

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a General Investigation to)
Determine Whether the Commission Should) Docket No. 08-GIMT-154-GIT
Require Eligible Telecommunications)
Carriers to Certify That They Have Used)
Kansas Universal Service Fund Support)
Appropriately.)

STATE CORPORATION COMMISSION

APR 30 2009

**REBUTTAL COMMENTS OF THE
CITIZENS' UTILITY RATEPAYER BOARD**

 Docket
Room

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following rebuttal comments in response to various comments of parties filed on March 18, 2009. These comments result from the Kansas Corporation Commission's (KCC or Commission) January 30, 2009, Order Adopting Staff Workshop Report and Issue Resolutions and Soliciting Additional Comments (Order Soliciting Additional Comments) requesting comments on the following issues raised in Staff's Report on KUSF Certification Industry Workshop (Staff's Report on Industry Workshop):¹

- (a) (Issue 1) - Should the RLECs be permitted to provide sufficient expense and investment data upon FUSF and KUSF certification to supplant KUSF audits?
- (b) (Issue 2) - Should all telecommunications investments and expenses be recognized for USF certification purposes?

In support of its position, CURB states and alleges as follows:

¹ Staff's Report on Industry Workshop, dated April 7, 2008.

I. Summary

1. CURB has reviewed the March 18, 2009, comments of all parties in this docket and continues to support its original comments filed in this proceeding, which are also generally consistent with the Commission Staff (Staff) positions in this proceeding. Among the parties filing March 18, 2009, Comments on Issue 1 – CURB and Staff agree that the USF certification should not replace company-specific KUSF audits, the RLECs² propose that the KUSF audits should only be used as the exception (when carriers are requesting increases or decreases to their KUSF support), SWBT³ proposes a process somewhere between the current KUSF audit and the certification process should be used, and Embarq⁴ has no comment on this issue at this time. With regard to March 18, 2009, Comments on Issue 2 - CURB, Staff, SWBT, and Embarq all urge the Commission not to recognize all telecommunications investments and expenses for USF certification purposes, whereas the RLECs take the opposing position. CURB will address the parties' comments in further detail below, focusing primarily on opposing comments of the RLECs.

II. KUSF Audits Should Not Be Replaced by RLEC FUSF and KUSF Certification Data

2. The RLEC's position has not changed from their original positions as described in Staff's Report on Industry Workshop. The RLEC Comments propose, "the use of an annual KUSF certification process as an effective substitute for a continuing and repeating series of

² The Rural Local Exchange Carriers (RLECs) are represented in comments by the Independent Telecommunications Group, Columbus *et al.*, (Columbus) and the State Independent Alliance (SIA).

³ Southwestern Bell Telephone Company, d/b/a AT&T Kansas (SWBT).

⁴ 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 and Embarq Missouri, Inc. d/b/a Embarq (collectively referred to as "Embarq").

audits.”⁵ The RLECs state that K.S.A. 66-2008(c) gives the Commission the authority to periodically review the KUSF to determine if the costs of telecom carriers to provide local service justifies modification of the KUSF. The RLECs indicate there is no explicit requirement for repeated or frequent periodic audits of all KUSF recipients to satisfy the statute.⁶

3. CURB contends the Commission is properly enforcing K.S.A. 66-2008(c) via periodic audits of rural carriers which are objective, not abusive, and comply with K.S.A. 66-2008(c). The audits of rural carriers by Staff are periodic and the “same” rural carrier is not “frequently” audited by Staff. Staff’s Comments indicate that the first KUSF audit of a rural carrier was in 2000, and there are three rural carriers that have never been audited to date.⁷ This would indicate that for the past eight years (2000 to 2008) of rural carrier KUSF audits, no rural carrier has been audited twice by Staff - - unless a rural carrier subsequently voluntarily filed another application to increase its KUSF support. Auditing most rural carriers only once over an eight year period certainly qualifies as “periodic” under the statute, and there is no evidence in the record indicating any individual rural carrier has been “frequently” audited. The RLECs admit that Staff’s KUSF audits have resulted in instances of both overearning and underearning,⁸ so it is clear that Staff is performing an objective evaluation of rural carriers and not just auditing those carriers that are overearning.⁹ It is clear that Staff’s KUSF audits are reasonable, periodic, objective, and meet the requirements of K.S.A. 66-2008(c).

