

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

AUG 11 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 )

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

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following reply comments in this docket (Docket 667) in regards to the issues set forth in the Kansas Corporation Commission's (KCC or Commission) June 16, 2010, Order Opening Docket and Setting Procedural Schedule (Commission Order on Supplemental KUSF Funding).

**I. Introduction**

1. CURB filed its initial comments (CURB comments)<sup>1</sup> in this proceeding on whether the current supplemental KUSF funding remains adequate or if modifications are necessary. In addition, initial comments were filed by Commission Staff (Staff comments)<sup>2</sup> and United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of Southcentral Kansas and Embarq Missouri, Inc.<sup>3</sup> doing business as CenturyLink (CenturyLink comments).<sup>4</sup> In these reply comments, CURB will address the initial comments of Staff and CenturyLink.

<sup>1</sup> CURB comments dated July 14, 2010.

<sup>2</sup> Staff comments dated July 13, 2010.

<sup>3</sup> Collectively referred to as United Telephone Companies of Kansas.

<sup>4</sup> CenturyLink comments dated July 15, 2010.

## 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. CenturyLink did not specifically address this issue in its initial comments. Staff's comments state that the definition of an access line should be modified and replaced by a technological equivalent, such that the new definition should be "any revenue producing access line *or technological equivalent*, over which universal service is provided and meets the KCC's definition of a supported line."<sup>5</sup> CURB's comments propose that the definition of an access line be modified to state, "any revenue producing access line, and any *other technological-neutral means*, over which universal service is provided and meets the KCC's further definition of a supported line."<sup>6</sup> CURB believes that the modifications proposed by both CURB and Staff are consistent and intended to achieve the same objective to address other forms of technology<sup>7</sup> when the term "access line" may not be applicable. Although CURB and Staff use slightly different terminology (CURB's proposed terminology "*other technological-neutral means*" or Staff's proposed terminology "*or technological equivalent*"), either modification is reasonable and acceptable to CURB.

3. Regarding modifications to the definition of a line eligible for supplemental KUSF support, Staff's comments also ask that the Commission specifically reiterate the types of lines that are excluded from the definition of a "supported line".<sup>8</sup> CURB is not opposed to Staff's recommendation and believes a reiteration of such excluded lines is reasonable in this proceeding.

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<sup>5</sup> Staff comments, ¶ 10.

<sup>6</sup> CURB comments, ¶ 3.

<sup>7</sup>As indicated at CURB ¶ 3, other forms of technology may refer to universal services provided by wireless, cable, VOIP and other type carriers - - where the term "access line" may not be appropriate.

<sup>8</sup> Staff comments, ¶ 10.

### **III. Current Filing Frequency Procedure**

4. 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. CenturyLink did not specifically address this issue in its initial comments. Staff's comments propose elimination of the option to file a request for supplemental KUSF support between quarters and to increase the quarterly filing requirement to a minimum threshold of 5% net increase in lines over a consecutive 12-month period (compared to the current 2% threshold).<sup>9</sup>

5. Staff and CURB appear to agree on the issues of eliminating the between-quarter filings and increasing the filing threshold to a minimum 5% net increase in lines for quarterly filings. However, CURB goes one step further and proposes that companies not be allowed to file supplemental funding requests for two consecutive quarters, and this issue is best addressed in the next section.

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

6. The Commission seeks comments regarding how prior adjustments adopted by the Commission be incorporated in the carrier's subsequent requests for supplemental KUSF support. CenturyLink did not specifically address this issue in its initial comments. Staff's comments support modifications that require a company to file an amendment to a subsequent quarterly filing to reflect adjustments adopted by the Commission for a prior filing, unless Staff advises the company that such an amendment is not necessary.

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<sup>9</sup> Staff comments, ¶ 12 and 13.

Alternatively, Staff proposes that the company could elect to forego back-to-back quarterly filings to ensure it recognizes all Commission-adopted adjustments in a subsequent filing.<sup>10</sup>

7. CURB's recommendation is more consistent with Staff's alternative suggestion, although there are some differences in the recommendation. Staff appears to give the company the option to forego back-to-back quarterly filings, whereas CURB's recommendation prohibits a company from filing supplemental funding requests for two consecutive quarters. CURB believes that its proposal will add more certainty to the process, promote administrative ease, and eliminate the potential confusion and extra effort required by the company, Staff, and the Commission in addressing a company's amendment to a subsequent quarterly filing. If CURB's primary recommendation to eliminate consecutive quarterly filings is not adopted, CURB proposes an alternative that would allow companies to file an amendment to their subsequent quarterly filing, and this appears to be consistent with Staff's primary recommendation. However, CURB urges the Commission to accept its primary recommendation to eliminate consecutive quarterly filings by a company.

