

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

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of a General Investigation into)
the Implementation of Senate Substitute for) Docket No. 16-GIMT-517-GIT
House Bill 2131.)

ORDER OPENING DOCKET; SOLICITING COMMENTS; PROCEDURAL MATTERS

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. On April 6, 2016, Governor Brownback signed Senate Substitute for House Bill No. 2131 (HB 2131) into law.¹ HB 2131 will become effective July 1, 2016.
2. HB 2131 substantially modified certain provisions of the Kansas Telecommunications Act of 1996 (KTA), found at K.S.A. 66-2001 *et seq.* Amendments were made to K.S.A. 66-2004, K.S.A. 66-2005, K.S.A. 66-2007, K.S.A. 66-2008, and K.S.A. 66-2017.²
3. The Commission seeks to open an investigation, and solicit comments from the telecommunications industry regarding the proper interpretation of the statutory amendments.

¹A pdf version of Senate Substitute for House Bill No. 2131 (HB 2131) may be found online at: http://www.kslegislature.org/li/b2015_16/measures/documents/hb2131_enrolled.pdf.

²HB 2131 also created a new statute setting forth rules governing the relationship between certain authorities and wireless service providers. The new statute addressed applications, fees, public rights-of-way, and other issues. HB 2131 also modified K.S.A. 17-1902 concerning public rights-of-way. New Section 1 and the amendments to K.S.A. 17-1901 will take effect October 1, 2016. The Commission does not need to address these specific provisions, as they are non-jurisdictional.

The Commission also seeks comment regarding any new policies or rules that should be adopted with respect to the statutory amendments.

4. Commission Staff (Staff) submitted a Report and Recommendation (R&R) to the Commission dated May 19, 2016, attached hereto and made a part hereof by reference. Staff's R&R identified the revisions made to the KTA. Staff provided its preliminary analyses of each provision that may require Commission attention. Staff recommended that the Commission open a docket to implement any determinations of law or rulemaking/policy changes necessitated by HB 2131.

5. The Commission agrees with Staff that a docket should be opened for the purpose of soliciting comments on HB 2131 and making any necessary determinations of law, rules, or policy changes.

Entry of Appearance Required to Actively Participate

6. All known telecommunications providers in Kansas shall be made a party to this proceeding and will be served a copy of this order opening an investigation into HB 2131. However, providers that wish to actively participate in the proceeding shall file an Entry of Appearance before making any filing in the docket or appearing at any hearing. The Commission desires entries of appearances to be filed within ten (10) days after the issuance of this order, but late filed entries will be accepted. Any party who does not enter their appearance after being served with this order shall not be allowed to file comments or pleadings, nor participate in any potential hearings. Such parties will only receive service of the Commission order referenced in ordering clause F., below.

Electronic Service

7. All entries of appearance should state whether the party consents to electronic service, and identify an e-mail address where other parties may serve their comments and pleadings if the party consents to electronic service.

8. Parties who enter their appearance are not required to consent to electronic service, but it is strongly encouraged.

Scope of Comments

9. Staff's R&R contains a listing of amendments made to the KTA that it believes require further Commission determination or action. The Commission understands that parties may disagree with Staff's initial remarks and/or consider other statutory changes to be relevant and worthy of discussion.

10. Parties shall review Staff's R&R, and comment upon the issues identified. Parties are also invited to comment upon other issues pertaining to HB 2131 that it believes the Commission needs to address.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. This docket is hereby opened, for purposes of investigating and complying with HB 2131.

B. All telecommunications providers desiring to actively participate shall enter their appearance, as explained above.

C. Active participants shall file their comments in response to Staff's R&R by June 21, 2016.

D. Active participants shall file reply comments by July 5, 2016.

E. Staff shall file a Report and Recommendation based upon all comments and reply comments by July 29, 2016.

F. Active participants may reply to such Report and Recommendation by August 8, 2016. Thereupon, the Commission shall issue an order interpreting contested HB 2131 amendments and requiring the implementation of any additional rules and/or policies deemed necessary.


G. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

H. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: JUN 07 2016



Amy L. Green
Secretary to the Commission

MRN

Order Mailed Date

JUN 08 2016

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Jay Scott Emler
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

FROM: Christine Aarnes, Chief of Telecommunications
Sandy Reams, Asst. Chief of Telecommunications
Jeff McClanahan, Utilities Division Director

DATE: May 19, 2016

RE: **Docket No. 16-GIMT-517-GIT**
In the Matter of a General Investigation into the Implementation of Senate Substitute for House Bill 2131.

