

**IN THE MATTER OF A GENERAL INVESTIGATION )**  
**OF TAG MOBILE, LLC TO SHOW CAUSE WHY )**  
**THIS COMMISSION SHOULD NOT INITIATE ) DOCKET No.**  
**SANCTIONS AND FINES AND CANCEL, SUSPEND ) 16-TAGC-323-SHO**  
**AND REVOKE ANY AUTHORITY THE CARRIER )**  
**CURRENTLY HOLDS. )**

**SURREBUTTAL TESTIMONY**

**PREPARED BY**

**CHRISTINE AARNES**

**ON BEHALF OF**

**KANSAS CORPORATION COMMISSION STAFF**

**AUGUST 18, 2017**

1   **Q.     Please state your name and business address.**

2   A.     My name is Christine Aarnes. My business address is: Kansas Corporation  
3           Commission, 1500 S.W. Arrowhead Rd., Topeka, Kansas 66604-4027.

4

5   **Q.     Are you the same Christine Aarnes that earlier filed Direct Testimony in this**  
6           **docket?**

7   A.     Yes, I am.

8

9   **Q.     What is the purpose of your testimony?**

10  A.     The primary purpose of my testimony is to respond to issues raised by Mr. Z.  
11          Edward Lateef in his Rebuttal Testimony (Lateef Rebuttal). Specifically, I will  
12          address Mr. Lateef's broad assertions regarding: (1) TAG Mobile, LLC's (TAG)  
13          satisfaction of the "own facilities" requirement; and (2) TAG's compliance with  
14          the Commission's *Order on ETC Application* in which it was granted Lifeline-  
15          Only eligible telecommunications carrier (ETC) status in specific Southwestern  
16          Bell Telephone Company d/b/a AT&T Kansas (AT&T) wire centers in Kansas.<sup>1</sup>

17

18  **I.     "Own Facilities" Requirement**

19  **Q.     Mr. Lateef states that at the time TAG was granted ETC status, TAG owned**  
20          **a switch through which its traffic was routed.<sup>2</sup> How do you respond?**

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<sup>1</sup> Order on ETC Application, Docket No. 12-TAGC-843-ETC (Nov. 15, 2012).

<sup>2</sup> Lateef Rebuttal, p. 4, lines 1-2.

1 A. Staff has yet to see any evidence that TAG ever owned a switch through which its  
2 traffic was routed – whether it was owned at the time TAG was granted ETC  
3 status, sometime in between, or now. TAG admitted in response to Data Request  
4 (DR) 10, dated July 25, 2016, that it “does not currently own its own facility.”<sup>3</sup>  
5 Furthermore, TAG continues to fail to provide any evidence of ownership of said  
6 switch in Mr. Lateef’s Rebuttal Testimony. Simply saying the switch was owned  
7 by TAG does not provide adequate demonstrable evidence that the switch was or  
8 is owned.

9

10 **Q. Mr. Lateef further states that “TAG was entitled to use a combination of its**  
11 **own facilities and facilities owned by another carrier if they are leased by the**  
12 **ETC using UNEs or commercial agreements.”<sup>4</sup> How do you respond?**

13 A. Pursuant to 47 U.S.C. § 214(e)(1)(A), an ETC must provide the supported  
14 services using either its own facilities or a combination of its own facilities and  
15 resale of another carrier's services (including the services offered by another  
16 ETC). An ETC could meet this requirement by utilizing unbundled network  
17 elements (UNEs) that an ETC obtained via an interconnection agreement or by  
18 utilizing Local Wholesale Complete (LWC) facilities that it obtained via a  
19 commercial agreement; however, that is not what TAG did nor what TAG  
20 represented to the Commission it would do in its ETC Application.

21

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<sup>3</sup> TAG’s Response to Staff DR 10, July 25, 2016, See Aarnes Direct Exhibit I.

<sup>4</sup> Lateef Rebuttal, p. 4, lines 2-5.

1 **Q. Why does Staff believe TAG did not provide universal service to Kansas**  
2 **customers using a combination of UNEs?**

3 A. There are many reasons why this is not accurate. First, UNEs are elements of the  
4 wireline telecommunications network to which incumbent local exchange carriers  
5 (ILECs) are required to provide access to telecommunications carriers.<sup>5</sup> The  
6 ILEC in the area in which TAG has been designated as an ETC in Kansas is  
7 AT&T.<sup>6</sup> Staff has seen no evidence that TAG has or ever had an interconnection  
8 agreement with AT&T to obtain UNEs in Kansas. Pursuant to 47 U.S.C. §  
9 252(e)(1), interconnection agreements must be submitted for approval to the state  
10 commission. Therefore, if such interconnection agreement with AT&T exists, it  
11 should have been filed with the Commission, but it was not.

