

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Received  
on

AUG 15 2013

In the Matter of the General Investigation )  
to Review the Kansas Lifeline Service )  
Program (KLSP) to Determine the Impact )  
of the Increase in the Statewide Affordable )  
Residential Rate for Rural Local Exchange )  
Carriers to Their Lifeline Subscribers and )  
Whether the \$7.77 Monthly Credit Should )  
be Modified. )

by  
State Corporation Commission  
of Kansas

Docket No. 13-GIMT-597-GIT

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

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following reply comments in response to Verizon's Initial Comments (Verizon's Comments), Verizon was the only party to file initial comments in this proceeding. These comments are filed in response to issues raised by the Kansas Corporation Commission's (KCC or Commission) April 17, 2013,<sup>1</sup> Order Opening General Investigation (April 17th Order) and the subsequent April 25, 2013, Notice of Filing of Supplemental Report and Recommendation (April 25<sup>th</sup> Staff Supplemental Report) by Commission Staff in this proceeding.

**I. CURB's Final Position**

1. CURB's initial comments proposed preserving the existing \$7.77 Kansas Lifeline Service Program monthly credit (KLSP), as well as an annual increase in the KLSP credit equal to the Consumer Price Index for Urban Consumers (CPI-U). CURB continues to favor

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<sup>1</sup> This Order also includes the March 28, 2013 dated, Report and Recommendation Utilities Division (March 28<sup>th</sup> Staff Report).

preserving the existing \$7.77 KLSP credit, but now proposes a minor change to its original position. The GDPPI-CW should be used as the annual inflation or growth factor for the \$7.77 KLSP credit, instead of using the CPI-U originally proposed by CURB. The GDPPI-CW is the same inflation factor that CURB and other parties stipulated to use, and which the Commission adopted, for Basket 3 services in the recent price cap proceedings for CenturyLink.<sup>2</sup> The GDPPI-CW inflation factor will be used to offset the current trend of increasing prices of basic local service in Kansas and ineffective competition in Kansas (particularly in the AT&T exchanges) as addressed in CURB's initial comments.<sup>3</sup>

## **II. Reply to Verizon Comments**

2. Verizon's Comments generally seek to reduce the current \$7.77 monthly KLSP credit as a means to an end for reducing the KUSF. However, Verizon's comments are vague and misguided because the KLSP is not a significant amount of the total KUSF and is not the component driving any significant growth in the KUSF. Verizon generally proposes that the Commission "recognize"<sup>4</sup> the full \$9.25 per month federal Lifeline credit in calculating a new monthly KLSP, but Verizon never explains its definition of "recognize", never explains how the \$9.25 federal Lifeline credit should be treated in a method for determining a new KLSP, and never proposes a new KLSP credit amount. In addition, Verizon states that "recognizing" the full \$9.25 federal Lifeline credit in "recalculating" the KLSP credit could avoid situations where

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<sup>2</sup> Order Approving Stipulated Settlement Agreement, July 9, 2013, Docket No. 13-GIMT-473-MIS. The Commission's Order, page 9 approved the Stipulation, and paragraph 8, item (a) of the Order sets forth the GDPPI-CW as the inflation factor to be used for Basket 3 services in the Stipulation.

<sup>3</sup> CURB Comments, June 14, 2013, ¶¶ 2-6. Docket No. 13-GIMT-597-GIT.

<sup>4</sup> Verizon Comments, p. 1 ("...urging the Commission to recognize the full \$9.25 per month federal Lifeline credit for non-Tribal Lifeline subscribers in calculating a new monthly Kansas Lifeline Service Program ("KLSP") credit.")

a company's total lifeline support would be greater than company's local service rate.<sup>5</sup> However, Verizon never explains how, or if, (and to what degree) it is harmed in a financial or other manner by negative local service rates of local exchange carriers. Also, "negative" local service rates have been in place to some degree ever since the Commission's original decision to implement the current \$7.77 KLSP credit in August 2012, yet Verizon never explains or quantifies how it has been harmed during this period. Verizon appears to support an approach that has never been used by this Commission for establishing the KLSP monthly credit. Verizon has not met a reasonable burden of proof or provided substantive or meaningful documentation to support its general proposal. The Commission should retain the current \$7.77 KLSP and not adopt Verizon's position.

