reporting of **fictional revenue** – gross revenue before applicable discounts -- amounts ***not billed*** to customers ***or collected*** by Cricket.

10. The methodology used by Cricket to report KUSF assessable revenue is not only consistent with the FCC's approach it is actually consistent with, not contrary to, the *1999 Uncollectibles Order*. In that prior proceeding, the Commission, determining the appropriate methodology for addressing bad or uncollectible debt in the context of KUSF assessable revenue reporting found that:

A primary objective is that all companies report on a consistent basis. Among the three options presented: ... (2) deduct their own company-specific amount of uncollectibles, ... the Commission finds the second option to be the best option. ***It is simple to administer and would base each company's revenues on amounts actually received.*** ... The Commission concludes that all companies shall deduct their own company-specific amount of uncollectibles before reporting intrastate revenues to the KUSF Administrator.³

¹ 2014 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), p. 13 [hereinafter the "*Reporting Worksheet Instructions*"]. (Emphasis added).

² See, e.g., 2014 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 13-14 ("Gross revenues consist of total revenues *billed* to customers during the filing periodGross revenues *do not include amounts that cannot be billed to customers.* . . .") (emphases added); 47 C.F.R. § 54.712(a) ("the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor").

³ Order On Issue of Uncollectible Revenue and Additional KUSF Revenue Reporting Issues, In the Matter of a General Investigation into Competition within the Telecommunications Industry in the State of Kansas, Docket No. 94-GIMT-478-GIT (190,492-U), dated Aug. 13, 1999, at ¶ 12.

Id. (Emphasis added). Cricket does exactly what the Commission concluded was appropriate; it bases its reportable and KUSF assessable jurisdictional revenues on ***amounts it actually receives.***

11. Finally, Cricket submits that its billing systems are not currently capable of easily providing monthly Kansas revenues gross of any discounts provided and billed to its Kansas end-user customers. Any requirement to report assessable revenues on pre-discount basis would impose significant costs upon Cricket to implement a Kansas specific regulatory mandate.

12. Accordingly, Cricket requests the Commission find and conclude that: 1) Cricket has complied with the Commission's orders and properly reported its KUSF assessable gross revenues by reporting those revenues net of service discounts; and, 2) impose no penalties upon Cricket.

Other KUSF-Related Issue

13. The *Audit Report* notes Cricket identifies both the KUSF and FUSF surcharges on a customer's bill as "Universal Service Fund Surcharge" but does not clearly identify whether the charge is for Kansas or the Federal jurisdiction or both. The audit report suggests that Cricket be made to clearly identify the KUSF surcharge to comply with the Federal Truth-in-Billing and CTIA Consumer Code requirements. *Audit Report* at pp. 3-4.

14. Cricket strongly disagrees with the *Audit Report's* suggestion that Cricket does not currently comply with the Federal Truth-in-Billing and CTIA Consumer Code requirements. In fact, Cricket was recertified by the CTIA during the audit period and

was deemed to be “compliant with the principles, disclosures, and practices set forth in the Voluntary Consumer Code.”⁴

15. The applicable section of the Truth-In-Billing requirements states:

(b) Descriptions of billed charges. Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.⁵

The CTIA Consumer Code, to which Cricket adheres and supports, states that the carrier shall:

Separately Identify Carrier Charges from Taxes on Billing Statements

On customers' bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal state or local governments. Carriers will not label cost recovery fees or charges as taxes.⁶

Cricket's billing statement fully complies with both provisions. Cricket's consumer bills identify separate charges for state and federal universal service funds as:

Universal Service Fund Surcharge (WN)
Universal Service Fund Surcharge (WS)

The notation (WS) designates the state USF and (WN) designates the federal USF.

Cricket's designations/descriptions are sufficiently clear and specific in both

⁴ See Letter Dated Dec. 30, 2013 from CTIA President Steve Largent to Darin English, Senior Legal Counsel, Cricket Communications, Inc. (Attached hereto and incorporated herein by this reference as Attachment 1.)

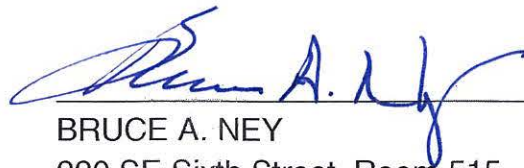
⁵ 47 CFR §64.2401(b).

⁶ CTIA Consumer Code for Wireless ¶16 (2014).

presentation and content to comply with both the Truth-In-Billing requirements and the CTIA Consumer Code on a national basis, not just in Kansas.

16. Accordingly, Cricket requests the Commission find and conclude that Cricket's billing designations comply with both the Truth-In-Billing and CTIA Code provisions. Cricket further requests the Commission refrain from mandating a Kansas specific requirement that would necessitate costly billing and programming changes.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bruce A. Ney", is written over a horizontal line.

