

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

**RESPONSE OF COX KANSAS TELCOM, LLC,**  
**TO STAFF'S REPORT AND RECOMMENDATION**

COMES NOW, Cox Kansas Telcom, LLC ("Cox"), by and through its undersigned counsel and, pursuant to K.A.R. 82-1-218(d), respectfully submits its Response to Staff's November 6, 2017 Report and Recommendation ("Report"). For its Response, Cox states as follows:

I.     BACKGROUND

1.     On August 1, 2017, Cox filed an Application requesting a waiver of the requirement to provide access to interexchange carriers within the local calling area when offering Lifeline service.<sup>1</sup> Cox stated it will continue to provide long distance service to its customers, only seeking permission to cease offering its customers the option to presubscribe to long distance service offered by a different provider. Application of Cox Kansas Telcom, LLC (Aug. 1, 2017), at 1 ("Application").

2.     Cox explained that its request is justified in light of the Federal Communications Commission ("FCC") not including access to interexchange carriers in the definition of federal Lifeline and the decline of the stand-alone residential interexchange market, including Cox's own customer base. Application at 1-2.

3.     Cox further explained requiring it to maintain its obligation to offer equal access to interexchange carriers would be economically and technologically burdensome and would

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<sup>1</sup> The access requirement is found in the definition of "universal service" at K.S.A. § 66-1,187(p).

place Cox at a competitive disadvantage with similarly situated carriers. Application at 2, 8-9, 10. In contrast, granting Cox's request is consistent with recent FCC decisions, will ensure that providers utilizing VoIP technology to provide Lifeline service will be treated in the same manner, regardless of their regulatory status, is technologically- and competitively-neutral, and is, therefore, in the public interest. Application at 8-10.

4. On November 6, 2017, Staff submitted its Report recommending that the Commission deny Cox's Application. Significantly, Staff did not recommend denial of Cox's waiver request on substantive grounds, but rather on the procedural argument that the Commission is unable to waive a statutory requirement, to which Cox responds as follows.

## II. ARGUMENT

5. It is undisputed that the current statutory definition of "universal service" includes "equal access to long distance services." K.S.A. § 66-1,187(p). However, it is also undisputed that the Kansas Legislature vested the Commission with "full power, authority and jurisdiction to supervise and control the local exchange carriers . . . and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction." K.S.A. § 66-1,188. Consistent with such broad and unfettered authority, the Kansas Legislature specifically mandated that "the [C]ommission shall:" "[a]dopt a definition of 'universal service' and 'enhanced universal service,' pursuant to subsections (p) and (q) of K.S.A. 66-1,187" and 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[.]" K.S.A. § 66-2002(a), (k).

6. Staff appears to suggest that these statutes are somehow "in conflict." Not so. It is a long-established principle of statutory construction in Kansas that "[g]eneral and special

statutes should be read together and harmonized whenever possible," but "the more specific statute governs when two statutes may be applicable." *In re N.A.C.*, 299 Kan. 1100, 1107, 329 P.3d 458, 464 (2014) (quotations omitted). Here, the above statutes can be harmonized without conflict, and the more specific provisions of K.S.A. § 66-2002(a) and (k) — permitting the Commission to exercise its nearly limitless authority to define and/or modify the definition of universal service in K.S.A. § 66-1,187(p) when advances in telecommunications so warrant — are controlling. As a result, Staff's perceived statutory conflict is readily resolved.

7. Staff also suggests, without citing any authority in support, that the Commission's exercise of its specific authority per K.S.A. § 66-2002(a) and (k) in this proceeding "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)." Report at 3. However, Cox is not requesting a legislative amendment. Instead, Cox has explicitly applied for individualized relief — a waiver of the requirement to provide equal access to interexchange carriers within the local calling area when Cox offers Lifeline service, pursuant to the Commission's statutory authority to define the definition of "universal service" as it sees fit. Just as the Commission may waive a regulatory requirement for good cause and if in the public interest, upon the specific request by a party pursuant to K.A.R. 82-1-202(a), the Commission may also exercise its vast powers to narrowly craft the remedy requested by Cox pursuant to K.S.A. §§ 66-1,188, 66-2002(a) and 66-2002 (k).

