

Lifeline Phone Service Inc.

May 18, 2012

Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, KS. 66604-4027

Received
on

MAY 21 2012

by
State Corporation Commission
of Kansas

Re: Reply to Staff Report in Docket No. 12-LLPT-714-COC

Matter of the Application of Lifeline Phone Service, Inc. for a Certificate of Convenience and Authority to Provide Exchange Telecommunications Service on a Resold Basis Within the State of Kansas

Honorable Commission:

On May 9, 2012 the Kansas Corporation Commission Staff issued a report recommending denial of the CLEC Application of Lifeline Phone Services Inc.

The undersigned applicant, Rick Laham, wishes to personally correct the inaccuracies contained in the Staff report. The Staff report is highly biased, presented single issues as multiple infractions, and in some cases the examples are a decade old. Since competitive telecommunications has so few players these days, perception and reputation is everything. In my opinion this fact necessitates a reply by me personally, not my lawyer, in order to protect my reputation. I also wish to provide you with a candid explanation, straight from the horse's mouth as-it-were, about inaccuracies in the report, extenuating circumstances, and issues which simply do not matter to this application.

Denial of my application would penalize a person who has been the single biggest Lifeline promoter and benefactor in the history of the Kansas Lifeline Program. My former companies have enrolled more Lifeline Eligible Recipients than all other CLECs or RLECs combined. More than 40,000 Kansas Low Income, Minority, Elderly, Handicapped and Disadvantaged, have used our services for over ten years. In doing so, my previous companies have done more good for Kansans than any other CLEC in the history of the Kansas Lifeline Program. My former company, Local Phone Services Inc d/b/a Best Phone was even recognized by the Governor of Kansas. (Exhibit 1)

The report you will rely upon in part in making your decision tells an incomplete story. Therefore, please consider my comments when you take up this matter. Feel free to call me into a Hearing if you wish further information or to ask questions.

Respectfully,



Rick Laham
Applicant

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received
on

MAY 21 2012

Before Commissioners: Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright

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State Corporation Commission
of Kansas

Re: Matter of the Application of Lifeline
Phone Service, Inc. for a Certificate of
Convenience and Authority to Provide
Exchange Telecommunications Service on a
Resold Basis Within the State of Kansas

Docket No. 12-LLPT-714-COC

On May 10, 2012 Staff filed a Report and Recommendation providing analysis of the application of Lifeline Phone Service, Inc. The analysis report made a recommendation to deny to the Commission. Denial of this application would penalize the single biggest Lifeline promoter and benefactor in the history of the Kansas Lifeline Program and deny tens of thousands of Kansans a true choice in service providers. Setting aside these concerns however, the Staff report comes to incomplete conclusions based on out-of-context quotes taken from a litany of complex cases, some up to a decade old.

I. The Staff Report is Based on Dated Information and Does Not Tell the Full Story

1. Staff mis characterizes the statements about Rick Laham in regard to Connect IT because it does not understand that he is in a civil dispute with that company.¹ Mr. Laham acknowledges that under dire circumstances AT&T would step in as carrier of last resort. Mr. Laham's comments were made only in the spirit of service and out of concern about leaving thousands of Lifeline customers impaired or without service due to his business dispute with Connect IT.
2. In its report, Staff cites to two companies owned by Laham from 1997 to 2009.² First, the applicant questions the fairness of bringing up ten-year old issues when records and recollections are sketchy at best. Second, Staff seems to sidestep the fact that concerns regarding Laham and Local Phone Service Inc. were not weighty enough at the time they were occurring to dissuade this Commission from approving Local Phone Service, Inc.

¹ Staff comments on Page 2 of Staff Report, top three paragraphs.

² See Page 3 of Staff Report. Local Phone Services, Inc. was granted a Certificate of Convenience and Authority to resell switched local exchange telecommunications service and exchange access service in Kansas on November 26, 1997, in Docket No. 98-LPST-289-COC. Local Phone Services, Inc. was granted a Certificate of Convenience and Authority to resell switched local exchange telecommunications services within the state of Kansas on February 19, 2002, in Docket No. 02-LCLT-576-COC.