## **V. Effective Date for Payment of Supplemental KUSF Support**

8. The Commission seeks comments regarding the appropriate effective date for payment of supplemental KUSF support. CenturyLink did not specifically address this issue in its initial comments. Both Staff and CURB appear to agree that initial or supplemental KUSF support should be payable, effective the first of the month following a Commission order, for all companies.<sup>11</sup> This change in policy will encourage transparency and consistency between the

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<sup>10</sup> Staff comments, ¶ 14.

<sup>11</sup> Staff comments, ¶ 21.

support payments for other carriers and rural LECs and it will avoid retroactive KUSF support payments.

#### **VI. Additional Issues Raised by Parties**

9. CURB, CenturyLink, and Staff raise additional issues not originally addressed by the Commission in its order in this proceeding. CURB believes that all of these issues have merit and that this docket should be expanded to address these additional matters, or another generic docket should be created to address these matters. These additional issues are addressed in subsequent paragraphs.

#### **VII. CURB's Additional Issue – Whether KUSF Support Should be Limited to the Primary Line**

10. Because these are reply comments, CURB will not offer any new comments or arguments, but merely restate this issue from CURB's initial comments. CURB believes the Commission should revisit whether KUSF support should be limited to the primary line. In Docket No. 99-GIMT-326-GIT ("Docket 326") both Staff and CURB urged the Commission to limit KUSF support to a primary line, and the Commission originally agreed with this position. However, the Commission ultimately decided not to limit KUSF support to the primary line because of difficulties and costs of implementing support on a primary line basis cited by parties and the fact the KUSF was decreasing in size at that time. As support for proposed modifications to the KUSF funding formula, CenturyLink points to the changing telecommunications environment and increased KUSF support payments (since the current supplemental procedures were adopted) as reasons for proposed modifications to the KUSF funding formula. CURB agrees with CenturyLink's rationale, and believes these and other

reasons justify revisiting the issue of limiting KUSF support to a primary line (either in this docket or another generic proceeding initiated by the Commission).

**VIII. CenturyLink's Additional Issue – Whether the Funding Formula Should be Reviewed Regarding the Existing “Equal-Payment” Process and Related Competitive-Neutrality Issues**

11. CenturyLink's comments indicate that Kansas wireline and wireless ETCs receive the same per line dollar amount of KUSF support as the underlying incumbent carrier would have received, and this was based on the KCC's interpretation of competition policy and competitive neutrality goals developed from various Federal Communications Commission (FCC) rulemakings implementing the Federal Telecom Act. CenturyLink states the FCC has recently clarified its position and it no longer defines competitive neutrality as requiring “equal-payment.” The FCC has now capped the amount of federal USF available to CETCs, so they are no longer guaranteed the same level of support as the incumbent carrier. CenturyLink notes that since year 2002 (the first year CETCs began seeking KUSF support based on the equal-payment rules), the amount of CETC support from the KUSF has grown from \$26,000 in 2002 to over \$5 million in 2010, and the related KUSF assessment surcharge has increased from 3.7% (wireline carriers) and 3.34% (wireless carriers) in 2002, to an assessment of 6.64% today. CenturyLink indicates the “equal-payment” approach was well-intentioned to achieve competitive-neutrality, but it has caused mushrooming increases in USF support and other unintended consequences, which led the FCC to sever the direct linkage between the goal of “competitive-neutrality” and the requirement for “equal-payment.”<sup>12</sup>

12. CenturyLink also states that while virtually every incumbent local exchange carrier (LEC) has gone through comprehensive cost proceedings to determine their proper

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<sup>12</sup> CenturyLink comments, ¶¶ 3 through 7.

amount of KUSF funding support, not a single CETC has gone through this detailed cost review because they have benefitted from the “equal-payment” approach. CenturyLink maintains that requiring incumbent carriers to go through a comprehensive cost proceeding, and not requiring the same procedure for CETCs, has actually resulted in a considerable cost advantage for the CETCs. CenturyLink recommends, at a minimum, that the Commission implement a CETC funding cap similar to the CETC funding cap enacted by the FCC for federal USF.<sup>13</sup> CenturyLink also asks that the Commission include in this docket a review of the appropriateness of the equal-payment process currently in place, or that a new docket be opened to further explore how competitive-neutrality should be implemented in Kansas when considering recent FCC developments.

