

Comments of
Patti Petersen-Klein, Executive Director
Kansas Corporation Commission

Before the House Energy and Utilities Committee
Regarding FCC's Order on Reform of Universal Service and Intercarrier Compensation
January 18, 2012

Chairman Holmes and Committee Members:

My name is Patti Petersen-Klein and I am the Executive Director of the Kansas Corporation Commission. Thank you for allowing me to appear before you this morning on behalf of the Commission and speaking about the Commission's efforts to implement the FCC's Order.

Background

The Kansas Telecommunications Act was enacted in 1996 to promote telecommunications competition in local markets. In implementing provisions in the Kansas Telecommunications Act, the Commission has been guided by the public policy goals declared in K.S.A. 66-2001. Pursuant to K.S.A. 66-2001, it is the public policy of the state to:

- (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;
- (b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;
- (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;
- (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and
- (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.

Within the Kansas Telecommunications Act, the Kansas Legislature charged the Commission with establishing the Kansas Universal Service Fund (KUSF) on or before January 1, 1997. The KUSF is currently in its fifteenth year of providing support to local telephone service providers to assist in making universal service available in high-cost areas of the state, to provide dual-

party relay service and telecommunications equipment for persons with disabilities and to provide assistance to those with lower incomes through the Lifeline program. For the last several years, the KUSF has also provided funding for Kan-Ed. Currently, the fund is meeting requirements totaling approximately \$62 million annually.

While the initial amount of KUSF support was set to replace lost access charge revenues, K.S.A. 66-2008(c) requires the Commission to periodically review the KUSF to determine if the cost to provide local service by carriers eligible to receive such funds justifies modification. “If the Commission determines that any changes are needed, the Commission shall modify the KUSF accordingly.” K.S.A. 66-2008(c)

The federal universal service fund (USF) also provides support for universal service in Kansas. Carriers receive support for serving in high-cost areas and support for low-income consumers is also provided through the USF. By far, the most significant relationship between the KUSF and USF is in support for high-cost service. For the incumbent carriers, the Commission takes into account the amount of USF a carrier receives in determining the amount of KUSF support necessary for the carrier. Thus, changes in USF support amounts have a direct effect on KUSF support.

Kansas currently ranks fifth in receipt of high-cost support from the USF. In 2010, carriers received approximately \$195 million in federal high-cost support for Kansas service areas. From 1998 to 2010, carriers have received approximately \$1.9 billion in federal high-cost support for Kansas service areas.

FCC Order and the National Broadband Plan

Since 1934, universal service has focused on providing voice communications services to all Americans at reasonable charges. In early 2009, the U.S. Congress directed the FCC to develop a National Broadband Plan. In response, the FCC created and released the *Connecting America: The National Broadband Plan* on March 16, 2010. Under this proposal, the focus of universal service will change, reflecting the need for broadband infrastructure for many forms of communications, including voice communication.

The FCC acknowledges that USF and ICC are both federal-state systems. That is, both the FCC and state regulators have oversight responsibilities related to USF and intercarrier compensation (ICC). Over the last fifteen years, the Commission has implemented the KUSF and addressed those ICC issues within its jurisdiction to promote the goals of the Kansas Telecommunications Act. The Commission has incorporated FCC policies, where required and/or applicable, to encourage competition within the telecommunications industry in Kansas. The FCC’s reform proposals will substantially affect Kansans and the implementation of the Kansas Telecommunications Act by the Commission. As the FCC revisits the definition of universal service and the role of advanced networks in today’s world, Kansas must determine its priorities for providing communication services throughout Kansas and make policy decisions consistent with promotion of these priorities and the goals defined in K.S.A. 66-2001. As the Commission makes these determinations it must do so with an eye on implications for changes that may be

necessary to maintain a KUSF that is “. . . not inconsistent with the [FCC’s] rules to preserve and advance universal service.”¹

The FCC released its Order and Further Notice of Proposed Rulemaking on November 16, 2011. The document is voluminous – including the appendices, it is 759 pages. The Commission has opened a proceeding, in part, to explore the impact the FCC’s universal service and intercarrier compensation reform could have on Kansas and the KUSF. (Docket Number 12-GIMT-170-GIT)

The Commission’s order opening the proceeding, which is attached to my testimony, avows the Commission will undertake an evaluation of priorities for providing communication services throughout Kansas, including what policies are needed to promote these priorities and this state’s goals as defined in K.S.A. 66-2001.