8. The basis of Staff's single concern with Cox's requested relief is a mistaken statutory conflict and an unrequested expansion of Cox's discrete application; Staff otherwise "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[.]” Report at. 5. Accordingly, Cox's request is undisputed.

9. Further, Cox's request should be considered in context. Of Cox's nearly 120,000 customers in Kansas, approximately 700 are Lifeline subscribers. Of these 700 Lifeline subscribers, only two customers have not selected Cox as their long distance provider. It is for these two customers that Cox seeks a waiver of the equal access requirement. If the Commission grants Cox's waiver request, Cox will notify these customers of the discontinuation of access to their chosen interexchange carriers and provide them options from Cox's suite of long distance calling plans. Given that less than one percent of Cox's Lifeline subscribers avail themselves of the option to utilize an interexchange carrier for long distance service other than Cox, Cox maintains that the requested waiver likewise will have a minimal to non-existent impact on future Lifeline customers. To be clear, Cox will continue to provide long distance service 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. Cox's request, therefore, does not violate the public interest and should be granted.

### III. CONCLUSION

10. Cox requests a waiver of the requirement to provide access to interexchange carriers to its Lifeline customers. As stated in its Application, requiring Cox to maintain its obligation to offer equal access to interexchange carriers would be economically and technologically burdensome, and would place Cox at a competitive disadvantage with similarly situated carriers. In contrast, granting Cox's request is consistent with recent FCC decisions, will ensure that providers utilizing VoIP technology to provide Lifeline service will be treated in the

same manner, regardless of their regulatory status, is technologically- and competitively-neutral, and is, therefore, in the public interest. Moreover, the impact of Cox's request is de minimis.

11. Staff does not fundamentally disagree with Cox's request or the rationale underlying such request; rather, Staff's hesitation to recommend approval of Cox's application is based on procedural concerns. First, Staff believes that K.S.A. § 66-1,187(p) and K.S.A. § 66-2002(a) and (k) are irreconcilably in conflict, when, in truth, it is a simple matter of reading together and harmonizing the statutes. Further, Staff believes that granting Cox's waiver request would require a legislative revision to K.S.A. § 66-1,187(p). Cox does not seek a legislative amendment, nor does Cox believe one is required. Instead, Cox believes its requested individualized relief — a waiver of the requirement to provide equal access to interexchange carriers within the local calling area when Cox offers Lifeline service — is permissible pursuant to the Commission's statutory authority to define the definition of "universal service" as it sees fit.

12. Finally, granting Cox's request will have little to no impact on existing or future Lifeline customers. Currently, only two customers out of approximately 700 Lifeline customers use an interexchange carrier for long distance service other than Cox, which represents less than one percent of Cox's Lifeline subscribers. Therefore, the order of magnitude in granting Cox's request is minimal to non-existent.

WHEREFORE, for the reasons set out herein, Cox respectfully requests that the Commission deny the recommendation contained in Staff's November 6, 2017 Report, and grant Cox's Application for a waiver of the requirement to provide access to interexchange carriers within the local calling area when offering Lifeline service.

Respectfully submitted,

/s/ *Susan B. Cunningham*

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**VERIFICATION**  
K.S.A. 53-601

STATE OF KANSAS            )  
                                          )  
COUNTY OF SHAWNEE    )       ss:

I, Susan B. Cunningham, verify under penalty of perjury that I have caused the foregoing Response of Cox Kansas Telcom, LLC, Staff's Report and Recommendation to be prepared on behalf of Cox, and that the contents thereof are true and correct to the best of my knowledge, information, and belief.

*/s/ Susan B. Cunningham*

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Susan B. Cunningham

November 16, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Response of Cox Kansas Telcom, LLC, Staff's Report and Recommendation was electronically served this 16th day of November, 2017, to the parties appearing on the Commission's service list as last modified on November 6, 2017.

*/s/ Susan B. Cunningham*

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Susan B. Cunningham