

- b) the availability of both services and BNFs;
- c) cost characteristics;
- d) the ability of the LEC to cross-subsidize an end user service with a BNF;  
and
- e) the competitiveness of the functions or services. (Rhinehart, Tr. at 3118-29).

b. PRICE CAP FACTORS

(1) PRODUCTIVITY FACTOR/PRICE CAP ADJUSTMENT FORMULA

64. The productivity factor "X" is critical in the development of a price cap plan. SWBT proposes a productivity offset not to exceed 1.25 percent for Basket One. (Van Pelt, Tr. at 2251-6). SWBT states that a 2.1 percent productivity offset is the starting point that represents the average of long term productivity offsets for telecommunications which were developed in seven widely recognized and accepted total factor productivity (TFP) studies. (Van Pelt, Tr. at 2251-7). According to SWBT, the 2.1 percent productivity offset is the difference between TFP growth of the U.S. economy to that of the telecommunications industry. (Van Pelt, Tr. at 2251-7). In his testimony, Dr. Van Pelt recommends, based on his experience with both the technical and practical aspects of productivity measurement, a productivity offset of 1.25 percent for Basket One. (Van Pelt, Tr. at 2251-6). SWBT recommends that no productivity offset be included in the Basket Three price cap index (PCI) formula. (Van Pelt, Tr. at 2251-16).

65. Sprint/United recommends the use of fifty (50) percent of the Gross Domestic Product Price Index (GDPPI) for the single-line and residential basket because of its simplicity and relative fairness. (Harper, Tr. at 2633-13). Sprint/United also recommends that if the Commission finds 50 percent of the GDPPI inappropriate, a productivity factor of approximately 1.25 percent be adopted. (Harper, Tr. at 2633-61).

66. AT&T expressed concern for any proposal of extremely low, or even no, productivity offset factors by SWBT and Sprint/United for the basic residential and single-line business basket and the miscellaneous services basket. Further, AT&T is concerned that the lack of sub-categories in these two baskets will give price cap-electing incumbents far too much ability to discriminate in the marketplace, particularly since the incumbent LECs continue to provide most miscellaneous services basket services. (Rhinehart, Tr. at 3118-87).

67. AT&T asserts that "X" be based on the expectation that the LECs' productivity will improve under price caps and should therefore be set to reflect those expectations. AT&T gave the example that in Illinois, Ameritech proposed an "X" of 0.7 and the Illinois Commerce Commission prescribed an "X" of 3.8 percent. In the FCC plan, the LECs may choose an "X" of either 4.0, 4.7 or 5.3 depending on the level of earnings sharing they are willing to do. (Rhinehart, Tr. at 3118-35 to 3118-36).

68. MCI does not recommend a specific adjustment formula or productivity factor. (Klaus, Tr. at 3121-39).

69. KCTA asserts there are two components of the "X" factor: a) a productivity growth rate; and b) an input price differential. The productivity growth rate is expressed as the TFP and measures the difference in the rate of growth between output and inputs. This should be based upon either total company or intrastate TFP, consistent with what the FCC does in this regard and should be in the range of two to three percent. The input price differential is designed to take into account the fact that the kinds of inputs the typical LEC purchases have experienced considerably less inflation over the past decade than the economy as a whole, and should be in the range of three to five percent. The TFP and the input price differential combine to make the total productivity offset in the range of five to seven percent. (Kravtin, Tr. at 2455-18 to 2455-19).

70. CURB's position is that rates should be subject to the same factors recently established by the FCC, which is GDPPI less the 5.3 percent productivity factor (subject to discouraging discriminatory pricing practices and not favoring urban customers over rural customers in any repricing). (Ostrander, Tr. at 2684-24). CURB, CompTel and Staff state that since SWBT adopted the 5.3 percent productivity option at the federal level it is reasonable for adoption in Kansas. (Ostrander, Tr. at 2684-26; Ensrud, Tr. at 3116-5 and 3116-51; Rearden, Tr. at 2867-10).

