

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

In the Matter of a General Investigation)
Regarding the Effect of Federal Income)
Tax Reform on the Revenue Requirements)
Of Kansas Public Utilities and Request to) Docket No. 18-GIMX-248-GIV
Issue an Accounting Authority Order)
Requiring Certain Regulated Public)
Utilities to Defer Effects of Tax Reform)
to a Deferred Revenue Account)

**STAFF TESTIMONY IN SUPPORT OF
WAMEGO SETTLEMENT AGREEMENT**

PREPARED BY

JUSTIN T. GRADY

UTILITIES DIVISION

KANSAS CORPORATION COMMISSION

November 5, 2018

1 **Q. Please state your name and business address.**

2 A. My name is Justin T. Grady and my business address is 1500 Southwest
3 Arrowhead Road, Topeka, Kansas, 66604.

4

5 **Q. Are you the same Justin Grady that contributed to the Report and**
6 **Recommendation in this Docket on December 14, 2017?**

7 A. Yes.

8

9 **Q. What is the purpose of your testimony?**

10 A. I am testifying on behalf of the Staff of the Kansas Corporation Commission
11 (Staff and Commission, respectively) in support of the settlement of the issues
12 outlined in the Settlement Agreement (Agreement) between Wamego
13 Telecommunications Company, Inc. (Wamego), Staff, and the Citizens' Utility
14 Ratepayer Board (CURB) (collectively, the Parties).¹

15 My testimony will explain why the Commission should approve the
16 Agreement because it is in the public interest. Specifically, I will:

- 17 • Provide background information about this Docket;
- 18 • Provide an overview and discussion of the Agreement;
- 19 • Discuss the standard of review used to guide the Commission in its
20 consideration of whether to accept the Agreement²; and
- 21 • Discuss the evidence in the record that supports the Agreement.

¹ *Joint Motion for Approval of Settlement Agreement Regarding Wamego Telecommunications Company, Inc.*, Docket No. 18-GIMX-248-GIV (October 29, 2018).

² *Order Approving Contested Settlement Agreement*, Docket No. 08-ATMG-280-RTS, pp. 4-6 (May 12, 2008).

1

2 **Background Information**

3 **Q. Please provide a brief background of this Docket.**

4 A. The Tax Cuts and Jobs Act (TCJA) is a Congressional bill that amends the
5 Internal Revenue Code to reduce tax rates and modify policies, credits, and
6 deductions for individuals and businesses. The bill was initially passed in the
7 House of Representatives on November 16, 2017, and on December 2, 2017, the
8 Senate passed its version of the bill. While the House and Senate bills were in
9 reconciliation conference meetings, it became widely anticipated that tax reform
10 would be signed by the President before the first of the upcoming year.

11 Therefore, in anticipation of the TCJA being signed into law, on December
12 14, 2017, Staff filed a Motion to Open a General Investigation and Issue
13 Accounting Authority Order Regarding Federal Tax Reform (Staff's Motion).
14 Attached to Staff's Motion was a Report and Recommendation recommending the
15 Commission issue an Order addressing the following:

- 16 1) Opening a general investigation for the purposes of examining the
17 financial impact of anticipated federal income tax reform on regulated
18 public utilities operating in Kansas;
- 19 2) Requiring, through the use of an Accounting Authority Order (AAO),
20 certain regulated public utilities that are taxed at the corporate level to
21 track and accumulate in a deferred revenue account, with interest
22 compounded monthly at the most current Commission-approved customer
23 deposit interest rate, the reduction in their regulated cost of service that

1 would occur in the event that a new lower federal income tax rate is signed
2 into law. These deferrals should take effect at the same time as the new
3 federal corporate tax rate change and the calculations should be performed
4 using the cost of service data that were used to set the utilities' last
5 Commission-approved revenue requirement; and

6 3) Confirming that the Commission's intention regarding the AAO is to
7 preserve any potential tax benefits so that they may be evaluated in the
8 context of a comprehensive evaluation of the reasonableness of the
9 utilities' rates (or KUSF distributions), as well as notifying utilities that
10 this portion of their rates (or KUSF distributions) should be considered
11 interim subject to refund until the Commission has the opportunity to
12 review the reasonableness of the utilities' rates (or KUSF distributions) on
13 a comprehensive and case-by-case basis and confirming that the
14 Commission intends to capture the reduction in Accumulated Deferred
15 Income Tax (ADIT) balances that will occur in the event that a lower
16 corporate federal income tax rate takes effect, over time, in a manner that
17 comports with Internal Revenue Services (IRS) Tax Normalization Rules.

