

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

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

In the Matter of the Application of Cox)
Kansas Telecom, LLC for Waiver of) Docket No. 18-COXT-057-MIS
Requirement to Offer Equal Access to)
Interexchange Carriers.)

**ORDER DENYING COX'S REQUEST TO WAIVE THE REQUIREMENT TO OFFER
EQUAL ACCESS TO INTEREXCHANGE CARRIERS**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On August 1, 2017, Cox Kansas Telecom, LLC (Cox) filed an Application to waive the requirement to provide access to interexchange carriers within the local calling area when offering Lifeline service.¹ If granted, Cox would cease offering its customers the option to presubscribe to long-distance service offered by other providers.²

2. Cox cites a sharp decline in customer requests for stand-alone long distance, making it no longer economical to offer.³ Currently, Cox utilizes two technologies to provide service: (1) circuit-switched; and (2) voice over internet protocol (VoIP).⁴ Stand-alone long distance traffic is handled over the circuit-switching network. Cox is transitioning away from the circuit-switched network, and argues it is no longer cost-effective to continue to upgrade its

¹ Application of Cox Kansas Telecom, LLC, Aug. 1, 2017, p. 1.

² *Id.*

³ *Id.*, ¶ 2.

⁴ *Id.*, ¶¶ 13, 16.

circuit-switched network for a dwindling number of customers.⁵ Cox estimates that less than 1% of its customers subscribe to stand-alone long distance service.⁶

3. On November 6, 2017, Staff filed a Report and Recommendation (R&R) advising the Commission deny Cox's Application because K.S.A. 66-1,187(p)'s definition of universal service does not allow for waiver of the equal access requirement.⁷ Staff agrees that Cox is not required to provide equal access to interexchange carriers for federal Lifeline purposes, but argues Cox is required to provide universal service as defined in K.S.A. 66-1,187(p) to low-income consumers receiving Kansas Lifeline Support Program (KLSP) assistance.⁸

4. On December 7, 2017, the Commission directed the parties to brief the legal issues presented in this Docket.⁹

5. On January 12, 2018, both Cox and Staff filed their initial briefs, followed by their reply briefs on January 26, 2018.¹⁰ After noting only 2 of its 700 Lifeline customers would be affected by the requested waiver,¹¹ Cox argued there is no statutory conflict between K.S.A. 66-1,187(p) and K.S.A. 66-2002. Cox claims K.S.A. 66-2002 is the more specific, and thus controlling statute.¹² While the Commission agrees the more specific statute would govern, Cox has failed to demonstrate K.S.A. 66-2002 is more specific than K.S.A. 66-1,187(p).

6. In response to Staff's concern that K.S.A. 66-1,187(p) would need to be amended if the Commission were to broadly exercise its authority to modify the definition of universal service, Cox argues that it is not requesting a legislative change, but merely a limited waiver.¹³

⁵ See *id.*

⁶ *Id.*, ¶ 19.

⁷ Report and Recommendation, Nov. 6, 2017, p. 1.

⁸ *Id.*, p. 3.

⁹ Order Establishing Briefing Schedule, Dec. 7, 2017, ¶ 7.

¹⁰ *Id.*

¹¹ Initial Brief of Cox Kansas Telcom, LLC, Jan. 12, 2018, ¶ 6.

¹² *Id.*, ¶ 8.

¹³ *Id.*, ¶ 9.

Cox emphasizes it is not seeking a modification of the definition of universal service codified in K.S.A. 66-1,187.¹⁴

7. Staff's Brief on Commission Questions cites to the Commission's Order on Definition of Universal Service issued in the 16-GIMT-575-GIT (16-575) Docket, in which, after acknowledging its authority to redefine universal service to align it with the Federal Communications Commission's definition of voice telephony, the Commission elected not to revisit the definition of universal service.¹⁵ In the 16-575 Docket, Cox agreed redefinition was unnecessary.¹⁶

8. In its Reply Brief, Cox claims it "has never requested that Commission change, modify, amend or re-interpret the universal service definition in K.S.A. 66-1,187."¹⁷ Instead, Cox characterizes its request as a simple waiver, which would not impact any other companies.¹⁸

9. In its Reply Brief, Staff claims that granting the requested waiver would essentially usurp the Legislature's definition of universal service codified in K.S.A. 66-1,187.¹⁹ Staff interprets K.S.A. 66-2002 as allowing the Commission to "fill in the details" of K.S.A. 66-1,187, but not to change the statutory definition of universal service found in K.S.A. 66-1,187.²⁰

10. The parties agree the Commission has great discretion in deciding whether to grant the requested waiver. Therefore, the question presented is not whether the Commission has authority to grant a waiver, but whether the Commission should grant the proposed waiver.

11. Cox's attempt to distinguish its requested waiver from a modification of the definition of universal service falls flat. Cox's stated rationale for a waiver is the Commission's

¹⁴ *Id.*, ¶ 14.

¹⁵ Staff's Brief on Commission Questions, Jan. 12, 2018, ¶ 6.

¹⁶ *Id.*

¹⁷ Reply Brief of Cox Kansas Telcom, LLC, Jan. 26, 2018, ¶ 3.

¹⁸ *Id.*, ¶¶ 3, 8.

¹⁹ See Staff's Reply to Initial Brief of Cox Kansas Telcom, LLC, Jan. 26, 2018, ¶ 7.

²⁰ *Id.*, ¶ 8.

“nearly limitless authority to ‘modify the definition of universal service and enhanced universal service’ under K.S.A. § 66-2002(k).”²¹ That reliance on the Commission’s authority to modify the definition of universal service, suggests there is little to no distinction between the requested waiver and a modification of the definition of universal service.

12. The Commission believes Staff’s concerns over modifying the definition of universal service are well-founded. Cox has not met its burden to demonstrate the Commission should interpret its authority under K.S.A. 66-2002(k) so broadly as to redefine universal service. The Legislature, rather than the Commission, is the appropriate forum to redefine the statutory definition of universal service found in K.S.A. 66-1,187.

THEREFORE, THE COMMISSION ORDERS:

A. Cox’s Application to waive the requirement to provide equal access to interexchange carriers within the local calling area for Lifeline service is denied.

B. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.²²

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: 04/03/2018 _____



Lynn M. Retz
Secretary to the Commission

BGF

²¹ Initial Brief of Cox Kansas Telcom, LLC, ¶ 11.

²² K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

18-COXT-057-MIS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 04/03/2018.

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