EXECUTIVE SUMMARY

Commission Staff (Staff) has received inquiries from industry representatives and the Kansas Universal Service Fund (KUSF) third-party administrator, GVNW Consulting, Inc. (GVNW), regarding implementation of some of the elements of Senate Substitute for House Bill 2131 (Sen. Sub. for HB 2131 or Bill). Staff recommends the Commission issue an Order to open a generic investigation regarding the Commission's implementation of Sen. Sub. for HB 2131.

BACKGROUND:

The 2016 Kansas Legislature passed Sen. Sub. for HB 2131 and it was signed into law by Governor Brownback on April 6, 2016. The Bill will become effective on July 1, 2016.

Sen. Sub. for HB 2131 creates new law concerning the siting of wireless telecommunications infrastructure and the permit application process between wireless service providers and municipalities, amends existing law regarding rural telephone companies and the KUSF, changes how a rural telephone company changes its local service rates, changes how KUSF support for rate of return carriers is determined, revises the statute on contributions to the KUSF, and codifies the regulation of rural telephone companies that use Voice over Internet Protocol (VoIP) or Internet Protocol (IP)-enabled services.

ANALYSIS:

The Commission does not have jurisdiction over the siting of wireless telecommunications infrastructure and the permit application process between wireless service providers and municipalities; therefore, Staff will not address aspects of the Bill related to those matters.

Staff is providing an analysis of the Bill and has identified elements of the Bill that may need to be addressed by the Commission. Some of the items identified below may not warrant Commission action, but Staff recommends the Commission allow comment on all of the identified issues nonetheless.

1. Rural Telephone Company Regulation

A. Regulation Continues if a Rural Telephone Company Provides VoIP

Language was added to K.S.A. 66-2017(c), which states that no provision of K.S.A. 66-2017 shall affect the regulation of any rural telephone company. The proponents of this change claim this revision would ensure rural carriers remain subject to State, including Commission, regulation even if a carrier converts from circuit-switched technology to IP-based technology. Staff does not believe this provision requires any action since the Commission currently regulates all rural telephone companies.

B. Rural Telephone Companies May Increase Local Rates to Maintain Federal Support

Pursuant to 47 C.F.R. 54.318, incumbent local exchange carriers (ILECs) whose rates for residential local service plus state regulated fees offered for voice service are below the Federal Communications Commission (FCC)-specified local urban rate floor shall have their federal high-cost support reduced by an amount equal to the extent to which its rates for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.

The FCC, however, determined it would phase in support reductions associated with the rate floor over a four-year period beginning in 2014. Thus, although the FCC determined the 2016 local service rate floor is \$21.93, the FCC will implement support reductions only to the extent an ILEC's lines plus state regulated fees in 2016 are less than \$18. Beginning July 1, 2017, the FCC will implement support reductions only to the extent an ILEC's lines plus state regulated fees are less than \$20 or the 2017 rate floor, whichever is lower.¹

New subsection (d) was added to K.S.A. 66-2007, which reads as follows:

¹*Report and Order*, WC Docket No. 10-90, Rel. June 10, 2014, ¶¶ 7, 80.

(d) The commission shall approve each application, within 45 days of such application, by a rural telephone company to increase the company's local service rates in an amount necessary for such company to maintain eligibility for full federal universal service support. If the commission does not order approval of such application within 45 days, the application shall be deemed approved.

The new language allows a rural telephone company to increase its local rate in an amount necessary to maintain eligibility for full federal universal service support. This provision is presumably designed to ensure the company's local rate remains above the FCC's rate floor or the amount determined by the FCC as a minimum local rate it may charge without having its federal support reduced.

Staff presumes applications filed pursuant to this provision would include a tariff revision and the Commission would process such applications consistent with its normal tariff application processes. Staff does not believe the Commission needs to take any action to implement this provision.