(2) EXOGENOUS ADJUSTMENTS

71. Various parties define exogenous adjustment as a factor which would allow changes to the price cap plan for circumstances beyond the carriers' control.

72. SWBT asserts that exogenous factors are particularly appropriate for legislative/regulatory mandates, such as number portability. (Brown, Tr. at 1840-68).

73. Sprint/United assert that it is essential that the Commission establish guidelines for the recovery of exogenous adjustments, either through the price cap adjustment formula or through the KUSF. Sprint/United propose exogenous treatment be given for significant changes in revenues or expenses incurred due to legislative or regulatory mandates outside the company's control. (Sprint/United Post-Hearing Brief at 8). Sprint/United suggest the Commission should clearly define the treatment of all exogenous costs before a LEC elects an alternative regulatory plan. (Harper, Tr. at 2633-70 to 2633-71).

74. AT&T expresses concerns about Sprint/United and SWBT's suggestions that tax law changes be considered eligible exogenous costs. (Rhinehart, Tr. at 3118-89).

75. KCTA asserts the adjustment formula should provide for exogenous conditions. Such adjustment should be used to flow through costs associated with one-time exogenous events resulting from conditions uniquely applicable to LECs. (Kravtin, Tr. at 2455-19 to 2455-20).

76. CURB's position is that exogenous costs should not be approved upfront. CURB asserts that a company should be required to petition the Commission for pass-through of certain uncontrollable "economic" cost increases, subject to a maximum 120-day proceeding. CURB maintains that "the petition should provide evidence of no offsetting cost decreases and that the cost increase has a significant

negative impact upon company operations (and documenting the negative impact on earnings and other matters)." (Ostrander, Tr. at 2684-24 to 2684-25).

77. Staff urges the Commission to narrowly define the circumstances under which a petition for exogenous adjustment may be filed and to exercise great caution in granting such a petition.

(3) IMPUTATION

78. Section 6(j) of the State Act requires imputation by LECs as part of the price floor for toll services. "Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by local exchange carriers on a toll service basis." (HB 2728 § 6(j)). The purpose of imputation is to prevent the LECs from subjecting dependent competitors to price squeezes. (Rhinehart, Tr. at 3118-40; Klaus, Tr. at 3121-10; Staff Post-Hearing Brief at 8). Imputation is appropriate when the incumbent LEC is the sole or principal source of inputs necessary to the deployment of competitive or potentially competitive retail services. (Rhinehart, Tr. at 3118-41).

79. SWBT contends that toll services represent a single market and that the imputation required by HB 2728 should be applied across the entire toll service market, not on a plan-by-plan basis. (Vining, Tr. at 2298-9; SWBT Post-Hearing Brief at 28). However, Ms. Vining identifies an alternate application of the imputation test which requires each pricing plan to pass an imputation test without considering other toll pricing plans. The price floor for a new plan is the direct incremental costs

associated with the new plan and the imputed access costs associated with the new plan. (Vining, Tr. at 2298-9, 2325).

80. Many parties raise concern regarding imputation being performed on a total toll service approach. Commingling individual pricing plans with all toll services will not disclose whether individual plans are priced below long run incremental costs and the imputed cost of access. (Klaus, Tr. at 3121-55). Combining all services in the imputation requirement allows one or more elements to be priced anti-competitively below cost, yet appear to be priced above cost because they are combined with other services. This places competitors at a competitive disadvantage.

81. CompTel also states that the purpose of imputation is to prevent a specific service from being priced anti-competitively. CompTel maintains that imputation must be applied to a specific service to have its intended effect. (Ensrud, Tr. at 3116-36).

2. RANGE OF RATE PRICING

82. Staff proposes two price range plans: range of rate-fixed and range of rate-flexible.

a. RANGE OF RATE-FIXED

83. Basket One prices would remain unchanged until the year 2000 except for rate changes authorized by the Commission as a part of the rate rebalancing between local and access. Basket Two prices would be reduced to parity with the corresponding interstate rates. (Matson, Tr. at 2691-15 to 2691-16).

