

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

In the Matter of Addressing the COVID-19)
Pandemic in the State of Kansas.) Docket No. 20-GIMX-393-MIS

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

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), hereby files this Report and Recommendation (R&R) pertaining to Kansas jurisdictional telecommunications providers. Specifically, Staff recommends the following:

- Staff and the Commission continue to monitor the situation but not adopt any additional consumer protection requirements for jurisdictional telecommunications carriers at this time.
- Staff will continue to work with the Commission's Office of Public Affairs and Consumer Protection on complaints received in regard to disconnects and will apprise the Commission if the situation changes.
- Staff will continue to informally request delinquency information from the ILECs in order to monitor the severity of the impact from COVID-19 on average delinquencies.
- The Commission draft a letter to the FCC requesting guidance beyond the pledge period that addresses customer protections in both the near-term and long-term given the possibility of COVID-19 lasting into the next flu season.

WHEREFORE, Staff submits its R&R dated May 5, 2020, attached hereto, for Commission consideration.

Respectfully Submitted,

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Susan K. Duffy
Commissioner Shari Feist Albrecht
Commissioner Dwight D. Keen

FROM: Christine Aarnes, Chief of Telecommunications & SPP Affairs
Jeff McClanahan, Director of Utilities

DATE: May 5, 2020

SUBJECT: Docket No. 20-GIMX-393-MIS
In the Matter of Addressing the COVID-19 Pandemic in the State of Kansas.

EXECUTIVE SUMMARY

The Commission's Third Emergency Order Suspending Disconnects requires all jurisdictional public utilities to suspend the practice of disconnecting service for non-payment through May 31, 2020. Staff reached out to the incumbent local exchange carriers (ILEC) requesting that each carrier identify how they intend to treat customers that remain in arrears after the expiration of the disconnection suspension period.

Staff appreciates the quick responses and the companies' willingness to work with their customers during this difficult time. Overall, the carriers appear to have reasonable plans in place and Staff does not believe the Commission needs to implement any additional consumer protection measures at this time. Staff will continue to work with the companies and the Commission's Office of Public Affairs and Consumer Protection and apprise the Commission if the situation changes and additional consumer protection measures become necessary. Staff, however, recommends the Commission draft a letter to the FCC requesting guidance to address consumer protections in both the near-term and long-term given the possibility of COVID-19 lasting into the next flu season.

BACKGROUND

On March 16, 2020, the Commission issued an Emergency Order Suspending Disconnects, pursuant to K.S.A. 77-536(b) to prevent or avoid the immediate danger to the public health, safety or welfare, and directed all public utilities under the Commission's authority to suspend the practice of disconnecting service for nonpayment while customers and communities are experiencing potential hardship from the COVID-19 virus. The Commission's Emergency Order Suspending Disconnects was effective for 30 days, through April 15, 2020.

Because the threat of the COVID-19 pandemic remained, the Commission issued a Second Emergency Order Suspending Disconnects on April 14, 2020. The Order was effective immediately and is to remain in effect until May 15, 2020. On May 5, 2020, the Commission issued its Third Emergency Order Suspending Disconnects, which is effective immediately and to remain in effect until May 31, 2020. The Commission stated it may elect to extend the suspension period in a subsequent order pursuant to its emergency powers under K.S.A. 77-536.

Jurisdictional gas and electric companies have informed Staff that they plan to follow the Cold Weather Rule payment plan arrangements for customers that were affected by COVID-19 and unable to pay for their service during the service disconnection period. Pursuant to the Cold Weather Rule, the utility companies are required to offer a 12-month payment plan to allow consumers to maintain or re-establish utility service. Payment plan terms to maintain or restore service require that customers agree to pay 1/12th of the total amount owed, 1/12th of the current bill, the full amount of any disconnection or reconnection fee, plus any applicable deposit to the utility. The remaining balance must be paid in equal payments over the next 11 months, in addition to the current monthly bill.¹

The Commission's Telecommunications Billing Practice Standards contain some consumer protections related to suspension/disconnection of service, but do not require ILECs to negotiate payment arrangements with their subscribers (except under specific circumstances) nor do they require companies to allow consumers to repay arrearages over a 12-month period, similar to the Cold Weather Rule.

