

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

STATE CORPORATION COMMISSION

SEP 03 2010



In the Matter of Staffs Motion to the)
Commission to Commence a Generic)
Proceeding to Address Issues Concerning)
the Kansas Lifeline Service Program.)
_____)

Docket No. 10-GIMT-658-GIT

COMMENTS OF CONNECT IT AND BEST PHONE

Pursuant to the Commission's ORDER COMMENCING A GENERIC PROCEEDING TO ADDRESS ISSUES CONCERNING THE KANSAS LIFELINE SERVICE PROGRAM filed June 18, 2010, Connect Insured Telephone, Inc., d/b/a Connect IT and Local Phone Services, Inc., d/b/a Best Phone (collectively "Connect IT" unless otherwise indicated), hereby submit these comments for the purpose of bringing to the Commission's attention an important and ongoing issue involving the manner in which AT&T Kansas, an incumbent local exchange carrier ("ILEC"), bills its resellers such as Connect IT for telecommunications services they provide to low-income Kansans under the state and federal Lifeline service programs.

1. Connect IT is a competitive local exchange carrier ("CLEC") which purchases telecommunications services from AT&T at discounted wholesale rates, which exclude the ILEC's avoided costs through a 21.6% reduction in AT&T's established retail rate for each service, for resale to residential and business customers. *See Matter of the Joint Application of Sprint Communications Company, L.P., Etc.*, Docket No. 97-SCCC-149-GIT (Order Granting Motion to Approve Stipulation and Cancelling

Procedural Schedule, filed March 10, 2000, pp. 3-4 (approving stipulated agreement establishing wholesale discount rate of 21.6%). However, when a residential customer of Connect IT is or becomes an eligible beneficiary of the Lifeline program, AT&T refuses to directly apply any applicable Lifeline credits to reduce Connect IT's wholesale purchase price. Instead, AT&T Kansas recalculates Connect IT's wholesale price for basic telephone service by subtracting the amount of applicable Lifeline credits rates from its retail rate for the identical qualifying telephone service and then reducing this adjusted amount by 21.6%. By recomputing Connect IT's wholesale rate for service to Lifeline beneficiaries in this manner, AT&T effectively retains a material portion of the Lifeline credits for itself to the detriment of Connect IT and/or its Lifeline subscribers. For the reasons more fully explained below, Connect IT believes that AT&T's refusal to subtract Lifeline credit amounts from Connect IT's established wholesale rate for the same service is contrary to or otherwise inconsistent with the Kansas Telecommunications Act, K.S.A. 66-2001 *et seq.* and amendments thereto, and the federal Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*, and the Commission should make it clear that any ILEC must directly subtract all Lifeline credit amounts ultimately due to any Lifeline customer from any reseller's normal discounted wholesale purchase price for the same service to any residential customer.

2. Connect Insured Telephone, Inc. is a small CLEC which provides telecommunications services to residential and business customers in this State. Connect IT's principal place of business in Kansas is located at 2405 East Pawnee in the City of Wichita, where it has nine (9) full-time and three to five (3 -5) part-time employees. Connect IT furnishes telecommunications services to approximately 4,400 residential and

200 business customers, most of whom are located in the Wichita area, through the resale of services it purchases at wholesale rates from AT&T Kansas.¹ Connect IT has neither sought nor obtained designation by this Commission as an eligible telecommunications carrier (“ETC”) since it does not currently own the requisite wireline facilities or provide telephone service using its own wireline-based facilities. *See* K.S.A. 66-2006(c) (defining ETC); 47 C.F.R. §§ 54.201 (same). Although Connect IT is not eligible to receive direct support payments from the Universal Service Fund, *see, e.g.*, K.S.A. 66-2008(b); 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.407, it provides qualifying telecommunications service to approximately 4,000 low-income Kansans who are entitled to Lifeline credits under the Kansas Lifeline Service Program (“KLSP”) and the federal Lifeline program.

3. AT&T Kansas has been designated as an ETC and is eligible to receive direct support payments from the Universal Service Fund for its own Lifeline customers and Connect IT’s 4,000 Lifeline customers.²

4. For more than a decade, AT&T Kansas has been required under Kansas law to permit the reasonable resale of its retail telecommunications services to CLECs at

¹ Local Phone Services, Inc., d/b/a Best Phone, surrendered its certificate several years ago, but is a predecessor-in-interest to Connect IT, which acquired many of the assets and customers of Best Phone prior to its decision to discontinue providing telecommunications service in Kansas.