3. Staff cites four complaint proceedings against Local Phone Services Inc. as rationale for denying this application.³ The Applicant disagrees with much of Staff's conclusions. However, Applicant and Staff would be in agreement that the cases cited present a complex, interwoven, sequence of events spanning many years. During this time Local Phone Services was under intense financial pressure. (This financial pressure is described in Section II below and is arguably, at least in part, due to actions or inaction of a previous Kansas Corporation Commission)
4. Set in this context, Applicant questions the equity of raising issues older than five years when the CLEC application cites specifically to five years, and when any court in the land would throw out items of similar age due to the statute of limitations.
5. Staff cites to Applicant's October 13, 2009 letter to this Commission informing it of Local Phone Service Inc. intent to exit the Kansas market and sell its customer base to Connect IT.⁴ Unlike the other allegations in the Staff report, this one is "only" three years old. Since these particular issues do fall within the appropriate limitations period, Applicant responds here in more detail.
6. First, Applicant agrees with Staff that the Commission issued an Order on January 25, 2010, at his request, to cancel Local Phone Services, Inc.'s Certificates to provide services in Kansas. Nevertheless, Staff is way out of line in its other allegations.⁵ These cases were a complex litany of cases that worked through this Commission over a series of many years. In this regard Staff presents a vastly simplified account of them - a *Cliff Notes* equivalent of *War and Peace*.
7. Staff came to an *incorrect* conclusion that Local Phone Services or Connect IT was operating in Kansas without a COA.⁶ Neither Local Phone Services nor Connect IT operated without a certificate since the Connect IT acquisition of Local Phone Services customers.
8. Staff is correct that Connect IT entered into an Agreement with one of the Applicant's companies. There is nothing wrong with such an Agreement.

³ (1) Matter of the General Investigation of Local Phone Services, Inc. to Show Cause Why This Commission Should Not Initiate Sanctions and Fines and Cancel, Suspend and Revoke Any Authority the Carrier Currently Holds, Docket No. 04-LCLT-835-SHO.

(2) Matter of the KUSF Audit of Local Phone Services, Inc. Docket No. 05-LCLT-053-KSF.

(3) Matter of the Application of Local Phone Services, Inc. for a Certificate of Convenience and Authority to Transact the Business of an Interexchange Services Provider Within the State of Kansas, Docket No. 07-LCLT-020-COC.

(4) Matter of the General Investigation of Local Phone Services, Inc., Docket No. 07-LCLT-011-GIT.

⁴ Exhibit "A" of the Staff Report.

⁵ Page 4 of the report states: (1) Local Phone Services, Inc. offered long distance services without obtaining proper authority to do so; (2) the Company did not report actual revenues to the KUSF; (3) the Company lacked financial documentation to support revenue reported to the KUSF; and (4) the Company may have provided Lifeline credits to ineligible customers. The Staff Report cited cases up to nine years old.

⁶ Due to the fact that this is the only claim of Staff that is within an acceptable three-year limitations period, and since operating without authority is serious, it probably represents the only valid reason for denial contained in the Staff Report. It is however not valid for reasons contained in this Reply.

9. In the first place, Mr. Laham's expertise in crafting this business arrangement saved some 5000 Lifeline from disconnection due to AT&T billing and OSS errors.
10. In the second place, telecommunications companies contract with management companies all the time. Not only is operations responsibility outsourced in this manner all the time, many times when one calls a telecommunications company they get a representative that is not even in America, let alone that company. How many times have you personally called a telecom company and were connected to a person in India?
11. Thirdly, the fact that revenue sharing exists in such an arrangement is also not an issue. Even the FCC has conceded on this point in numerous cases. An every-day example of this occurring is when AT&T or another telecom company signs up a hotel or pay phone owner and shares revenue as part of the deal. Set in this context, the single most valid reason Staff presents for denial of my application is a red herring.
12. Staff presented an out-of-context quote by Applicant to support their incorrect conclusion:

In 2009, after relinquishing my certificates, I entered into an Agreement to Provide Wholesale CLEC Services (the Agreement) with Connect Insured Telephone, Inc. d/b/a Connect I.T., for the purchase of local telephone exchanges services, for the purpose of obtaining telephone numbers that could then be resold to my subscribers.

In the out-of-context quote above Applicant was describing the outsource agreement with Connect IT, which was certified in Kansas. This is another reason Applicant chose to speak to the Commission directly and on a pro-se basis. The Applicant finds it disconcerting to see other filings with this Commission twisted to support incorrect conclusions.