⁵ Comments of Independent Telecommunications Group, Columbus et al., and State Independent Alliance, ¶ 5 March 18, 2009 (RLEC 3-18-09 Comments).

⁶ RLEC 3-18-09 Comments, ¶ 5.

⁷ Staff Comments on Remaining KUSF Certification Issues (Staff 3-18-09 Comments), ¶ 9. Staff indicates that the first rural carrier audited was Rural Telephone Service Company, Inc. Docket No. 01-RRLT-518-AUD, and the three rural carriers that have never been audited include Gorham Telephone Co., Inc., LaHarpe Telephone Co., Inc., and Zenda Telephone Co., Inc.

⁸ RLEC 3-18-09 Comments, ¶ 8.

⁹ Rural carrier that are overearning would be subject to reduced KUSF support, and rural carriers that are underearning would be subject to increased KUSF support.

4. The RLECs do not want to implement any procedures that would change a rural carrier's ability to seek increased KUSF support, although the RLECs admit that these filings would still be subject to a full KUSF audit and formal proceedings.¹⁰ The RLECs also admit that audits of rural carriers should not be eliminated completely.¹¹ The RLEC's do not oppose a KUSF audit when a rural carrier is underearning and seeks to increase its KUSF support. The RLEC proposal appears to propose that rural carriers that are underearning (and which are seeking increased KUSF support) would be subject to KUSF audits, but rural carriers which may be overearning (and facing reductions in KUSF support) would not be subject to detailed KUSF audits. If rural carriers are overearning (especially because they are not subject to periodic KUSF audits), they are receiving excessive support payments from the KUSF, and all statewide residential and business customers are paying an excessive KUSF assessment rate to provide windfall profits to these rural carriers. In this respect, it would appear that rural carriers want the best of both worlds - they embrace rate-of-return regulation to seek increased rates when it is favorable, yet seek to effectively avoid rate-of-return regulation (per the KUSF audits) when it is detrimental. The RLEC's proposal is discriminatory and unduly favors rural carriers that are overearning and receiving excessive KUSF support.

5. The RLECs argue that KUSF audits are protracted and expensive activities placing significant demands on the resources of the Commission, Staff and the audited carrier.¹² The RLECs also indicate such audits divert the carrier's efforts toward administrative activity and away from providing the highest quality of service.¹³ While KUSF audits do impose a cost on RLECs, the overall benefit to ratepayers generally exceeds the cost. The RLECs are

¹⁰ RLEC 3-18-09 Comments, ¶¶ 10-11.

¹¹ RLEC 3-18-09 Comments, ¶ 9.

¹² RLEC 3-18-09 Comments, ¶ 6.

¹³ RLEC 3-18-09 Comments, ¶ 7.

responsible for incurring expensive consulting fees to support their filing when they choose to “initiate” a request for increased KUSF support. It is not clear that the RLEC’s expensive consulting fees would disappear, or be reduced significantly, under any alternative to KUSF audits. KUSF audits are equally expensive when RLECs choose to initiate a case, not just when Staff initiates a KUSF audit. CURB does not agree that KUSF audits detract from an RLEC’s service quality, we are not aware of carrier’s making any similar claims on a national basis. If the RLEC’s argument is true, then RLECs routinely make a conscious decision to trade-off increased revenues for decreased service quality when they choose to initiate a request for increased KUSF support. CURB disagrees with this flawed rationale. Service quality is mostly influenced by the actions and responsibilities of outside plant maintenance personnel, and these types of personnel are not actively involved in administrative functions related to KUSF audits.

6. The RLECs claim that KUSF audits are unduly expensive. However, certain RLECs have unusually high expense levels as a starting point each year without considering any KUSF audit costs. Therefore, it is not reasonable to blame KUSF audits for high cost levels when RLECs do not take initial responsibility for controlling their own internal costs. For example, CURB Table 1 below shows a sample of Kansas RLECs whose Corporate Operations Expenses¹⁴ are considered excessive by the Federal Communications Commission (FCC) for purposes of claiming FUSF loop support. The FCC has determined that significant portions of Corporate Operations expenses are discretionary, and it has adopted rules to limit excessive expenditures for those RLECs seeking FUSF loop support. CURB Table 1 displays the most

¹⁴ Corporate Operations Expenses include executive compensation, legal consulting costs, regulatory consulting costs, corporate planning, accounting and finance operations, external relations, human resources, information management, and other general and administrative costs.