2. Price Cap Carrier Regulation

K.S.A. 66-2005(F) is revised in the Bill to read as follows:

(F) up to and continuing until July 1, 2008, rates for the initial residential local exchange access line and up to four business local exchange access lines at one location shall remain subject to price cap regulation and all other rates, except rates for switched access services, are deemed price deregulated. On and after July 1, 2008, the local exchange carrier shall be authorized to adjust such rates without commission approval by not more than the greater of the percentage increase in the consumer price index for all urban consumers, as officially reported by the bureau of labor statistics of the United States department of labor, or its successor index, or the amount necessary to maintain the local rate floor as determined by the federal communications commission or its successor, in any one year period and such rates shall not be adjusted below the price floor established in subsection (k). Such rates shall not be affected by purchase of one or more of the following: Call management services, intraLATA long distance service or interLATA long distance service;

This provision currently applies only to United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink) as CenturyLink is the only carrier subject to price cap regulation in Kansas. The proposed language essentially deregulates the rates for the miscellaneous services that are currently in Basket 3, such as Caller ID and Call Waiting.

The provision also authorizes CenturyLink to increase its local rate by not more than the

greater of the percentage increase in the Consumer Price Index-Urban (CPI-U) or the amount necessary to maintain the local rate floor as determined by the FCC. CenturyLink is currently authorized to increase its local rate by no more than the percentage increase in the CPI-U, but the new language allows CenturyLink to increase the local rate by not more than the greater of the change in the CPI-U or the amount necessary to maintain the FCC's local rate floor.

Specifically, the new language permits a price cap carrier to increase its local rate by not more than the greater of the percentage increase in the CPI-U or "the amount necessary to maintain the local rate floor", as determined by the FCC. The revised language in K.S.A. 66-2007(d) related to rate of return carrier rate increases specifically states that a carrier may increase its local rates by an amount necessary for such company to maintain eligibility for full federal universal service support, implying that rate increases would be limited to whatever rate is necessary to ensure the carrier's federal support is not reduced. However, the language related to price cap carrier local rate increases simply says local rates may be increased by the amount necessary to maintain the local rate floor. Thus, Staff is uncertain whether CenturyLink is authorized to increase its local rate to the FCC's local rate floor, which for July 1, 2016 is \$21.93 less state regulated fees (KUSF assessment amount), or if the increase would be limited to the amount at which the FCC will implement federal support reductions. Because the FCC is phasing in the local rate floor over four years, federal support reductions will only occur to the extent an ILEC's lines plus state regulated fees are less than \$18 as of July 1, 2016, and less than \$20 as of July 1, 2017.²

Staff suggests the Commission seek comment on the correct interpretation of this provision.

3. KUSF Contributions

K.S.A. 66-2008(a), as amended in the Bill, requires entities to contribute to the KUSF "based upon the provider's intrastate telecommunications services net retail revenues on an equitable and non-discriminatory basis. The commission shall not require any provider to contribute to the KUSF under a different contribution methodology than such provider uses for purposes of the federal universal service fund, including for bundled offerings."

The Commission has addressed issues related to reporting revenue to the KUSF in numerous proceedings over the years and most recently in Docket 14-GIMT-105-GIT. Staff believes, in general, the methodologies adopted by the Commission are consistent with the current federal contribution and reporting methodologies; however, Staff recommends the Commission seek comment on several issues to ensure the Commission's contribution methodologies will be consistent with the statute and federal contribution methodologies on July 1, 2016. Several terms within the amended language could be interpreted differently. Thus, to ensure all carriers contribute to the KUSF "on

² CenturyLink's local residential rate is currently \$18.08; therefore, it is currently already above the current floor for federal support reduction.

an equitable and non-discriminatory basis,” Staff suggests that carriers set forth their interpretation of these terms, including but not necessarily limited to: (1) how the term “net retail revenues” should be defined; (2) whether there are terms within the FCC’s instructions for reporting to the federal universal service fund that need further definition, such as “gross billed revenues”; (3) how to implement a process to ensure that the Commission is apprised of any changes in the FCC’s “contribution methodology” and what that process should be; and (4) how the Commission can be assured that a carrier is contributing to the KUSF in a manner consistent with its federal contribution methodology.

Staff suggests that once all comments and reply comments have been received, it may be appropriate for Staff, GVNW Consulting, Inc., and industry representatives responsible for reporting to the KUSF to participate in an industry conference to discuss specific questions and implementation issues.

