

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

Before Commissioners: Susan K. Duffy, Chair  
Shari Feist Albrecht  
Dwight D. Keen

In the Matter of the Application and Request of )  
United Telephone Association, Inc. for an ) Docket No. 20-UTAT-032-KSF  
Increase in its Cost-Based Kansas Universal )  
Service Fund Support. )

**ORDER APPROVING SETTLEMENT AGREEMENT**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings and conclusions:

1. United Telephone Association, Inc. (United) is a Kansas non-profit corporation that provides local telephone service to ten rural exchanges in southwestern Kansas and serves approximately 3,900 access lines.<sup>1</sup> United is a rural telephone company as defined by K.S.A. 66-1,187(1) and has elected to operate under traditional rate of return regulation pursuant to K.S.A. 66-2005(b).

2. United is the parent company of United Wireless Communications, Inc. (UWC), which offers fixed and mobile wireless services in 17 counties in southwestern Kansas.<sup>2</sup> United is also affiliated with United Communications Association, Inc. (UCA), a competitive local exchange telecommunications service provider that offers additional non-regulated services, including cable TV, long distance, and internet services.<sup>3</sup>

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<sup>1</sup> Direct Testimony of Andria Jackson (Jackson Direct), Dec. 13, 2019, p. 6.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

3. K.S.A. 66-2008(e)(1) provides:

For each local exchange carrier electing pursuant to subsection (b) of K.S.A. 66-2005, and amendments thereto, to operate under traditional rate of return regulation, all KUSF support, including any adjustment thereto pursuant to this section shall be based on such carrier's embedded costs, revenue requirements, investments and expenses, subject to the annual cap established pursuant to subsection (e)(3).

4. On July 24, 2019, United filed an Application and Request for an Increase in its Cost-Based Kansas Universal Service Fund Support (Application).<sup>4</sup> United requested an increase in annual KUSF support of \$2,287,253 from its current annual support level of \$285,030.<sup>5</sup> United's Application contained schedules required by K.A.R. 82-1-231. The schedules contained evidence reflecting United's embedded costs, revenue requirements, investments, and expenses.<sup>6</sup> The schedules were supported by testimony from Todd Houseman, United's General Manager, and Stacey Brigham, United's consultant.<sup>7</sup>

5. On December 13, 2019, Staff filed schedules and exhibits with direct testimony from: Andria Jackson, Ann Diggs, Katie Figgs, Adam Gatewood, and Roxie McCullar.<sup>8</sup> Based on its review of United's embedded costs, revenue requirements, investments, and expenses, Staff recommended increasing United's KUSF annual support by \$1,144,146, and requiring United to execute written agreements for all affiliate services and transactions and to file those agreements with the Commission.<sup>9</sup>

6. Staff expressed concerns with some of the components, and the allocation of United's Board of Directors' compensation.<sup>10</sup> Each of the eight members of United's Board

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<sup>4</sup> Application for United Telephone Association, Inc. (Application), July 24, 2019.

<sup>5</sup> *Id.* at p. 3.

<sup>6</sup> *Id.* at Sections 3-12.

<sup>7</sup> *Id.* at pp. 7-18.

<sup>8</sup> See Direct Testimony of Ann Diggs, Katie Figgs, Adam Gatewood, and Roxie McCullar, Dec. 13, 2019 (filed separately).

<sup>9</sup> Staff's Testimony in Support of Settlement Agreement (Staff Testimony in Support), Jan. 22, 2019, p. 2.

<sup>10</sup> Jackson Direct, pp. 19-21.

serve on three separate boards simultaneously: UTA, UCA, and UCW. UTA, UCA, and UWC have separate, consecutive board meetings on the third Thursday of each month.<sup>11</sup> United (UTA) pays \$488, UCA pays \$276, and UWC pays \$597.<sup>12</sup> So each board member receives \$1,361 per month (or \$16,332 annually) for attending board meetings. Of that \$16,332, only \$5,856 is included in United's revenue requirement, which Staff adjusted down to \$5,414.<sup>13</sup> In addition to being compensated for attending regular meetings and an annual meeting, the Board members are compensated mileage and secretary fees (paid solely by UTA), and fees and per diem related to the attendance of one industry conference per year (split evenly between regulated and non-regulated operations).<sup>14</sup>

7. Staff also expressed concern with the long term care (LTC) insurance (paid solely by UTA) provided to the Board members,<sup>15</sup> and reduced the \$3,294.82 in expenses to \$1,092.23.<sup>16</sup> Despite the reduction, the Commission questions the need for the KUSF to reimburse board members for long term care expenses.

