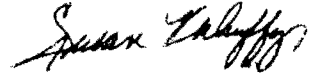


BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

JUL 14 2010

Generic Proceeding to Address Kansas)
Universal Service Fund Support Supplemental) Docket No. 10-GIMT-667-KSF
Funding Procedures, as Adopted by the)
Commission in Docket No. 00-GIMT-842-GIT)



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

COMES NOW the Citizens' Utility Ratepayer Board ("CURB") and files the following comments in this docket ("667 Docket") in response to the Kansas Corporation Commission's ("KCC" or "Commission") June 16, 2010, Order Opening Docket and Setting Procedural Schedule ("Commission Order on Supplemental KUSF Funding"). The Commission requests comments on whether the current supplemental KUSF funding remains adequate or if modifications are necessary.

I. Introduction

1. The Commission's Order on Supplemental KUSF Funding seeks comment on certain issues set forth in the related Staff Memorandum ("667 Docket Staff Memorandum") dated April 14, 2010.¹ The Commission seeks comments on the following issues:

- (a) Is the definition of a line eligible for supplemental KUSF support adequate?
- (b) Is the current filing frequency procedure - allowing companies to request supplemental KUSF funding for lines in service at the end of each quarter or

¹ The history of KUSF supplemental funding procedures for requests and payment is provided in the 667 Docket Staff Memorandum.

between quarters if a two percent or greater 12-month net increase in lines occurs
- appropriate?

- (c) How should prior adjustments adopted by the Commission be incorporated in the carrier's subsequent requests for supplemental KUSF support?
- (d) What is the appropriate effective date for payment of supplemental KUSF support?

II. Definition of a Line Eligible for Supplemental KUSF Support

2. The Commission seeks comments regarding whether the definition of a line eligible for supplemental KUSF support is adequate, and the 667 Docket Staff Memorandum summarizes this issue.² The Commission's order in Docket 00-GIMT-842-GIT ("842 Docket"), dated May 25, 2000, adopted the "Staff Report and Recommendation for KUSF Supplemental Funding Requests" ("842 Docket Staff Report"). The 842 Docket Staff Report states that an access line can no longer be defined as the traditional "two copper pair placed in the ground" (but needs to be more generic to address any technology) and the Parties agreed that an access line should be defined as "any revenue producing access line over which universal service is provided and meets the KCC's definition of a supported line."³

3. The Commission now seeks further comment on the access line definition set forth in the 842 Docket Staff Report. Therefore, CURB proposes that the current definition be further clarified as follows: KUSF supplemental funding is available to "any revenue producing access line, and any other technology-neutral means, over which universal service is provided and meets the KCC's further definitions of a supported line." First, CURB believes the terminology "access line" may not even be applicable for other forms of technology. Second,

² 667 Docket Staff Memorandum, page 3.

³ 842 Docket Staff Report, page 3.

CURB adds the terminology “technology-neutral” to incorporate universal services provided by wireless, cable, VOIP, and other carriers - - as opposed to universal service provided by the traditional landline local exchange carriers (LEC). Third, CURB adds the terminology “similar service” (but does not use the terminology “equivalent service”) to refer to service provided by competitive entities that is “similar”, but may not be an exact or precise technological or economic substitute for access line service provided by traditional landline LECs.

4. Finally, CURB believes it is time for the Commission to revisit whether KUSF support should be limited to the primary line, an issue addressed by the Commission in KCC Docket No. 99-GIMT-326-GIT (“326 Docket”). In the 326 Docket, both Staff and CURB urged the Commission to limit KUSF support to a primary line,⁴ and the Commission had initially indicated it was inclined to order KUSF support to be limited to a primary line:

The Commission agrees that providing KUSF support for the primary line adequately ensures the availability of universal service. The goal of universal service is to ensure that the greatest number of customers feasible have access to the telecommunications network. A single line or connection is all that is needed to achieve this goal. The services and facilities included in the definition of universal service are: single party, two-way voice grade calling; stored program controlled switching with vertical services capability; E911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services. K.S.A. 66-1,187. By providing support only for the primary line, the Commission furthers the goal to ensure availability of universal service. Providing support for additional lines per customer is not necessary to meet the goals of universal service as defined.⁵

5. The Commission’s ultimate decision not to limit KUSF support to the primary line was not because it had changed its opinion that limiting support to a primary line was sufficient to achieve the availability of universal service,⁶ but because of difficulties and costs of

⁴ Order 10: Adopting A Forward Looking Cost Methodology For Purposes Of Determining KUSF Support And Selecting The FCC’s Proxy Cost Model, ¶¶ 63, 67, October 1, 1999, KCC Docket No. 99-GIMT-326-GIT.