4. Rate of Return Carrier KUSF Changes

The Bill revises K.S.A. 66-2004 to read as follows:

(f)(1) Any local exchange carrier electing pursuant to K.S.A. 66-2005(b), and amendments thereto, to operate under traditional rate of return regulation, or an entity in which such carrier directly or indirectly owns an equity interest of 10% or more, shall not use KUSF funding, except for Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and amendments thereto, for the purposes of providing telecommunication services in an area outside of the carrier’s authorized service area.

(2) The provisions of this subsection shall not be construed to affect a competitive eligible telecommunications carrier’s eligibility for KUSF support pursuant to K.S.A. 66-2008(c)(4), and amendments thereto.

The revised language is consistent with current practice; therefore, Staff does not believe the Commission needs to take any action to implement this provision.

The Bill revises K.S.A. 66-2008(e)(1) to read as follows:

(e)(1) For each local exchange carrier electing pursuant to K.S.A. 66-2005(b), and amendments thereto, to operate under traditional rate of return regulation, all KUSF support, including any adjustment thereto pursuant to this section, shall ensure the reasonable opportunity for recovery of such carrier’s intrastate embedded costs, revenue requirements, investments and expenses, subject to the annual cap established pursuant to subsection (e)(3). Any modification of such support shall be made only as a direct result of changes in those factors enumerated in this subsection. Nothing in this subsection shall prohibit the commission from conducting a general investigation regarding effects of

federal universal service reform on KUSF support and the telecommunications public policy of the state of Kansas as expressed in K.S.A. 66-2001, and amendments thereto. The commission may present any findings and recommendations to the telecommunications study committee established in K.S.A. 2015 Supp. 66-2018, and amendments thereto.

The revised language reaffirms that rate of return carrier support is subject to the \$30 million cap in K.S.A. 66-2008(e)(3). Staff does not believe this revision requires comment.

Additionally, the revised language now states that all KUSF support shall “ensure the reasonable opportunity for recovery of such carrier’s intrastate embedded costs, revenue requirements, investments and expenses.” Staff believes this gives the Commission discretion to determine whether a certain level of KUSF support provides a “reasonable opportunity” for recovery. The revised language does not state that the Commission shall “guarantee” or provide in all cases a “dollar for dollar” recovery, nor require “all” embedded costs, etc., to be subsidized by the KUSF.

Staff recommends that the Commission seek comment on the correct interpretation of this provision.

The Bill revises K.S.A. 66-2008(e)(2) to read as follows:

(2) Notwithstanding any other provision of law, no KUSF support received by a local exchange carrier electing pursuant to K.S.A. 66-2005(b), and amendments thereto, to operate under traditional rate of return regulation shall be used to offset any reduction of federal universal service fund support for recovery of such carrier’s interstate costs and investments.

The revised language states that no KUSF support received by a rate-of-return local exchange carrier shall be used to offset any reduction of FUSF support for recovery of such carrier’s “interstate” costs and investments. However, the statute is silent with respect to “intrastate” costs and investments, and it appears the revised language neither prohibits, nor requires, the Commission to provide KUSF support to offset reduced federal universal service fund recovery attributable to such “intrastate” costs and investments.

Staff recommends that the Commission seek comment on the correct interpretation of this provision.

The Bill revises K.S.A. 66-2008(e)(3) to read as follows:

(3) Notwithstanding any other provision of law, the total KUSF distributions, not to include KUSF support for Kansas lifeline service

program purposes, pursuant to K.S.A. 66-2006, and amendments thereto, made to all local exchange carriers operating under traditional rate of return regulation pursuant to K.S.A. 66-2005(b), and amendments thereto, shall not exceed an annual \$30,000,000 cap. In any year that the total KUSF support for such carriers would exceed the annual cap, each carrier's KUSF support shall be proportionately based on the amount of support each such carrier would have received absent the cap. A waiver of the cap shall be granted based on a demonstration by a carrier that such carrier would experience significant hardship due to force majeure or natural disaster as determined by the commission.

The revised language codifies: (1) the methodology adopted by the Commission to implement the \$30 million cap; and (2) the Commission's determination that Kansas Lifeline support shall not be included in the calculation of the \$30 million cap.³ As the revised language is consistent with current Commission practice, Staff does not believe the Commission needs to take any action to implement this provision.