BRUCE A. NEY (#15554)

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Topeka, Kansas 66603-3596

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(785) 276-1948 (facsimile)

bruce.ney@att.com

Attorney for Cricket Communications, Inc.

ATTACHMENT 1

Steve Largent
President/CEO

December 30, 2013

Mr. Darin English
Senior Legal Counsel
Cricket Communications, Inc.
6380 S. Fiddlers Green Circle
Suite 900
Greenwood Village, CO 80111

Dear Darin:

Congratulations! This letter is to notify you that Cricket Communications ("Cricket") has completed the recertification process for the CTIA Consumer Code for Wireless Service ("Voluntary Consumer Code") for the period January 1, 2013 – December 31, 2013, and is deemed compliant with the principles, disclosures and practices set forth in the Voluntary Consumer Code. Accordingly, Cricket is authorized to use and display the CTIA Seal of Wireless Quality/Consumer Information, subject to the terms and conditions set forth in the attached License Agreement.

Please ensure that the relevant employees of Cricket review the License Agreement before using the Seal. Use of the Seal constitutes acceptance of these terms and conditions. Upon request, we will provide two specimens (color and black/white) of the Seal for Cricket's use on its website or collateral materials. If you should have any questions concerning the recertification process or use of the Seal, please contact Michael Altschul, CTIA's Senior Vice President & General Counsel, at (202) 736-3248 or maltschul@ctia.org.

CTIA commends Cricket for its ongoing leadership and participation in the CTIA Voluntary Consumer Code, and we look forward to continuing to work with Cricket on this important industry initiative.

Sincerely,

Congratulations!

Steve Largent

Steve Largent

Attachment



SEAL OF WIRELESS QUALITY/CONSUMER INFORMATION

LICENSE AGREEMENT

Company is hereby granted a non-exclusive, world-wide, royalty-free license to use CTIA's Seal of Wireless Quality/Consumer Information ("Seal") to represent that Company voluntarily adopts and follows the *CTIA Consumer Code for Wireless Service* and has certified such to CTIA.

CTIA permits the use of appropriate references to CTIA and the Seal solely in connection with the *CTIA Consumer Code for Wireless Service* Program. References to the Seal shall not be misleading as to the extent of Company's voluntary support and participation in the CTIA Voluntary Code for Consumer Information program. The Seal may appear in Company's advertising, promotional material or other literature to indicate its voluntary and consistent application of the *CTIA Consumer Code for Wireless Service*.

Upon CTIA's acknowledgement of Company's certification, CTIA shall supply Company with a specimen of the Seal. Company shall not modify or alter the Seal without prior written permission from CTIA, and such permission shall not be unreasonably withheld. Company agrees to amend or discontinue the use of the Seal upon written request of CTIA. Company shall immediately cease use of the seal upon receipt of CTIA's written notice to do so.

Company assumes full and complete responsibility for its use of the Seal, and agrees that its use of the Seal constitutes a declaration that Company voluntarily adopts and follows the principles set forth in the *CTIA Consumer Code for Wireless Service*.

Use of the Seal for other purposes than those stated in this License Agreement is an unauthorized use of the Seal and is strictly prohibited.

This license may be renewed annually subject to Company's successful completion of the certification process.

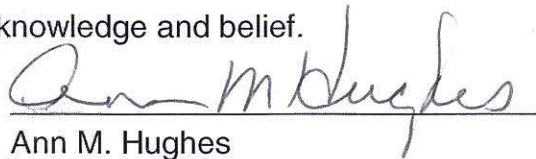
Use of the Seal constitutes acceptance of these legal terms and conditions.



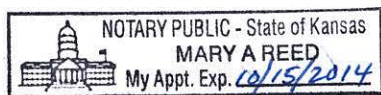
VERIFICATION

STATE OF KANSAS)
) SS:
COUNTY OF SHAWNEE)

I, Ann M. Hughes, of lawful age, and being first duly sworn, now state: I am Director – Regulatory, and have read Cricket Communication, Inc.'s Response to Kansas Universal Service Fund Audit Report, and verify the statements contained herein to be true and correct to the best of my knowledge and belief.


Ann M. Hughes

Subscribed and sworn to before me this 19th day of May, 2014.




Notary Public

My Appointment Expires: October 15, 2014

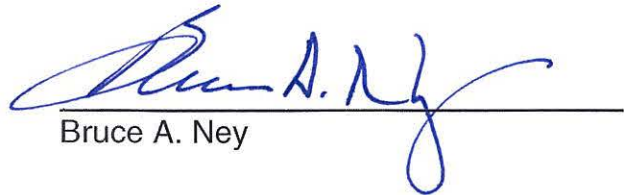
CERTIFICATE OF SERVICE

I hereby certify that a correct copy of Cricket Communication, Inc.'s Response to Kansas Universal Service Fund Audit Report was sent via electronic mail on this 19th day of May, 2014 to:

Robert Fox
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Bruce A. Ney