18 On December 22, 2017, the TCJA was signed into law, which, amongst other
19 changes, reduced the federal corporate income tax rate from 35% to 21%
20 beginning on January 1, 2018.³ Also, on December 22, 2017, CURB filed a
21 Petition to Intervene and a Response in Support of Staff's Motion.

³ *Tax Cuts and Jobs Act*, Public Law No. 115-97; Statute 131 Stat. 2054 (Dec. 22, 2017).

1 On January 2, 2018, and January 16, 2018, Wamego, as part of the
2 Independent Telecommunications Group, filed comments in response to Staff's
3 R&R.

4 On January 18, 2018, the Commission issued its Order Opening General
5 Investigation and Issuing Accounting Authority Order Regarding Federal Tax
6 Reform.

7 On several occasions in the months following the Commission's Order, the
8 Parties met via teleconference to discuss the issues present in this case in an
9 attempt to reach agreement on the quantification of the financial impacts of the
10 new lower tax rate on Wamego's operations and how the cost savings should be
11 passed on to the contributors of the KUSF. As a result of the discussions, the
12 Parties were able to reach an agreement.

13

14 **Terms of the Settlement Agreement**

15 **Q. Please discuss in detail the provisions of the Agreement.**

16 A. The provisions of the Agreement are as follows:

- 17 • As required by the Commission's January 18, 2018, Order in this
18 Docket, Wamego has been accumulating in a deferred revenue account
19 the difference between: (1) the cost of service as approved by the
20 Commission in its most recent KUSF Docket, Docket No. 14-WTCT-
21 142-KSF (14-142 Docket); and (2) the cost of service that would have
22 resulted had the provision for federal income taxes been based upon the
23 corporate income tax rate approved in the Tax Cuts and Jobs Act

1 ("TCJA"), plus a 1.62% annual interest rate reflecting the current
2 Commission approved interest rate paid on customer deposits.

3 • Wamego shall refund the above referenced regulatory liability to the
4 KUSF through a one-time reduction in payment from GVNW to
5 Wamego in the amount of \$69,852 for October 2018, with the reduction
6 occurring in the Company's support received in November. This one-
7 time reduction in KUSF payment shall serve to release Wamego from
8 any further obligation associated with the tax reform regulatory liability
9 recorded from January 1, 2018, through October 31, 2018. The one-time
10 payment amount was reduced from the annual deferral amount
11 calculated to reflect the partial year from January 1, 2018, through
12 October 31, 2018, and to reflect a compromise between the Joint
13 Movants. This compromise recognizes the administrative cost savings
14 and expediency of Wamego's Agreement to immediately reduce its
15 KUSF support instead of requiring a full KUSF audit proceeding to
16 implement the reduction in support.

17 • To reflect the ongoing reduction in federal taxes embedded in
18 Wamego's KUSF support, Wamego's annual KUSF support shall be
19 reduced by \$139,712 annually beginning with the KUSF support for
20 November 2018, received in December 2018.

- 1 • In the event that there are material changes in federal tax law that
2 affect Wamego between now and its next KUSF determination
3 proceeding, Staff and CURB agree to work with Wamego in good faith
4 to review the impact of the change in federal tax law on Wamego's
5 financial results. In the event that the change in federal tax results in a
6 material impact on Wamego's financial results, Staff and CURB agree to
7 recommend to the Commission extraordinary regulatory relief consistent
8 with K.S.A. 66-2008(e) to capture the impact of the change in federal tax
9 liability. This extraordinary regulatory relief may include the
10 implementation of deferral accounting through an Accounting Authority
11 Order and/or the implementation of a change in Wamego's KUSF
12 support outside of a full KUSF determination proceeding.
- 13 • Wamego will establish a regulatory liability to account for and
14 capture the impact of the TCJA on the utility's excess ADIT that exists
15 as of December 31, 2017, and will provide evidence of such to Staff
16 upon request.
- 17 • Joint Movants also agree Wamego will record the Excess ADIT
18 (EDIT) as a subcomponent of ADIT consistent with National Exchange
19 Carrier Association (NECA) Reporting Guideline 3.3, Excess Deferred
20 Tax Development, Issue Date: 2/93, Revised 08/18. The calculated
21 EDIT will be amortized over the remaining useful life of the assets
22 through deferred income tax expense as per the NECA Reporting