84. Staff proposes that all services in Basket Three, except for the sub-category of local access lines (PBX, digital trunk for PBX, PLEXAR access lines and multi-line business services), would be eligible for immediate petitioning for movement into range of rate-fixed pricing. (Matson, Tr. at 2691-17).

85. Staff proposes the minimum/maximum rates be established as set forth in the Kansas Act. The price could be set no lower than the wholesale rate discount.<sup>1</sup> Staff proposes the company be allowed additional flexibility to reduce rates by lowering the minimum range an additional amount each year by an amount equal to the productivity offset that is recognized in the rate cap adjustment formula. (Matson, Tr. at 2691-17).

86. Staff proposes the following constraints on rate changes: the rate for any one service may not increase more than 10 percent in any two year period; and the rates charged times quantities may not exceed the price cap for the basket as a whole. No service may be priced below long run incremental costs (LRIC) plus imputed access; or in the case of local service, imputed prices of unbundled network elements. Range of rate pricing must at a minimum apply to a rate group. Fines may be requested if a rate is found not to be in compliance. (Matson, Tr. at 2691-18 to 2691-19).

b. RANGE OF RATE-FLEXIBLE

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<sup>1</sup> The Federal Communications Commission's interconnection order establishes a default discount of 17-25 percent. (Docket No. 96-98).

87. Staff proposes that the next step in the transition would be a petition to move from range of rate-fixed pricing into the range of rate-flexible designation. The difference between fixed and flexible is that companies would be able to deaverage rates within a rate group provided that all similarly situated customers receive service at the same rate.

88. Staff proposes evaluation of the following criteria for movement to range of rate-flexible pricing: number of facility and resale based entrants in each exchange of the total service territory; number of providers offering comparable products and/or services; current and historical market share information of the company; and the essential nature of the service. (Matson, Tr. at 2691-19 to 2691-20).

89. SWBT asserts that Staff's proposed range of rate-flexible pricing would give SWBT the ability to price services on an individual customer basis within an exchange as long as the price is available to similarly situated customers. However, according to SWBT, Staff has conditioned the availability of this flexibility on ambiguous criteria similar to the effective competition criteria not adopted by the Legislature as a predicate to complete price deregulation. (Brown, Tr. at 1840-85). SWBT proposes that the Commission deregulate a service if there is an alternate provider as allowed by HB 2728 § 6(p). (SWBT Post-Hearing Brief at 12).

90. Sprint/United recommend that Basket Three have no sub-baskets and the annual change in aggregate prices for all services in the basket be constrained by the current year price cap index. (Harper, Tr. at 2633-64). Sprint/United argue that a company should be able to petition to have a service immediately moved to the

range of rate-flexible or price deregulation status without first having to file for range of rate-fixed. (Harper, Tr. at 2633-66).

91. AT&T supports the general concept and methodologies expressed in the Phase I Order.<sup>2</sup> In the alternative, AT&T supports Staff's recommendation concerning reduced regulation. According to AT&T many of Staff's recommendations overlap with the Commission's previous determination as to whether a service should be deregulated. AT&T also states that SWBT's request for a "competitive alternative" as the only requirement for reduced regulation should be denied. (AT&T Post-Hearing Brief at 27).

92. MCI concurs generally with Staff recommendations, but cautions that in the telecommunications setting most competitors are dependent on LECs for input services. MCI asserts that the incumbent LECs have enormous market power over interconnection prices for interexchange services and entering local exchange providers. Thus, development of effective competition is not possible unless the incumbent LECs impute the prices charged dependent competitors into the prices set for their competing retail services. (Klaus, Tr. at 3121-35).

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<sup>2</sup> The Commission's Phase I Order determined a two-pronged test to categorize a service as competitive. First, there must be at least one actual competitor certificated to serve in the specific geographic and product market. Second, the market must be effectively competitive. The Commission indicated it would consider relevant market factors on balance to determine whether the market was effectively competitive: the incumbent's current market share; the capacity of competitors in the market; the degree of substitutability of services offered by alternative suppliers; the existence and level of barriers to entry; and the existence of sustained economic profits for the service over a long run period. (See Order dated May 5, 1995, at 37-38).

