

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Kansas Corporation Commission's	)	WC Docket No. 08-55
Petition for Declaratory Ruling	)	
Affirming the Lawfulness of Its USF	)	
Certification Procedures	)	

**COMMENTS OF AT&T INC.**

**I. INTRODUCTION AND BACKGROUND**

AT&T Inc. ("AT&T") files these comments in response to the Kansas Corporation Commission's ("Kansas Commission") Petition for Declaratory Ruling filed on April 16, 2008, in the above-referenced docket ("Petition"). In its Petition, the Kansas Commission requests that the Federal Communications Commission ("Commission") declare that the Kansas Commission had adopted reasonable and lawful procedures, consistent with section 254(e) of the Communications Act of 1934, as amended (the "Act"), for certifying competitive eligible telecommunications carriers' ("CETCs") receipt and use of high-cost support from the federal Universal Service Fund.

In November 2006, the Kansas Commission opened a docket to reexamine its annual certification procedures for CETCs.<sup>1</sup> In that docket, the Kansas Commission found that, consistent with its previous decision, it would only certify a CETC's

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<sup>1</sup> *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 Telecommunication's Carrier's Justification of Use of High Cost Federal USF Support, Order Opening Docket, Docket No. 07-GIMT-498-GIT (rel. Nov. 21, 2006).*

expenditures and investments in those areas within the CETC's designated service area where the underlying incumbent local exchange carrier ("ILEC") received federal high-cost support.<sup>2</sup> A Kansas CETC, therefore, is not permitted to utilize federal high-cost support in Southwestern Bell-Kansas ("AT&T Kansas") areas, because AT&T Kansas does not receive federal high-cost support in those areas.<sup>3</sup> A CETC could, however, expend funding in a non-supported area for services and facilities so long as those services and facilities are used for service inside a supported study area.<sup>4</sup> On October 29, 2007, USCOC of Nebraska/Kansas, LLC and RCC Atlantic, Inc., challenged the Kansas Commission's decision in the U.S. District Court of Kansas. On January 29, 2008, the district court referred the matter to the Commission.<sup>5</sup> The Kansas Commission filed this petition thereafter.

## **II. DISCUSSION**

As the Commission has long recognized, state commissions play an integral role in implementing sections 214(e) and 254(e) of the Act. Under section 214(e)(2) of the Act, for example, state commissions are assigned the primary responsibility for designating carriers as ETCs; the Commission may step in to evaluate a carrier's request for ETC designation only when a state commission affirmatively decides that it does not have jurisdiction over a carrier or class of carriers.<sup>6</sup>

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<sup>2</sup> The Kansas Commission has defined federal high-cost support to exclude interstate access support.

<sup>4</sup> Petition at 2-3 (explaining that CETCs may allocate costs between supported and non-supported study areas for services and facilities that serve both areas).

<sup>5</sup> See Petition, Attach. 1 (attaching the federal district court decision)

<sup>6</sup> 47 U.S.C. § 214(e)(6).

In fulfilling this responsibility, state commissions may establish ETC eligibility requirements that differ from those established by the Commission, provided that such requirements are not inconsistent with the Act and the Commission's rules. The Fifth Circuit, for example, has held that state commissions may impose additional eligibility requirements on carriers otherwise eligible to receive federal universal service support.<sup>7</sup> The Commission too has declined to require states to adopt the same eligibility requirements as the Commission in designating CETCs. Specifically, in 2005, the Commission established additional standards for carriers seeking designation or ongoing certification as an ETC from the Commission,<sup>8</sup> but declined to mandate that state commissions adopt these same ETC designation/re-certification requirements.<sup>9</sup>

Of course, the states' authority to adopt additional ETC eligibility requirements is not unlimited. For example, section 332(c)(3) of the Act precludes the states from regulating the rates and entry of CMRS providers.<sup>10</sup> Thus, a state could not subject a wireless carrier to ETC requirements that regulate rates or entry, or to requirements that otherwise were not consistent with sections 214 and 254 of the Act.<sup>11</sup>

In addition, the Commission has decided that state commissions should be responsible for certifying that ETCs are utilizing federal high-cost support for the

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<sup>7</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir. 1999), *cert. dismissed sub nom. GTE Serv. Corp. v. FCC*, 531 U.S. 975, 121 S.Ct. 423 (2000) (holding that nothing in section 214(e)(2) "prohibits the states from imposing their own eligibility requirements").

<sup>8</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*).

<sup>9</sup> *ETC Designation Order* at para. 61.

<sup>10</sup> 47 U.S.C. § 332(c)(3).

<sup>11</sup> *ETC Designation Order* at para. 31.

“provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>12</sup> To make such a certification to the Commission, state commissions have articulated reasonable certification criteria for CETCs in the state and then measure the CETCs’ compliance with these requirements. Although the Commission has set forth criteria for those ETCs seeking annual certification from the Commission in its *ETC Designation Order*, it has determined that it should not impose these annual certification requirements on states that have exerted jurisdiction in this area.<sup>13</sup>

Moreover, the Commission has explicitly declined to impose restrictions on states’ authority to determine the appropriate expenditure of high-cost support, and thus to certify compliance with 254(e). Specifically, the Commission rejected AT&T Corp.’s petition to clarify that non-rural high-cost support must be used in the wire centers to which it is targeted, explaining that states have primary responsibility to “decide how support will be used to advance the goals of section 254(e).”<sup>14</sup>

As such, the Kansas Commission plainly had authority to adopt reasonable requirements that a CETC must follow in expending federal high-cost support. If this support is utilized consistent with the reasonable requirements of the state, the state can then certify to the Commission that the CETC is using the federal high-cost support consistent with the requirements set forth in section 254(e).

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<sup>12</sup> See 47 C.F.R. § 54.313 (state certification of support for non-rural carriers); 47 C.F.R. § 54.314 (state certification of support for rural carriers).

<sup>13</sup> *ETC Designation Order* at para. 61.

<sup>14</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, para. 137 (2003) (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999)).

### III. CONCLUSION

AT&T supports the Kansas Commission's request that the Commission should declare that states have the authority to adopt reasonable procedures for certifying an ETC's receipt of federal high-cost support and that the Kansas Commission's procedure is lawful.

Respectfully Submitted,

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