5. Reporting Requirements

A. Individual Customer Pricing

The Bill revises K.S.A. 66-2005(u) to read as follows:

(u) A local exchange carrier may offer individual customer pricing without prior approval by the commission. In response to a complaint that an individual customer pricing agreement is priced below the price floor set forth in subsection (k), the commission shall issue an order within 60 days after the filing of the complaint, unless the complainant agrees to an extension.

Currently, K.S.A. 66-2005(u) allows a local exchange carrier to petition the Commission for individual customer pricing (ICP) and the Commission shall respond to such requests within 30 days, subject to a 30 day suspension. The Commission determined in Docket No. 02-GIMT-555-GIT that a local exchange carrier may enter into ICP agreements at any time, including in response to a competitive offer received by a customer. The Commission determined that ICP agreements shall be filed with the Commission within 30 days of the effective date of the agreement accompanied by a verified statement that the price of any jurisdictional service offered under the agreement is above the long run incremental cost of the service or services offered through the agreement. The Commission further determined it would review only the pricing term of the agreement, and would reject or modify the pricing term only if the price in the agreement is not above the long-run incremental cost of the service. ICP agreements were to remain effective during any such Commission review. In addition, the terms of contracts for services that are price regulated are required to be filed publicly except for information

³ Docket No. 13-GIMT-736-GIT, December 3, 2013 Order.

that would specifically identify the customer.

In Docket Nos. 08-UTDT-1078-MIS and 08-SWBT-1020-MIS, the Commission determined that Southwestern Bell Telephone Company d/b/a AT&T (AT&T) and CenturyLink should be exempt from filing ICP contracts with the Commission. Instead, each company shall file, each month, a redacted and a non-redacted spreadsheet indicating the company's name, title of report, and the reporting period. Each spreadsheet shall include contract listings that became effective during the reporting month. Each listing shall include a customer identification code, customer name, a description of each service, monthly rate, nonrecurring rate, contract effective date, and service term of the contract. The filing of the spreadsheets is due within twenty days of closing of the reporting month and shall be accompanied with a verification statement that the contract prices are above long-run incremental cost, as required by K.S.A. 66-2005(k), unless the contract contains only price-deregulated services. A verification statement is not required for contracts containing only price-deregulated services.

Pursuant to the new statutory language, starting July 1, 2016, local exchange carriers are no longer required to petition the Commission for individual customer pricing. Instead, local exchange carriers are allowed to do so and the Commission may investigate if a problem arises.

CenturyLink is the only local exchange carrier that currently offers ICP and files a monthly listing of its individual customer contracts along with a verification statement that the contract rates are above the long run incremental cost price floor. AT&T and the competitive local exchange carriers were deregulated and exempted from this provision in 2013, and the other local exchange carriers have not petitioned to offer ICP.

Starting July 1, 2016, Staff presumes that CenturyLink and any other local exchange carrier that wishes to offer ICP may do so without petitioning the Commission and would not be required to file a monthly listing of its individual contracts and a verification statement that its contract rates are above the cost price floor. Staff also presumes that the Commission would not need to take any action to implement this provision, but rather CenturyLink would simply cease filing its monthly ICP reports in July.

Staff suggests the Commission solicit comments on the correct interpretation of this provision.

B. Price Deregulation Report

K.S.A. 66-2005(q)(1)(7) currently requires the Commission to provide an annual report to the Legislature on the weighted average rate and the service offerings available in each of the exchanges that have been price deregulated pursuant to K.S.A. 66-2005(q)(1)(B)(C) or (D) by February 1 of each year. K.S.A. 66-2005(q)(1)(7) is stricken in its entirety in the Bill.

The Commission produces the Price Deregulation Report based on annual data provided

from telecommunications companies in response to data requests. Pursuant to the Bill, the Commission would not produce the next Report, which would have been due by February 1, 2017. Staff does not believe the Commission needs to take any action to implement this statutory revision.

RECOMMENDATION:

Staff recommends the Commission issue an Order opening a Docket to implement Senate Sub. for HB 2131. Staff further recommends the Commission request comments on the issues identified by Staff and on any additional issues identified by the parties.

CERTIFICATE OF SERVICE

16-GIMT-517-GIT

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on JUN 07 2016.

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16-GIMT-517-GIT

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16-GIMT-517-GIT

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JUN 08 2016