1 Guideline 3.3. For purposes of KCC reporting, future KUSF
2 determination proceedings, and other intrastate cost study purposes,
3 Wamego will not amortize the intrastate EDIT. If the intrastate EDIT is
4 amortized, it will be reversed by the creation of an intrastate regulatory
5 liability such that the net effect is that the intrastate portion of EDIT
6 remains at the unamortized value from December 31, 2017, until the
7 intrastate EDIT amortization is included in a KUSF determination
8 proceeding. Joint Movants have agreed to defer any issues regarding the
9 impact of the TCJA on the utility's intrastate excess ADIT to Wamego's
10 next general rate case filing or KUSF determination. Wamego is not
11 bound by any particular date for a future rate case or KUSF
12 determination.

- 13 • Paragraphs eight through twelve contain typical language often found
14 in Settlements of this type preserving the rights of the Parties and the
15 Commission for future proceedings not involving Wamego, or in the
16 event that the Settlement agreement in this Docket is not approved.

17
18 **The Commission's Standard of Review for Settlement Agreements**

19 **Q. Has the Commission previously used factors or standards to review a**
20 **settlement agreement?**

21 A. Yes. The Commission's Order in Docket No. 08-ATMG-280-RTS (08-280
22 Docket) discusses five factors, or standards, and multiple agreements have been

1 reviewed by the Commission using the five factors since that Order.⁴ These five
2 standards are as follows:

- 3 1. Whether there was an opportunity for the opposing party to be heard on
4 their reasons for opposition to the Agreement;
- 5 2. Whether the Agreement is supported by substantial competent evidence in
6 the record as a whole;
- 7 3. Whether the Agreement conforms to applicable law;
- 8 4. Whether the Agreement results in just and reasonable rates; and
- 9 5. Whether the results of the Agreement are in the public interest.

10 Each of these five factors is discussed individually below.

11

12 **Support for the Settlement Agreement**

13 **Q. Please address whether each party had an opportunity to be heard on its**
14 **reasons for opposing the Agreement.**

15 A. The Agreement presented to the Commission is a unanimous agreement, as the
16 Parties either support or do not oppose approval of the Agreement. All parties
17 having an interest in Wamego's tax savings plan participated in settlement
18 discussions and were able to reach an agreement that identifies a one-time amount
19 for Wamego to distribute to the KUSF for the tax savings achieved from January
20 1, 2018, through October 31, 2018, and requires Wamego to reduce its ongoing
21 KUSF support by the full amount of tax savings as calculated in accordance with
22 the Commission's January 18, 2018 Order in this Docket. Therefore, this factor

⁴ *Order Approving Contested Settlement Agreement*, 08-280 Docket, p. 5 (May 12, 2008).

1 has been met as each party has been represented, has had an opportunity to be
2 heard, and agree to the terms of the Agreement.

3 It should be noted that the Agreement limits its applicability to only Wamego
4 and is not binding or precedential to the tax savings refund plans submitted by
5 other utilities. Furthermore, should any other party wish to be heard, it can file a
6 response to the Joint Motion.

7

8 **Q. Please address whether the Agreement is supported by substantial competent**
9 **evidence in the record as a whole.**

10 A. The Agreement is supported by substantial competent evidence in the record as a
11 whole. The record as a whole includes Wamego's Application and direct
12 testimony, Staff's direct testimony, Wamego's rebuttal testimony and a
13 Commission Order filed in support of the settlement amount resulting from
14 Wamego's last KUSF determination proceeding, Docket No. 14-WTCT-142-KSF
15 (14-142 Docket), which the Parties agree is the basis of the recalculation of the
16 KUSF draw. Additionally, Staff is submitting pre-filed testimony in support of
17 this Agreement. These past and present filed positions constitute the body of
18 evidence that the Commission would rely on to make a determination of the
19 issues presented if this were to go to a fully-litigated evidentiary hearing. It is
20 Staff's position that the terms of this Agreement complies with all the instructions
21 set forth in the Order issued by the Commission in this Docket, is based on the
22 record as a whole, and are commensurate with what could be expected if the case
23 were to be fully litigated.