3. Verizon's Comments refer to information that might give the incorrect impression that the KLSP credit is the primary reason for significant increases in KUSF funding when Verizon refers to as "unharnessed growth of the KUSF."<sup>6</sup> Verizon refers to the March 29, 2013 Staff Report which indicates that the "KLSP could experience the most significant growth ever."<sup>7</sup> However, Staff's Report properly points out that this KLSP growth is due to "wireless providers receiving ETC designation for Lifeline services."<sup>8</sup> As a result, any increase in KLSP funding is not due to the KLSP credit, but is instead due to wireless providers now being eligible as "ETCs" to receive KLSP funding from the KUSF. More specifically, the March 25, 2013 Staff Supplemental Report and Recommendation shows that from the period ending March 2012 to March 2013, the KLSP funding for ETC wireless carrier Your Tel America increased by an

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<sup>5</sup> Verizon Comments, p. 2 ("Recognizing the full \$9.25 federal Lifeline credit in reevaluating and recalculating the monthly KLSP credit will help avert situations in which a company's local service rate could wind up being less than zero after all support is considered.")

<sup>6</sup> Verizon Comments, p. 2.

<sup>7</sup> March 29, 2013 Staff Report, p. 5.

<sup>8</sup> Verizon Comments, p. 2. *See also*, Staff's March 29, 2013 Staff Report, p. 5, attached to the Commission's Order Opening a General Investigation, Docket No. 13-GIMT-597-GIT.

amount of \$1,165,880 or 114% (increasing from \$1,026,091 to \$2,191,971).<sup>9</sup> Thus, it appears that Verizon may be barking up the wrong tree and offering a solution without a problem. It would appear that Verizon's concerns about increases in the KLSP funding would be more appropriately directed at the trend of wireless ETCs receiving new and significant KLSP funding, something not likely to occur because Verizon is a wireless carrier. As a result, Verizon's concern with increasing KLSP funding related to the actual KLSP credit amount should be disregarded.

4. While CURB shares Verizon's concerns about unjustified significant increases in the KUSF, it is not the KLSP credit or even KLSP funding in total that is causing significant increases in the KUSF. In reality, funding for KLSP in the most recent Seventeenth Year of the KUSF is only \$4.7 million, a mere 7% of the total KUSF funding of \$62.9 million,<sup>10</sup> and funding for the KLSP has only increased by about \$221,790, or 5%, from the prior year.<sup>11</sup> Thus, the amount of the KLSP credit has not been proven to be a significant problem or concern, and it is not the reason that the KUSF is increasing or that KLSP funding has increased by a relatively modest amount of 5% in the most recent year.

5. The March 29, 2013 Staff Report states that the Federal Communication Commission issued an order on February 6, 2012, to reform the federal Lifeline program, and one of these reforms was limiting the federal Lifeline credit per line to \$9.25 per month for all Lifeline eligible subscribers, whereas the prior federal Lifeline credit could range up to \$10.00

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<sup>9</sup> Staff Supplemental Report and Recommendation, March 25, 2013, Exhibit 2, p. 2 of 2 (showing the Your Tel America March 2012 KLSF funding of \$1,026,091), Exhibit C, p. 1 of 2 (showing Your Tel American March 2012 KLSF funding of \$2,191,971).

<sup>10</sup> Direct Testimony of Ms. Sandra K. Reams, December 20, 2012, Exhibit SKR-1, page 1 of 3 (line 15 identifies KLSP funding of \$4,657,579, and line 22 identifies the total KUSF of \$62,873,250), Docket No. 13-GIMT-130-GIT.

<sup>11</sup> *Id.* (Attachment M, p. 4, line 11 provides the annualized Year 16 KLSP funding of \$4,435,789 and line 7 provides the Year 17 KLSP funding of \$4,657,579, and the increase in funding from Year 16 to Year 17 is \$221,790 [an increase of 5% as projected and established by Ms. Reams]. Also, Ms. Ream's 5% growth factor for KLSP funding is shown at line 2 and addressed at p. 28, line 12.).

per month (with an average of \$9.25) per individual eligible customer based on the support provided for a combination of Tier One (support equal to the ILEC's subscriber line charge (SLC), up to \$6.50 per month), Tier Two (additional support up to \$1.75 per month), and Tier Three (federal support to match one-half of state support, up to a maximum of \$1.75 per month).<sup>12</sup> Thus, the FCC Lifeline reform eliminates the "Tier-approach" and now all federal Lifeline eligible customers receive the same amount (\$9.25 per month) for the federal Lifeline credit.