Specifically, with regard to consumer protections related to suspension/disconnection of service, the Commission's Telecommunications Billing Practice Standards²:

- (1) require ILECs to apply partial payments to local service charges starting with the oldest arrearage for purposes of avoiding suspension of local service;
- (2) allow, but does not require, carriers to negotiate payment arrangements with subscribers and impose 900 number and/or long distance restrictions as part of the payment arrangement;
- (3) require that the provider's office or personnel, identified in the written notice that must be provided at least seven calendar days prior to the date of suspension/disconnection, remain available to the subscriber for one hour after the suspension/disconnection and on the day following suspension/disconnection so that the subscriber may prevent suspension/disconnection or obtain reconnection;
- (4) prohibit the suspension/disconnection of service if a residential subscriber notifies the ILEC and establishes that suspension/disconnection would be especially dangerous to the safety or health of the subscriber, resident member of the subscriber's family or other permanent resident of the premises where service is rendered, and such subscriber

¹ The Commission adopted the Cold Weather Rule in 1983 to prevent utility companies from disconnecting a customer's natural gas, electric or water service during periods of extreme cold. The Cold Weather Rule begins each year on November 1 and remains in effect through March 31, and prohibits jurisdictional natural gas, electric and water companies from disconnecting a customer's service when temperatures are forecast to be at or below 35 degrees over the following 24 hours. See: <https://kcc.ks.gov/consumer-information/cold-weather-rule>.

² See: <https://estar.kcc.ks.gov/estar/ViewFile.aspx/20101005082319.pdf?Id=ee766093-db5e-4373-b1dc-501f69f79d0a>.

is unable to pay for such service in accordance with the requirements of the provider's billing or is able to pay for such service only in installments.

ANALYSIS

The Commission's Telecommunications Billing Practice Standards are only applicable to the ILECs because the Commission does not have authority over billing practices for the non-ILEC telecommunications carriers, wireless telecommunications services, Internet and television programming services. In addition, the ILECs and other telecommunications carriers typically offer competitive services, such as Internet and television programming, which are not subject to the Commission's jurisdiction. Therefore, although the Commission has some consumer protections in place, the protections are limited to a small segment of the telecommunications marketplace and a small portion of consumers' telecommunications bills.³

As discussed, the Telecommunications Billing Standards do not contain a specific payment plan requirement or repayment period but do require that partial payments for past due amounts be applied to local service first. Staff has communicated with the ILECs and, overall, they appear to be willing to work with their customers on payment arrangements on a case-by-case basis. Staff does not believe additional consumer protection measures are necessary at this time, as the companies appear willing to work with their customers on repayment plans and the Commission's jurisdiction is limited to a small segment of the consumer's telecommunications bill. However, Staff notes for the ILECs (and other public utilities) that we consider an extended payment period, such as the Cold Weather Rule's 12-month period, to be a best practice during this pandemic.

Staff will continue – on an informal basis – to monitor the number of customers and amount of delinquent bills for each ILEC to determine the extent to which delinquencies are above average. Should the level of delinquencies exceeding the average cause Staff concern, Staff will recommend a general investigation to evaluate possible consumer protections. Staff's continued monitoring of the impacts of COVID-19 virus is warranted due to the potential for the virus to last into the next flu season.

It is also important to recognize that thirty-one of the thirty-six ILECs under the Commission's jurisdiction, the one electing carrier, and numerous other Kansas telecommunications carriers have **voluntarily** signed the Federal Communications Commission's (FCC) Keep American's Connected Pledge. In order to ensure that Americans do not lose their broadband or telephone connectivity because of these exceptional circumstances surrounding COVID-19, FCC Chairman, Ajit Pai, specifically asked broadband and telecommunications service providers and trade associations to take the Keep Americans Connected Pledge. So far, more than 700 companies and associations have signed the Chairman's Pledge to Keep Americans Connected. The Keep Americans Connected Pledge reads as follows:

³ According to the FCC's most current Voice Telephone Services Report, in December 2018, there were 44 million end-user switched access lines in service, 67 million interconnected VoIP subscriptions, and 348 million mobile subscriptions, for a total of 459 million retail voice telephone service connections in the United States. Retail voice switched access lines, which includes switched access lines provided by competitive carriers not subject to the Commission's jurisdiction, comprise only 9.6 percent of the 459 million retail telephone service customers. *See FCC Voice Telephone Services Report: Status as of December 31, 2018*, Industry Analysis Division Office of Economics and Analytics, issued March 2020, p. 2.