1

2 **Q. How was the one-time KUSF reduction amount of \$69,582 and the ongoing**
3 **KUSF reduction amount of \$139,713 arrived at the Parties?**

4 A. Staff quantified the impact of the new lower tax rates by taking the difference
5 between the cost of service approved by the Commission in the 14-142 Docket
6 and the cost of service that would have resulted had the provision for federal
7 income taxes been based upon the corporate income tax rate approved in the
8 TCJA. This calculation also included the impact of the change in Federal High
9 Cost Loop Support that would be expected at that time, as a result of the change
10 in federal income taxes. The result of that calculation, as presented in Appendix 1
11 attached to this testimony, resulted in an annual KUSF reduction in the amount of
12 \$139,713. This is the support for the calculation of the ongoing reduction in
13 KUSF support.

14 Regarding the one-time KUSF reduction amount of \$69,582, this amount
15 reflects a compromise between the parties and accounts for the proration of the
16 total annual cost of service savings identified above for a ten-month period
17 instead of twelve. For the period of January through October 2018, the prorated
18 amount of the annual reduction would amount to \$116,427. Therefore, the one-
19 time settlement amount of \$69,582 represents 60% of this prorated amount.
20 There is no specific determination in the Settlement that supports this calculation;
21 it is essentially a “black box settlement” amount that recognizes the time and cost
22 savings of Wamego agreeing to a reduction of its KUSF support without a full
23 cost of service determination, as it would otherwise be entitled to under Kansas

1 law. In addition to taking eight months to complete, a full KUSF determination
2 proceeding can easily cost the KUSF fund in excess of \$100,000, so Staff views
3 this one-time KUSF reduction amount as reasonable.

4

5 **Q. Please address whether the Agreement conforms to applicable law.**

6 A. I am not an attorney. However, it is my understanding that the Agreement does
7 follow precedent for similar settlements in the past that have been executed in an
8 effort to conform to applicable laws. All attempts were made to ensure that this
9 Agreement conforms to applicable laws, including K.S.A 66-2008(e), and is
10 presented in a fashion to allow the Commission to properly approve the
11 Agreement.

12

13 **Q. Does the Agreement result in just and reasonable rates?**

14 A. The agreement does not affect Wamego's tariff rates. Instead, the Agreement
15 alters the amount of Wamego's KUSF distribution. Pursuant to K.S.A 66-
16 2008(e), Wamego's KUSF support is required to be based on its embedded costs,
17 revenue requirements, investments and expenses. By revising Wamego's KUSF
18 distribution to account for its new lower federal tax rate, this Agreement
19 establishes a just and reasonable KUSF distribution that is based on Wamego's
20 embedded costs, revenue requirements, investments and expenses.

21 The agreed-upon reduction in KUSF is based upon the Commission-approved
22 KUSF distribution in the 14-142 Docket, which at the time of approval were just
23 and reasonable as they resulted in the proper balance between the Company's

1 desire to have a reasonable assurance that it would earn sufficient revenues and
2 cash flows to meet its financial obligations and the need to keep the KUSF
3 contributions as low as possible for customers, while providing reliable local
4 telephone service. However, with the passing of the TCJA, a subsequent revision
5 to the Commission-approved KUSF distribution must be made to reflect the lower
6 tax rate in order to ensure the KUSF distribution continues to be just and
7 reasonable as was intended by the Commission Order in the 14-142 Docket.
8 Wamego's agreement to pass the savings resulting from the TCJA on to KUSF
9 contributors in this Agreement, without a full cost of service determination,
10 contributes to its KUSF distribution continuing to be just and reasonable.

11

12 **Q. Why is it reasonable to defer a decision on amortization of the excess**
13 **deferred taxes to Wamego's next KUSF proceeding?**

14 A. As part of the Agreement, the Parties agree to defer many issues regarding the
15 amount of tax savings related to excess ADIT to Wamego's next KUSF
16 determination. Until such time, Wamego will establish a regulatory liability to
17 account for and capture the tax savings related to the excess deferred taxes. This
18 regulatory liability will not be amortized until the KUSF proceeding. This
19 approach is reasonable because it ensures that customers will continue to realize
20 the benefit associated with the excess deferred taxes as an offset to rate base. If
21 ADIT is reduced, rate base will increase, reflecting less of an ADIT rate base
22 offset (lower cost free capital). Therefore, until the excess deferred taxes are
23 reflected in Wamego's KUSF determination case, customers will continue to

1 receive the time value of money associated with the excess deferred taxes today
2 because they serve as an offset to rate base.

