

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

Before Commissioners: Thomas E. Wright, Chairman  
Ward Loyd

In the Matter of a Review of the Kansas ) Docket No. 11-GIMT-420-GIT  
Universal Service Fund, including the )  
Forward-Looking High-Cost Model Used to )  
Determine Cost-Based Kansas Universal )  
Service Fund Support for Price Cap Carriers )  
and Competitive Eligible )  
Telecommunications Carriers Offering )  
Service in Price Cap Carrier Study Areas, the )  
Level of Participation of Interconnected )  
VoIP and Wireless Service Providers, the )  
Effect of Federal Universal Service Fund )  
Reform, the Definition of Universal Service, )  
and Other Matters )

**ORDER INITIATING INVESTIGATION, ESTABLISHING COMMENT SCHEDULE,  
AND APPOINTING PREHEARING OFFICER**

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

**I. Background – Staff’s Report**

1. On December 7, 2010, Staff filed a Notice and a Report and Recommendation, dated November 24, 2010 (Staff Report). Pursuant to the Commission’s March 10, 2010 Order in Docket No. 08-GIMT-1023-GIT (08-1023 Docket), Staff recommended that the Commission undertake a review of the forward-looking high-cost model used to determine the cost-based Kansas Universal Service Fund (KUSF) support for telecommunications carriers that have elected price cap regulation. The results of this review would also determine the KUSF support for competitive eligible telecommunications carriers (ETCs) offering service in price cap carrier study areas. Notice of Filing of Staff Report and Recommendation.

2. Staff noted that the Commission had addressed the issue of whether the United Telephone Companies of Kansas d/b/a/ CenturyLink's (CenturyLink) intrastate switched access charges should be reduced to parity with its interstate access charges, pursuant to K.S.A. 66-2005(c) in the 08-1023 Docket, *In the Matter of the Petition of Sprint Communications Company, L.P., Sprint Spectrum L.P., and Nextel West Corp. d/b/a/ Sprint to Conduct General Investigation into the Intrastate Access Charges of United Telephone Company of Kansas, United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas d/b/a Embarq*. Staff's Report and Recommendation (Staff's Report), pg. 1. Staff observed that the Commission had reduced CenturyLink's intrastate switched access rates to interstate levels and authorized CenturyLink to recover the related access revenue from the KUSF on a revenue-neutral basis. Staff's Report, pg. 1; Order Setting Embarq's Intrastate Access Rates to Parity and Providing for Rebalancing Through the KUSF (March 10, 2010 Order), see ¶¶ 232, 235. Staff noted that the Commission also found that because CenturyLink's access revenue recovery would occur initially on a revenue-neutral basis, the Commission would review the KUSF pursuant to K.S.A. 2009 Supp. 66-2008(c) to determine whether the cost to provide universal service justified modifications to the KUSF. Staff's Report, pg. 1; March 10, 2010 Order, ¶ 244.

3. Staff noted that the Commission had directed Staff to open a docket for the purpose of reviewing the KUSF pursuant to K.S.A. 2009 Supp. 66-2008(c), recognizing that significant legal issues would need to be addressed and that the participation of experts might be required. Staff observed that the Commission had also recognized that it was unlikely that the Federal Communications Commission (FCC) would have a new cost model the Commission could utilize for purposes of the review. Staff's Report, pg. 2.

4. Staff discussed the FCC's determinations regarding the development of a cost model to estimate forward-looking economic costs of providing universal service in high cost areas<sup>1</sup> and the current FCC Hybrid Cost Proxy Model (HCPM) developed to determine federal Universal Service Fund (USF) support for price cap carriers.<sup>2</sup> Staff's Report, pg. 2. Staff noted this model was developed to estimate the cost, in an open, verifiable process, to provide service to all businesses and households within a geographic region, and was designed to reflect the most efficient and least cost technology deployed to provide the supported services. Staff observed that the FCC had recognized that establishment of a model to estimate forward-looking economic costs of providing universal service in high-cost areas was a dynamic process and that the model would need to evolve over time to reflect changes, such as technological changes. However, Staff pointed out that the FCC has not, to date, updated the HCPM. Staff indicated that at present, the HCPM model addresses forward-looking costs to deploy circuit-switched, narrowband networks for providing Plain Old Telephone Service (POTS), not the wireless and/or interconnected Voice over Internet Protocol (VoIP) technologies that now may be the most efficient and least cost methods available. Staff's Report, pg. 2.

5. Staff noted that the FCC is currently pursuing reform of intercarrier compensation, interstate/intrastate separations, and the federal USF in connection with implementation of the FCC's National Broadband Plan. Staff's Report, pg. 2. On April 21, 2010, the FCC released a Notice of Inquiry and a Notice of Proposed Rulemaking (NOI/NPRM), which requested comment on whether the FCC should utilize a cost model to assist in

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<sup>1</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8899, para. 224 (Universal Service First Report & Order).

<sup>2</sup> See *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, Tenth Report and Order, CC Docket Nos. 96-45, 97-160, 14 FCC Rcd 20156 (1998) (Tenth Report and Order).

determining universal service support levels in certain areas where it was unlikely the private sector would provide broadband and voice services. Staff's Report, pg. 2.