recent 2007 information for Kansas RLECs seeking FUSF loop support.¹⁵ CURB Table 1 only lists those Kansas RLECs which have had 20% or more of their Corporate Operating Expenses disallowed by the FCC, and this acts to reduce the amount of support dollars that these RLECs can recover from the FUSF. The most relevant information at CURB Table 1 is included in columns E and F. Column E shows the amount of Corporate Operations Expense disallowed by the FCC and Column F shows the percentage rate by which the RLECs Actual Corporate Operations Expense exceeds the FCC Allowed Corporate Operations Expense. The bottom line is that some RLECs already have excessive operating costs which they fail to adequately control, and these types of excessive costs should be subject to adjustment via detailed KUSF audits. In the big picture, the RLEC management personnel have a much greater influence on excessive expense levels that currently exist without the impact of KUSF audits, so KUSF audits cannot be blamed for the excessive cost levels of various RLECs.

CURB - TABLE 1

**Kansas RLEC Data
2007 FCC Disallowance of Corporate Operations Expense**

A	B	C	D	E	F
Name	FCC Allowance Per Line/Month	Total Expenses Incurred	FCC Allowed Expenses	FCC Disallowed Expenses	% Expense Exceeds FCC Allowance
ELKHART TEL CO INC	\$40.83	\$1,037,840	\$736,356	(\$301,484)	40.94%
H & B COMMUNICATIONS	\$66.72	\$1,004,401	\$747,020	(\$257,381)	34.45%
KANOKLA TEL ASSN-KS	\$33.81	\$1,386,574	\$883,357	(\$503,217)	56.97%
MOUNDRIDGE TEL CO	\$32.20	\$1,617,751	\$1,055,579	(\$562,172)	53.26%
RAINBOW TELECOM	\$34.84	\$954,741	\$763,458	(\$191,283)	25.05%
S. CENTRAL TEL – KS	\$35.48	\$876,818	\$730,137	(\$146,681)	20.09%
SOUTHERN KANSAS TEL	\$26.32	\$1,793,240	\$1,491,194	(\$302,046)	20.26%
TWIN VALLEY TEL INC	\$34.01	\$1,316,215	\$914,678	(\$401,537)	43.90%

¹⁵ The source for information in columns A, B, C, and D is <http://www.fcc.gov/wcb/iatd/neca.html>, usf08r07.zip, file: USF2008LC08. Columns E and F were calculated from information in the other columns.

7. The RLECs have advocated an alternative to KUSF audits since their initial comments submitted on September 21, 2007.¹⁶ Generally, the RLECs propose that the USF certification process be modified to allow them to provide a more extensive report to the Commission as a substitute for ongoing KUSF audits. However, the RLECs have failed to provide a specific filing/reporting alternative to KUSF audits dating from their initial proposal in September 2007 through their March 18, 2009 comments. Staff's Comments likewise noted the RLECs' failure to provide any specific recommendations or reports as an alternative to KUSF audits.¹⁷ The RLEC's March 18th Comments again fail to propose a specific reporting format. Instead, the RLECs request that the Commission order a workshop process whereby Staff and the RLECs can develop an appropriate format and requirements for an annual RLEC report to replace the KUSF audits.¹⁸ CURB opposes the RLEC's proposal for another industry workshop. The RLECs failed to propose a specific reporting requirement or alternative to KUSF audits on three separate occasions it was afforded an opportunity (the September, 21, 2007 Comments, the February 2008 industry workshop, and the March 18, 2009 comments). The Commission should deny the RLEC's request and continue to use the KUSF audit process. To require another industry workshop is unnecessarily duplicative and would result in cost-ineffective burdens and unwarranted costs - - which the RLECs otherwise urge the Commission to avoid.¹⁹

8. SWBT's brief comments appear to support an alternative to the KUSF audits, although SWBT provides no specific proposal. SWBT supports a methodology that would still require "substantial and useful information" to be provided by the RLECs. Also, SWBT

¹⁶ Comments of State Independent Alliance and Independent Telecommunications Group, ¶ 19, September 21, 2007.

¹⁷ Staff 3-18-09 Comments, ¶ 4.

¹⁸ RLEC 3-18-09 3-18-09 Comments, ¶ 11.