13. CURB agrees with CenturyLink, the issue of the reasonableness of the current equal-payment process, competitive-neutrality issues, the type of documentation and process required to justify KUSF support payments for incumbents and CETCs, and other related issues should be addressed via this docket or a new generic docket. CURB shares CenturyLink’s concerns regarding the growth of the KUSF over time and increases in the KUSF assessment surcharge over time. However, CURB has not yet reached the same conclusion as CenturyLink regarding implementation of a KUSF support cap for CETCs, because CURB would prefer to analyze this issue in more detail in a separate proceeding.

14. CenturyLink states that incumbents have faced comprehensive cost proceedings to determine their KUSF support and CETCS have not faced this burden, giving CETCs a

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<sup>13</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, adopted May 1, 2008 (Interim Cap Order). CURB believes it is important to clarify CenturyLink’s comments on the FCC’s order by pointing out that the FCC’s “interim cap” is reflected at March 2008 annualized ETC support levels, the cap is only in place until the FCC adopts comprehensive high-cost universal service reform, and ETCs will not be subject to the interim cap if they file cost data justifying the level of support that they receive in the same manner as incumbent LECs - - Interim Cap Order, ¶ 1.

considerable cost advantage. Placing a “funding cap” on incumbents (as well as CETCs) could be an alternative remedy to CenturyLink’s concerns about incumbents having to go through detailed cost reviews.

15. In addition, depending upon a carrier’s historical pattern of making “universal service” plant investment in Kansas, perhaps the funding/support cap should be a declining amount over time to match up with depreciation of the company’s same plant investment over time. The two largest incumbents in Kansas, AT&T and CenturyLink, have faced numerous changes in their operations since the Commission established its current KUSF support policy, including undergoing mergers or buyouts, changes in price cap plans, changes in their level of plant investment in Kansas, changes in technology, changes in service quality, and other matters. In light of these changes, CURB believes it is an appropriate time to re-evaluate funding/support mechanisms for all carriers in Kansas. Therefore, while CURB shares some of the concerns expressed by CenturyLink, CURB would prefer to analyze these related issues in further detail in a separate Commission proceeding.

**IX. Staff’s Additional Issue – Whether a Separate Company-Specific Docket Should be Opened for each Supplemental KUSF Support Request**

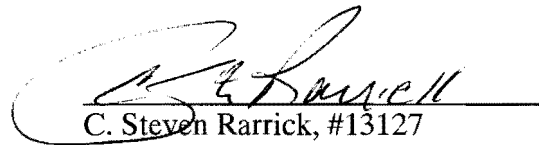
16. Staff raises an additional issue not addressed in the Commission’s original order. Staff indicates that in recent years the Commission has opened a company-specific docket for each supplemental KUSF support request, and Staff believes this approach should continue for the related benefits asserted by Staff. CURB agrees with Staff’s recommendation for the same reasons.



**X. Conclusion**

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

Respectfully submitted,

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


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**VERIFICATION**

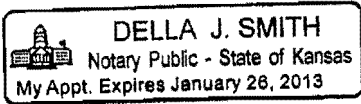
STATE OF KANSAS                    )  
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COUNTY OF SHAWNEE            )     ss:

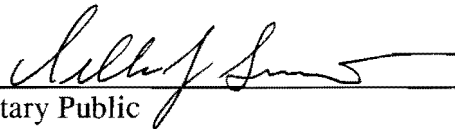
C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

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 11<sup>th</sup> day of August, 2010.



  
\_\_\_\_\_  
Notary Public

My Commission expires: 01/26/2013

CERTIFICATE OF SERVICE

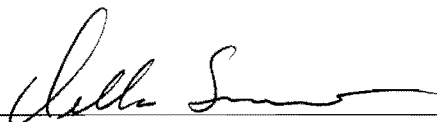
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I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 11th day of August, 2010, to the following:

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