

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners:

Thomas E. Wright, Chair
Joseph F. Harkins, Commissioner
Michael C. Moffet, Commissioner

STATE CORPORATION COMMISSION

SEP 21 2007

 Docket
Room

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

COMMENTS OF EMBARQ

COMES NOW the United Telephone Company of Kansas d/b/a Embarq, United Telephone Company of Eastern Kansas d/b/a Embarq, United Telephone Company of Southcentral Kansas d/b/a Embarq, Embarq Missouri, Inc. d/b/a Embarq (herein collectively referred to as "Embarq") and hereby files Comments in the above-captioned matter.

In its August 8, 2007 Order Opening Docket and Scheduling Initial Comments, the Commission referenced a June 28, 2007, memorandum from Staff related to augmenting current eligible telecommunications carrier ("ETC") annual certification requirements in order for ETC's to demonstrate that they have used Kansas Universal Service Fund ("KUSF") support appropriately. The Commission also attached a complete set of current Federal Universal Service Fund ("FUSF") certification forms and instructions applicable to wireline and wireless ETCs in Kansas. In the August 8 Order, the Commission asked parties to provide input on (1) its authority to impose KUSF certification requirements, (2) any potential modifications required to the forms

currently used by ETCs to certify for federal universal service (FUSF), in order to accommodate KUSF certification purposes, (3) the investment and expenses that should be considered as evidence of use of KUSF, and (4) the appropriate consequence(s) for failure to use KUSF support appropriately. Embarq respectfully provides its comments, as follows.

1. Before specifically commenting on the above issues, Embarq wishes to express its full support for the Commission's intent to hold a workshop following the submission of written comments by parties. Through such a collaborative process, participants should have ample opportunity to more fully explore these and related ETC certification issues.

2. Additionally, Embarq respectfully requests that the Commission, in considering the ETC and KUSF certification issues addressed in this proceeding, also keep in mind the proposed modifications to the ETC certification documentation requirements that are still pending in Docket No. 06-GIMT-446-GIT ("446" Docket), from earlier this year¹. That earlier proceeding sought input regarding modifications to certain aspects of the Commission's formal documentation and forms that are used by ETCs in the Commission's annual FUSF certification process. Any decisions in either this proceeding and/or the "446" Docket are interrelated and it may be appropriate for both dockets to be considered in tandem when the Commission considers final action regarding ETC certification documentation matters.

Issue 1: Commission's Authority

3. Embarq believes that it is quite evident that the Commission has authority to oversee the administration of the KUSF and, therefore, certification of its intended use by

¹ See *Order Requesting Comments on New Attachment 6 and Instructions Set Out On New Attachment 7 of the Eligible Telecommunications Carrier Certification Forms*, Docket No. 06-GIMT-446-GIT, dated April 4, 2007, wherein the Commission previously sought input on potential modifications to the FUSF annual certification forms used by Kansas ILECs and CETCs. Comments and suggested recommendations were timely filed by Embarq on May 4, 2007 in that docket.

receiving carriers in Kansas. The Commission's authority regarding oversight matters pertaining to KUSF is well founded, and this issue should be self-evident. See K.S.A. 66-2008(c), K.S.A. 66-1,188 and K.S.A. 66-1,194.

Issue 2: Modifications to Current FUSF Forms

4. At this time, as mentioned above, the Commission has already taken input in the "446" Docket and a decision is still pending on potential modifications to the existing FUSF forms and related instructions for the ETC Certification Forms for USF certifications in Kansas. Embarq believes that with the resolution of any pending changes in the forms resulting from the "446" Docket, that the resulting version of forms used by incumbent wireline carriers in Kansas should be completely adequate for use in certification for both FUSF and KUSF purposes.

