

position of each respective Sponsoring Party. The Sponsoring Parties agreed to submit the case to the Commission on legal briefs. The legal issues to be briefed were:

- (i) does the Commission have the authority to increase RLECs intrastate switched access rates to interstate levels;
- (ii) does the Commission have the authority to require additional access reductions when a RLEC loses KUSF support to competing Eligible Telecommunication Carriers (“ETC”) because the Commission has made KUSF portable; and
- (iii) does the Commission have the discretionary authority to flow through access reductions by permitting the flow through of the RLEC access reductions in this proceeding with the first major access reductions made in the generic docket, Docket No. 01-GIMT-082-GIT, considering access reductions, assuming some reductions would be ordered by the Commission.

3. On November 13, 2000, Staff, AT&T, and SWBT submitted legal briefs outlining their respective positions on the issues in which they had an interest. Similarly, ITG and SIA filed a legal brief jointly. On November 28, 2000, AT&T submitted Reply Comments addressing Staffs and ITG and SIA’s arguments.

B. The Commission has the discretionary authority to increase RLECs intrastate switched access rates to interstate levels.

4. Staff argued that K.S.A. 66-2005(c) does not require the Commission to reduce access rates for each RLEC in every instance. Staff did not rely upon on any statutory rule of construction or legislative history, but suggests that the Commission has the discretion to take into consideration the current rate structure for the RLECs and to make adjustments which keep the existing rate structures in tact. Staff points out that most RLECs participated in a pool administered by the National Exchange Carriers Association (“NECA”) that established the interstate access charges. At one time, according to Staff, one NECA rate applied to RLECs and thus any changes in the NECA rate resulted in increases and decreases for all participating companies. Since then, NECA introduced rate bands and disaggregated its access charges. As a result of the introduction of rate bands, Staff continues, a

RLEC may recognize increases in access rates (by changing rate bands) even though interstate access rates have overall decreased. Since access rate reductions are to be implemented “with the objective of equalizing interstate and intrastate rates,” the Commission has the implied authority to increase intrastate access rates to achieve the stated objective, Staff avers. Based on this interpretation of K.S.A. 66-2005(c), Staff calculated RLEC access charge reductions to total \$80,788, which netted 23 companies experiencing interstate access charge reductions against 15 companies experiencing interstate access rate increases. (Palmer, Substitute Direct at 1).

5. AT&T argued that the plain meaning of the word “reduce” in K.S.A. 66-2005(c) limits the Commission’s authority to adjust access rates. Since K.S.A. 66-2005(c) does not expressly state that the Commission may “increase” intrastate access rates, according to AT&T, the Commission cannot require intrastate access rates to “mirror” interstate access rates. AT&T avers that Staff should not have recommended any intrastate access rate increases for the 15 companies that experienced interstate access rate increases. Rather, as AT&T avers, Staff should have limited its calculations to the intrastate access charge reductions for the 23 RLECs that experienced interstate access rate reductions. According to AT&T, the total RLEC access charge reductions should be set at \$686,277. (Pauls, Rebuttal at 2).

6. ITG and SIA argued that K.S.A. 66-2005(c) imposes a paramount duty on the Commission to equalize interstate and intrastate access rates, which does not preclude the Commission from considering intrastate access rate increases. ITG and SIA aver that the Commission must act in the public interest and is not precluded from taking into consideration the impact on the affordability of local service rates, the availability of universal service and the size of the KUSF. In addition, according to ITG and SIA, the legislature assumed that the only way to achieve parity was through a reduction in intrastate access rates. Since the passage of the 1996 State Telecommunications Act, the

interstate and intrastate access rate structures have changed; NECA no longer sets one rate but sets several access rates based upon rate bands reflecting the carriers' costs relative to the total pool costs, ITG and SIA aver. ITG and SIA point out that RLECs have generally concurred in a standardized tariff for intrastate access and if the Commission does not equalize all access rates, then the benefits of the standardized tariff will be nullified. ITG and SIA aver that a narrow reading of K.S.A. 66-2005 is inconsistent with the overall statutory scheme granting the Commission broad jurisdictional oversight over telecommunication providers in Kansas.

