Pamela H. Sherwood
Vice President of Regulatory

tw telecom inc.
4625 West 86th Street, Suite 500
Indianapolis, IN 46268
(317) 713-8977
Pamela.sherwood@twtelecom.com

March 22, 2011

Chairman Thomas E. Wright
Commissioner Ward Loyd
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

RE: **tw telecom**'s Comments to the Kansas Corporation Commission Roundtable Broadband and Telecommunications on the Cusp: The FCC's NPRM on USF and ICC.

Dear Kansas Commissioners:

tw telecom was unable to attend the roundtables held on March 4 and March 11, but appreciates the KCC's willingness to take comments from interested parties.

tw telecom is a leading provider of managed networking solutions to a wide array of businesses and organizations in 75 markets spanning 30 states, including Kansas. As one of the country's premier competitive service providers, **tw telecom** integrates data, dedicated Internet access, and local and long distance voice services for long distance carriers, wireless communications companies, incumbent local exchange carriers, and enterprise organizations in healthcare, finance, higher education, manufacturing, and hospitality industries, as well as for military, state and local government. Our Kansas City network has over 95 miles of fiber and over 8600 glass miles with backbone/distribution serving business customers in the Kansas City metro area.

The KCC sought comments on a number of questions and issues raised by the FCC's February 9, 2011 NRPM addressing the Universal Service Fund and Intercarrier Compensation Reform. **tw telecom** submits the following comments on the list of the issues and questions identified in the March 3, 2011 notice of the KCC. While **tw telecom** is not commenting on all the questions as it is developing its position and comments for filing with the FCC, we will continue to discuss and share its position on various issues with the KCC.

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

USF Reform: With respect to Universal Service Reform, the National Broadband Plan recommends that the FCC create a Connect America Fund (CAF) to address the broadband availability gap in unserved areas and provide any ongoing support necessary to sustain service in areas that already have broadband because of previous support from the Federal USF. The plan would include replacing all the high-cost fund programs with the new CAF and transition the current funding amounts to it. The KCC comments should be guided by:

1) Concern with the current the contribution methodology, including how that contribution methodology will impact the Kansas USF ("KUSF"). As recommended in the Broadband Plan, the FCC

Residence SLC. The guiding principle should be a showing of a clear and quantified nexus between support and maintenance of universal service. Moreover, there shou no USF funding for lines where rates have been deregulated.

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

tw telecom continues to expand our IP backbone data networking capability between our markets, supporting end-to-end Ethernet and VPN connections for customers, and have selectively interconnect existing service areas within regional clusters with fiber optic facilities that we own or lease. We have built, licensed or acquired local and regional fiber networks to serve metropolitan geographic markets, li the Kansas City market, where we believe there are large numbers of potential customers. We have deployed digital switching equipment that enables us to combine Internet access in a bundle with voice and provide a dynamic bandwidth allocation feature which allows our customers to increase their voice Internet bandwidth on demand. We continue to extend our network in our present markets in order to reach additional office buildings and business parks directly with our fiber facilities. In addition, we have deployed technologies such as dense wave division multiplexing ("DWDM") to provide additional bandwidth and higher speed in our networks without the need to add additional fiber capacity. Our focu on using our fiber facilities-based services, rather than reselling network capacity of other providers, requires that we make significant capital investments to reach new and existing customer locations. We invest selectively in growth prospects that often require that we install fiber in buildings, purchase electronics, construct fiber rings, and invest in product expansion. We also seek to increase operating efficiencies by investing selectively in strategic enhancements to our back office and network management systems. We maintain a disciplined approach to capital and operating expenditures. Our capital expenditure program requires that prior to making expenditures for new sales opportunities, the project must be evaluated against certain financial criteria such as projected minimum recurring revenu cash flow margins and rate of return. During the economic downturn, our strategy has been to continue make strategic investments in our business in order to position us for long term growth.

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?

No comment at this time.

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

No comment at this time.

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

No comment at this time.

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

No comment at this time.

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?

No comment at this time.

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?

No comment at this time.

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?

No comment at this time.

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?

No comment at this time.

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?