13. Staff persists in its incorrect conclusions by stating: "*It is evident that Applicant has provided local and inter exchange telecommunications services to Kansas customers since 2009 without a Certificate to transact the business of a public utility in the state.*"⁷ Staff is just plain wrong. In fact, Staff's only real basis for making its determination is a quote taken out of context.
14. Staff cites a requirement to list enforcement proceedings or criminal charges in connection with the provision of telecommunications services within the last five years. There were of course no criminal charges, and the very first example Staff lists is for a *six year old* proceeding. Without exception, the remainder of the "issues" Staff cites are the result a *single tax issue*, not five infractions. These issues were due to financial pressure on Local Phone Services Inc., which was beyond its control. This financial pressure is described Section II below and is arguably, at least in part, due to actions or inaction of a previous Kansas Corporation Commission.

⁷ Top of Page 6 of Staff Report.

II. Extenuating Circumstances and Financial Pressures Beyond Mr. Laham's Control

Above and beyond the complex regulatory cases which kept Applicant in litigation for more than a decade, two items in particular contributed to the issues experienced by Local Phone Services Inc. Combined, these issues cost Local Phone Services Inc. at least \$1.68 million dollars. With better regulatory oversight by the Kansas Commission, the *single* tax issue raised by Staff would have been inconsequential, and non-existent. Please consider the following:

1. Local Phone Services received inferior service from AT&T. As a result, Local Phone Services accrued almost \$1 million in liquidated "PM" damages as a result under the ICA. This is a fact even AT&T admits. It sent Local Phone Services Inc. the spreadsheet attached as Exhibit 2.⁸ AT&T paid out these PM liquidated damages to its CLEC competitors in all four of the other "Southwest Region" states. Local Phone Services Inc. petitioned the Kansas Corporation Commission for equal treatment. Under the Moffet administration this Commission denied payment on a legal technicality.⁹ Local Phone Services Inc. is the only local provider denied these damages and it is due solely to the fact that it resides in Kansas. This is the first reason the KCC should consider its role in Local Phone Services financial problems. The cost to Local Phone Services for not receiving what CLECs in all five other AT&T states received was **\$997,250**. As it was AT&T still paid \$216,000 in damages representing only 17% of what Local Phone Services would have received if it were in any other AT&T state *except* Kansas.
2. Applicant believes that this Commission was on the ball this year in regard to this recent case where AT&T was misapplying the Lifeline Services discount.¹⁰ According to an outside auditor, Local Phone Services Inc. was shortchanged **\$685,744.61** due to AT&T miscalculating the Lifeline discount – in Kansas but in no other AT&T state. Applicant appreciates the fact that this Commission forced AT&T to correct the issue, albeit too late for Local Phone Services. The computations are attached as Exhibit 3. Applicant respectfully requests the Commission weigh in this fact when making its decision as well.¹¹

⁸ These amounts were accrued in Texas PUC Docket 20400, Order No. 45 which AT&T appealed for over four years. Upon loss of their appeal, AT&T paid out millions of dollars to CLECs in Texas and three other states. Since the five state Southwest region adopted essentially the same ICAs (K2A, T2A, A2A, O2A etc) all AT&T competitors were paid – except for Kansas. Mr. Laham petitioned the KCC for relief but was denied on a technicality leaving him with the worst of both worlds; poor service and no recourse.

⁹ KCC Docket 07-SWBT-872-COM

¹⁰ Cite Docket No. 10-GIMT-658-GIT

¹¹ This Commission still has a chance to set this record straight. First, obviously, it can approve this Application. Second, this Commission can still ask AT&T to refund Local Phone Services (which is still a corporate entity) for the AT&T miscalculation discovered in Docket No. 10-GIMT-658-GIT. In such a case the Applicant would be willing to earmark a portion of that refund to Lifeline Phone Service Inc as further proof of financial stability.