93. CompTel generally supports Staff's recommendation on reduced regulation as well as the Commission's previously established two-pronged test contained in its Phase I Order of May 5, 1995. (CompTel Post-Hearing Brief at 22).

C. PUBLIC HEARINGS

94. Garden City, Kansas: Some attendees expressed concerns over telephone local rate increases "affordable basic telephone service is essential for all Kansans but it is extremely important to low income and older persons on a fixed income. It just does not seem fair or right that nearly seventy (70) percent of Kansas residential customers should be burdened with a rate increase that benefits only 30 percent of its users." (Garden City Public Hearing, Tr. at 7). However, other attendees welcomed the long distance reduction for business service and residence service. (Garden City Public Hearing, Tr. at 9).

95. Hays, Kansas: Some attendees expressed their opposition to telephone rate increases. (Hays Public Hearing, Tr. at 6). Attendees requested the Commission to keep the infrastructure investments flowing to the non-metro areas of the state to preserve and enhance the ability to stay connected to the information age. (Hays Public Hearing, Tr. at 9).

96. Other public hearings were also held in Topeka and Wichita, Kansas. Attendees expressed similar comments as stated above.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. JURISDICTION

97. The Commission has been given full power, authority and jurisdiction to supervise and control the telecommunications public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. K.S.A. 66-1,187 *et seq.* Although wireless

providers are statutorily exempt from Commission jurisdiction (K.S.A. 66-1,143, 1,145), the State Act covers all telecommunications providers and mandates that wireless providers be required to pay into the KUSF fund.

B. NOTICE

98. At the August 12, 1996 hearing, CURB entered an objection to notice. CURB stated the impact that rate rebalancing and other issues would have on rates was not reflected in the notice. (Tr. at 1761). In an accompanying brief, CURB contended that pay phones and directory assistance services were not part of this docket when first opened and should not be made a part of this proceeding. CURB stated no notice was given that pay phone and directory assistance rates would increase. It is a violation of due process to order increases of this kind without specific notice. (CURB Post-Hearing Brief at 4).

99. The record demonstrates that SWBT, Sprint/United, Wamego Telephone and Moundridge Telephone submitted proof of publication to the Commission<sup>3</sup> attesting to the completion of the public notice of hearings before the Commission regarding possible rate changes. The public notice was provided in newspapers of general circulation where those telecommunications companies provide service. Notice was also provided to the customers by way of bill inserts. The content of the notice was broad enough to include "possible increases in local service rates to offset decreases in long distance rates in accordance with the Kansas

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<sup>3</sup> Wamego Telephone filed proof of publication on August 12, 1996; Moundridge Telephone filed proof on August 13, 1996; Sprint/United filed proof on September 17, 1996; and SWBT filed proof on September 20, 1996.

Act." The language "possible increases in local rates" is all inclusive and covers any increase, even pay phone and/or directory assistance. The Commission finds notice is proper because ratepayers were provided sufficient notice of possible rate increases.

100. The Wireless Providers stated they objected to receiving notice via telephone call on August 1, 1996. The Wireless Providers alleged neither the Commission nor Staff gave notice of these proceedings to providers of wireless telecommunications services. (Wireless Providers Memorandum at 22; Tr. at 1761-1762). However, the Wireless Providers did not oppose going forward with the hearing in light of HB 2728. (Tr. at 1762).

101. At the hearing, the Commission noted the Wireless Providers' objection stating the docket had been opened since 1994. The Commission further noted it has no jurisdiction over cellular providers. However, due to HB 2728's mandate that all telecommunications carriers are to contribute to the KUSF fund, the Commission found the notice was proper and the Commission proceeded with the hearing. (Tr. at 1763).

