FCC's USF/ICC NPRM to Promote Broadband
Summary of the Issues

I. Background

Since 1934, the focus of universal service has been on providing voice communications services to all Americans at reasonable charges. However, the focus for universal service is now changing to reflect the need for broadband infrastructure for many forms of communication, including voice communications. Thus, at the direction of Congress, the Federal Communications Commission (FCC) developed a National Broadband Plan (NBP) to ensure ubiquitous access to broadband services.

To further the NBP goal to promote broadband deployment, the FCC released on February 9, 2011, its Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM) addressing the Universal Service Fund (USF) and Intercarrier Compensation (ICC) reform. Under these two broad topics, the FCC has requested comments on a myriad of issues aimed at "[b]ringing robust, affordable broadband to all Americans. . ..."[1] Indicating an intention to eliminate waste and inefficiency and to reorient USF and ICC to meet the nation's broadband availability challenge, the FCC proposes to fundamentally change the federal USF and ICC systems. Because the FCC believes broadband deployment, USF reform, and ICC reform are all interrelated, these issues are addressed in one NPRM.

The FCC indicates that while the current USF and ICC programs were developed over a decade ago to support telephone voice services, ". . . the communications landscape has changed dramatically[,]"[2] since that time. For example, mobile services, broadband internet access, and Voice over Internet Protocol (VoIP) services have become more prevalent while traditional wireline telecommunications use has declined. In the view of the FCC, these industry changes provide additional rationale for revisiting and reforming USF and ICC.

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 ICC. Over the last fourteen years, the Kansas Corporation Commission (Commission) has implemented the Kansas Universal Service Fund (KUSF) and addressed those intercarrier compensation issues within its jurisdiction to promote the goals of the Kansas Telecommunications Act of 1996 (KTA). The Commission has incorporated FCC policies, where required and/or applicable, to encourage competition within the telecommunications industry in Kansas. As will become apparent as issues are outlined below, the FCC's reform proposals will substantially affect Kansans and the implementation of the KTA 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

[1] Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM), FCC 11-13, *rel*. February 9, 2011, ¶1.
[2] NPRM, ¶8.

make policy recommendations to the FCC consistent with promotion of these priorities. Changes in FCC policies for USF and ICC may also lead to a need for change in Kansas policies and statutes. As the Commission seeks input for comments to the FCC, it does so with an eye on implications for changes that may be necessary in order to assure maintaining KUSF that is ". . . not inconsistent with the [FCC's] rules to preserve and advance universal service."[3]

It should also be noted that the FCC also released a NPRM on October 14, 2010 concerning the creation of a Mobility Fund to provide universal access to mobile voice service.[4] The Mobility Fund is an element of USF reform we must keep in mind as the FCC considers these additional changes to long held policy. The creation of a Mobility Fund has direct implications on both the universal availability of voice service and universal availability of broadband services.

II. NPRM Issues

The FCC states that networks which provide only voice service are no longer adequate for this century's communications needs as Americans expect to access both fixed and mobile networks to experience the benefits of broadband. It also recognizes that fixed networks remain essential for mobile services which typically depend on wireline backhaul facilities to connect cell towers and enable mobile communications to other networks. In addressing USF and ICC, the FCC states that it will keep the following four principles in mind:

- *Modernize USF and ICC for Broadband*. Modernize and refocus USF and ICC to make affordable broadband available to all Americans and accelerate the transition from circuit-switched to IP networks, with voice ultimately one of many applications running over fixed and mobile broadband networks. Unserved communities across the nation cannot continue to be left behind.

- *Fiscal Responsibility*. Control the size of USF as it transitions to support broadband, including by reducing waste and inefficiency. We recognize that American consumers and businesses ultimately pay for USF, and that this contribution burden may undermine the benefits of the program by discouraging adoption.

- *Accountability*. Require accountability from companies receiving support, to ensure that

[3] 47 U.S.C. § 254(f).
[4] Notice of Proposed Rulemaking (Mobility NPRM), FCC 10-182, *rel*. October 14, 2010.

public investments are used wisely to deliver intended results. Government must also be accountable for the administration of USF, including through clear goals and performance metrics for the program.