The Commission’s order recognizes that its staff observed that issues may need to be reviewed in phases as they are ripe for consideration, and that its staff recommended the Commission open this proceeding for several reasons, including:

- a Commission review of the impact of the FCC’s reform on Kansas and the KUSF will be necessary, including a review of the state’s definition of universal service;
- a Commission review of the KUSF, pursuant to K.S.A. 66-2008(c), 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 is prudent, including a review of the fund’s performance against the policy objectives set forth in K.S.A. 66-2001; and,
- it would be efficient to address any findings from the pending audit of the KUSF third-party administrator in this proceeding.

The Commission agreed that an investigation should be opened to explore changes needed to maintain a KUSF that would be consistent with the FCC’s rules to preserve and advance universal service. This investigation would include a review of the definition of universal service that will consider the impact of the FCC’s USF and ICC reform efforts. The Commission determined it would also evaluate whether modification of the KUSF is justified under K.S.A. 2010 Supp. 66-2008(c), taking into account the policy objectives of the Kansas Telecommunications Act as articulated by the Legislature in K.S.A. 66-2001. The Commission also noted that findings from the KUSF audit would be examined to determine whether they should be addressed in this proceeding.

Noting that Commission staff and the industry had been reviewing this extensive FCC Order, on December 23, 2011, the Commission scheduled an informal industry conference to be moderated by the Commission staff on January 9, 2012, for the purpose of developing issues to be discussed in the proceeding and for the purpose of informal discussion and development of a procedural schedule. The parties developed a list of issues as a foundation for further identification and prioritization of issues. Comments addressing further identification of issues, prioritization of

¹ 47 U.S.C. § 254(f).

the issues and proposed procedures and timelines for addressing the issues as prioritized are to be filed with the Commission by March 1, 2012.

In the coming months, the Commission will be addressing the various issues raised and addressing the potential impacts of the FCC's Order on Kansas and the KUSF.

Thank you for your consideration of these comments. I am available for questions at the appropriate time.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Chairman Mark Sievers
 Commissioner Ward Loyd
 Commissioner Thomas E. Wright

In the Matter of a General Investigation into)
the Kansas Universal Service Fund pursuant) Docket No. 12-GUMT-170-61T
to K.S.A. 2010 Supp. 66-2008(c).)

ORDER OPENING DOCKET, DESIGNATING PREHEARING OFFICER,
AND DIRECTING ACTIVE PARTIES TO FILE ENTRY OF APPEARANCE

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

1. Since 1934, universal service has focused on providing voice communications service to all Americans at reasonable charges. In early 2009, the United States Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan (NBP) to ensure ubiquitous access to broadband services. In response, the FCC issued created and released the *Connecting America: The National Broadband Plan* on March 16, 2010. Under this proposal, the focus of universal service will change, reflecting the need for broadband infrastructure for many forms of communication, including voice communication.

2. Carriers throughout Kansas have received assistance in providing universal service to high-cost areas of the state and to low-income consumers through support received from both the federal universal service fund (FUSF) and the Kansas universal service fund (KUSF). The FCC's proposed NBP-related wireless/mobility, universal service and intercarrier compensation reform initiatives necessitates this Commission initiating an investigation to explore the impact of

universal service reform on Kansas and more particularly on the KUSF. The Commission has jurisdiction to initiate this investigation pursuant to K.S.A. 2010 Supp. 66-2008(c).