102. The Wireless Providers again argued in their Post-Hearing Memorandum that notice was defective. The Commission reaffirms its bench ruling and finds that notice was proper. At the hearing the Wireless Providers were given the opportunity to either file testimony during the hearing or provide oral testimony. (Tr. at 1764). The Wireless Providers did not prefile testimony and did not provide oral testimony. The Wireless Providers were notified of the hearing

and given the right to fully participate at the hearing, cross-examine all the witnesses, file briefs and/or findings of fact and conclusions of law. The Wireless Providers decided to go forward with the hearing, which demonstrated a waiver on their part. The Commission affirms its bench ruling and finds that notice to Wireless Providers was proper.

C. KANSAS UNIVERSAL SERVICE FUND

1. ACCESS RATE REDUCTION

103. The State Act states that all local exchange carriers shall reduce intrastate access charges to interstate levels. (HB 2728 §6(c)). Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period for SWBT and United with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. The amount of access rebalancing in Years 1 and 2 will correspond to the portion of assessment recovery by the LECs discussed below. That is, the move to interstate access parity shall be in proportion with the LECs KUSF assessment phase in, i. e., for SWBT, miscellaneous increases plus \$2.00 per line, per month in Year 1 and \$1.00 per line, per month in Year 2 and the remainder in Year 3.

104. The Commission also finds Staff's arguments persuasive that parity should be based upon the interstate rates in effect on November 1, 1996. (Lammers, Tr. at 2966-8).

105. MCI argued the State Act requires interstate access parity at interstate access rates in effect in 1999. (MCI Post-Hearing Brief at 9). However, the

Commission believes interstate access and federal universal service will change considerably over the next two years. It is premature at this juncture to determine how interstate access parity will be achieved based upon currently unknown 1999 access rates. Consequently, the Commission will not specify how access parity will be achieved when the full impact and extent of such access changes are unknown at this time. However, the Commission believes it is reasonable to revisit the access parity issue after the FCC access guidelines are issued, and no later than September 1998.

2. REVENUE REDUCTION RECOVERY FROM KUSF

106. The initial amount of the KUSF shall be comprised of local exchange carrier revenues lost as a result of rate rebalancing pursuant to the State Act. Revenues shall be recovered on a revenue neutral basis. The revenue neutral calculation shall be based on the volumes and revenues for the 12 months prior to September 30, 1996, adjusted for any rate changes. (HB 2728 § 9(a)). The Commission interprets "adjusted for any rate changes" to require that revenues be determined by using the intrastate access rates in effect at the end of the twelve (12) month period, September 30, 1996. To ensure that current information is available, the interstate rates will be those in effect on November 1, 1996. (Lammers, Tr. at 2966-8). As part of the access rate reduction, the Commission finds that ILECs should reduce their Billing and Collection rates to \$.05 per message as determined by the Commission in its April 4, 1996 Order. (Order dated April 4, 1996, at 8).

107. SWBT argued that changes in MOU subsequent to September 30, 1996, be factored into its revenue neutral calculation. (Brown, Tr. at 1840-29 to 1840-30). The Commission rejects this position for the purposes of this rebalance and finds that the State Act is specific in requiring the calculations of volumes and revenues be made on the twelve (12) months ending September 30, 1996. Reductions in access and toll rates will encourage further growth in MOU which will provide additional revenues to SWBT. The Commission does not believe the likely growth in MOU resulting from access rebalancing should result in further revenue neutral replacement.

3. KUSF ASSESSMENT ON ALL

108. In accordance with the State Act, the Commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and non-discriminatory basis. (HB 2728 § 9(b)).

109. Upon review of the evidence presented by the parties, the Federal and State Acts, the Commission finds that the KUSF shall be funded by an equal assessment on all intrastate retail revenues. The State Act requires that the KUSF assessment be imposed on the LECs, telecommunications providers, and wireless providers. These companies all generate revenues. An assessment on revenues assures every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate

telecommunications services, will contribute on an equitable and non-discriminatory basis in accordance with the State Act.