² In *Matter of a Commission Review of the Kansas Lifeline Service Program, Etc.*, Docket No. 07-GIMT-1353-GIT, the Commission Staff estimated that Southwestern Bell Telephone Company (“SWBT”), which does business as AT&T Kansas and through the use of various other AT&T trade names, had almost 19,000 Lifeline customers. *See* KCC Docket No. 07-GIMT-1353-GIT (Comments of Commission Staff, filed July 27, 2007, at Attachment II - Estimated Qualifying Lifeline Subscribers, p. 1). Of course, Connect IT serves approximately 4,000 of these Lifeline customers or roughly 20% of the qualifying

wholesale rates determined by the Commission on the basis of retail rates charged subscribers for the telecommunications service requested, “excluding the portion thereof attributable to any marketing, billing, collection and other costs, that will be avoided by” AT&T Kansas. *See* K.S.A. 66-2003(b), (c). The Federal Telecommunications Act of 1996 has likewise required any ILEC to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers and that this Commission shall determine wholesale rates on the basis of its retail rates for the requested service, excluding the portion thereof attributable to any marketing, billing, collection and other costs avoided by the local exchange carrier. *See* 47 U.S.C. §§ 251 (c)(4)(A) & 252(d)(3); *see also* 47 C.F.R. §§ 51.605, 51.607 & 51.609.

5. Following enactment of the Kansas Telecommunications Act in 1996, this Commission also implemented the mandate of K.S.A. 66-2006 by establishing the KLSP in the *Matter of a General Investigation into Competition within the Telecommunications Industry in the State of Kansas*, Docket No. 94-GIMT-478-GIT (Order, filed December 27, 1996, at para.131). As the Commission has previously recognized, “[t]he intent of the KLSP was to provide qualifying subscribers with a credit to offset the costs of local phone service.” *Matter of Commission Review of the Kansas Lifeline Service Program, Etc.*, Docket No. 08-GIMT-1353-GIT (Order Returning KLSP to Equal Credits at the \$7.77 Credit Level, filed August 12, 2008, p. 1). *See also* 47 C.F.R. § 54.403(b) (federal support amounts must be applied to reduce the carrier’s lowest tariffed (or otherwise generally available) residential rate for the services enumerated in 47 C.F.R.

Lifeline subscribers for whom AT&T Kansas receives direct support from the Universal

§54.101(a)(1) through (a)(9), and the ILEC must charge Lifeline consumers the resulting amount).

6. It is readily apparent that the Kansas Telecommunications Act and the federal Telecommunications Act of 1996 have each intended to simultaneously promote competition in the telecommunications market while providing universal access to vital telecommunications services to all citizens, including low-income consumers who might otherwise be unable to afford even basic telephone service necessary to obtain emergency services. Connect IT accordingly submits that under familiar rules of construction, the provisions of each Act must be construed harmoniously to promote the achievement of competition and expanding the availability of basic telephone services.

7. In Kansas, eligible low income consumers who are served by or through an ETC are entitled to receive a state Lifeline credit of \$7.77 per month and a federal Lifeline credit of \$3.50 per month for a single qualifying residential telephone line or a total monthly credit or subsidy of \$11.27.

8. Connect IT reasonably believes that, consistent with state and federal law, AT&T Kansas is required to apply the Kansas 21.6% wholesale discount to the retail price first to get the wholesale price, then subtract the full value of the Lifeline subsidy from the wholesale price to come up with the proper charge to Connect IT and its Lifeline customer. Instead, AT&T reverses the procedure and first subtracts the Lifeline subsidy from the retail price, and then applies the 21.6% wholesale discount to the resulting (much smaller) amount. The net effect of this is that instead of Connect IT and its Lifeline customer getting the full \$11.27 Lifeline subsidy, they receive only 78.4% of the

Service Fund under the state and federal Lifeline programs.

subsidy and AT&T Kansas keeps 21.6% for itself. For example, by first subtracting the Lifeline subsidy amount of \$11.27 from the retail price of \$16.55, AT&T Kansas reduces the "retail price" to \$5.28. The ILEC then applies the 21.6% discount to that amount, thus charging Connect IT \$4.14. This is wrong. The proper approach is to first apply the 21.6% to the \$16.55 retail price, getting a wholesale price of \$12.98. Then the Lifeline subsidy of \$11.27 should be subtracted to derive the charge to Connect IT of \$1.71. Several reasons demonstrate why this is the correct methodology.

9. AT&T's approach does not give Connect IT or the Lifeline consumer the full value of the \$11.27 subsidy. By charging \$4.14 instead of \$1.71, AT&T Kansas has given Connect IT only \$8.84 of the subsidy and has kept \$2.43 for itself. That is clearly not the intent of state or federal law, this Commission or the Federal Communications Commission. The full amount of the Lifeline subsidy is meant to go to end users, not into the pocket of AT&T Kansas. It is also noteworthy that if Connect IT was an ETC, the full Lifeline subsidy would be paid directly to Connect IT. The FULL \$11.27 would go directly to Connect IT and AT&T Kansas would never touch it. It is only by virtue of the fact that resellers that do not provide wireline facilities-based telephone service cannot be ETCs, and thus must get Lifeline payments indirectly through AT&T, that this can even happen.