¹⁹ RLEC 3-18-09 Comments, ¶¶ 6, 8, 11.

indicates that the Commission should preserve the ability to audit the RLECs if necessary.²⁰ SWBT's proposal appears to fall somewhere between the recommendations of CURB/Staff and the RLECs. CURB opposes a substitute process for the KUSF audits. However, if the RLECs are allowed to provide additional reporting data as a substitute for the KUSF audits, the RLECs should first be required to show progress in reducing certain other excessive costs as shown by CURB Table 1. In the alternative, a strict limitation could be placed on Corporate Operations Expense and other expenses, similar to that which the FCC requires of carriers for FUSF support purposes. In addition, a limitation on RLEC legal and regulatory consulting costs should be implemented to ensure that any alternative approach is more efficient than a KUSF audit. Since the RLECs maintain that an alternative approach to KUSF audits would be more efficient, they should be willing to implement such controls or limitations to ensure this outcome. In addition, numerous other reporting requirements and controls would need to be put in place. CURB still believes it would be very difficult to convince the RLECs to implement or agree to such reporting requirements and controls, so a KUSF audit remains the most effective and viable manner to review RLEC costs.

III. All Telecommunications Investments and Expenses Should Not be Recognized for USF Certification Purposes

9. The March 18, 2009 Comments of CURB and Staff Comments sufficiently address issues raised in the RLEC Comments, so CURB has very few additional remarks. Most importantly, the RLEC Comments fail to recognize the significant distinction between KUSF audits and the USF certification process. The KUSF audits are used to determine the amount of the RLEC's cost-based support, while the RLEC self-certification process is more simplified because it is merely intended to allow each RLEC to certify how it will use the USF support.

²⁰ Additional Comments of Southwestern Bell Telephone Company, ¶ 1, March 18, 2009.

The RLECs contend that the current “self-certification” process poses “fundamental issues of legal sufficiency”, which would appear to infer a “confiscation or takings” argument.²¹ CURB disagrees - the self-certification process does not directly calculate any support dollars for carriers and cannot be construed as process that results in any confiscation or takings.

10. CURB believes the current process for self-certification of “use” of USF support is already extremely expedited and favorable to RLECs. CURB has historically favored additional monitoring requirements for this self-certification process, but CURB has compromised its position in agreeing to the current self-certification process. Ultimately, CURB maintains it could be a very difficult process for RLECs to “prove” that they use KUSF/FUSF funds for universal service purposes. If the “self-certification” process is expanded in part as a substitute for KUSF audits, then CURB believes that the RLECs should also be required to provide additional proof regarding their “use” of funds. This would be in addition to expanded reporting requirements that are implemented to help determine the amount of RLEC cost-based support (which is the intent of the current KUSF audits). As a result, the process for both re-evaluating a substitute for KUSF audits and the process for proving “use” of funds would need to be opened up again. Most of a rural carrier’s revenues come from regulated services that are part of “universal services” supported by the FUSF and the KUSF. However, CURB also believes that carriers fund significant non-regulated operations (not part of universal services) with revenues/cash flow from universal services. CURB would propose to re-examine this issue in much more detail under a process that re-evaluates KUSF audits and the RLEC’s “use” of funds for universal service. In the alternative, maintaining existing KUSF audits is a reasonable substitute for CURB’s concerns.

²¹ RLEC 3-18-09 Comments, ¶ 19.

IV. Conclusion

11. CURB appreciates the opportunity provided in this docket to submit these reply comments on behalf of Kansas small business and residential ratepayers regarding these important KUSF issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line. The signature is fluid and cursive.

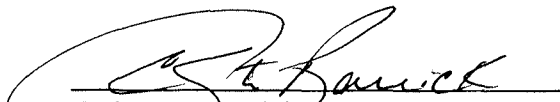
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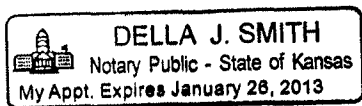
STATE OF KANSAS)
)
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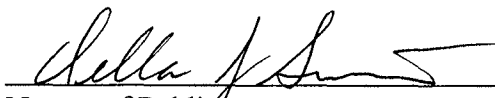
C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 30th day of April, 2009.




Notary of Public

My Commission expires: 01-28-2013

CERTIFICATE OF SERVICE

08-GIMT-154-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed, or hand-delivered this 30th day of April, 2009, to the following:

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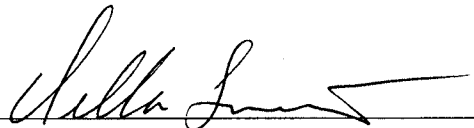
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