7. K.S.A. 66-2005(c) provides:

Subject to the commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate levels as provided herein. Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. The commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions. Any remaining portion of the reduction in access and toll charges not recovered through local residential and business service rates shall be paid from the KUSF pursuant to K.S.A. 1999 Supp. 66-2008 and amendments thereto. Rural telephone companies shall reduce their intrastate switched access rates to interstate levels on March 1, 1997, and every two years thereafter, as long as the amounts equal to such reductions are recovered from the KUSF.

K.S.A. 1999 Supp. 66-2005(c).

8. "In interpreting a statute, [the reviewing tribunal] must give effect to its plain and unambiguous language, without determining what . . . the law should be." *State v. Reed*, 23 Kan. App. 2d 661, 663, 934 P.2d 157, *rev. denied* 262 Kan. ____ (1997). "When a statute is plain and unambiguous, the appellate courts will not speculate as to the legislative intent behind it and will not read such a statute so as to add something not readily found in the statute. [Citation omitted.]" *State v. Lawson*, 261 Kan. 964, 966, 933 P.2d 684 (1997). "In construing statutes, the legislative intention

is to be determined from a general consideration of the entire act. Effect must be given, if possible, to the entire act and every part thereof. To this end, it is the duty of the court, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible. [Citation omitted.]” *KPERS v. Reimer & Koger Assocs., Inc.*, 262 Kan. 635, 643-44,941 P.2d 1321 (1997). “In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act, but are required to consider and construe together all parts thereof in *pari materia*. . . . [Citation omitted.]” 262 Kan. at 644. “[S]everal provisions of an act, in *pari materia*, must be construed together with a view of reconciling and bringing them into workable harmony and giving effect to the entire act if it is reasonably possible to do so. [Citation omitted.]” *State v. Le*, 260 Kan. 845, 847-48, 926 P.2d 638 (1996).

9. The language of the statute is not esoteric or otherwise difficult to understand. However, K.S.A. 66-2005(c) presupposes that interstate access rates would be greater than intrastate access charges and that parity would be a matter of reducing intrastate access rates. It is not plain or clear what action may be taken when intrastate access rates are not greater than interstate access rates, especially given the legislative mandate to equalize interstate and intrastate rates. This legislative mandate, coupled with the ambiguity created by a factual circumstance not specifically envisioned by the statute allows the Commission to review the legislative history leading to the passage of the State Telecommunications Act of 1996 to determine the legislative intent.

10. In reviewing the early legislative history, the legislative telecommunication policy was not to operate in a vacuum, noting that transitional issues would be difficult. Final Report of the Telecommunication Strategic Planning Committee dated January, 1996 at iv-v. This report envisioned a regulatory framework that would bring consumers the greatest benefits of effective competition while creating a level playing field where no participant is placed at a competitive disadvantage. The report

recognized that the Commission would play a vital role in implementing competition into the telecommunications industry, and the legislature did not intend to curtail the Commission's authority. *Id.* at 20-23. The report further recognized the need for the Commission to act carefully, deliberately and in a balanced manner. *Id.* at 36. The report expressed concern about local rates reflecting a cost misallocation and causing asymmetry for the regulated firm. *Id.* at 22. Rate rebalancing between access charges and local rates was central to the policy framework supporting the introduction of competition into the Kansas telecommunications market. *Id.* at 47. In discussing the introduction of competition into the intraLATA toll market, the report was based on the assumption that intrastate access is overpriced relative to interstate access and that intrastate access charges had to be reduced. The report also indicated that reduction in access charges was to be "revenue neutral" to the LEC in that customers collectively would not pay more or less on their monthly bills. Customers, however, would see a shift reflected within their total rates. *Id.* at 45. See also *CURB v. KCC*, 264 Kan. 363, 382 (1998)(a constant arranging and rearranging of additional costs goes on between the regulatory agency and the public utility--always with the purpose of arriving at a fair total price. Here, the legislature sets up a procedure to ensure that the utilities would have the same revenue under the new Act [1996 Kansas Telecommunications Act] as they had prior to the Act).

