

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of an Investigation to Determine)
the Assessment Rate for the Eighteenth Year of) Docket No. 14-GIMT-105-GIT
the Kansas Universal Service Fund, Effective)
March 1, 2014.)

ORDER ASSESSING PENALTIES AGAINST AT&T

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being fully advised of all matters of record, the Commission makes the following findings:

1. On January 30, 2014, AT&T advised the Commission of some reporting discrepancies in its Kansas Lifeline Service Program (Lifeline or KLSP) recertification.¹ On March 7, 2014, AT&T explained it over-counted the number of customer lines it claimed as eligible for Lifeline support, resulting in it over-collecting approximately \$83,000 for June 2012-December 2013.² Upon submitting its true-ups to GVNW, AT&T adjusted the amount of Lifeline support it over-collected to \$83,831.³ AT&T remitted \$83,831 to the KUSF, resulting in AT&T having a credit balance of \$83,831 in its KUSF account.⁴

2. In its August 12, 2014 Report and Recommendation, Staff suggested the Commission find AT&T over-collected \$83,831 in Lifeline support, which should be repaid to the KUSF.⁵ AT&T did not comment on Staff's Report and Recommendation.

¹ Report and Recommendation, Aug. 12, 2014, p. 6.

² *Id.*, pp. 6-7.

³ *Id.*, p. 7.

⁴ *Id.*

⁵ *Id.*

3. On September 9, 2014, the Commission issued an Order Adopting Adjustments and Refunds to AT&T's KUSF Account, finding AT&T over-collected \$83,831 in Lifeline support, but has repaid those unearned Lifeline credits. The Commission expressed concern over AT&T's failure to adequately monitor its Lifeline program processes and directed Staff to file a Report and Recommendation, suggesting an appropriate penalty to levy against AT&T for its failure to adequately monitor its annual Lifeline recertification process and proposing guidelines for addressing non-compliance with Lifeline obligations.

4. On September 29, 2014, Staff filed its Report and Recommendation recommending the Commission assess a penalty of \$4,750 against AT&T for non-compliance with KLSP rules and proposing general guidelines for addressing non-compliance with Lifeline obligations.

5. In attempting to develop guidelines, Staff reviewed the Federal Communications Commission's (FCC) enforcement actions on penalties for violations of Lifeline program rules.⁶ The FCC's rules specifically provide for upward penalty adjustments based on: (1) egregious misconduct; (2) ability to pay/relative disincentive; (3) intentional violation; (4) substantial harm; (5) prior violations of any FCC requirements; (6) substantial economic gain; and (7) repeated or continuous violation. The FCC's rules also provide for downward adjustments based on: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of overall compliance; and (4) inability to pay.⁷

6. Staff recommended the following guidelines for addressing noncompliance with KLSP obligations: (1) the carrier should be required to repay the over-collected monies to the KUSF; (2) each occurrence should be defined as one month, unless the Commission believes the

⁶ Report and Recommendation, Sept. 29, 2014, p. 2.

⁷ *Id.*, p. 3.

situation warrants a different treatment, with the monthly fines for non-compliance should range from \$250 - \$2000; and (3) the Commission would have leeway to increase the fines if the Commission finds: (A) egregious misconduct; (B) the carrier's assets are significant enough that a larger disincentive is necessary; (C) the violation was intentional; (D) the violation resulted in substantial harm; (E) prior violations of Commission requirements; (F) the violation resulted in substantial economic gain; or (G) repeated or continuous violation. Similarly, the Commission would have latitude to reduce the fines if it finds: (A) the violations are minor; (B) good faith or voluntary disclosure; (C) a history of overall compliance; or (D) inability to pay.⁸

7. The Commission finds the guidelines proposed in Staff's September 29, 2014 Report and Recommendation to be consistent with the FCC's approach and believes they will advance the Commission's goals of greater compliance with the Lifeline program. Accordingly, the Commission adopts the guidelines set forth in paragraph 6 to impose penalties for violations of Lifeline program rules.