3

4 **Q. Does Staff believe the results of the Agreement are in the public interest?**

5 A. Yes. There were multiple interests represented by the Parties involved in the
6 Agreement with CURB representing the interests of residential and small general
7 service ratepayers, Wamego representing the interest of its management and
8 shareholders, and Staff attempting to balance each of those interests while
9 representing the interests of the public generally. The fact that these varied
10 interests were able to collaborate and present a unanimous resolution of the issues
11 discussed in this case strongly indicates the public interest standard has been met.

12 Generally speaking, the public interest is served when customers are protected
13 from unnecessarily high prices, discriminatory prices and/or unreliable service.
14 More specifically, it is Staff's opinion that the Agreement meets the public
15 interest because:

- 16 • It is in the public interest to pass back savings to KUSF contributors as
17 soon as possible, and this Agreement establishes a process and procedures
18 to accomplish that;
- 19 • Each of the Parties represented their respective interests by putting time,
20 thought, and analysis into deriving a tax savings process it found
21 reasonable; and
- 22 • If this Agreement is approved, the Parties would avoid the costly and
23 time-consuming process of a fully-litigated hearing. It is in the public

1 interest to avoid these costs if possible, and this Agreement accomplishes
2 this result.

3

4 **Q. Should the Commission accept the Agreement as a reasonable resolution of**
5 **the issues in this Docket?**

6 A. Yes, the Agreement represents a reasonable resolution of the issues in this
7 Docket, will result in a just and reasonable KUSF distribution, is in the public
8 interest, is supported by substantial competent evidence in the record, and falls
9 within the realm of reasonable debate and the zone of reasonableness.

10

11 **Q. Does this conclude your testimony?**

12 A. Yes, thank you.

Appendix 1

WAMEGO TELECOMMUNICATIONS COMPANY, INC.
 DOCKET NO. 18-GIMX-248-GIV
 PRESENTATION OF REVENUE REQUIREMENT CHANGE FROM TAX REFORM
 UTILIZING THE TEST YEAR ENDED JUNE 30, 2013

Line No.	Description	<u>14-WTCT-142-KSF</u> Total Staff Adjusted Intrastate	<u>RECALCULATED w/ TAX REFORM</u> Total Staff Adjusted Intrastate
1	PROFORMA RATE BASE	\$7,901,019	\$7,906,764
2	STAFF RATE OF RETURN	<u>6.5570%</u>	<u>6.5570%</u>
3	OPERATING INCOME REQUIRED	518,073	518,449
4	TOTAL REVENUES (INCLUDING HIGH COST LOOP SUPPORT)	2,262,550	2,279,693
5	OPERATING FEDERAL INCOME TAXES	(353,508)	(215,015)
6	TOTAL OPERATING EXPENSES	2,888,146	3,027,896
7	PROFORMA OPERATING INCOME	<u>(625,596)</u>	<u>(748,203)</u>
8	NET PROFORMA REVENUE INCREASE / (DECREASE)	1,143,669	1,266,652
9	NET TO GROSS MULTIPLIER	<u>1.6345</u>	<u>1.3655</u>
10	GROSS PROFORMA REVENUE INCREASE / (DECREASE)	<u>\$1,869,327</u>	<u>\$1,729,614</u>
	CHANGE IN REVENUE REQUIREMENT		<u><u>(\$139,713)</u></u>

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

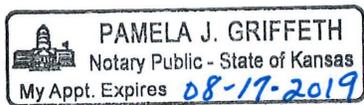
VERIFICATION

Justin T. Grady, being duly sworn upon his oath deposes and says that he is the Chief Auditor for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff Testimony in Support of Wamego Settlement Agreement* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Justin T. Grady
Chief Auditor, Utilities Division
State Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 5th day of November, 2018.





Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

18-GIMX-248-GIV

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff Testimony in Support of Wamego Settlement Agreement was served by electronic service on this 5th day of November, 2018, to the following:

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