

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair
Robert E. Krehbiel
Michael C. Moffet

FILED³

JAN 16 2007

Missouri Public
Service Commission

In the Matter of a Review of the)
Commission's Federal USF Certification)
Requirement to Remove All Expenses and)
Investments by Competitive Eligible)
Telecommunications Carriers in a)
Southwestern Bell Telephone, L.P. Study)
Area from the Competitive Eligible)
Telecommunications Carrier's Justification)
of Use of High Cost Federal USF Support.)

Docket No. 07-GIMT-498-GIT

ORDER OPENING DOCKET

NOW COMES the above captioned matter for consideration and determination by the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

1. On July 27, 2006, the Commission issued an order opening Docket No. 07-GIMT-025-GIT (025 Docket) for the purpose of requiring companies to submit certifications and data required for the Commission to substantiate that carriers are using support for the provision, maintenance, and upgrading of facilities and services for which high-cost support from the Federal universal service fund (FUSF) is intended. The Commission is required to file a recommendation regarding each eligible telecommunications carrier's (ETC) use of FUSF support to the Federal Communications Commission (FCC). The Commission's July 27 order directed companies to file information required for certification by August 25, 2006. The order also attached copies of the Commission's "USF Certification Instructions for Cost Reporting"

Exhibit No. 33
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previously adopted in Docket No. 05-GIMT-112-GIT, in an order dated April 13, 2005 (2005 Order).

2. On August 14, 2006, Alltel Kansas Limited Partnership (Alltel) filed a petition seeking reconsideration of the Commission's order opening the 025 Docket. Alltel was concerned with an FUSF certification instruction which required a competitive ETC (CETC) to remove all expenses and investments associated with a Southwestern Bell Telephone, L.P. (SWBT) study area from its justification of use of FUSF support. Alltel also argued that neither Federal law nor FCC rules imposed such a limitation on the use of FUSF support, and that other states have not imposed such a requirement. According to Alltel, such requirement is discriminatory by allowing funds to be spent in a rural local exchange area that are attributable to another rural local exchange carrier but not allowing such funds to be used in a Bell Operating Company (BOC) exchange such as SWBT's territory. Alltel further argued that this requirement unreasonably and unnecessarily limits ETC discretion in meeting customer service requirements.

3. On September 1, 2006, Staff filed its response to Alltel's petition. Staff explained that one of Alltel's concerns was caused by an incorrect reference in the certification instructions and clarified which citation should have been made. In addition, Staff argued that any misunderstanding by Alltel of the instructions adopted in the Commission's prior orders could be taken into account when the Commission evaluated Alltel's certification data, but Staff argued the certification for the year 2005 regarding FUSF information should not be delayed due to the FCC-imposed September 29, 2006 deadline for receipt of the certification information. Staff noted it did not oppose a review of the substantive issue raised by Alltel regarding certification requirements for CETCs related to expenditures and investments in incumbent local exchange

carrier (ILEC) study areas, but Staff suggested that the Commission open a new docket to address the issue.

4. Alltel filed its certification data as required and after applying the allocation method adopted by the Commission, Staff found Alltel's data met the certification requirements. As a result, the Commission certified to the FCC that Alltel met the FUSF requirements for 2005 as implemented in Kansas. In light of this certification, the Commission found no reason to grant Alltel's petition for reconsideration and delay proceedings in the 025 Docket. Alltel's petition was denied by operation of law. K.S.A. 2005 Supp. 77-529(b).