⁵ *Id.*, ¶ 68.

⁶ Order Addressing Support of Primary line, ¶4, February 25, 2002, KCC Docket No. 99-GIMT-326-GIT

implementing support on a primary line basis cited by parties and the fact the KUSF was *decreasing in size at that time*:

We are persuaded by the comments of the parties that it would be complicated to implement support for only the primary line at this time. Because the KUSF is currently decreasing in size and a change to primary line support would involve significant cost, the Commission finds that it is not cost efficient to implement distribution of KUSF support on a primary line basis at this time.⁷

6. Circumstances have changed since 2002, the year of the Commission's final decision in the 326 Docket. The KUSF fund has increased significantly since 2002,⁸ and technology has likewise changed. CURB urges the Commission to revisit the issue of limiting KUSF support to a primary line, either in this docket or in another generic proceeding initiated by the Commission.

III. Current Filing Frequency Procedure

7. The Commission seeks comments regarding whether it is appropriate to allow companies to request supplemental KUSF funding for lines in service at the end of each quarter or between quarters if a two percent or greater 12-month net increase in lines occurs, and this issue is summarized at the 667 Docket Staff Memorandum.⁹ CURB proposes the following changes in current filing frequency procedures:¹⁰

a) Eliminate between-quarters filings - Companies are currently allowed to file requests for supplemental funding "between quarters". However, CURB recommends that companies not be allowed to file between quarters but only be able to file at the end of a quarter - such as March 31, June 30, September 30, and December 31. CURB's proposal to eliminate between-quarter filings is consistent with its recommendation in Section IV of these comments

⁷ *Id.*, at ¶ 5.

⁸ The actual size of the KUSF has increased from \$60.1 m in 2002 (year 6 of the KUSF) to \$73.6 m in 2010 (year 14 of the KUSF), a 22% increase. The KUSF is currently at its greatest size in the past 10 years (since 2000).

⁹ 667 Docket Staff Memorandum, pages 3 and 4.

¹⁰ CURB will explain the rationale for these recommendations in Section IV because of the related applicable policy recommendations in Section IV.

related to prior adjustments of companies, and this recommendation will also promote efficiency and ease administrative burdens.

b) Companies cannot file supplemental funding requests for two consecutive quarters - Companies are currently allowed to file requests for supplemental funding for each and every quarter in a year (or a maximum of four times a year). However, CURB recommends that companies not be allowed to file for two consecutive quarters (a maximum of two filings a year). CURB's proposal to eliminate consecutive quarterly filings is consistent with its recommendation in Section IV of these comments related to prior adjustments of companies, and this recommendation will also promote efficiency and ease administrative burdens.

c) Companies must experience growth of 5% or more to file at quarter-end – It is CURB's understanding that companies are currently allowed to file for supplemental funding "between quarters" if they experience a 2% or greater 12-month increase in access lines, or file at "the end of a quarter" if the company experienced any growth in 12-month access lines (there is no 2% constraint for quarter-ending filings). However, CURB has already recommended that between-quarter filings be eliminated, and CURB further recommends that companies filing at the end of a quarter must experience at least a 5% or greater 12-month increase in access lines (instead of no minimum growth requirements for quarterly-end filings). CURB's previous comments in the 842 Docket recommended that all supplemental funding be restricted to companies having at least a 5% growth in annual access lines, and CURB is now recommending this same policy.¹¹ In addition, access line increases of 2% are not significant and CURB believes the cost of processing a minimal supplemental funding request of 2% growth exceeds the benefits. Therefore, the threshold for considering supplemental funding should be more significant, such as the 5% access line growth recommended by CURB. Also, a minimal 2%

¹¹ CURB Comments, May 14, 2000, Docket 842.

growth in access lines between quarters (or within a quarter) can easily represent a short-term fluctuation that can readily be offset by equal or larger access line reductions in subsequent quarters - - although a company will not likely volunteer a reduction in its supplemental funding due to a decrease in its access lines. Therefore, a more significant increase in access line growth, such as 5%, is more likely to represent a permanent increase in access lines versus just a short-term fluctuation. CURB's proposal of a 5% minimum volume growth requirement is consistent with its recommendation in Section IV of these comments related to prior adjustments of companies, and this recommendation will also promote efficiency and ease administrative burdens.