12 Furthermore, TAG provides wireless mobile service<sup>7</sup> and the Federal  
13 Communications Commission (FCC) prohibits the use of UNEs for the exclusive  
14 provision of telecommunications services in the mobile wireless market.<sup>8</sup>

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<sup>5</sup> One of the major goals of Congress in enacting the Telecommunications Act of 1996 (1996 Act) was to open local telecommunications service markets to competition. To that end, Congress imposed certain interconnection, resale, and network access requirements on ILECs through section 251 of the 1996 Act. Pursuant to 47 U.S.C. § 251(c)(3), ILECs are required to provide unbundled access to telecommunications services, which are commonly referred to as unbundled network elements or UNEs.

<sup>6</sup> ILECs are defined by 47 U.S.C. § 251(h)(1) as: “with respect to an area, the local exchange carrier that— (A) on February 8, 1996, provided telephone exchange service in such area; and (B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission’s regulations (47 C.F.R. 69.601(b)); or (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).” AT&T is the ILEC serving the wire centers for which TAG was designated an ETC in Kansas. Therefore, AT&T is the entity that is required by statute to sell UNEs to requesting telecommunications carriers in the area in Kansas in which TAG serves.

<sup>7</sup> Application for Designation as an Eligible Telecommunications Carrier on a Wireless Basis, Docket No. 12-TAGC-843-ETC, ¶ 19.

<sup>8</sup> 47 C.F.R. § 51.309(b) and *In the Matter of Unbundled Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, Rel. Feb. 4, 2005, ¶¶ 5, 34-36.

1           Therefore, as a mobile wireless provider, TAG is prohibited from obtaining  
2           UNEs.

3

4   **Q.    Is a commercial agreement in which a carrier obtains LWC different than an**  
5           **interconnection agreement through which a carrier obtains UNEs?**

6   A.    Yes. On February 5, 2005, the FCC issued an Order determining that ILECs were  
7           no longer required to provide telecommunications carriers with unbundled access  
8           to one type of UNE - mass market local circuit switching, effective March 11,  
9           2006. Telecommunications carriers could, however, continue to obtain the same  
10          UNEs they obtained via an interconnection agreement, including mass market  
11          local circuit switching, through a commercial agreement negotiated with the  
12          ILEC, albeit at a higher rate. This is referred to as Local Wholesale Complete or  
13          LWC. The only significant difference between the process and result of leasing  
14          UNEs through an interconnection agreement and the process and result of  
15          acquiring LWC through a commercial agreement is the cost.<sup>9</sup> UNEs must be cost  
16          based, while the same network element obtained via a commercial agreement is  
17          priced at a negotiated rate.

18

19   **Q.    Has the FCC or this Commission determined that UNEs or LWC facilities**  
20           **obtained via a commercial agreement satisfy the facilities requirement for**  
21           **ETC designation purposes?**

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<sup>9</sup> Docket No. 06-GIMT-1277-GIT, November 28, 2006 Order, ¶ 14.

1 A. In 1997, the FCC determined that a carrier that offers any of the services  
2 designated for universal service support, either in whole or in part, over facilities  
3 that are obtained as UNEs pursuant to 47 U.S.C. § 251(c)(3) and meet the  
4 definition of supported facilities, satisfies the facilities requirement of 47 U.S.C. §  
5 214(e)(1)(A).<sup>10</sup> Specifically, the FCC determined that in the context of section  
6 214(e)(1)(A), UNEs are the requesting carrier’s “own facilities” in that the carrier  
7 has obtained the “exclusive use” of the facility for its own use in providing  
8 services and has paid the full cost of the facility, including a reasonable profit, to  
9 the ILEC.<sup>11</sup>

10 Although the FCC has not determined whether facilities obtained through  
11 a commercial agreement satisfies the facilities requirement<sup>12</sup>, this Commission  
12 determined in its November 28, 2006 Order in Docket No. 06-GIMT-1277-GIT  
13 that commercial agreements *through which an ETC obtains LWC should be*  
14 *treated the same as UNEs for ETC purposes and would satisfy the “own*  
15 *facilities” requirement.*<sup>13</sup> This Commission has not specifically addressed

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<sup>10</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, Docket 97-157, May 8, 1997, ¶ 154.

<sup>11</sup> *Id.* at ¶ 160.

<sup>12</sup> Although the FCC has not addressed whether commercial agreements satisfy the “own facilities” requirement, the FCC reaffirmed in 2012 that only carriers that provide the supported services, as defined in 47 C.F.R. § 54.101(a), as amended, using their own facilities will be deemed to meet the requirements of section 214(e)(1). As part of this reaffirmation, the FCC determined that a Lifeline-only ETC does not meet the “own facilities” requirement of section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported services, such as access to operator service or directory assistance. *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, Docket Nos. 11-42, 03-109, 96-45 and 12-23 (Feb. 6, 2012), ¶ 366.