6. Because all federal Lifeline subscribers are now eligible for the \$9.25 per month credit, plus the KLSP credit, the March 29, 2013 Staff Report states:

- a) the Commission may wish to consider whether, and how, the change in the federal Lifeline credit may impact the amount of the KLSP credit;
- b) this could consider analyzing whether a portion of the \$9.25 federal Lifeline credit should be recognized, similar to the current process of recognizing \$3.50 of the federal Lifeline credit (no citation to prior Commission orders or other documents is provided for this statement);
- c) whether the full \$9.25 federal Lifeline credit should be recognized; and
- d) if the full \$9.25 federal Lifeline credit is recognized, and the \$7.77 KLSP credit remains unchanged, it could result in a company's local service rate being less than zero.<sup>13</sup>

7. Verizon appears to favor a reduction in the current \$7.77 KLSP credit because it believes the combined federal and KLSP lifeline credit of \$17.02 (\$9.25 full federal Lifeline credit plus the current \$7.77 KLSP credit) could cause a company's local service rate to be less than zero after all support is considered, and Verizon refers to Staff's March 29, 2013 Report which raises this as a potential issue to be addressed in this proceeding.<sup>14</sup> However, Verizon's

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<sup>12</sup> Staff Report, March 29, 2013, p. 4.

<sup>13</sup> *Id.*, p. 7.

<sup>14</sup> Verizon Comments, pp. 2-3; Staff Report, March 29, 2013, p. 7.

recommendation to reduce the KLSP credit because of its concerns about a resulting negative local service rate has no merit and should not be adopted for the following reasons:

- a) It is not supported by any Commission precedent or prior Commission decisions in establishing KLSP credit amounts.
- b) The Commission's order that established the current \$7.77 KLSP credit and related calculation method did not use or rely upon a criteria that the combined federal Lifeline credit and KLSP credit could not result in a net reduction in a company's local service rate (negative local service rates).
- c) The current \$7.77 KLSP credit was supported by a method and related calculations which the Commission knew in advance would produce negative basic local service rates for most of the incumbent local exchange carriers (ILECs) in the state at that time (especially if the entire amount, or a significant portion, of the federal Lifeline credit of \$10.00 at that time was considered).<sup>15</sup>
- d) Even if the current \$9.25 federal Lifeline credit is considered in calculating a new KLSP credit (along with the \$7.77 KLSP credit), it would not produce any negative basic local service rates if the Commission's methodology for calculating the current KLSP credit was used. Even if the full amount of the \$9.25 federal Lifeline credit was considered this would not cause negative local rates on an average basis and would not cause any significant negative local rates under any circumstances. Thus, Verizon's related concerns are mitigated or eliminated.
- e) Verizon refers to the March 29, 2013, Staff Report which raises the issue of whether the full \$9.25 federal Lifeline credit should be recognized (among other issues raised by Staff), although this same Staff Report admits that "no Kansas Lifeline subscriber receives free monthly service" as of March 1, 2013 - - after applying the \$3.50 federal Lifeline credit (part of the total federal Lifeline credit) and the \$7.77 KLSP credit.<sup>16</sup> Therefore, Staff's current calculations and methodology do not appear to support Verizon's position and concerns about negative local service rates.
- f) Verizon provides no specific reasons, analysis, documentation, or calculations to support its position. Verizon cannot point to any precedent for its position, either at this Commission or any other state regulatory agency in another jurisdiction. Verizon does not demonstrate that it (or other parties) would be financially or otherwise harmed by retaining the existing \$7.77 KLSP credit.

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<sup>15</sup> The total federal lifeline support was \$10.00 per eligible customer at the time the Commission approved the current \$7.77 KLSP in its Order dated August 12, 2008, with \$6.50 related to SLC support and the remaining \$3.50 related to non-SLC support. The \$10.00 federal lifeline support is set forth at the 2009 Universal Service Monitoring Report, CC Docket No. 98-202, Table 2.3 "Lifeline Monthly Support by State or Jurisdiction" as of March 31, 2008.

<sup>16</sup> Staff Report, March 29, 2013, p. 6, Section IV. Estimated Lifeline Subscriber Impact.