110. Various parties proposed that the KUSF be funded based on toll MOU or by assessing a quasi-sales tax on customer bills for telecommunications services in lieu of having a surcharge on toll MOU, or a percentage assessed in various forms. Unresolved is the method by which to separate the amount to be recovered from lines and MOU. The Commission believes these proposals may leave out some revenues and not assure an equitable contribution. The Commission rejects the proposals based on MOU or surcharges and finds the most equitable and reasonable approach is a contribution on a "retail revenue" basis as proposed by Staff. (Lammers, Tr. at 2966-14).

111. The phrase "rate rebalancing" is only applicable if the Commission decides to raise any rate in excess of the KUSF assessment amounts. Since the Commission is adopting an equal assessment on all retail revenue amounts, no rebalancing to local rates will occur beyond the impact of the KUSF assessment and the ILEC transition to the statewide average. The Commission finds all intrastate retail revenues shall be assessed on the same percentage basis, reaching an estimated 14.1 percent at the end of three years. (Lammers, Tr. at 2966-16).

112. The Commission finds that the initial revenue neutral amount should be consistent with the \$111.6 million estimate originally proposed. The record supports that the size of the fund shall be determined in the same manner as the estimated \$111.6 million and shall be phased in over three years. (Lammers, Tr. at

2966-14). The Commission also finds that LEC payments and distributions may be offset, so as to avoid unnecessary fund transfers. The Commission's intent is to have record keeping and monitoring reports to assure that all recipient LECs are only receiving payments due them which exceed the assessments retained by the LEC. The assessments shall be redetermined by the administrator annually. The Commission wishes to ensure that all telecommunications carriers forward the correct level of assessment to the fund administrator. Allowing LECs to retain their assessment will reduce the amount paid by the administrator and somewhat reduce the administrative burden on the LECs. This process does not reduce the size of the fund or in any way reduce the responsibility of LECs to assess their customers as prescribed in this Order and HB 2728. In the event a LEC's assessment exceeds its required rate rebalancing amount, the LEC will submit the difference to the administrator.

#### 4. HOW LECs FLOW THRU

113. The portion of the assessment attributed to the LECs' local service which may be recovered on a flat per line basis will approximate \$3.21 per month for SWBT customers over three years, and slightly less than \$3.00 per month for United customers over three years. These amounts per line are after the adoption of increases in miscellaneous charges such as directory assistance and pay phones. These miscellaneous charges shall be increased by \$7.7 million per year as requested by SWBT. (Cooper, Tr. at 2151-61). Similar miscellaneous increases shall be implemented by United. The rates for pay phone calls shall be \$.35 and the free call

allowances for directory assistance shall be eliminated. These rates shall go into effect March 1, 1997. SWBT and United are hereby ordered to file tariffs reflecting these rates thirty (30) days after receipt of this Order.

114. Since the assessment is based on retail revenue, flow through of the assessment should only apply to retail customers and not to resold or unbundled services. The purchasing ALEC will be responsible for its own KUSF contributions.

5. THREE YEAR TRANSITION

115. The estimated \$3.21 per month rate increase for SWBT customers would be allocated as follows: a) \$2.00 per month for the first year, b) \$1.00 per month for the second year, and c) the remainder for the third year. United will implement the pass through of its KUSF assessment on a similar per line basis, determined by dividing its assessment amount (less coin and directory assistance) by its number of lines.

116. An equal assessment on the ILECs would result in a per line increase of \$1.42 to \$3.23 per month. However, the actual increase may be different since the Commission has reviewed the Stipulation and Agreement (S&A) submitted by the ILECs and finds the S&A is reasonable because it averages the impact on ILEC customers much the same as the flow through averages the impact on SWBT and United customers. This reduces the rate shock effect on customers who have the highest local rates while at the same time ameliorating the increase on those who are below the statewide ILEC average. The Commission approves the S&A with the following clarifications: a) Provision number 3 of the S&A combines the KUSF

assessment with the movement to statewide average. The Commission finds this provision acceptable as long as it does not reduce the amount of funding for the KUSF. b) The Commission clarifies that the Petitioners reference to "an assessment on net revenues" is in actuality "an assessment on retail revenues". The Commission approves the S&A with these clarifications and incorporates it as Attachment "A" of this Order.