Given the coronavirus pandemic and its impact on American society, [[Company Name]] pledges for the next 60 days to:

- not terminate service to any residential or small business customers because of their inability to pay their bills due to the disruptions caused by the coronavirus pandemic;
- waive any late fees that any residential or small business customers incur because of their economic circumstances related to the coronavirus pandemic; and
- open its Wi-Fi hotspots to any American who needs them.

On April 30, 2020, FCC Chairman Pai announced the extension of the Keep Americans Connected Pledge until June 30, 2020. While the FCC encouraged all providers that have signed the pledge previously to extend their commitments to June 30, it understands that some providers, particularly those in small markets and rural areas, may not be able to do so as a result of financial challenges. Those providers should contact KACpledge@fcc.gov by May 12 if they wish to opt out of the extension. The FCC further encouraged consumers to contact their service provider directly to make them aware of their specific circumstances and to discuss options. Consumers can also visit consumercomplaints.fcc.gov.

The FCC's pledge does not include any guidance for consumer protections past the pledge period. Given the possibility that COVID-19 may last into the next flu season, Staff believes a letter to the FCC is warranted. The letter should request the FCC to provide guidance regarding customer protections should unemployment and delinquent bills continue to rise in both the near-term and long-term, similar to the Commission's April 23, 2020, letter to the Kansas Congressional delegation.⁴

Staff further notes that, on April 29, 2020, the FCC's Wireline Competition Bureau (FCC WCB) issued an Order temporarily waiving the requirement that consumers seeking to qualify for the federal Lifeline program based on their income must provide at least three consecutive months of income documentation. The Lifeline program provides monthly discounts on broadband and voice services to qualifying low-income consumers. Pursuant to the waiver, until June 30, 2020, consumers demonstrating their income-based eligibility can instead submit an official document that confirms their current income information, such as a notice of unemployment benefits. The FCC WCB stated it will monitor the situation to determine whether any additional extension of this waiver is appropriate.

⁴ The Commission sent a letter to the Kansas Congressional delegation on April 23, 2020, stating that a one-size approach does not make sense for all utilities because it would limit the state commissions' ability to work with their jurisdictional utilities and consumers on acceptable payment plans. However, one area where federal action makes sense is telecommunications because state regulatory commissions have limited jurisdiction over some telecommunications carriers, including no jurisdiction over broadband. Therefore, the Commission stated that it would appreciate some guidance from either Congress or the FCC on how to handle payment arrangements for customers after the pandemic passes.

On May 5, 2020, in Docket No. 16-GIMT-575-GIT, the Commission followed the FCC's lead and issued an Order allowing consumers that seek to qualify for the Lifeline program based on income to present documentation covering three consecutive months and, instead, allow customers to submit an official document, including notice of unemployment benefits, to confirm their current income to demonstrate their eligibility for the Kansas Lifeline Service Program (KLSP). Consumers pursuing income-based qualification for the Lifeline program must still meet the 135% of federal poverty guidelines per household threshold, but will provide greater flexibility to the many consumers who have only recently found themselves in need of assistance from the Lifeline program. The Commission adopted the income documentation guidelines outlined by the FCC, which are to be further developed by the Universal Service Administrative Company, for KLSP income-eligibility purposes for the stated waiver period that ends June 30, 2020.

RECOMMENDATION

Staff recommends the following:

- Staff and the Commission continue to monitor the situation but not adopt any additional consumer protection requirements for jurisdictional telecommunications carriers at this time.
- Staff will continue to work with the Commission's Office of Public Affairs and Consumer Protection on complaints received in regard to disconnects and will apprise the Commission if the situation changes.
- Staff will continue to informally request delinquency information from the ILECs in order to monitor the severity of the impact from COVID-19 on average delinquencies.
- The Commission draft a letter to the FCC requesting guidance beyond the pledge period that addresses customer protections in both the near-term and long-term given the possibility of COVID-19 lasting into the next flu season.

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20-GIMX-393-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was placed in the United States mail, postage prepaid, or electronically served this 6th day of May, 2020, to the following:

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