5. First, the current Affidavit required to be submitted by all ETCs with the annual FUSF documentation² contains language explicitly affirming the appropriate use of FUSF support for its intended purpose. This Affidavit is signed by a company executive or officer, and could easily be modified to include certification for KUSF purposes, quite simply by adding references to "Kansas Universal Service Fund" and appropriate citations to Kansas statutory provisions. Such a modified affidavit would be appropriate as certification for both FUSF and KUSF support. Additionally, the certification form labeled Attachment 2a, entitled "Kansas Test for USF Certification for ILECs", which is completed each year for FUSF certification purposes by incumbent wireline carriers also contains a detailed submission of actual expenses/investments used in the provision of universally available service by incumbent wireline carriers. Included in that form are mechanisms that also contain "test" procedures to

² All the current forms/documentation referenced here are the current version utilized by ETCs in the annual FUSF certification process in Kansas. Copies were attached to the Commission's August 8, 2007 Order opening this proceeding as attachments to Staff's Memorandum dated June 28, 2007.

compare actual carrier expenditures with both FUSF and KUSF support received by the local provider. These existing provisions for incumbent carriers, coupled with the incumbent's carrier of last resort ("COLR") responsibilities, should be ample affirmation of the appropriate use of KUSF support. Hence, for incumbent local wireline service providers, no further changes pertaining to KUSF (or FUSF) certification documentation should be needed as a result of this proceeding.

Issue 3: Investments/Expenses To Be Used for KUSF

6. In the determination of the appropriate investments and expenses that should be utilized in the determination and certification that KUSF support has been appropriately used, Embarq believes that the current, detailed submission requirements contained in the Attachment 2a for the incumbent wireline ETCs, referenced above, are all that is needed. Nothing more should be necessary for KUSF certification purposes for incumbent wireline ETCs. This four page form for ILEC ETCs is quite detailed and contains all pertinent investments and expenditures by the ILEC. Further, the form contains adequate cross checks for KUSF, as well as FUSF, certification purposes. However, the Commission may wish to consider requiring more granular detail of investments and expenses from competitive ETCs ("CETC") in their respective submissions. The current submissions by CETCs contain far less detail than that required of wireline, incumbent ILECs³, and therefore, the requirements for CETCs may not be as competitively neutral as they should be. (See K.S.A. 66-2008(b))

³ *Id.* See Attachment 3a with Staff's Memorandum entitled "Kansas Test for USF Certification for CETCS". This form is merely one page in length and contains little detail of investments/expenditures made by CETCs, when compared to the Attachment 2a which must be used by incumbent ILEC ETCs, which is four pages in length and extremely detailed.

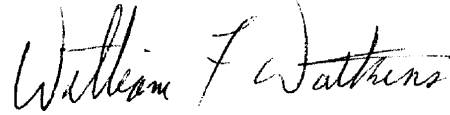
Issue 4: Consequences For Failure to Utilize KUSF Support Appropriately

7. As noted above, the current requirements applicable to incumbent wireline ETCs are entirely adequate and provide extensive detail via the annual FUSF certification process so that the Commission may review both FUSF and KUSF support utilization. K.S.A. 66-2008(c) clearly provides the Commission with authority pertaining to the KUSF and the broad investigative powers therein have previously been used by the Commission to carry out its responsibilities related to the investigation of KUSF compliance. Embarq believes that if the Commission, upon adequate notice and due process, finds that a specific case exists in which an ETC has failed to adequately justify and/or otherwise certify the appropriate use of KUSF support, then the Commission already has ample authority to oversee and investigate such matters (K.S.A. 66-2002(h)). The Commission also has authority to rectify matters related to the KUSF (K.S.A. 66-1,188 and 66-2002(c)). Finally, the Commission has additional fining, penalty, and enforcement powers over carriers and utilities (K.S.A. 66-138). Continued use of a balanced and competitively neutral, even-handed approach by the Commission in both determining the appropriate uses of KUSF support by all recipient ETCs via certification requirements, and enforcement action where required, is an essential tool in successfully carrying out all these statutory requirements.

WHEREFORE Embarq respectfully requests that the Commission consider these comments in making its final determination of additional ETC reporting and certification requirements applicable to KUSF support in this proceeding.

Respectfully submitted,

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VERIFICATION

STATE OF KANSAS)
)ss.
COUNTY OF JOHNSON)

William Watkins, of lawful age, being first duly sworn, on oath deposes and states:

That he is an attorney for Embarq in the above-referenced matter; that he has read the above and foregoing document, knows and understands the contents thereof and states that the statements and allegations contained therein are true and correct, according to his knowledge, information and belief.

William F. Watkins

William Watkins

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

My Appointment Expires:



Kathryn M. Mehrer

Notary Public in and for said
County and State

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of September 2007, a copy of each of the Entry of Appearance on Behalf of Embarq and Comments of Embarq were served via U.S. Mail, postage paid to each of the following:

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