- *Market-Driven Policies*. Transition to market-driven and incentive-based policies that encourage technologies and services that maximize the value of scarce resources and the benefits to all consumers.[5]

The FCC also recognizes that in considering reforms it must balance the following priorities:

- Advance Broadband Service to All Americans
- Sustain and Expand Mobile Voice and Broadband Service
- Increase Adoption of Advanced Communications Services
- Minimize the Burden of USF Contributions on Consumers and Businesses[6]

The filing of comments has been scheduled as follows:

Comments Due for Section XV: April 1, 2011
Reply Comments Due for Section XV: April 18, 2011

Comments Due for Remaining Sections: April 18, 2011
Comments Due for State Members of the Federal-State Joint Board on Universal Service: May 2, 2011
Reply Comments Due for Remaining Sections: May 23, 2011

A. USF Reform

The FCC plans to use USF support that is currently designated for providing voice service to high-cost, rural and insular areas for a new Connect America Fund (CAF). The CAF would focus on providing broadband services to areas that are currently unserved.

The FCC anticipates that it will address the reform of the USF in two phases. In the first phase, the FCC will work to reduce inefficiencies by setting guidelines for reimbursement of capital and operating expenses and limiting the total support per line that a carrier can receive. The FCC also plans to develop policies that encourage consolidation of service territories where it leads to more efficient operations. The "identical support" rule that guided the amount of support available to competitive eligible telecommunications carriers (ETC) will be eliminated. Finally, in the first phase,

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[5] Id, ¶ 10.
[6] *Id.*, ¶ 16.

the FCC will continue to work on the final form of the CAF and proposes a competitive bidding process to build out broadband networks to unserved areas.

In the second phase, the FCC plans to transition all support to the CAF. The CAF would then provide support to maintain and advance broadband.

B. ICC Reform

Guided by the same four principles outlined above (*Modernize for Broadband, Fiscal Responsibility, Accountability, and Market-Driven Policies*), the FCC states that it will also address ICC to promote broadband deployment. As the FCC indicates, ICC is a ". . . system of payments between carriers to compensate each other for the origination, transport, and termination of telecommunications traffic."[7] The FCC notes that while a few steps were taken in 2000 and 2001 to reform ICC, such reform has not addressed ". . . the fundamental, ongoing shifts in technology, consumer behavior, and competition."[8] Thus, the FCC proposes comprehensive ICC reform.

The FCC intends to address access stimulation[9] and phantom traffic[10] issues in the initial phase of reforming access charges, along with the status and compensation obligations (if any) of VoIP traffic. Access stimulation and phantom traffic issues have resulted in arbitrage and increased uncertainty in ICC payments. The FCC proposes that those carriers that have entered into revenue-sharing arrangements will be required to re-file interstate switched access tariffs to reflect a lower rate consistent with the actual volume of traffic. To address phantom traffic, the FCC proposes rules requiring appropriate signaling information be provided for all voice traffic, including VoIP traffic.

Over the long term, the FCC proposes that all per-minute charges be reduced and be consistent over all types of traffic. The FCC indicates that it may begin its reform by addressing interstate access charges. Because interstate access charges are higher than other forms of compensation, it will also assist in addressing arbitrage issues. As per-minute charges are reduced, a revenue recovery mechanism will be implemented.

III. Overarching Issues for Consideration

As industry experts, regulators, legislators and community representatives, we face a number of immediate and significant challenges ahead. The FCC proposals discussed above will fundamentally affect the Kansas telecommunications system, and we must understand the impacts on Kansas.

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[7] Id., ¶ 494.
[8] Id., ¶ 501.
[9] Access stimulation refers to "arrangements in which carriers, often competitive carriers, profit from revenue-sharing agreements by operating in an area where the incumbent carrier has a relatively high per-minute interstate access rate." *Id.*, ¶36.
[10] Phantom traffic refers to calls that are received by the terminating provider with insufficient signaling data for the provider to identify and bill the appropriate carrier.