6. REVIEW PROCEDURES FOR KUSF ADMINISTRATION

117. The Commission requested bids from parties interested in being the KUSF administrator. Four parties submitted bids. Based upon qualifications and costs, the Commission has awarded the initial contract (January 1997 to June 1998) to the National Exchange Carriers Association, Inc. (NECA).

118. Various parties recommended that the Commission require an annual audit of the KUSF administration by an independent accounting firm and that the audit report be of public record. (Rhinehart, Tr. at 3118-16; Klaus, Tr. at 3121-9). AT&T also recommended that the size of the KUSF requirements and the resulting surcharge on retail service revenues be reviewed at least annually for the first five years. (Rhinehart, Tr. at 3118-16).

119. CURB recommended an audit be performed at least every two years (and at least once for every administrator's term) and that the audit focus on compliance with fund procedures and proper administration of funds. (Ostrander, Tr. at 2684-33).

120. The Commission generally agrees with the above recommendations and finds it is reasonable to require an annual audit of the fund administrator. This audit will include a traditional financial review, as well as a review of the sufficiency of NECA's internal controls. The Commission also directs Staff to conduct periodic audits of intrastate telecommunications providers to verify that intrastate revenues are being reported accurately for assessment purposes. Further, the Commission directs Staff to coordinate with an outside consultant in reviewing the internal controls for the KUSF administrator. Compliance with these controls will be included in the annual KUSF audit. However, the Commission is not limited to these audit options. Over time, circumstances may change, necessitating additional fund oversight or adoption of other procedures.

7. WHO RECEIVES SUPPORT AND ON WHAT BASIS<sup>22</sup>

121. The Kansas Act provides KUSF support for companies "that are deemed eligible both under subsection (e)(1) of section 214 of the Federal Act and by the Commission." (HB 2728 § 9(c)). This could include ALECs which may be eligible for KUSF to the extent that they provide service in a high cost rural area. (Lammers, Tr. at 2966-27). CURB stated KUSF funds should be available to incumbent LECs and competitors on a non-discriminatory basis and under equivalent terms and conditions. (Ostrander, Tr. at 2684-31).

122. Section 254(e) of the Federal Act requires that subsidies go only to eligible telecommunications carriers certified by the Commission. (Harper, Tr. at 2633-22).

123. An ALEC is required to meet the following KUSF eligibility and qualification criteria:

- a) Meet the Federal Act eligibility criteria (Section 214(e)(1)) (Lammers, Tr. at 2966-27); and
- b) The universal service area in which an ALEC may qualify for KUSF support is an exchange area with 10,000 or fewer access lines. (Lammers, Tr. at 2966-27).

124. Support should be distributed to achieve revenue neutrality pursuant to the State Act. (HB 2728 § 9(c)). Based on the evidence of record the Commission finds that those companies that provide service in high cost rural areas shall receive support. Rural areas shall be defined as exchanges with 10,000 or fewer access lines.

ALECs are eligible to receive support to the extent they provide service in high cost rural areas. (Klaus, Tr. at 3121-7; Lammers, Tr. at 2966-27). The support shall be paid at a rate of up to \$36.88 per residential loop. (Lammers, Tr. at 2966-31). A portion of the revenue neutral support for LECs will be designated as the amount per residential loop.

125. The pay out of \$36.88 shall apply to residence lines only. Business service rates should generally be based on cost and not subsidized by the KUSF. (Rhinehart, Tr. at 3118-85 to 3118-86; Lammers, Tr. at 2962). The Commission recognizes that the FCC is currently reviewing universal service and access charges, the outcomes of which will impact all telecommunications providers. Therefore, the \$36.88 pay out may need to be revisited based upon the ultimate decisions reached in those proceedings.

