

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

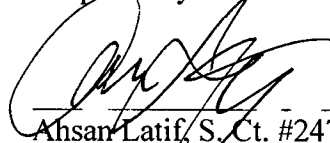
In the Matter of the Application of Cox Kansas )  
Telecom, LLC for a Waiver of Requirement to ) Docket No. 18-COXT-057-MIS  
Offer Equal Access to Interexchange Carriers. )

**NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION**

The Staff of the Kansas Corporation Commission ("Staff" and "Commission," respectively) hereby files its Report and Recommendation ("R&R") dated November 2, 2017, regarding the Application filed by Cox Kansas Telecom, LLC ("Cox") on August 1, 2017. Staff recommends the Commission deny Cox's request to waive the statutory requirement to provide equal access to long distance service providers when providing state Lifeline service.

WHEREFORE, Staff respectfully submits its R&R for Commission consideration.

Respectfully Submitted,



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**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chairman Pat Apple  
Commissioner Shari Feist Albrecht  
Commissioner Jay Scott Emler

**FROM:** Christine Aarnes, Chief of Telecommunications  
Jeff McClanahan, Utilities Division Director

**DATE:** November 2, 2017

**RE:** Docket No. 18-COXT-057-MIS

In the Matter of the Application of Cox Kansas Telecom, LLC for Waiver of Requirement to Offer Equal Access to Interexchange Carriers.

**EXECUTIVE SUMMARY:**

Cox filed an Application on August 1, 2017, requesting a waiver of the requirement to provide equal access to interexchange carriers within the local calling area when offering Lifeline service. Equal access allows telephone subscribers to choose an authorized telephone company or companies to handle their local toll and long-distance toll calls (including international). Cox states it would continue to provide long distance to its customers and only seeks permission to cease offering its customers the option to presubscribe to long distance service offered by a different provider.<sup>1</sup>

The state definition of universal service is codified in K.S.A. 66-1,187(p). Therefore, Staff recommends the Commission deny Cox's Application as the Commission is unable to waive a statutory requirement.

**BACKGROUND:**

The Commission was required to establish the Kansas Lifeline Service Program (KLSP) on or before January 1, 1997.<sup>2</sup> In accordance with state statute, the purpose of the KLSP shall be to promote the provision of universal service by local exchange carriers to persons with low income and shall be targeted to maintain affordable rates for residential local exchange service.<sup>3</sup>

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<sup>1</sup> Application, p 1

<sup>2</sup> See K.S.A. 66-2002(f)

<sup>3</sup> See K.S.A. 66-2006(a).

The Commission adopted a KLSP plan in December 1996 in which all local exchange carriers (LECs) and competitive local exchange carriers (CLECs) were directed to participate. The KLSP-qualifying programs were identified and the initial Lifeline discount was set at \$3.50 per month and funded through the Kansas Universal Service Fund (KUSF).<sup>4</sup>

Cox was granted a Certificate of Convenience to operate as a CLEC in the Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) and United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink) service areas in Docket No. 00-COXT-928-COC on May 4, 2000, and to operate as an interexchange carrier (IXC) in the state of Kansas in Docket No. 00-COXC-197-COC on December 17, 1999. Cox was granted eligible telecommunications carrier (ETC) designation in certain AT&T exchanges for the purpose of receiving federal Lifeline support in Docket No. 10-COXT-174-ETC on May 5, 2010.