8. The Commission's Order of August 12, 2008 that established the current \$7.77 KLSP credit and related calculation method did not use or rely upon a criteria that the combined federal Lifeline credit and KLSP credit could not result in a net negative local service rate (and the primary criteria appeared to be that all Lifeline customers receive the same \$7.77 KLSP credit throughout the state).<sup>17</sup>

9. In fact, the Commission's Order of August 12, 2008, explicitly relied upon Staff's method for calculating the \$7.77 KLSP credit which demonstrated that it would result in net negative local service rates for some companies (federal and state Lifeline support would exceed the basic local service rate). Therefore, it appears that the Commission was not overly concerned with a calculation method that produced negative local service rates.

10. At the direction of the Commission, the August 10, 2007, Reply Comments of Commission Staff calculated the \$7.77 KLSP credit as one-half of the statewide average local service rate of \$15.53 at that time ( $\$15.53 \times .50 = \$7.77$  KLSP credit).<sup>18</sup> Staff's calculations at Attachment 1 (page 2) of these Reply Comments showed the combined federal and state Lifeline credits of \$11.27 (\$7.77 KLSP credit plus \$3.50 of the federal Lifeline credit)<sup>19</sup> caused negative basic local service rates (total federal and state Lifeline credits exceeded the basic local service rate) for customers of the companies of Moundridge (negative local service rate of \$2.07), and Sunflower (ranging from a negative local service rate of \$.68 to \$1.00). Most importantly, if the Staff analysis at Attachment 1 would have considered at least another \$3.50 of the total \$10.00

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<sup>17</sup> Commission Order, August 12, 2008, ¶¶ 30-31, Docket No. 07-GIMT-1353-GIT,.

<sup>18</sup> Reply Comments of Commission Staff, August 10, 2007, ¶ 21.

<sup>19</sup> Total federal lifeline support was \$10.00, and Staff's calculations included \$3.50 of federal lifeline support consisting of the Tier Two support of \$1.75 plus the Tier Three support of \$1.75, but did not include the Tier One support of \$6.50 related to the federal SLC.

federal support in its calculations, this would have produced negative basic local service rates for 35 of the 39 incumbent local exchange carriers<sup>20</sup> in Kansas at that time.<sup>21</sup>

11. Verizon appears to support a reduction in the \$7.77 KLSP credit because it is concerned that the combined federal and state Lifeline credit of \$17.02 (\$9.25 federal Lifeline credit plus the \$7.77 KLSP credit) would produce negative basic local service rates (total lifeline support exceeds basic local service rates). However, Verizon never explains why it is concerned with negative basic local service rates, nor does it explain how, if, and to what degree this harms Verizon from a financial or other standpoint. Furthermore, CURB has established that “actual” negative basic local rates for ILECs were produced by Staff’s calculations of the \$7.77 KLSP credit that was implemented on August 12, 2008 - - yet Verizon never explains or demonstrates how, if, or to what degree it has been harmed during this period of negative basic local service rates.<sup>22</sup> Verizon has not met a reasonable burden of proof to support a reduction in the current \$7.77 KLSP credit, or to support a change in the method that was used to calculate the \$7.77 KLSP credit.

12. Most importantly, even if the current \$9.25 federal Lifeline credit is considered (along with the \$7.77 KLSP credit), this would not produce any negative basic local service rates if the Commission’s methodology for calculating the current KLSP credit of \$7.77 was used. If

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<sup>20</sup> Most customers of 35 of the 39 ILECs would have experienced negative basic local service rates, although several of these ILECs have higher basic local rates in some of their exchanges which may not have caused negative local rates for customers in these specific exchanges.

<sup>21</sup> CURB determined that the \$7.77 KLSP credit, and the full amount of the \$7.00 federal lifeline credit would have caused negative local rates for 35 of the 39 LECs using information from the August 10, 2007 Reply Comments of Commission Staff, Attachment 1, page 2. Staff’s Attachment 1 shows the basic local service rate for each LEC less the combined \$7.77 KLSP credit and \$3.50 of the federal lifeline credit, to arrive at a net local rate, which is the column referenced as “New Lifeline Rate.” CURB started with the New Lifeline Rate column, and deducted the remaining \$3.50 of the federal lifeline credit (\$7.00 total less the \$3.50 reflected in Staff’s Attachment 1), and this resulted in 35 of the 39 LECs showing a net negative local rate. For example, Staff’s Attachment 1, page 2, for Bluestem shows a net local rate of \$2.47 (which is calculated by taking Bluestem’s local rate of \$13.74 and deducting both the \$7.77 KLSP and \$3.50 of the lifeline service credit). CURB took Bluestem’s net local rate of \$2.47 and deducted the remaining federal lifeline support of \$3.50, and this causes a net negative local rate.