11. It is clear from the legislative history that the parity between interstate and intrastate access rate is the paramount concern. The Commission is expected to do what is necessary to achieve rate parity without institutionalizing a revenue shortfall for the LEC and has implied powers to carry out the paramount purpose of the statute. See *Pitts v. Kansas Dental Board*, 267 Kan. 775 (1999)(the Kansas Supreme Court implied a jurisdictional grant of authority to allow an administrative agency to perform a function the court considered to be vital). "Great latitude is granted to the legislature to delegate certain functions to the administrative branch of government. Courts start with the

presumption that the legislature and the people have the right to assume that public officials will exercise their express and implied powers fairly, honestly and reasonably. While standards must accompany a delegation of authority, great leeway should be allowed the legislature in setting forth guidelines or standards, and the use of general rather than minute standards is permissible.” *State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, Kansas*, 264 Kan. 293, syl. 12 (1998). Without the implied power to increase intrastate access rates, the objective of achieving rate parity would be thwarted and institutionalize an access revenue shortfall in terms of rate parity. Therefore, the Commission accepts Staffs calculation of the level of access rate reductions for the RLECs. The Commission notes that for companies experiencing an increase in access revenue, there will be a corresponding reduction in KUSF support.

C. The Commission is authorized to require additional access reductions in this proceeding at this time.

12. Staff argued K.S.A. 1999 Supp. 66-2005(c) specifically calls for access charge reductions to be implemented for RLECs every two years subject only to the qualification “so long as amounts equal to such reductions are recovered from KUSF.” According to Staff, the State Telecommunications Act does not require the Commission to stop access reductions because KUSF is portable. Furthermore, the KUSF, Staff avers, must be fully portable to meet the competitive neutrality requirement of the Federal Telecommunications Act of 1996. Staff observed that when a rural company loses a customer to a competitor, it will lose the revenue associated with that customer, regardless of whether access charges are reduced. According to Staff, a RLEC has no right to keep the KUSF support for that lost customer but may seek a rate increase to recover any revenue deficiency from its remaining customers. Finally, Staff pointed out that no ETC has yet been certified to receive

KUSF support in a rural exchange; however, the Commission is required by law to act on the currently proposed access charge reductions.

13. AT&T argued that K.S.A. 66-2005(c) does not contemplate that access reductions cease when and if the KUSF is determined to be portable. According to AT&T, if access reductions were not made and the RLEC lost a customer to a CLEC, the RLEC would lose that customer's access revenue. Likewise, AT&T avers, when a RLEC loses a customer to a KUSF supported CLEC, then the RLEC loses that KUSF support. According to AT&T, the loss of revenue is an inevitable part of competition but notes that the RLECs have yet to face competition. AT&T points out that it was never the intent or purpose of the State Telecommunications Act to insulate RLECs from revenue losses resulting from competition.

14. ITG and SIA argue that since access charge reductions are required to be offset by additional KUSF support, the RLEC is entitled to keep that amount of KUSF support associated with the access reduction when KUSF support is ported to a competing carrier. ITG and SIA aver that the RLEC must be compensated, without limitation, for all access revenue lost through competition. According to ITG and SIA, the porting of any KUSF support originally provided to compensate for state-mandated access reductions, as opposed to support necessary for the provision of high-cost universal service, is a condition precedent to any access rate reductions authorized under K.S.A. 66-2005.

15. This proceeding was initiated for the limited purposes set forth in K.S.A. 1999 Supp. 66-2005(c). K.S.A. 66-2005(c) requires RLECs to reduce access charges to interstate levels every two years. The Commission's authority in this proceeding at this time is not affected by a subsequent docket that may introduce competition into a rural exchange. The Commission recognizes that RLECs have made investments in their infrastructure to serve customers under a prior regulatory framework,

which determined a revenue requirement that is then recovered from the sum of revenues of the services provided, including access revenue. The proper regulatory treatment for investments that were made prior to the emergence of competition to deploy and maintain ubiquitous networks to meet universal service goals, and which might not be recovered due to developing competition has been recognized as an issue implicated by the introduction of competition into the telecommunication industry. See Final Report of the Telecommunication Strategic Planning Committee dated January, 1996 at 35. The Commission recognizes the importance of the issue to RLECs, as proposed in the Stipulation and Agreement, but believes that it is more appropriate to address this issue in a proceeding where all parties directly affected by any ruling on portability are participating. The Commission notes that no KUSF support is currently being ported and that there is sufficient time to address the issue in other dockets which are better suited to deal with issues of stranded investments and KUSF portability thoroughly and completely such as Docket No. 99-GIMT-326-GIT.