To assist the Commission in formulating its comments to the FCC, we request the roundtable participants provide information on the following questions through roundtable discussions and in written submissions to the Commission. The questions below are just a handful of the questions asked within the FCC's NPRM. Although we request comment on any and all of the questions identified below, a participant should not limit his or her response to these issues, if it is believed that additional issues should be identified and considered.

A. What priorities should be used to guide Kansas comments?

B. What are the current broadband and mobile voice deployment plans for Kansas?

C. How should broadband be defined (the FCC proposes 4Mbps download speed and 1Mbps upload speed)? Should the funded network be scalable for future needs?

D. What is the minimum broadband speed necessary to support wireless 3G services? 4G services?

E. How do the Legacy funding mechanism, the CAF, and the Mobility Fund work together?

F. What is the appropriate mechanism for providing access to broadband in unserved areas and determining support levels? Reverse auction? Other?

G. What are the short-term and long-term effects of proposed changes on price-cap ILECs (BOC and mid-size), RLECs, CLECs, Wireless providers, and VoIP providers? On the KUSF?

H. What is the risk of stranded investment or implications to Kansas carriers who have incurred substantial debt to build out their systems? Given the likely time frame for an FCC decision on this NPRM, will there be a chilling effect on current capital project planning?

I. Is there a "rural-rural" divide in Kansas, where there are RLECs that have deployed broadband-capable lines, and other rural areas which have either not received sufficient support or failed to make necessary investment to build-out or upgrade to broadband capability? What information does the Commission need to make this determination? What is the best resource from which the Commission can obtain information on this issue?

J. How can the Commission gather all necessary data (about broadband availability, mobile voice service availability, the cost associated with deployment to unserved areas, the effect of intercarrier compensation changes, etc.), without requiring companies to duplicate information that may have already been provided in response to others requests for data?

K. What is required of Kansas carriers to move to an IP network? Can current switches bet updated with software for IP or are new switches needed? Are other network changes needed? What is the time frame & cost of deployment?

L. Regarding the FCC's expressed interest in consolidating service territories to take advantage of scale efficiencies, what is the implication for Kansas service providers? Are there service territories in Kansas that could be the target of FCC consolidation efforts? Can the FCC force consolidation? Should the Commission consider this issue?

M. What impact would mandatory disaggregation have on Kansas carriers?

N. What service requirements or public interest obligations are appropriate for providers that receive USF support?

O. Are the proposed transition time-frames for USF and ICC reform adequate?

P. Is arbitrage a problem in Kansas? If so, what is the dollar impact (lost revenues or additional expense) related to arbitrage? What are the causes of arbitrage in Kansas (traffic pumping/access stimulation, phantom traffic, VoIP, etc)?

Q. What steps has the industry taken to address arbitrage? Are the FCC's proposals appropriate or are there other issues that should be considered? Are other Commission actions warranted?

R. Should Kansas and other "early adopter" states be provided some type of advantage, in access to CAF support or by other means, over other states that have not yet achieved parity with interstate access charges?

S. What are the pros and cons of the FCC's proposal to deem all intercarrier compensation as reciprocal compensation?

T. What is the effect of transitioning all intercarrier compensation to a bill-and-keep mechanism? Does per-minute compensation make sense in an all-IP network?

U. How do interconnected VoIP providers interconnect to the network? Can all VoIP traffic be identified? Why or why not?

V. Should VoIP calls be subject to switched access, special access, reciprocal compensation, or a special VoIP rate? What is the revenue impact of VoIP not paying compensation for access to the PSTN network? Should the FCC adopt a bill-and-keep methodology for VoIP? Should there be a VoIP-specific rate? Do per-minute intercarrier charges make sense in an IP world?

W. What is the success rate for negotiating payment contracts with VoIP providers? What are the implications for existing commercial arrangements that may address compensation for VoIP traffic?

X. The FCC has recognized that by having left open the status of VoIP, and its compensation obligations, it has created regulatory uncertainty, conflicts and litigation, which is deterring providers from rolling out advanced services. How has that uncertainty affected IP innovation and investment in Kansas?