I. Background

3. The Kansas Legislature enacted the Kansas Telecommunications Act of 1996 (KTA), K.S.A. 66-2001, *et seq.*, in part, to promote telecommunications competition within the state. In K.S.A. 66-2001, the Legislature declared it is the public policy of the state to:

- (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;
- (b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;
- (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;
- (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and
- (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.

4. As part of the KTA, the Legislature charged this Commission with establishing the KUSF on or before January 1, 1997.¹ This is the fifteenth year the KUSF has provided support to carriers with service territory in Kansas to ensure universal service is available in high-cost areas of the state, to provide dual-party relay service and telecommunications equipment for persons with disabilities, and to assist those with lower incomes through the Lifeline program. For the last several years, the KUSF has also provided funding for Kan-Ed, which benefits distance learning and public library services. Currently, the fund provides support of approximately \$65.7 million annually to fulfill the requirements for which the KUSF was established.²

¹ K.S.A. 2010 Supp. 66-2008.

² KCC Docket No. 11-GIMT-201-GIT, Direct Testimony of Sandra K. Reams, filed December 22, 2011, page 2.

5. Initially, KUSF support was used to replace lost access charge revenues with explicit, rather than implicit, support. In delegating to the Commission the responsibility to implement the KUSF, the Legislature also required that the fund be reviewed periodically to determine if the cost to provide local service by carriers eligible to receive such funds justified modification. In the event the Commission determined changes were needed, the Legislature directed the Commission to modify the KUSF accordingly.³

6. In addition to the KUSF, support for universal service in Kansas is provided from the FUSF. The most significant relationship between KUSF and FUSF involves support for high-cost service. In determining the amount of KUSF support that will be provided to an incumbent carrier, the Commission takes into account the amount of FUSF received by the carrier. For this reason, any change in FUSF support will have a direct impact on KUSF support.

II. Purpose of this General Investigation

7. Kansas currently ranks third in receiving high-cost support from the FUSF. In 2010, Kansas carriers received approximately \$256 million in federal high-cost support for service areas located in Kansas. From 1998 to 2010, Kansas carriers have received approximately \$1.9 billion in federal high-cost support for Kansas service areas.⁴ As a result of the large amount of FUSF high-cost support used for Kansas service areas, any changes in how this support is administered will directly impact the amount that is available for Kansas service areas.

8. In building on the NBP, the FCC issued a Notice of Inquiry (NOI) and Notice of Proposed Rulemaking (NPRM) Regarding the Connect America Fund (CAR) – A National Broadband Plan for our Future (the CAR NPRM), seeking comment on the use of a model to determine universal service support levels, on the best way to accelerate targeting of funding toward unserved areas, and on specific reforms to cap growth and cut inefficient funding in the legacy high-cost support mechanisms. In addition, the FCC issued a NPRM (the Mobility Fund NPRM) on October 14, 2010, concerning the development of a Mobility Fund and seeking

³ K.S.A. 2010 Supp. 66-2008(c).

⁴ Federal-State Joint Board on Universal Service Monitoring Report: Status through October 2010, released December 30, 2010, Table 3.14.

comment on using the FUSF “reserves” to improve mobile voice coverage and wireless broadband access to the Internet. To further its previously noted initiatives, the FCC released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM) addressing reform of the FUSF to promote broadband deployment and of the Intercarrier Compensation (ICC) regime and requesting comments on a myriad of issues aimed at “[b]ringing robust, affordable broadband to all Americans.”⁵ The FCC seeks to fundamentally change the FUSF and ICC systems to eliminate waste and inefficiency and to reorient FUSF and ICC to meet the nation’s broadband availability challenge. Because the FCC views broadband deployment, FUSF reform, and ICC reform as interrelated, these issues were addressed in one NPRM.