8. Staff also raised concerns over the continued lack of affiliate agreements. Specifically, Ann Diggs testified that United has not executed written agreements for all services and transactions to or from its affiliates and failed to file affiliate agreements with the Commission in violation of United's Stipulated Settlement Agreement with Staff, and approved by the Commission in United's most recent KUSF docket, Docket No. 10-UTAT-525-KSF.<sup>17</sup> Accordingly, Staff recommends requiring United to execute written agreements for all services and transactions to or from its affiliates, and to file all affiliate agreements with the Commission

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<sup>11</sup> DR 113, Attached to Jackson Direct.

<sup>12</sup> *Id.*

<sup>13</sup> See Jackson Direct, Exh. ANJ-6(a).

<sup>14</sup> Jackson Direct, p. 19.

<sup>15</sup> *Id.*, pp. 19-20.

<sup>16</sup> *Id.*, Exh. ANJ-6(a).

<sup>17</sup> Direct Testimony of Ann Diggs (Diggs Direct), Dec. 13, 2019, p. 5.

pursuant to K.S.A. 66-1402.<sup>18</sup> Under the FCC's affiliate transaction rules,<sup>19</sup> services sold or transferred from a company to its affiliates must be recorded at no less than the higher of fair market value (FMV) and fully distributed cost (FDC).<sup>20</sup>

9. On January 8, 2020, United filed rebuttal testimony, opposing a number of Staff's recommended adjustments.<sup>21</sup> After reviewing United's rebuttal, Staff revised its recommended revenue requirement and added \$115,393 to the original recommendation, increasing its recommended KUSF annual support increase to \$1,259,539.<sup>22</sup>

10. On January 21, 2020, Staff and United filed a Joint Motion to Approve Settlement Agreement; Cancel Remaining Procedural Schedule; Render a Decision on Paper Record (Motion)<sup>23</sup> resolving all outstanding disputes between the parties. Under the proposed settlement, United's KUSF annual support will increase by \$1,351,000 – for an annual total of \$1,636,030.<sup>24</sup> In the accompanying Motion, the parties set forth the terms of the Settlement Agreement and requested the Commission cancel the remaining procedural schedule in the Docket and render a decision in this Docket based solely upon the paper record.<sup>25</sup>

11. On January 22, 2020, Andria Jackson submitted Testimony on behalf of Staff supporting the Settlement Agreement. In the Testimony, Ms. Jackson discussed the procedural history of the Docket, described the terms of the Settlement Agreement, and examined the standards the Commission utilizes when considering a unanimous settlement agreement.<sup>26</sup>

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<sup>18</sup> *Id.*, p. 6.

<sup>19</sup> 47 C.F.R. §64.902.

<sup>20</sup> Diggs Direct, p. 9.

<sup>21</sup> Rebuttal Testimony of Stacey Brigham, Jan. 8, 2020, pp. 4-5.

<sup>22</sup> Staff Testimony in Support at pp. 2-3

<sup>23</sup> On January 23, 2020, Staff filed an Errata to Filing, correcting a typographical error in the Joint Motion. Errata to Filing, Jan. 23, 2020, p. 1

<sup>24</sup> See Staff Testimony in Support, at p. 6 (table indicating Staff's adjustments).

<sup>25</sup> See *id.*

<sup>26</sup> See Staff's Support of Settlement at pp. 2-3.

12. On January 28, 2020, the Commission issued its Order Canceling Remaining Procedural Schedule in this Docket.

13. The Settlement Agreement provides that United's KUSF support shall increase by \$1,351,000, effective the first day of the month following a Commission Order in this Docket.<sup>27</sup> In addition to the \$1,351,000 increase,

- United's annual KUSF support will decrease by \$20,376 after 5 years to reflect the full recovery of the rate case expense.<sup>28</sup>
- United will execute written agreements for all services and transactions to or from its affiliates, and will file such agreements with the Commission.<sup>29</sup>

14. The Commission is particularly concerned with United's continued failure to consistently file affiliate agreements as required by K.S.A. 66-1402,<sup>30</sup> and its failure to appropriately allocate costs. Continued failure will result in penalties for non-compliance. United is directed to execute written agreements for all services and transactions to or from its affiliates, and to promptly file all affiliate agreements with the Commission. Pursuant to K.S.A. 77-415(b), the Commission designates this paragraph as precedential.