6. Staff observed that the Commission had adopted, in 1999, the FCC's HCPM for KUSF purposes for price-cap carriers (Southwestern Bell Telephone Company d/b/a AT&T (AT&T) and CenturyLink. *In the Matter of an Investigation into the Kansas Universal Service Fund (KUSF) Mechanism for the Purpose of Modifying the KUSF and Establishing a Cost-Based Fund*, Docket No. 99-GIMT-326-GIT (99-326 Docket), Order No. 10: Adopting a Forward Looking Cost Methodology for Purposes of Determining KUSF Support and Selecting the FCC's Cost Proxy Model (Order 10). Staff's Report, pg. 3. In that docket, the Commission recognized that the FCC's cost model included more than 1,400 input variables in an effort to incorporate varied state conditions. Staff noted that the parties to that proceeding had agreed to use those variables with some exceptions and modifications to reflect Kansas-specific conditions, but not company-specific conditions. Staff's Report, pg. 3; 99-326 Docket, Order No. 16: Determining the Kansas-Specific Inputs to the FCC Cost-Proxy Model to Establish a Cost-Based Kansas Universal Service Fund (Order 16), pg. 3. This approach limited the number of modifications to the federal model while reflecting conditions that could affect all Kansas companies, not only the incumbent local exchange carriers. Staff observed that the KUSF support available to AT&T, CenturyLink, and any designated ETC serving in AT&T's or CenturyLink's study areas is now based on the KUSF model adopted in the 99-326 docket. Staff's Report, pg. 3.

7. Staff recommended that the Commission open a new docket to review the KUSF and the 99-326 docket cost model for price cap carriers. However, Staff recommended that the Commission first address legal and policy issues prior to determining a new specific cost model

or the inputs that should be used in that model. Staff's Report, pg. 3. Staff stated it believed a wide range of complex policy issues might exist and therefore, Staff suggested that the Commission seek comment from parties so as to identify such policy and legal issues that should be addressed initially by the Commission. Staff's Report, pg. 3.

8. Staff suggested the following initial issues: (1) the level of participation of providers of alternative technologies, such as VoIP and wireless, in the market; (2) whether and how the National Broadband Plan and federal USF reform should be addressed in reviewing the KUSF cost model; (3) whether the Commission should review the definition of universal service for Kansas; and (4) whether the Commission should phase out competitive ETC KUSF support, as suggested by the proposal to phase out federal competitive ETC support in the National Broadband Plan.

## **II. Commission Investigation**

9. The Commission may, on its own motion, undertake an investigation into the charges, rules and regulations of telecommunications public utilities. K.S.A. 66-1,191. The legislature has also specifically authorized the Commission to establish the KUSF and to modify the KUSF as necessary. K.S.A. 66-2008. The Commission is granted authority to "periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF." K.S.A. 2009 Supp. 66-2008(c). The Commission has the discretion and authority, if it determines that any changes are needed, to implement those changes. K.S.A. 2009 Supp. 66-2008(c).

10. In the Commission's March 10, 2010 Order in the 08-1023 Docket, the Commission noted it had been some time since such a review of the KUSF had been performed

and that its plan to review the KUSF support for CenturyLink as a follow-up to its decision in that docket would also provide a good opportunity to undertake such a full review again. The Commission concludes that, as the Commission indicated in its order in the 08-1023 Docket, and as recommended by Staff, it is appropriate to investigate the KUSF and the Commission's cost model for price cap carriers to determine what modifications may be necessary to ensure the KUSF is based upon the cost to provide service and is consistent with the requirements set forth in the pertinent state and federal statutory provisions to the extent possible. This proceeding will be governed by the Kansas Administrative Procedures Act as provided in K.S.A. 66-1,191.

11. The Commission recognizes here, as it did in the March 10, 2010 Order in the 08-1023 Docket, that this review will involve a complex undertaking in light of the issues that may be involved and the intricacies of the cost model, especially should further federal action in this area not be forthcoming. The Commission agrees with Staff that an initial step must be a thorough consideration and analysis of the legal and policy issues that will then provide direction to the task of reviewing the cost model and the scope of this investigation.

**III. Parties to this Docket; Entries of Appearance and Service List**

12. The Commission finds all contributors to the KUSF and recipients of KUSF funds as provided by K.S.A. 2009 Supp. 66-2008(a) and (b), including all telecommunications public utilities, telecommunications carriers, wireless telecommunications service providers, interconnected VoIP service providers<sup>3</sup>, and all designated ETCs should be made a party to this proceeding and will be served with a copy of this Order. However, for administrative efficiency, only those parties that file an entry of appearance will be placed on the official mail list and receive all documents filed in this proceeding. All parties shall receive the order setting forth the

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<sup>3</sup> Interconnected VoIP service providers are defined at K.S.A. 2009 Supp 66-2008(a), referencing 47 C.F.R. 9.3 (October 1, 2005).

final agency action in this proceeding. Service by the parties of pleadings, filings, and comments should be made pursuant to the service list developed upon the filing of entries of appearance.