Cox's Application requests that the Commission waive the requirement to provide equal access to long distance carriers when offering Lifeline service. In support of its Application, Cox states that:

- 1) granting the Application is reasonable, consistent with Federal Communications Commission (FCC) decisions, and provides technology- and competitive-neutrality; and
- 2) granting the Application is in the public interest and will not harm Cox's customers.<sup>5</sup>

First, Cox states that the long distance market has dramatically changed in the decades since the "access to interexchange carriers" service element was included in the definitions of basic service and Lifeline. To support this statement, Cox points to the 2015 FCC decision to relieve incumbent LECs nationwide of their equal access obligations. The FCC concluded that doing so was warranted by the dramatic changes in the wireline voice market since the requirement was established. Cox further cited to the FCC's elimination of access to interexchange carriers as a supported service for federal universal service support, including Lifeline.<sup>6</sup>

Second, although Cox currently can provide equal access to its customers, as it invests to modernize its network and supplant existing network arrangements, Cox asserts that recreating equal access arrangements would be wasteful and divert funds that could be used to provide better, more advanced services that customers actually value and use.<sup>7</sup>

Third, Cox states that since other telecommunications providers, such as wireless providers, are not required to provide equal access, it would not be technology neutral and non-discriminatory to require it of carriers such as Cox.<sup>8</sup>

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<sup>4</sup> Docket No. 94-GIMT-478-GIT, December 27, 1996 Order, ¶¶ 127-131. In the Order, the Commission referred to CLECs as alternative LECs, which is synonymous with CLECs.

<sup>5</sup> Application, ¶¶ 13-20.

<sup>6</sup> Id., ¶¶ 7-12, 15

<sup>7</sup> Id., ¶ 16.

<sup>8</sup> Id., ¶ 17.

Finally, Cox states that its experience with stand-alone long distance customers is similar to that reflected in the FCC decisions discussed above. According to Cox's Application, less than one percent of its residential customers subscribe to stand-alone long distance service. Cox states that existing customers subscribed to a different long distance provider will be initially grandfathered, and Cox will later assist them in transitioning to a different Cox service plan if they so choose. Because so few customers utilize this service element and because consumers may subscribe to numerous competitive telecommunications options, Cox submits that granting this Application is in the public interest and will not harm customers.<sup>9</sup>

### **ANALYSIS:**

As Cox correctly stated, the FCC has never required carriers to provide equal access to interexchange carriers for the federal Lifeline program. Rather, the FCC required carriers to simply provide access to interexchange carriers. In 2012, however, the FCC revised its list of supported services for the federal Lifeline program and eliminated the requirement to provide access to interexchange carriers. The FCC noted that many providers do not distinguish between local and long distance usage, and concluded that carriers may satisfy the obligation to provide local usage via service offerings that bundle local and long distance minutes.<sup>10</sup> Therefore, for federal Lifeline purposes, Cox is not required to provide equal access to interexchange carriers and no waiver is required.

With regard to the state Lifeline program, the KLSP was created to promote the provision of universal service to low-income consumers. The Kansas statutory definition of universal service contained in K.S.A. 66-1,187(p) is "telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E-911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services." Therefore, because the KLSP was created to promote the provision of universal service to low-income consumers, Cox is required to provide the statutory definition of universal service to low-income consumers for KLSP purposes.

Although K.S.A. 66-1,187(p) codified the definition of universal service, K.S.A. 66-2002(k), provides that the Commission may periodically review and, to the extent necessary, modify the definition of universal service and enhanced universal service, and KUSF, taking into account advances in telecommunications and information technology and services. The two statutes appear to be in conflict. Although the Commission has the authority to modify the definition of universal service, Staff does not believe the Commission can simply ignore the statutory definition of universal service contained in K.S.A. 66-1,187(p). Staff believes that any change to the definition of universal service that the Commission chooses to make would need to be followed by a similar revision by the Kansas Legislature to the definition of universal service in K.S.A. 66-1,187(p).

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<sup>9</sup> Id., ¶ 19, Fn. 27.

<sup>10</sup> *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and Further Notice of Proposed Rulemaking, rel. February 6, 2012, ¶ 49.