<sup>22</sup> Although negative local rates were produced by the calculations, the amount of support provided to customers cannot exceed the amount of the ILECs local rates.



the Commission's method (or some approximation of that method) for calculating the current KLSP credit was used, it appears that average actual basic local service rates would exceed the state/federal Lifeline support by about \$6.75 (\$19 average residential local rate less \$12.25 of state and federal support), and this would not result in any negative local service rates for any ILEC. Using a consistent method (that was adopted by the Commission for the \$7.77 KLSP credit), the calculation would start with the current approximate \$19 average statewide residential local service rate for all ILECs in Kansas.<sup>23</sup> The consistent method would calculate total state and federal Lifeline support of \$12.25, based on KLSP lifeline support of \$9.50 (one-half of the \$19 statewide average local rate), plus federal Lifeline support of \$2.75 (the \$9.25 federal Lifeline credit less the same Tier One SLC support of \$6.50 used in Staff's prior calculations). The statewide average local rate of \$19 would exceed the total state/federal support of \$12.25 by an amount of \$6.75, and not result in any negative local service rates for any LEC. Arguably, this method could support an increase in the KLSP credit up to \$14.525, which is the amount of the current \$7.77 KLSP credit plus the amount of \$6.75 (bringing the KLSP credit up to an amount that would not cause negative local service rates under this methodology). However, CURB continues to support retaining the current \$7.77 KLSP credit.

13. Even under a worst-case scenario where the entire amount of the \$9.25 federal Lifeline credit is considered, this would not result in any negative local service rates based on average calculations, and it would never cause significant negative local service rates for any ILEC. This is primarily due to the fact that residential basic local service rates have increased

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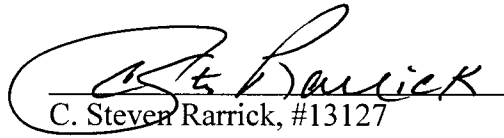
<sup>23</sup> The approximate statewide average residential local rate is a combination of the more heavily weighted AT&T local rate of about \$21 (per the February 1, 2013 Annual Price Deregulation Report to the legislature, p. 8, which identifies an AT&T residential customer rate of \$21 after the \$3 per line increase in July 2012), combined with the current \$16.75 statewide average residential local rate for rural local exchange carriers (RLECs) and Centurylink (per Ms. Reams Direct Testimony in Docket No. 13-GIMT-130-GIT regarding the Seventeenth Year assessment calculation of the KUSF, December 20, 2012, Attachment 1, page 1 of 3 which shows an average RLEC rate of \$16.18 combined with an average CenturyLink rate of \$17.73, combined to form an average rate of \$16.75).

since the original approval of the \$7.77 KLSP credit in August 2012. Again, this method starts with the same current approximate \$19 average statewide residential local service rate. This is now compared to the current total state/federal Lifeline credit of \$17.02 (\$7.77 KLSP credit plus federal Lifeline credit of \$9.25). On an average basis, the statewide local rate of \$19 exceeds the total state/federal support of \$17.02 by an amount of \$1.98, and does not cause any negative local rates on an average basis. Even on a specific-company basis assuming an affordable rate of \$16.75, this would not cause any significant negative local service rates, and certainly not to the degree which has been experienced under the current \$7.77 KLSP credit. For example, all RLECs are currently allowed to increase their residential local rates to an affordable level of \$16.75. The \$17.02 combined state/federal support exceeds the \$16.75 affordable local rate and causes a maximum and insignificant negative local rate of .27 (27 cents) per eligible RLEC lifeline customer. This negative local rate of 27 cents per lifeline customer does not justify a change in the \$7.77 KLSP credit, especially when local rates are still subject to increasing. Of course there would not be any negative local rates for AT&T and CenturyLink on an average basis, because these LECs average local rates (\$21 for AT&T and \$17.73 for CenturyLink) already exceed the total state/federal support of \$17.02. Any concerns of Verizon are mitigated or eliminated based on this analysis.