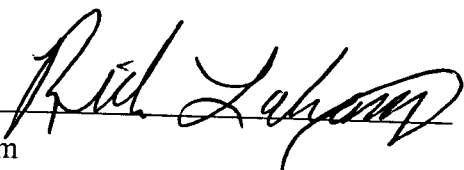
3. **\$997,250 + \$685,744 = \$1,682,994 lost.** Applicant is not blaming the Commission for this loss. Applicant is reminding this Commission that things could have been different with more aggressive regulation and enforcement. We respectfully request you consider these facts in your deliberations regarding our certification.

III Summary and Prayer

In summary, denial of this application would penalize the single biggest Lifeline promoter and benefactor in the history of the Kansas Lifeline Program. It would deny tens of thousands of Kansans a true choice in service provider. Setting aside these concerns however, much of the Staff report reaches its conclusions based on out-of-context quotes taken from a litany of complex cases. Many are now up to a decade old.

Please consider these facts, and the foregoing explanations in your deliberations. Please approve the application of Lifeline Phone Service Inc as soon as possible so Mr. Laham can continue to provide a choice in provider to Kansans. If necessary to this process, Applicant stands ready to field your individual questions personally in a formal hearing.

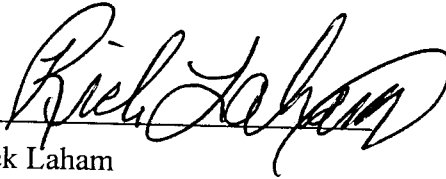
Respectfully Submitted,




Rick Laham
Applicant for Lifeline Phone Service Inc.

Affidavit of Rick Laham

I, **Rick Laham**, swear that I am over the age of 21 and qualified to make these statements. I further swear that the statements contained herein are true and correct.


Rick Laham

Subscribed and sworn to before me, Rick Laham, this 18th day of May, 2012.


Notary Public

My Commission Expires: 10 / 18 / 2015

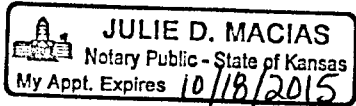


Exhibit 1

Rick Laham and Local Phone Services Inc d/b/a Best Phones Recognized by the Governor



Mark Parkinson, Governor

www.governor.ks.gov

For Immediate Release
September 10, 2009

Beth Martino, Press Secretary
785.368.8500

**Governor Parkinson highlights programs to help
low-income Kansans with phone services**

Governor Mark Parkinson, alongside state legislators, members of the Cabinet and representatives from AT&T, Best Phone and the United Way, sought to raise awareness of the Lifeline and Link-Up Programs. The two programs allow low-income customers to receive a discount on their phone services.

"Many Kansans are struggling to get by each month, and these services can make an enormous difference in helping them stay afloat," said Parkinson. "With only half of eligible consumers around the country taking advantage of the Lifeline program, it's important we raise awareness so Kansans can get the help they need."

The Lifeline Program provides a discount up to \$17.77 on monthly telephone services while the Link-Up Program provides a fifty percent discount on the cost of a phone line installation, up to \$30. To be eligible, consumers must be 150% below the federal poverty level or participate in various public assistance programs, such as food stamps, SSI or general assistance. Kansans should contact their phone company to enroll in either program.

The Kansas Legislature passed a bill during the 2008 Legislative Session to increase the number of low-income customers accessing the program. Through HB 2637, eligible consumers are automatically enrolled by phone companies based on data provided by the Kansas Department of Social and Rehabilitation Services. The Kansas Corporation Commission administers the program and reaches out to low-income Kansans to notify them about the services.

To also help low-income Kansans become aware of the programs, the Governor proclaimed next week "Lifeline Awareness Week" in the state. The week is dedicated to reaching out to those in need of telephone service.

For more information on the Lifeline or Link-Up Programs, please visit the Kansas Corporation Commission's website at <http://www.kcc.state.ks.us/pl/lifeline.htm>.

Exhibit 3

Effect of Docket No. 10-GIMT-658-GIT Lifeline Docket

EXHIBIT 3

CIT2 Lifeline Argument

AT&T Retail Line Charge \$16.55
Kansas CLEC Discount 21.6%

AT&T Wholesale Line Charge

Base AT&T Retail Rate \$16.55
Lifeline Discount \$11.27
Starting Base Cost \$5.28

AT&T Wholesale Rate \$4.14

CGM Position

Base AT&T Retail Rate \$16.55

Starting Base Cost \$12.98

Lifeline Discount \$11.27

CGM Wholesale Rate \$1.71