9. The FCC recognizes that state regulators and the FCC share oversight responsibilities related to the FUSF and ICC.⁶ During the last 15 years, this Commission has implemented the KUSF and has addressed ICC issues within its jurisdiction to promote the goals of the KTA. Where required and/or applicable, the Commission has incorporated FCC policies to encourage competition within the telecommunications industry in Kansas. The FCC’s newest reform proposals will substantially affect Kansans and this Commission’s continuing implementation of the KTA.

10. Based upon its review of anticipated changes, the Commission’s staff (Staff) has recommended that, as the FCC revisits its definition of universal service and reconsiders the role of advanced networks in today’s world, this Commission undertake an evaluation of priorities for providing communication services throughout Kansas, including what policies are needed to promote these priorities and this state’s goals as defined in K.S.A. 66-2001. Staff has urged the Commission to open a proceeding to explore issues related to the KUSF. But Staff has recognized policy issues reviewed within this proceeding may be broad reaching and are not

⁵ Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM), FCC 11-13, *rel.*, released February 9, 2011,, ¶ 1.

⁶ See, e.g., FCC USF-ICC NPRM dated February 8, 2011, *supra*, at ¶13: “We recognize that USF and ICC are both hybrid state-federal systems, and that reform will work best with the Commission and state regulators cooperating to achieve shared goals.”

interdependent. As a result, issues may need to be reviewed in phases as they become ripe for consideration. For now, Staff has recommended the Commission open this proceeding for the following four reasons:

(1) Staff believes the Commission will need to review the impact any FCC USF/ICC reform will have on Kansas and the KUSF, including a review of the state's definition of universal service.

(2) Staff believes it is prudent for the Commission to review the KUSF pursuant to K.S.A. 66-2008(c) 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. It is also prudent to review the fund's performance against the policy objectives set forth in K.S.A. 66-2001.

(3) Staff believes it is most efficient to address any findings from the pending audit of the KUSF third party administrator in this docket.

(4) The orderly progression of a docket where costs can be properly assessed is the most efficient, effective and transparent way for the Commission, as a whole, to address these issues exploring the KUSF.

11. The Commission agrees with Staff that a general investigation should be opened at this time in which the Commission will explore changes that will be needed to maintain a KUSF that is "not inconsistent with the [FCC's] rules to preserve and advance universal service."⁷ This investigation will include, *inter alia*, a review of the definition of universal service that takes into account the impact of any FCCUSF reform and ICC reform. In this review, the Commission will also evaluate whether modification of the KUSF is justified under K.S.A. 2010 Supp. 66-2008(c), taking into account the policy objectives of the KTA as articulated by the Legislature in K.S.A. 66-2001. At this time, the Commission is preparing to update audits of the KUSF third-party administrator and is aware the current administration contract expires June 30, 2012. Any findings from that audit will be examined to determine whether they should be addressed in this proceeding. The Commission finds it appropriate to open this docket. The costs of this proceeding will be assessed against all carriers or entities that contribute to the KUSF (i.e., ETCs, CLECs, IXCs, VOIPs and wireless), as discussed in a separate Order Assessing Costs that

⁷ 47 U.S.C. § 254(f).

accompanies this Order Opening Docket. Those carriers or entities shall be treated as parties to this proceeding and shall be served with this Order Opening Docket. As this docket progresses, the Commission may find it appropriate to include additional parties that might be impacted by the issues being explored in this proceeding.