13. Entries of appearance should be filed by February 18, 2011. Parties should submit an email address as well as a US Postal Mail address with their Entry of Appearance. Because the purpose of requiring entries of appearance is to timely develop a service list, entries of appearance filed after February 18 will not be rejected solely for being late.

14. The Citizens' Utility Ratepayer Board (CURB) is invited to participate in this docket as a party and need not file a petition to intervene. CURB will be added to the service list.

#### **IV. Identification and Prioritization of Legal and Policy Issues; Initial Comment Schedule**

15. As noted above, the Commission agrees with Staff that prior to establishing a procedural schedule or otherwise proceeding further, it is important to identify, consider, and prioritize the legal and policy issues that should be addressed. Therefore, the Commission seeks comments from CURB, Staff, and all parties who file Entries of Appearance addressing the issues identified by Staff and related points:

1. The level of participation of providers of alternative technologies, such as VoIP and wireless, in the market;
2. Whether costs of Interconnected VoIP and wireless should be included in a cost model, and if so, how those costs should be ascertained and reflected in the cost model.
3. Whether and how the National Broadband Plan and federal USF, intercarrier compensations, and separations reform should be addressed in a review of the KUSF cost model.

4. Whether, in light of pending FCC action with regard to separations, a separations factor should be reflected in the cost model and if so, how that factor should be reflected.
5. Whether the Commission should review the definition of universal service for Kansas. See K.S.A. 66-2002(k). If so, what potential changes should be considered. For example, should the Commission include broadband as the FCC is considering doing for supported services for federal universal service? Would this require statutory changes?
6. Whether the Commission should phase out competitive ETC KUSF support, similar to the proposal to phase out federal competitive ETC support in the National Broadband Plan. If so, what kind of a process and timeframe might be appropriate?
16. Such parties are invited to submit comments on the issues noted above.

The Commission also recognizes parties may believe additional issues should be addressed. Each party may develop and submit additional issues for consideration. Each issue submitted by a party should also be addressed thoroughly by that party in its comments, so as to provide a basis for consideration by the Commission and for reply comments by other parties. In addition to addressing the issues raised by Staff noted above and any other issues a party desires to raise, each party submitting comments should clearly prioritize the issues it believes should be addressed in this proceeding.

17. Parties will have an opportunity to file reply comments to the comments made by other parties. Staff is directed to summarize and analyze the comments and the reply comments and file a report with the Commission with recommendations on what issues should be addressed



and on further Commission action. The Commission will review Staff's Report and Recommendations and make a determination for further action at that time.

18. Parties may submit comments on or before March 18, 2011. Parties may file reply comments on or before April 29, 2011. Staff should file its Report and Recommendation on or before June 17, 2011.

**V. Appointment of Prehearing Officer**

19. Although the Commission will conduct any evidentiary hearing in this proceeding, the Commission designates a prehearing officer to conduct any prehearing conferences that may be needed and to address any matters that are appropriately considered in a prehearing conference or addressed by the prehearing officer, including all items listed in the KAPA at K.S.A. 77-517(b). These items include, by way of example and not limitation: conversion of the proceeding to another type; exploration of settlement possibilities; clarification of issues; rulings on identity and limitation of the number of witnesses; objections to proffers of evidence; determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person; order of presentation of evidence and cross-examination; discovery orders and protective orders; procedural orders; and such other matters as will promote the orderly and prompt conduct of the hearing. The Commission designates Charles Reimer, Advisory Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3361, email address [c.reimer@kcc.ks.gov](mailto:c.reimer@kcc.ks.gov), to act as Prehearing Officer in this proceeding. K.S.A. 2009 Supp. 77-514; K.S.A. 77-516; K.S.A. 2009 Supp. 77-551. The Commission, as it deems necessary, may designate other staff members to serve in this capacity

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission initiates an investigation into the Kansas Universal Service Fund as discussed above.

B. All contributors to the KUSF and recipients of KUSF funding, as described by K.S.A. 66-2008(a) and (b), are made a party to this docket, as discussed above, and will receive any orders of final agency action.

C. Parties who desire to participate in this docket and be included on a service list for receipt of comments, non-final Commission orders, and other filings and pleadings should submit Entries of Appearance on or before February 18, 2011.

D. Parties who have filed Entries of Appearance, CURB, and Staff may submit comments, as discussed above, on or before March 18, 2011. Reply comments may be submitted on or before April 29, 2011. Commission Staff is directed to summarize and analyze the comments and reply comments and file its Report and Recommendations for further action to the Commission on or before June 17, 2011.

E. The Commission appoints a Prehearing Officer for this investigation as discussed above.

F. A party may file a petition for reconsideration of this order within 15 days of the service of this order. If this order is mailed, service is complete upon mailing and 3 days may be added to the above time frame.

G. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Wright, Chmn; Loyd, Com.

Dated: JAN 26 2011

**ORDERED MAILED**

JAN 27 2011

*Susan K. Duffy* EXECUTIVE  
DIRECTOR

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Susan K. Duffy  
Executive Director

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