8. The Commission now applies those standards to AT&T's violations. AT&T over-collected \$83,831 in KLSP credits for nineteen months (June 2012 - December 2013). Under the newly adopted guidelines, the penalties could range from \$4,750 to \$38,000.

9. Following the discovery of the discrepancies in its Lifeline reporting, AT&T conducted a thorough review of its Lifeline subscriber base to ensure it identified all of the erroneously received KLSP credits. AT&T explains it has enhanced its quality controls to manage new and existing Lifeline customers, by comparing its billing data with its current Lifeline customers as shown in the Lifeline database to ensure it has the appropriate documentation for each Lifeline customer claimed. AT&T believes this monthly comparison will ensure its reimbursement claims remain in sync with the most current information about

⁸ *Id.*, pp. 3-4.

Kansas Lifeline subscribers as reflected in AT&T's Lifeline database. In addition, AT&T's Lifeline vendor has established a mechanized process to de-enroll customers from the Lifeline program if the subscriber has not responded to recertification within 30 days (as required by the FCC), which should prevent ineligible customers from being inadvertently included in AT&T's Lifeline reimbursement claims on a going forward basis. Finally, AT&T adopted additional processes for identifying which subscribers to include in its Lifeline reimbursement claims.⁹

10. Staff suggests leniency as it does not believe AT&T intended to over-collect KLSP monies, nor did AT&T achieve any financial gain as all of the over-collected monies were passed along to customers in the form of KLSP credits. Furthermore, AT&T voluntarily disclosed the error, has taken measures to prevent the error from occurring in the future,¹⁰ and to Staff's knowledge has not had any prior violations of KLSP rules and regulations. Taking all of those factors into consideration, Staff recommended the Commission assess a penalty of \$250 for each month AT&T over-collected KLSP monies, which amounts to a \$4,750 penalty.

11. In determining an appropriate penalty for AT&T's failure to adequately monitor its Lifeline program reporting, the Commission has wide discretion to impose a fine ranging from \$4,750 to \$38,000. Applying the newly adopted guidelines to AT&T's violations, AT&T has already repaid the over-collected monies to the KUSF. Therefore, the next step involves determining whether there are any applicable, aggravating factors. The only potential factor to support a higher penalty is AT&T's size and wealth. The penalty imposed must be significant enough to deter future non-compliance. The Commission factors in AT&T size and substantial assets in assessing the penalty. Next, the Commission considers any mitigating factors. The evidence suggests AT&T acted in good faith and voluntarily disclosed its failure to adequately

⁹ Id., pp. 5-6.

¹⁰ See ¶ 9 of this Order for a description of the remedial actions taken by AT&T.

monitor its Lifeline compliance. Furthermore, AT&T has demonstrated a history of overall compliance with Commission requirements. Accordingly, the Commission finds the penalty imposed upon AT&T should be close to the low end of the range in the newly adopted guidelines.

12. The Commission finds imposing a \$4,750 penalty against AT&T for its failure to adequately monitor its Lifeline recertification program is appropriate in light of the guidelines outlined by the Commission.

THEREFORE, THE COMMISSION ORDERS:

A. AT&T is fined \$4,750 for its failure to properly manage Lifeline recertification.

B. The proposed guidelines for imposing penalties for violations of Lifeline program rules set forth in paragraph 6 are adopted.

C. Paragraphs 6 and 7 are designated precedential as may be used as precedent for the Commission's assessment and imposition of penalties for violations of Lifeline program rules.

D. The parties have 15 days from the date this Order was electronically served to petition for reconsideration.¹¹

E. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

¹¹ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: NOV 20 2014



ORDER MAILED NOV 20 2014

Thomas A. Day
Acting Executive Director

BGF/mf

NOV 20 2014

CERTIFICATE OF SERVICE

14-GIMT-105-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Assessing Penalties Against AT&T was served by electronic service on this 20th day of November, 2014, to the following:

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