

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:     Brian J. Moline, Chair  
                              John Wine  
                              Robert E. Krehbiel

In the Matter of an Audit and General     )  
Rate Investigation of Home Telephone     )     Docket No. 02-HOMT-209-AUD  
Company, Inc.                                 )

**ORDER ON REMAND**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission finds and concludes as follows:

1.     On January 8, 2004, the Commission received the Order of the Kansas Supreme Court denying the Commission's Petition to Review the decision of the Court of Appeals issued in *Home Telephone Company, Inc. v. Kansas Corporation Comm'n*, \_\_\_ Kan.App.2d \_\_\_, \_\_\_ P.2d \_\_\_ (Slip Op. No. 03-90726, filed September 30, 2003). This Order implements the directions of the Court of Appeals rendered in *Home Telephone*.

2.     In *Home Telephone*, the Court of Appeals held:

In summary, we find the Commission's decision denying Home [Home Telephone Company] an income tax expense adjustment in its revenue requirement under the circumstances of this case was not reasonable. A regulatory agency's decision must be the result of a process that is logical and fair. We remand this issue and direct the Commission to enter an order amending Home's revenue requirement to include the \$74,634 income tax expense calculated by Staff and accepted by Home. We affirm the

Commission's order with respect to Home's rate case expenses.

Affirmed in part, reversed in part, and remanded with directions.

Slip Op. at 23-34.

3. The Court's decision embodies an income tax expense of \$74,634 which was considered by Commission Staff (Staff) in discussion with Home Telephone. The Commission notes that Staff's calculation of income tax expenses for Home Telephone's revenue requirement included the companion adjustment to rate base, which increased the deferred tax liability in recognition of the income tax expense. The Commission, therefore, presumes that the Court of Appeals intended to effectuate recovery of the income tax expense in conjunction with the companion rate base adjustment to the deferred tax liability, which was included as part of Staff's calculations.

4. The income tax component of Home Telephone's rate structure, and recovery thereof, shall relate back to the date when the Commission entered its Order Denying Imputed Income Tax Adjustment on November 27, 2002. The Court of Appeals did not find that it was unreasonable to deny the imputed income tax adjustment in the initial order; prior to that initial order, Home Telephone had failed to present evidence to support an income tax expense adjustment whether imputed or actual. The Commission granted reconsideration of that initial order to allow Home Telephone additional opportunities to present evidence on the income tax issue, a decision which was not considered by the Court of Appeals to be error. It was only during the period following the initial order; a period still lacking credible evidence as to income taxes actually paid by the Subchapter S shareholders of Home Enterprises, Inc. on income attributable to public

utility operations, that Home Telephone and Staff first considered an income tax expense of \$74,634. The Commission, therefore, presumes that the Court of Appeals intended to effectuate its mandate as of the date the Commission entered its Order Denying the Imputed Income Tax Adjustment and consistent with the existing practices used to administer the KUSF.

5. KUSF support payments are dispersed by the KUSF administrator on a monthly basis based upon the KUSF draw requirements, as reflected for each recipient company on the first of each month. The KUSF administrator does not prorate the KUSF support payments for changes occurring during a given month. Accordingly, the inclusion of income tax expense shall commence with the December 2002 support payment. The Commission, therefore, finds that pursuant to the Court of Appeals' mandate, Home Telephone's monthly KUSF support payment should be increased, as calculated in the attached exhibit. The Commission further finds that a one-time, lump-sum payment, as set forth in the attached exhibit, should be made to the company to reflect the inclusion of income tax expense in the revenue requirement for the period from December 2002 to February 2004.

6. The Court of Appeals noted that Home Telephone's calculations and documentation were not adequate and that the Commission's request that Home Telephone keep the appropriate accounting records was reasonable. Slip Op. at 8. Home Telephone chose not to keep financial data, as required by National Exchange Carrier Association (NECA) by virtue of the authority delegated to it by the Federal Communications Commission (FCC). NECA, as created by the FCC to administer interstate revenue pools, uses accounting rules and standards to govern record keeping for companies receiving

federal universal service fund support. These accounting rules and standards help ensure, and assist the Commission in determining, that ratepayers pay for the costs actually incurred in the provision of telecommunications services and not compensate the public utility for phantom costs or tax expenses. The Commission does and has required companies receiving KUSF support to follow NECA/FCC accounting rules and standards. The continued recognition of income tax expenses in future rate filings or audits, including any future requests for supplemental KUSF funding, are subject to compliance with the NECA/FCC's, and this Commission's, accounting rules and standards, and orders.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. Home Telephone's revenue requirement and monthly KUSF payment are modified pursuant to the mandate of the Court of Appeals, as set forth in the attached exhibit.

B. The KUSF administrator shall increase the monthly support payable to Home Telephone, as shown in the attached exhibit, to implement the modification provided by this Order on Remand, effective for support payable to the Home Telephone in March 2004. The KUSF Administrator shall also make an additional one-time, lump-sum payment in the amount shown in the attached exhibit from the Fund to the company to reflect the inclusion of income tax expense in the revenue requirement for the period from December 2002 to February 2004.

C. 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.

D. The Commission retains jurisdiction over the subject matter and the parties for the purposes of entering such further orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**


Moline, Chr.; Wine, Com.; Krehbiel, Com.

**ORDER MAILED**

MAR 19 2004

Dated: \_\_\_\_\_

MAR 19 2004

  
\_\_\_\_\_  
Susan K. Duffy  
Executive Director

**Home Telephone  
KUSF Support True-Up Calculation Worksheet  
Fiscal Year 12/2002-2/2004**

**True-Up Summary  
Issue Nos. 8-11**

**Calculation of Support by Category:**

<b>Description</b>	<b>Annual</b>	<b>Monthly</b>
<b>KUSF FY 2002/2003:</b>		
KUSF Support from Issue No 8-Original	\$583,145	\$48,595
KUSF Support from Issue No 8-Revised	657,779	54,815
KUSF Support True-Up FY 2002/2003	\$ 74,634	\$6,220
Number Months in FY 2002/2003 Affected (Dec. 02-Feb. 03)		3
<b>Total FY 2002/2003 True-Up</b>		<b>\$18,659</b>
<b>KUSF FY 2003/2004:</b>		
KUSF Support from Issue No 9-Original	\$ 735,289	\$ 61,274
KUSF Support from Issue No 9-Revised	808,430	67,369
KUSF Support True-Up	\$ 73,141	\$6,095
Number Months in FY 2003/2004 Affected (March-May 03)		3
<b>March 03-May 03 True-Up</b>		<b>\$18,285</b>
KUSF Support from Issue No 10-Original	\$ 734,409	\$ 61,201
KUSF Support from Issue No 10-Revised	807,550	67,296
KUSF Support True-Up	\$ 73,141	\$6,095
Number Months in FY 2003/2004 Affected (June 03-Feb. 04)		9
<b>June 03-Feb. 04 True-Up</b>		<b>\$54,856</b>
<b>Total FY 2003/2004 True-Up</b>		<b>\$ 73,141</b>
<b>Total FY 2002/2003 and FY 2003/2004 True-Up (Lump Sum Payment)</b>		<b>\$ 91,800</b>
<b>KUSF FY 2004/2005:</b>		
KUSF Support from Issue No 11-Original	\$ 710,639	\$ 59,220
KUSF Support from Issue No 11-Revised	783,796	65,316
<b>Additional Monthly KUSF Support, effective 3-1-04</b>	<b>\$ 73,157</b>	<b>\$ 6,096</b>