The Commission has reviewed the definition of universal service on three occasions. The Commission initiated its first review of the definition of universal service on June 6, 1997. The Commission specifically sought comment on whether the state and federal universal service definition should be identical. All but two commenters recommended against modifying the definition at that time. Therefore, the Commission determined not to revise the definition based on the July 1997 comments.<sup>11</sup>

The 1998 Kansas Legislature established a KUSF Working committee to, among other things, discuss, identify, and develop recommendations regarding the definition of enhanced universal service. The Chair of the KUSF Working Group sent a letter, dated September 9, 1998, to the Commission noting the statutory directive of K.S.A. 66-2002(k). The letter requested the Commission to expedite a review of the definitions of universal service and enhanced universal service and to advise the Senate Commerce Committee and House Utilities Committee of its findings and revisions, if any, not later than February 15, 1999. As the comments in the prior review were more than a year old and the telecommunications environment was rapidly changing, the Commission requested new comments on the aforementioned definitions.<sup>12</sup>

The Commission's Report and Recommendation on the Definitions of Universal Service and Enhanced Universal Service (Report) was issued on February 12, 1999. Upon careful consideration of all the comments and reply comments, the Commission recommended "toll blocking or toll control" be added to the definition of universal service and that "equal" be deleted from the phrase "equal access to long distance services." The Commission submitted its Report to the Senate Commerce Committee and House Utilities Committee in accordance with the request from the KUSF Working Group.<sup>13</sup> The Legislature, however, did not make the Commission-recommended changes to the statutory definition of universal service. Therefore, as stated previously, Staff does not believe the Commission can simply ignore the statutory definition of universal service contained in K.S.A. 66-1,187(p).

The Commission again reviewed the definition of universal service in 2016. The Commission solicited comment on, among other things, whether the Commission should align the definition of universal service for KUSF support purposes with the FCC's definition of voice telephony contained in 47 C.F.R. § 54.101 (a)(1), but not to include the broadband component in (a)(2). Several parties, including Cox, did not object to the proposed alignment of the definition of universal service for KUSF purposes with the FCC's definition of voice telephony. However, the rural local exchange carriers (RLECs) stated that there was nothing in the proceeding to support the necessity of administrative action to harmonize the definitions of universal service nor had there been any attention of record to the identification or resolution of the effects of redefining the state definition of universal service. The RLECs further suggested the Commission identify any and all potential consequences of revising the definition so that parties have a reasonable opportunity to address the public interest effects of a Commission decision. The Commission issued an Order on February 28, 2017, in which it stated that the parties were unanimous in the belief that redefinition was unnecessary at this time. Since the current state

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<sup>11</sup> Docket No. 94-GIMT-478-GIT, September 29, 1998 Order.

<sup>12</sup> Id.

<sup>13</sup> Docket No. 94-GIMT-478-GIT, February 12, 1999 Report.

definition hadn't resulted in any harm, the Commission found that it would not revise the definition of universal service at that time.<sup>14</sup>

Although Staff is not philosophically opposed to Cox's request and agrees with Cox in that the long distance market has dramatically changed in the decades since the equal access to interexchange carriers service element was included in the definition of universal service, Staff does not believe the Commission can waive or simply ignore the statutory definition of universal service contained in K.S.A. 66-1,187(p). The state definition of universal service clearly requires equal access to long distance services and only the Kansas Legislature has the authority to revise the statutory definition of universal service contained in K.S.A. 66-1,187(p). Therefore, Staff does not believe the Commission can grant Cox's request and believes Cox would need to seek a statutory change from the Kansas Legislature.

**RECOMMENDATION:**

Staff recommends the Commission deny Cox's request to waive the statutory requirement to provide equal access to long distance service providers when providing state Lifeline service because the Commission is unable to waive or simply ignore a statutory requirement.

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<sup>14</sup> Docket No. 16-GIMT-575-GIT, Order on Definition of Universal Service, February 28, 2017.

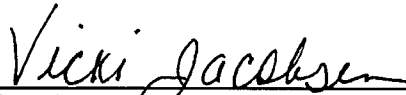
**CERTIFICATE OF SERVICE**

18-COXT-057-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served via electronic service this 6th day of November, 2017, to the following

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