D. The Commission has discretionary authority to flow through access reductions by permitting the flow through of the RLEC access reductions in this proceeding with the first major access reductions made in the generic docket, Docket No. 01-GIMT-082-GIT, considering access reductions, assuming some reductions would be ordered by the Commission.

16. Staff argued that the Commission has the discretionary authority to affect the timing of the toll reductions. Staff was concerned that the size of the proposed access reductions was so small that it may be difficult, if not impossible, to determine whether the access reductions have been flowed through to customers. Staff was also concerned that the compliance filings required of the toll provider would be unduly burdensome in light of the size of the proposed reductions. Although Staff's testimony provided various options for the Commission, Staff suggested in its brief that the Commission defer implementation of the toll reductions until Docket No. 01-GIMT-082-GIT is decided.

17. AT&T argued that the Commission has the discretionary authority to implement the timing of toll reductions. AT&T recommends that it be deferred until the Commission decides whether further access rate reductions should be required in Docket No. 01-GIMT-082-GIT. AT&T was concerned that the cost to make compliance tariff filings that is required of AT&T and other toll providers would be greater than the benefits of the lower access charges.

18. ITG and SIA argued that the Commission has the discretionary authority to delay the implementation of the toll reductions. ITG and SIA cautioned that if the reductions are deferred, customers may be denied the benefits in a timely manner. ITG and SIA suggested that all toll providers be required to immediately file new tariffs complying with the access reductions ordered in this proceeding.

19. The Commission accepts Staffs, AT&T's and ITG and SIA's arguments that the Commission has the discretion to defer the implementation of the toll reductions ordered in this proceeding. Given the magnitude of the reductions, the Commission will defer implementation and require the accrued benefit to be passed through after the issue of whether further access charge reductions should be ordered in Docket No. 01-GIMT-082-GIT is decided. The Commission does not intend to make compliance filings a barrier to effective competition. Staff also observed that it is an unnecessary administrative burden for resellers of telecommunications services to make any sort of compliance filing because as resellers, they do not benefit from the access charge reduction and cannot flow it through to their toll rates. When applicable carriers are required to flow the accrued benefit through to consumers, those toll providers that are strictly resellers of telecommunications services shall not be required to make any type of compliance filing regarding toll reductions required by this order.

20. SWBT argued that only the RLEC is subject to further access rate reductions. K.S.A. 66-2005(c), as SWBT avers, does not require and does not expressly authorize the Commission to implement further access rate reductions for price cap companies like SWBT. SWBT raises an argument that does not need to be decided in this proceeding. However, SWBT's argument, by itself, indicates the need for the Commission to review this issue anew in Docket No. 01-GIMT-082-GIT. Docket No. 01-GIMT-082-GIT is a general investigation into access charge reform. SWBT's argument is germane to that docket.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The foregoing statements, discussions, and analysis are hereby adopted as Findings and Conclusions of the Commission.

(B) The Commission approves Staff's calculation of access reductions.

(C) The Commission defers implementation of the access charge reduction order in this proceeding until Docket No. 01-GIMT-082-GIT is decided. No toll reductions are required at this time, but the accrued benefit will be required to be passed through to consumers when the toll reductions are implemented.

(D) Resellers of telecommunications services are not required to make any compliance filing regarding the toll reductions.

(E) A party may file a petition for reconsideration of this Order within fifteen (15) days of the date of this Order. If this Order is mailed, service is complete upon mailing, and three days may be added to the above time frame.

(F) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

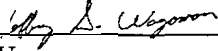
BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus, Corn.; Moline, Corn.

Dated: JAN 04 2001

ORDER MAILED

JAN 04 2001



Jeffrey S. Wagaman
Executive Director

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