<sup>13</sup> Prior to opening Docket No. 06-GIMT-1277-GIT (06-1277 Docket), Commission staff contacted the staff of the FCC to determine whether it planned to address this issue and was informed that the FCC had not looked at this issue and did not intend to look at this issue; therefore, state commissions were free to make their own determinations. See May 22, 2006 Staff Memorandum in 06-1277 Docket, p. 2.

1           whether any other type of commercial agreement would satisfy the ETC own  
2           facilities requirement.

3

4   **Q.    Did TAG provide universal service to Kansas customers via LWC facilities it**  
5   **obtained through a commercial agreement?**

6   A.   No. Again, Staff has seen no evidence that TAG has obtained UNEs or LWC  
7       facilities from AT&T via a commercial agreement nor has it seen evidence  
8       establishing that TAG has a commercial agreement that would satisfy the own  
9       facilities requirement.

10

11   **Q.    Could Mr. Lateef's statement in lines 1-5 on page 4 be referring to a different**  
12   **type of agreement other than the LWC commercial agreement you discussed**  
13   **above?**

14   A.   Yes. Staff believes Mr. Lateef is likely referring to an agreement negotiated  
15       between TAG and another entity, but not a LWC commercial agreement between  
16       TAG and AT&T. More specifically, Mr. Lateef may be referring to the  
17       agreement it entered into with Reunion Communications, Inc. (Reunion) that  
18       TAG provided in its Amended Response to Staff DR 12.<sup>14</sup>

19

20   **Q.    Does TAG's agreement with Reunion satisfy the own facilities requirement?**

21   A.   No. First, the Reunion agreement is not the same as a commercial agreement for  
22       LWC, nor is TAG obtaining UNEs in the agreement. Second, as discussed in my

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<sup>14</sup> See Aarnes Direct Testimony, Exhibit F.

1 Direct Testimony, it is not clear what services are provided through the contract  
2 with Reunion and whether the facilities are utilized to provide the supported  
3 services.  
4

5 **II. TAG's Compliance with the *Order on ETC Application***

6 **Q. When asked whether TAG was in compliance with the Order granting TAG**  
7 **ETC status, Mr. Lateef states that there was only one period, April 2015**  
8 **through January 2016, when not all of TAG's voice service was routed**  
9 **through its switch.<sup>15</sup> How do you respond?**

10 A. Although Mr. Lateef concedes that its ISO Agreement with Selectel, Inc. was not  
11 in compliance with the Commission's *Order on ETC Application*, he fails to  
12 provide any evidence demonstrating that TAG was otherwise ever in compliance  
13 with the Commission's *Order on ETC Application*. Once again, simply  
14 suggesting TAG was in compliance all of the other months does not provide  
15 adequate demonstrable evidence of compliance.  
16

17 **Q. When asked why TAG agreed to the Selectel arrangement, Mr. Lateef states**  
18 **that a "previous CEO of TAG made the decision to enter into the agreements**  
19 **with Selectel." How do you respond?**

20 A. Mr. Lateef states in his Rebuttal Testimony that he is the President and founder of  
21 TAG; therefore, although Mr. Lateef appears to be placing the blame for the  
22 "Selectel arrangement" on "a former CEO", Mr. Lateef is ultimately responsible

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<sup>15</sup> Lateef Rebuttal, page 4, lines 20-21 and page 5, lines 1-3.



1           for his company's operations and should have known that the Selectel  
2           arrangement did not satisfy TAG's ETC obligations.

3

4   **Q.    Does this conclude your testimony?**

5   **A.    Yes.**

STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF SHAWNEE            )

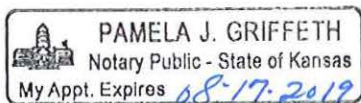
**VERIFICATION**

Christine Aarnes, being duly sworn upon her oath deposes and states that she is Chief of Telecommunications in the Utilities Division of the State Corporation Commission of the State of Kansas, that she has read and is familiar with the foregoing, *Surrebuttal Testimony*, and that the statements contained therein are true and correct to the best of her knowledge, information and belief.



Christine Aarnes  
Chief of Telecommunications  
Kansas Corporation Commission of the  
State of Kansas

Subscribed and sworn to before me this 18 day of August, 2017.

  
Notary Public

My Appointment Expires: August 17, 2019

## **CERTIFICATE OF SERVICE**

16-TAGC-323-SHO

I, the undersigned, certify that a true and correct copy of the above and foregoing Surrebuttal Testimony was served by electronic service on this 18th day of August, 2017, to the following:

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