IV. Treatment of Prior Adjustments in Carrier's Subsequent Requests for Supplemental KUSF Funding

8. The Commission seeks comments regarding how prior adjustments adopted by the Commission be incorporated in the carrier's subsequent requests for supplemental KUSF support and this issue is summarized in the 667 Docket Staff Memorandum.¹² Under current supplemental filing requirements, a filing can be made every quarter (or even between quarters¹³), supplemental filings can be submitted within 45-days of the end of a quarter, and the Commission has 120 days¹⁴ in which to review and issue a decision regarding the supplemental funding application¹⁵

9. Under current filing procedures, a company could make a filing in two consecutive quarters although Staff's review of the second filing may not be substantially completed before the Commission render's a decision related to the first filing. Therefore, the

¹² 667 Docket Staff Memorandum, pages 4 and 5.

¹³ A company can file between quarters if it has access line growth of 2% or greater for a consecutive 12-month period.

¹⁴ The 120-day time frame is established by K.S.A. 66-2008(d) and is not subject to change in this proceeding.

¹⁵ 667 Docket Staff Memorandum, page 3.

logistics of this filing process causes certain complications for the second filing. This is because Staff may not know which adjustments, and how much of these adjustments, will be adopted by the Commission in the first filing and so Staff will not know the related impacts upon the company's second filing. This complication can cause Staff's adjustments in the second filing to be over or under-stated because of the logistics of the filing process that allows a company to file consecutive cases within a condensed time frame. Therefore, the current process would appear to be administratively burdensome, causes undue complications, and is not efficient or reasonable.¹⁶

10. If CURB's preferred recommendations for Section III are adopted, then the concerns related to treatment of prior adjustments are resolved, because a company is not allowed to make a filing for two consecutive quarters so there would not be any overlap regarding potential adjustments and the logistical problems would be resolved. However, if the Commission does not adopt CURB's preferred recommendation in Section III and decides to allow a company to make consecutive quarterly filings, then CURB would recommend the following as a second option. CURB's second option proposes (for any company making a filing in two consecutive quarters) that the company file an amendment (with applicable adjustments) to its second filing which incorporates any decisions of a Commission order issued during the pendency of the second filing. In essence, this would require that the company restart the 120-day clock for its second filing, if a Commission decision on the first filing is rendered during the time frame of the second filing. To avoid the logistics and complications of this second option, CURB's recommendation in Section III is preferable because it merely disallows consecutive quarterly filings by the same company.

¹⁶ Because the Commission is required by statute to render a decision within 120 days, extending the 120-day time frame is not an option.

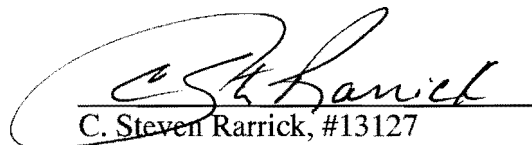
V. Effective Date for Payment of Supplemental KUSF Support

11. The Commission seeks comments regarding the appropriate effective date for payment of supplemental KUSF support and this issue is addressed in the 667 Docket Staff Memorandum.¹⁷ Staff states that payments of supplemental KUSF support are effective the first of the month following the quarter-end on which the company's request is based, although rural LEC KUSF support determined in a company-specific audit or docket requesting additional KUSF support is effective the first of the month following a Commission order. CURB concurs with the 667 Docket Staff Memorandum and agrees that it would be preferable for all KUSF support payments to be effective the first of the month following a Commission order. This change in policy will encourage transparency and consistency between the support payments for other carriers and rural LECs and it will avoid retroactive KUSF support payments.

VI. Conclusion

12. CURB appreciates the opportunity provided in this docket to submit these comments on behalf of Kansas small business and residential ratepayers regarding the importance of issues related to KUSF supplemental funding procedures.

Respectfully submitted,



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¹⁷ 667 Docket Staff Memorandum, page 4.

CERTIFICATE OF SERVICE

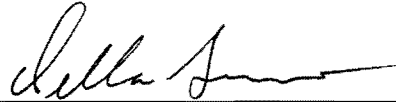
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I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, electronic service, or hand-delivered this 14th day of July, 2010, to the following:

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