10. The method employed by AT&T Kansas also completely destroys the "avoided costs" analysis that the Commission did in setting the wholesale discount at 21.6%. The Commission did not simply draw numbers out of a hat; instead, like all state Public Utility Commissions, it held a hearing and reviewed various cost accounts for AT&T local services to determine what costs would be avoided in serving wholesale

companies. For example, most states found that 90% of marketing expenses are "avoided" when selling to wholesale customers rather than retail customers. The PUCs went through various cost accounts in this fashion and came up with a "costs avoided" calculation. They then took that data and derived a wholesale discount percentage. In Kansas that amount is 21.6%. That means that on an AT&T retail price of \$16.55, the KCC concluded that \$3.57 in "avoided costs" exist which should be removed from the price charged to resellers like you. BUT, with the treatment of Lifeline used by AT&T in Kansas, the charge of \$4.14 is only \$1.14 less than the "retail price" as viewed by AT&T. The result is that AT&T has failed to pass through \$2.43 of the "avoided costs" and, in the process, completely ignored and violated the KCC "costs avoided" analysis.

Under the circumstances, Connect IT respectfully urges the Commission to determine that the refusal of AT&T Kansas to subtract Lifeline credit amounts from Connect IT's established wholesale rate for the same service is contrary to or otherwise inconsistent with the Kansas Telecommunications Act, K.S.A. 66-2001 *et seq.* and amendments thereto, and the federal Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*, and the Commission should make it clear that any ILEC must directly subtract all Lifeline credit amounts ultimately due to any Lifeline customer from any reseller's normal discounted wholesale purchase price for the same service to any residential customer.

Respectfully submitted,



John C. Frieden KS #06592

Kevin M. Fowler KS #11227

Clinton Patty KS #18912

Frieden, Unrein, Forbes & Biggs, LLP

555 South Kansas Avenue, Suite 303

Topeka, Kansas 66603

Tel: (785) 354-1100

Fax: (785) 354-1113

kfowler@fufblaw.com

*Counsel for Connect Insured Telephone, Inc.,
d/b/a Connect IT and Local Phone Services,
Inc., d/b/a Best Phone*

VERIFICATION

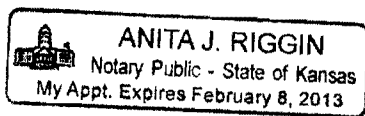
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

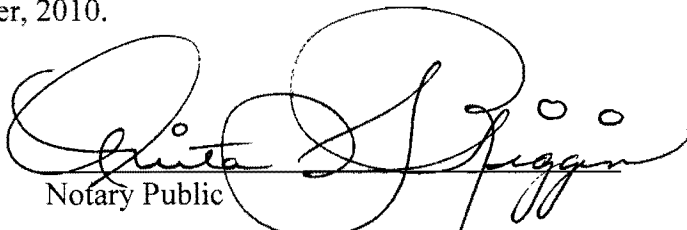
I, Kevin M. Fowler, of lawful age and being first duly sworn under oath, hereby depose and state as follows: That I am one of the attorneys for Connect Insured Telephone, Inc., d/b/a Connect IT and Local Phone Services, Inc., d/b/a Best Phone, in the above-styled Kansas Corporation Commission Docket No. 10-GIMT-658-GIT; that I have read the above and foregoing document; and that the matters set forth therein are true and correct to the best of my knowledge, information and belief.



Kevin M. Fowler

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Kansas, on this 3rd day of September, 2010.





Notary Public

My Commission/Appointment Expires:

2-8-2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a genuine copy of the above and foregoing was deposited in the United States mail, first class postage prepaid, on this 3rd day of September, 2010, properly addressed to the following

Colleen R. Harrell
Litigation Counsel, Telecommunications
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604
Fax: (785) 271-3167
c.harrell@kcc.ks.gov

Linda K. Gardner
5454 West 110th Street
KSOPKJ0702
Overland Park, Kansas 66211
linda.gardner@CenturyLink.com

C. Steven Rarrick
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, Kansas 66604
Fax: (785) 271-3116

Bruce A. Ney
220 E. Sixth Street, Room 515
Topeka, Kansas 66603-3596
Fax: (785) 276-1948
bruce.ney@att.com

Robert A. Fox
Stegall & Associates, P A
504 Plaza Drive
Perry, Kansas 66073
bfox@steglaw.com

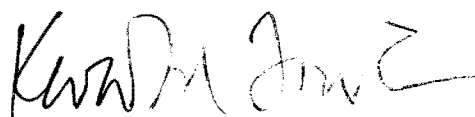
Curt Stamp
6301 Waterford Blvd., Suite 200
Oklahoma City, Oklahoma 73118
curt.stamp@cox.com

Thomas E. Gleason, Jr.
Gleason & Doty, Chartered
P.O. Box 6
Lawrence, Kansas 66044
Fax: (785) 856-6800
gleason@sunflower.com

Mark Caplinger
James M. Caplinger, Chartered
823 West 10th Street
Topeka, Kansas 66612
Fax: (785) 232-0724

David E. Bengston
Stinson Morrison Hecker LLP
1625 North Waterfront Parkwa, Suite 300
Wichita, Kansas 67206-6620
Fax: (316) 265-1349

Stephen Rowell
Assistant General Counsel
Verizon Wireless, LLC
P.O. Box 2177
Little Rock, Arkansas 72202



Kevin M. Fowler KS #11227