8. SUPPLEMENTAL FUNDING

126. The Commission must act on requests for supplemental KUSF funding within 120 days if the request is based on the criteria in Section 9(e) of the State Act. However, the Commission is not bound by the 120 day requirement if the request is based on the criteria in Section 9(f). Eligible new entrants providing local service are also permitted supplemental funding under the State Act § 9(f) on a per line served basis which can be fixed monthly with the KUSF administrator. The Commission concurs with the provisions of the State Act with regard to supplemental funding.

9. LIFELINE SERVICE PROGRAM

127. Section 7 of the State Act requires the Commission establish the Kansas Lifeline Service Program (KLSP) to assist low income persons in retaining and obtaining telephone service.

128. At the public hearings held across the state (Garden City Public Hearing, Tr. at 7; Hays Public Hearing, Tr. at 6) attendees expressed a strong concern regarding the impact rate increases may have on persons living on fixed incomes who are not eligible for or do not participate in the following programs:

- a) Aid to Dependent Children (ADC)
- b) Food Stamps
- c) General Assistance (GA)
- d) Medicaid
- e) Supplemental Security Income (SSI)
- f) Food Distribution Program

Based on the above programs, 1) an applicant must provide the LEC with proof of participation in any of the programs, and 2) the subscriber must not be a dependent (unless 60 years old or older). The Commission is aware that welfare

reform is changing participation in these programs. The Commission is open to new criteria which may effectively identify low income households.

129. In order to protect the interests of this segment of the population, the Commission believes that an income specific criterion should be added. This criterion would include determining a minimum income level based on the Kansas Adjusted Gross Income as filed with the Kansas Department of Revenue which will become a benchmark below which a person qualifies for Lifeline support during the ensuing year. In addition:

- a) The Department of Revenue would annually provide the Commission a data file of the names and telephone numbers reported on Kansas Income Tax forms for those with income below the benchmark level.
- b) This data would be provided to the local telephone service provider to determine whether or not each identified subscriber is already participating in the KLSP.
- c) Subscribers not already receiving benefit of Lifeline will be granted KLSP support for the next year (12 months) or until the service is disconnected. (i. e., If the data were available by May 15, the subscriber could receive Lifeline credit from July 1 through the following June 30.)

130. The Commission directs Staff to contact the Department of Revenue, the Department of Aging and any other state agency necessary to investigate the feasibility of applying a minimum income criterion plan. The investigation should also include the methodology of developing and implementing a minimum income criterion plan.

131. The Commission hereby adopts a KLSP plan in which all local service providers (existent LECs and new LECs or ALECS) will participate. The KLSP will

use the criteria outlined above. The Lifeline discount of \$3.50 per month as proposed by Staff will be recovered from the KUSF and will be phased-in in conjunction with the line assessment. (Lammers, Tr. at 2966-25). LECs should file tariffs annually to reflect the phase in reduction of \$2.00 on March 1, 1997; \$3.00 on March 1, 1998 and \$3.50 on March 1, 1999. Funding of the Lifeline program will be collected by the KUSF administrator as part of the KUSF assessment.

10. KANSAS RELAY SERVICES INC. (KRSI)

132. Section 3(g) of the State Act requires the Commission to establish a competitively neutral mechanism or mechanisms to fund:

- a) dual party relay services for Kansans who are speech or hearing impaired;
- b) telecommunications equipment for persons with visual impediments; and
- c) telecommunications equipment for persons with other special needs.

This funding mechanism(s) shall be implemented by March 1, 1997.

133. Dual party relay service for Kansans who are speech or hearing impaired was established in Docket No. 168,334-U. Operations have been funded by contributions from all toll service providers based on an assessment upon intrastate MOUs plus a proportional share assumed by each LEC based upon the distribution (local vs. toll) of traffic handled by the Kansas Relay Center (KRC).<sup>4</sup>

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<sup>4</sup> SWBT operates the KRC under competitive contract for KRSI.