III. Entry of Appearance and Electronic Service for Active Parties

12. The Commission anticipates carriers or entities that will want to be actively involved in this proceeding will be fewer than all carriers or entities being served with this Order. Active parties are those carriers or entities that desire to be involved in litigating issues that will be identified and explored in this general investigation. Only those entities that participate as active parties in this docket will be served with pleadings, testimony, briefs, and procedural orders as this proceeding progresses; only active parties will be given notice of and allowed to participate in hearings, roundtables, or other sessions that are scheduled in this proceeding. Those entities that desire to participate as an active party in this proceeding shall file an entry of appearance by September 30, 2011. Any carrier or entity that has been served with this Order but has chosen not to participate as an active party will not be served with pleadings, testimony, briefs and procedural orders during litigation of this docket. However, all entities being served with this Order will be served with any Commission decision that is a final order. Upon receipt of a Commission final order, an entity that chose not to actively participate in this docket will be allowed to petition for reconsideration, but the entity will not be allowed to introduce new issues inasmuch as it was given notice of the adjudicative proceeding with service of this Order but chose not to participate.⁸ If a carrier or entity did not previously enter its appearance in this proceeding but later desires to become an active party, that carrier or entity may do so by submitting an Entry of Appearance that states whether it is willing to receive electronic service and, if so, provides an email address for service, as discussed in ¶ 12.

13. The Commission urges entities that are involved as active parties to this proceeding consider agreeing to receive pleadings, testimony, briefs, and orders by electronic

⁸ See K.S.A. 77-617(c).

service without a hard-copy follow-up as required by K.A.R. 82-1-216(a)(6). Confidential papers will be served either electronically if confidentiality can be retained or by some other method acceptable to the parties, such as providing information on a compact disc. For entities agreeing to use electronic service, testimony, briefs, and other pleadings must be served electronically by 3:00 p.m. on the date due, without requiring service among the parties of a follow-up hard copy, but the original and at least seven paper copies of testimony, briefs, and other pleadings must still be filed in the Commission's docket room by close of business on the date of the deadline.⁹ Any electronic service without follow-up hard copies will specifically state in the electronic message that the electronic message constitutes service of the attached document and that a hard copy will not follow to make clear paper copies will not also be provided. Electronic service of testimony, briefs and other pleadings shall include service on the Prehearing Officer designated below at m.coffman@kcc.ks.gov.

VI. Confidential Information

14. In conducting this investigation, the Commission may at times seek information from parties that is confidential commercial information.¹⁰ The Commission recognizes that some information may be particularly sensitive due to the extremely competitive nature of this industry. If a party identifies information requested by the Commission as particularly sensitive due to competition in the industry, the Commission shall not disclose this information to anyone other than the Commission and members of the Commission's staff. The Commission will carefully consider whether disclosure is proper if anyone not approved by the party requests permission to allow inspect such information.¹¹

V. Prehearing Officer Designated

15. Although the Commission will conduct any evidentiary hearing in this docket, the Commission designates a prehearing officer to conduct any prehearing conferences that might be needed and to address any matters that are appropriately considered in a prehearing conference,

⁹ K.A.R. 82-1-215(a).

¹⁰ K.S.A. 2010 Supp. 66-1220a.

¹¹ K.S.A. 2010 Supp. 66-1220a(a)(3).

including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b). These items include, for example, conversion of the proceeding to another type; recommending the opening or other dockets; 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; and such other matters as will promote the orderly and prompt conduct of the hearing. The Commission designates Martha J. Coffman, Advisory Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3105, email address m.coffman@kcc.ks.gov, to act as Prehearing Officer in this proceeding.¹² 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 hereby opens this investigation for the reasons discussed in this Order.

(B) Any carrier or entity that desires to participate as an active party in this proceeding shall file an Entry of Appearance by September 30, 2011, stating whether the party will agree to electronic service and providing an email address, as discussed in this Order.

(C) This Order will be served on all carriers or entities that contribute to the KUSF (i.e., ETCs, CLECs, IXCs, VOIPs and wireless). K.S.A. 66-1502.

(D) Parties have fifteen days from the date of service of this Order in which to petition the Commission for reconsideration of any matter decided herein. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

(E) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

¹² K.S.A. 77-516; K.S.A. 2010 Supp. 77-551(c).

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: SEP 13 2011


ORDER MAILED SEP 13 2011

Patrice Petersen-Klein
Executive Director

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