### **III. Conclusion**

14. CURB appreciates the opportunity provided in this docket to submit these comments on behalf of Kansas small business and residential ratepayers, and urges the KCC to adopt CURB's positions in this proceeding.

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, with the first letter of each word being capitalized and prominent.

C. Steven Rarrick, #13127

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

Tel: (785) 271-3200

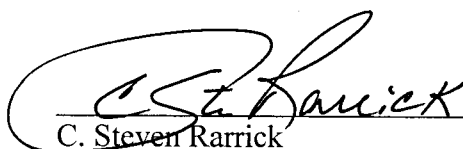
Fax: (785) 271-3116

VERIFICATION

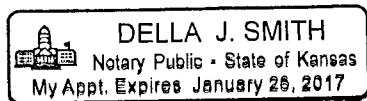
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 ) ss:  
COUNTY OF SHAWNEE )

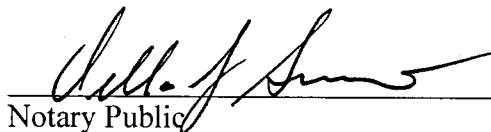
C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

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 15<sup>th</sup> day of August, 2013.



  
Notary Public

My Commission expires: 01-26-2017.

**CERTIFICATE OF SERVICE**

13-GIMT-597-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 15<sup>th</sup> day of August, 2013, to the following parties who have waived receipt of follow-up hard copies:

ROBERT A. FOX, SENIOR LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
[r.fox@kcc.ks.gov](mailto:r.fox@kcc.ks.gov)

JAMES M. CAPLINGER, ATTORNEY  
JAMES M. CAPLINGER, CHARTERED  
823 W 10TH STREET  
TOPEKA, KS 66612  
[jim@caplinger.net](mailto:jim@caplinger.net)

JAMES M. CAPLINGER, JR., ATTORNEY  
JAMES M. CAPLINGER, CHARTERED  
823 W 10TH STREET  
TOPEKA, KS 66612  
[jrcaplinger@caplinger.net](mailto:jrcaplinger@caplinger.net)

COLLEEN R. HARRELL  
JAMES M. CAPLINGER, CHARTERED  
823 W 10TH STREET  
TOPEKA, KS 66612  
[colleen@caplinger.net](mailto:colleen@caplinger.net)

MARK E. CAPLINGER  
MARK E. CAPLINGER, P.A.  
7936 SW INDIAN WOODS PL  
TOPEKA, KS 66615-1421  
[mark@caplingerlaw.net](mailto:mark@caplingerlaw.net)

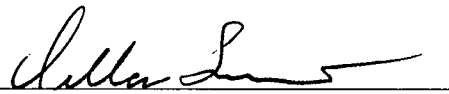
RON COMINGDEER, ATTORNEY  
RON COMINGDEER & ASSOCIATES  
6011 N ROBINSON AVE  
OKLAHOMA CITY, OK 73118  
[hunter@comingdeerlaw.com](mailto:hunter@comingdeerlaw.com)

TORRY R. SOMERS, ASSOCIATE GENERAL COUNSEL  
UNITED TELEPHONE CO. OF KANSAS D/B/A CENTURYLINK  
6700 VIA AUSTI PKWY  
LAS VEGAS, NV 89119  
[torry.r.somers@centurylink.com](mailto:torry.r.somers@centurylink.com)

DEBORAH KUHN, ASSISTANT GENERAL COUNSEL  
MCIMETRO ACCESS TRANSMISSION SERVICES LLC  
205 N MICHIGAN AVE 7TH FLR  
CHICAGO, IL 60601  
[Deborah.Kuhn@verizon.com](mailto:Deborah.Kuhn@verizon.com)

LUKE A. SOBBA, ATTORNEY  
MORRIS LAING EVANS BROCK & KENNEDY CHTD  
800 SW JACKSON STE 1310  
TOPEKA, KS 66612-1216  
[lsobba@morrislaing.com](mailto:lsobba@morrislaing.com)

BRUCE A. NEY, GENERAL ATTORNEY  
SOUTHWESTERN BELL TELEPHONE CO. D/B/A AT&T KANSAS  
220 SE 6TH AVE RM 515  
TOPEKA, KS 66603-3596  
[bruce.ney@att.com](mailto:bruce.ney@att.com)



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Della Smith  
Administrative Specialist