The National Broadband Plan goal of providing U.S. Businesses with the broadband tools to compete in a global marketplace cannot be achieved without ubiquitously available, affordable Ethernet access. The fixed bandwidth environment of the legacy network limits the flexibility and scalable bandwidth businesses need for core applications. Companies have to move more data, make decisions faster, and facilitate real-time commerce between suppliers, providers, and customers to remain competitive. Only Ethernet can facilitate these capabilities.

While **tw telecom** cannot answer this question for all carriers, in order for U.S. businesses to reap the full benefits of the transition to the IP world, carriers need reasonable terms, conditions and quality of service for wholesale inputs, such as Ethernet. Moreover, carriers need to connect to each other on an IP-to-IP basis, recognizing the importance of preserving quality of service standards when traffic passes from the network of one carrier to another.

tw telecom has invested heavily in fiber and building connectivity, typically investing 20-25% of its revenues in capital expenditures, the vast majority (< 80%) of which goes to deployment of Metro & Intercity fiber/equipment to deliver customer services. While we've been successful deploying Ethernet capabilities where economically feasible, barriers to construction and economic realities associated with the scale and scope of services limit our ability to construct and deploy fiber. To supplement our deployment of Ethernet, we've attempted to negotiate contracts to purchase finished Ethernet services from ILECs. However, unreasonable pricing and lack of service quality guarantees highlight uneven bargaining power. Targeted regulation is necessary to support a robust wholesale market for Ethernet.

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?

No comment at this time.

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

No comment at this time.

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

Recipients of CAF support must be accountable for its use. Similarly, recipients of KUSF funding, as it may be revised to comport with the Federal CAF, must also be accountable for the use of the funds.

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

There should be an adequate transition to a Unified Rate for all intercarrier compensation as a means to minimize significant arbitrage opportunities and allow carriers the opportunity to adjust business plans accordingly. While carriers face a fundamental shift in industry conditions, a five to six year time period should be an adequate period to allow for transition. After that period, the industry may need to revisit USF and ICC based on currently industry conditions.

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)?

No comment at this time.

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?

The FCC's proposals for Phantom Traffic and Access Stimulation, as outlined in the NRPM, seem reasonable, however **tw telecom** is still evaluation whether the proposals can be implemented and the costs associated with the requirements.

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?

No comment at this time.

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

tw telecom supports the FCC's proposal to deem all intercarrier compensation as reciprocal compensation subject to cost based rates. **tw telecom** has advocated that the FCC could undertake a two-stage process in which it (1) gradually reduces, through a series of lock-step reductions, intrastate terminating access rates to interstate levels; and (2) relies on Section 251(b)(5) of the Act to unify all terminating rates (including intrastate access, interstate access, reciprocal compensation, and the ISP-bound terminating rate) to a single TELRIC-based level. This approach ensures a more orderly and predictable process, and carriers would have certainty as to year-over-year revenue reductions.

tw telecom also supports subjecting VoIP traffic to the same intercarrier rates—i.e., intrastate access, interstate access, and reciprocal compensation—as other voice telephone traffic. Applying the same intercarrier rates to VoIP traffic would level the playing field among providers of voice services. Moreover, if the same intercarrier rates are not applied to VoIP traffic, then carriers would be forced to incur huge expenses to configure their systems in order to differentiate between VoIP traffic and other voice traffic.

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?

tw telecom opposes transitioning to a bill-and keep mechanism and instead supports the principle that carries should be compensated at cost-based rates for the use of their networks. Per-minute compensation may not make sense in an all-IP network. **tw telecom** supports the establishment of some type of a reciprocal compensation rate for IP transport and termination (IP-to-IP termination).

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

See comments in response to "S" above.

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?

See comments in response to "S" and "T" above.

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?

No comment at this time.

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?

No comment at this time.

tw telecom appreciates the opportunity to submit comments on these important issues that reflect major overhaul of the Universal Service Funding system and Intercarrier Compensation structure. look forward to continuing the dialogue with all our state commissions and the FCC as we jointly w toward a resolution of these complex regulatory issues.

Sincerely,

Pamela H. Sherwood

Vice President of Regulatory