5. The Commission addressed the question of what process to adopt to certify proper use of FUSF by CETCs in an earlier, generic docket, Docket 05-GIMT-112-GIT (112 Docket). There, after receiving comments from the parties, the Commission specified that it would not require CETCs to make a showing of expenses and investments by each rural ILEC study area, but that it would require all ETCS to provide data to show that their FUSF was spent within the supported areas to provide universal service. Furthermore, because SWBT did not receive high cost loop support from the FUSF, the Commission concluded that a CETC would not be allowed to use its expenditures and investments in SWBT study areas to justify its use of high cost FUSF support.¹

6. The Commission's September 25, 2006 Order in the 025 Docket found it appropriate to revisit the issue raised by Alltel, noting that Alltel's list of concerns did not address all arguments surrounding this issue. For example, Alltel did not address how allowing a CETC to use high cost FUSF support for expenses and investments in a BOC exchange in which the BOC does not qualify for FUSF support comports with requirements of competitive neutrality. The Commission concluded it would be best to revisit this certification requirement

¹ See April 13, 2005 Order, 112 Docket.

in a new generic docket, allowing all interested entities, including carriers currently seeking ETC designation, to present arguments. To this end, the Commission directed Staff to prepare for the opening of a new docket to review the Commission's prior decision regarding certification of use of FUSF support. That review is to be limited to the issue raised by Alltel. The Commission directed that the new generic proceeding should address whether all expenses and investments by CETCs in SWBT study areas should be excluded from a CETC's justification of use of high cost loop support from the FUSF.

7. On October 23, 2006, the Commission received a memorandum from Staff setting out questions on which the Commission should focus the general investigation. Specifically, Staff recommended the Commission request parties to the docket file comments on the questions, below, and also recommended the Commission allow parties to suggest additional, directly related questions. Staff suggested the following:

- A. Has the FCC provided any guidance on this issue?
- B. What are the certification filing requirements in other states?
- C. Have other states addressed whether funds paid to CETCs must be utilized by the CETC within the incumbent's study area from which the high cost support subject to certification requirements was ported?
- D. Is it competitively neutral to permit a CETC to use high cost FUSF support subject to certification requirements in an area where the ILEC does not receive those types of FUSF support?
- E. Is it consistent with FCC rules regarding portability to permit a CETC to use high cost FUSF support in an area where the ILEC does not receive high cost support?

F. Do the Commission's current certification instructions, which permit an allocation of cost for investment and expenses incurred in a particular study area to be allocated among several study areas sufficiently address Alltel's concern regarding its discretion to meet its customer service requirements?

8. The Commission finds it appropriate to open this docket to address the issue raised by Alltel in its petition for reconsideration in the 025 Docket. Specifically, the Commission finds that the questions posed in paragraph 7, above, are appropriate questions on which to request comment. The Commission also believes, however, that input from other entities is important to ensure all aspects of this issue are covered. The Commission makes all currently designated ETCs, and those companies with ETC applications currently docketed, parties to this docket and directs that parties wishing to actively participate in this docket, be on the service list, and receive pleadings from other parties enter an appearance no later than twenty days after the date of this order. Petitions to intervene are unnecessary during this twenty day period of time. The Commission also requests that if parties entering appearances wish to suggest additional questions or aspects of the single issue to be addressed in this docket, such additional questions or aspects of that issue should be included in the entries of appearance. Once entries of appearance are received, the Commission will schedule a prehearing conference at which interested parties may participate to determine a procedural schedule for this investigation, including whether the issue should be addressed through comments or testimony, and determine whether there is a need for a technical hearing.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. This docket is opened for the reasons set forth above.

B. The Commission makes all currently designated ETCs, and those companies with ETC applications currently docketed, parties to this docket. Parties shall file entries of appearances in this docket within twenty (20) days of the date this order is entered and shall include in that entry of appearance, if desired, additional questions or aspects of the single issue being addressed in this docket. Entities wishing to actively participate in the docket outside the twenty days previously provided shall file petitions to intervene pursuant to K.A.R. 82-1-225.

C. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118; K.S.A. 2005 Supp. 77-529(a)(1).

D. 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.

Moline, Chr.; Krehbiel, Com; Moffet, Com.

Dated: NOV 21 2006

ORDER MAILED

NOV 21 2006

 Executive Director

Susan K. Duffy
Executive Director

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