15. The Commission is troubled by United's ongoing practice of offering what appears to be excessive or unnecessary benefits to its board members. Long term care insurance appear to be excessive and not related to providing sufficient and efficient telephone service to customers. Likewise, the Commission questions the necessity of compensating board members \$16,332 for meetings. Going forward, the Commission directs Staff and any RLEC seeking increased KUSF funding to detail these types of board expenses and provide evidence on

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<sup>27</sup> Staff's Support of Settlement, p. 3.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Testimony of Ann Diggs, Dec. 13, 2019, p. 6.

whether these expenses should be paid out of the KUSF. The Commission will consider whether the expenses are necessary to provide regulated telecommunication service. Among the factors that the Commission will evaluate are: (1) whether the expenses are just and reasonable; (2) do the expenses disproportionately benefit the RLECs' shareholders at the expense of contributors to the KUSF; (3) are the benefits reasonably related to the qualifications of the board members; (4) are the board members independent or are they family members or employees of the RLEC; (5) are the expenses reasonable compared to the costs incurred by other similarly-situated and similarly-sized RLECs throughout the State and the Country; and (6) any other evidence the Commission determines is relevant to the issue of whether cost recovery through the KUSF should be allowed for these expenses. Going forward, the Commission will disallow excessive or unnecessary benefits to board members in KUSF dockets. What constitutes excessive or unnecessary will be determined on a case-by-case basis after reviewing each carrier's expenses. When these costs are included in a carrier's revenue requirement, they are paid by all Kansans, not just those who take service from the particular carrier. Pursuant to K.S.A. 77-415(b), the Commission designates this paragraph as precedential.

16. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith to settle the dispute.<sup>31</sup> When approving a settlement, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole, establishes just and reasonable rates, and is in the public interest.<sup>32</sup>

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<sup>31</sup> *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-242 (2001).

<sup>32</sup> *Citizens' Util. Ratepayer Bd. v. Kansas Corp. Comm'n.*, 28 Kan.App.2d 313, 316 (2000), rev. denied March 20, 2001.

17. The Settlement Agreement is a unanimous settlement agreement as defined by K.A.R. 82-1-230a, therefore, there is no need to apply the five-factor test.<sup>33</sup> Instead, the Commission examines whether the settlement: (1) is supported by substantial competent evidence in the record as a whole; (2) will result in just and reasonable rates; and (3) if it is in the public interest.

18. Substantial competent evidence possesses something of substance and relevant consequences, which furnishes a substantial basis of fact to reasonably resolve the issues.<sup>34</sup> Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a court can only find that a Commission decision is not supported by substantial competent evidence when the evidence shows “the [Commission’s] is so wide of the mark as to be outside of the realm of fair debate.”<sup>35</sup> The Settlement Agreement is supported by United’s Application, direct and rebuttal testimony, Staff’s direct testimony and testimony in support of the Settlement Agreement. The audit information, direct testimony, and rebuttal testimony filed by the parties in this case fully address: (1) revenue requirement analysis that includes numerous pro forma adjustments, (2) cost of capital analysis, and (3) non-regulated and affiliated transactions. As a whole, the filed positions in this Docket constitute the body of evidence the Commission would rely on to make a determination of the issues were this Docket to proceed to a full hearing.

19. Having reviewed the record as a whole, the Commission finds the Settlement Agreement is supported by substantial competent evidence.

20. An examination of just and reasonable rates has limited applicability to the Settlement Agreement in this Docket, primarily because the Settlement Agreement does not

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<sup>33</sup> See Docket No. 15-KCPE-116-RTS, Order on KCP&L’s Application for Rate Change, ¶16 (Sept. 10, 2015).

<sup>34</sup> *Farmland Indus., Inc. v. Kansas Corp. Comm’n*, 25 Kan.App.2d 849, 852 (1999).

<sup>35</sup> See *id.* at 851.

revise the tariffed rates charged to United's customers. Rather, an audit of the type in this docket determines the revenue requirement for the Company and the resulting amount of KUSF support a rate of return regulated carrier receives; as such, any adjustment to a carrier's KUSF support is based on such carrier's embedded costs, revenue requirements, investments and expenses. According to Staff, the agreed upon increase of KUSF support is an accurate approximation of what the Commission would decide should this docket be fully litigated. As such, the KUSF support increase agreed to by the parties is found to be just and reasonable.

21. The Commission also finds the terms of the Settlement Agreement are fair and reasonable and were fully and fairly negotiated by the parties in conjunction with the acknowledgement that it is unlikely the Commission would accept wholesale any party's pre-filed position.

22. Furthermore, the Commission finds the approval of the Settlement Agreement is in the public interest. The public interest is served when customers are protected from unnecessarily high prices, discriminatory prices, and/or unreliable service. Moreover, by settling the issues, the parties have agreed to limit costly administrative expenses which otherwise would be paid by other KUSF contributors. Because it is in the public interest to avoid those costs, and because the terms of the Settlement Agreement do avoid those costs, the Commission finds the Settlement Agreement is in the public interest.

23. As agreed to by the Parties, in any Order issued after February 28, 2020, the change in KUSF support will be effective on the first of the month following the issuance of a Commission Order.<sup>36</sup> Therefore, the change in KUSF support will be effective on April 1, 2020.

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<sup>36</sup> Joint Motion to Approve Settlement Agreement; Cancel Remaining Procedural Schedule; Render a Decision on Paper Record, Jan. 21, 2020, ¶ 7.

24. Based on the foregoing, the Commission finds the Settlement Agreement is supported by substantial competent evidence in the record as a whole, results in just and reasonable rates, and is in the public interest. Thus, the Commission approves the Settlement Agreement in its entirety.

**THEREFORE, THE COMMISSION ORDERS:**

A. The Joint Motion to Approve Settlement Agreement is granted. The Settlement Agreement is approved in its entirety. The terms of the attached Settlement Agreement are incorporated into this Order.

B. The Commission approves United's annual KUSF support increase of \$1,351,000, effective for the first day of the data month after the issuance of this Order five (5) years after United's annual KUSF support increase, the KUSF support shall decrease by \$20,376 to reflect the complete recovery of amortized rate case expense over five (5) years.

C. United is directed to execute written agreements for all services and transactions to or from its affiliates, and to promptly file all affiliate agreements with the Commission.

D. The change in KUSF support will be effective on April 1, 2020.

E. Pursuant to K.S.A. 77-415(b), paragraphs 14 and 15 of this Order are designated precedential. Accordingly, this Order will be included in the Commission's index of precedential orders, published on the Commission's website.

F. Any party may file a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>37</sup>

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

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<sup>37</sup> K.S.A. 77-503(c); K.S.A. 77-531(b).

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

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 03/17/2020



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Lynn M. Retz  
Secretary to the Commission

BGF/zc

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application and Request )  
of United Telephone Association, Inc. for an ) Docket No. 20-UTAT-032-KSF  
Increase in its Cost-Based Kansas Universal )  
Service Fund Support. )

**SETTLEMENT AGREEMENT**

The Staff of the Kansas Corporation Commission (“Staff” and “Commission,” respectively) and United Telephone Association, Inc. (“United”) (collectively, “Parties”), pursuant to K.A.R. 82-1-230a, enter into the following Unanimous Settlement Agreement (“Agreement”) in resolution of all disputes in this matter.

**I. TERMS OF AGREEMENT**

**A. United’s annual KUSF support shall increase by \$1,351,000.**

1. The Parties agree that United’s Annual KUSF support shall increase by \$1,351,000. The Parties request that the Commission issue an Order in this proceeding by February 28, 2020, if possible. This would allow the KUSF increase to be effective on March 1, 2020. If an Order cannot be issued by February 28, 2020, the Parties acknowledge that the change in KUSF support will be effective on the first of the month following the issuance of a Commission Order.

**B. United’s annual KUSF support shall decrease by \$20,376 after 5 years.**

2. Five (5) years after United’s annual KUSF support increases as a result of approval of this Settlement Agreement, it shall be reduced by \$20,376 to reflect the complete recovery of amortized rate case expense over 5 years.

C. United will execute written agreements for all services and transactions to or from its affiliates, and to file all affiliate agreements with the Commission pursuant to K.S.A. 66-1402.

## II. GENERAL PROVISIONS

3. This Agreement represents a negotiated settlement that resolves the issues in this docket as between the Parties. The Parties represent that the terms of the Agreement constitute a fair and reasonable outcome and comport with the statutory requirements of K.S.A. 66-2008(e) for purposes of calculating United's KUSF support. Except as specified herein, the Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement in the instant proceeding. If the Commission accepts this Agreement in its entirety and incorporates the same into a final order without material modification, the Joint Movants shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues. The parties recognize that, pursuant to K.A.R. 82-1-230a(b), the Commission may approve, reject, or modify any Settlement Agreement. Should the Commission not approve the terms of this Settlement Agreement in full, the Parties agree that by entering into this Settlement Agreement, they are not waiving any arguments.

4. Nothing in this Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information.

5. The provisions contained in this Agreement have resulted from negotiations among the Parties and are interdependent. In the event the Commission does not approve and

adopt the terms of this Agreement in total, it shall be voidable and none of the Parties shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

**III. TESTIMONY IN SUPPORT OF THE AGREEMENT**

6. The Parties agree that Staff will file testimony in support of this Agreement on January 22, 2020. United may file testimony, but it is not required to do so. Staff's testimony will address the three factors the Commission typically considers when evaluating a unanimous settlement agreement.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

20-UTAT-032-KSF

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 03/17/2020.

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