

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

In the Matter of Southern Kansas Telephone)
Company Filing Tariff Revisions to Federal) Docket No. 20-SNKT-193-TAR
Lifeline Support.)

ORDER APPROVING TARIFF REVISIONS

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and record, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On October 29, 2019, Southern Kansas Telephone Company, Inc. (Southern Kansas) filed a request to revise its General Exchange Tariff to change the credit amount for voice Federal Lifeline support that will be made effective on December 1, 2019, pursuant to the Federal Communications Commission's (FCC) Lifeline Modernization Order¹ and Commission Docket No. 16-GIMT-575-GIT. Because the monthly credit for voice Federal Lifeline support is reduced overtime at a declining rate and is currently scheduled to go to zero in most instances on December 1, 2021, Southern Kansas was asked to consider filing a generic tariff that would permit automatic adjustment of the credit going forward without the necessity of filing an annual credit adjustment. Southern Kansas agreed to this proposal as an effective way to implement the *2016 Lifeline Order* and filed a supplemental replacement tariff on November 12, 2019, for Section 3, 24th Revised Sheet 1, effective, December 1, 2019, that eliminates a specific dollar amount for the credit, permitting an adjustment based on the maximum amount authorized by the FCC for qualifying

¹ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, Rel. April 27, 2016 ("*2016 Lifeline Order*").

service. The Kansas Lifeline credit amount is also eliminated and is to be replaced by reference to the maximum amount authorized by the Commission for qualifying service. The Kansas Lifeline credit is currently established at a constant monthly rate of \$7.77, but could be modified, if necessary, without triggering additional tariff revisions on a going forward basis.

2. K.S.A. 66-1, 190 requires that telecommunications public utilities doing business in Kansas shall:

... publish and file with the commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate, and shall furnish the commission copies of all rules and regulations and contracts between such telecommunications public utilities pertaining to any and all jurisdictional services to be rendered by such telecommunications public utilities.

The Commission derives its authority to review Local Exchange Carrier tariffs from K.S.A. 66-117(d), which states in part:

Except as provided in subsection (c), no change shall be made in any rate, toll, charge, classification or schedule of charges or joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission.

3. The Commission maintains authority to require telecommunications public utilities to maintain rates that are not unjust or unreasonably discriminatory.² Accordingly, the Commission conducts its investigation regarding the reasonableness of Southern Kansas' request to adjust its credit for Federal and Kansas Lifeline support.

4. On November 13, 2019, the Commission Staff (Staff) submitted a Report and Recommendation, advising the Commission to grant the tariff revisions proposed by Southern Kansas. Staff finds the tariff revisions to be reasonable in addressing the Federal and Kansas Lifeline credit and do not result in a material increase in overall revenue or Southern Kansas' rate

² K.S.A. 66-1,189.

of return.³ The Staff summarized certain requirements for eligibility for Lifeline support that were adopted by both the FCC and the Commission. The Staff also highlighted the minimum service standards identified in the *2016 Lifeline Order*, which place increased emphasis on providing support for broadband and decreased support for voice services. The change in emphasis for federal support is reflected in reduced monthly amounts for Federal Lifeline voice only service credits, which are currently projected to decline for most voice service on an annual basis through December 2021. The Staff further indicated that the change in federal support levels will not impact revenue received by carriers for the service provided, as the only adjustment that will occur is related to the Federal Lifeline credit, resulting in the customer making up the difference on charges for voice service and not causing an increase in total collections by the carrier.

5. The Commission adopts Staff's analysis and recommendations of November 13, 2019, as stated in the Report and Recommendation, which is attached hereto and made a part hereof by reference, and finds that the Southern Kansas request should be granted. In conjunction with the request, Southern Kansas has provided replacement tariff revisions to be placed in effect December 1, 2019, which the Commission authorizes with the issuance of this Order.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Southern Kansas Telephone Company, Inc. request filed in this matter on October 29, 2019, is hereby granted with the effective tariff date occurring on December 1, 2019.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529 (a) (1).⁴

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

³ See, Order, 04-GIMT-1080-GIT (September 28, 2004).

⁴ K.S.A. 66-118b; K.S.A. 77-503 (c) and K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 11/21/2019



Lynn M. Retz
Executive Director

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

FROM: Paula Artzer, Senior Telecommunications Analyst
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: November 13, 2019

SUBJECT: Docket No. 20-SNKT-193-TAR
In the Matter of Southern Kansas Telephone Company Filing Tariff Reversions to
Federal Lifeline Support

EXECUTIVE SUMMARY:

On October 29 2019, Southern Kansas Telephone Company, Inc. (Southern Kansas) filed a request to make tariff revisions to a certain section of its General Exchange Tariff changing the verbiage for the Company's Lifeline offering. These changes are to reflect the modifications made by the Federal Communications Commission (FCC) in the Lifeline Modernization Order and the Kansas Corporation Commission's (the Commission or KCC) Order in 16-GIMT-575-GIT (16-575).

The Commission action date is **Thursday, November 28, 2019. Due to the Holiday, the action date is Monday, December 2, 2019.**

BACKGROUND:

On April 27, 2016, the FCC released the *2016 Lifeline Order*¹ in which it determined it must modernize the federal Lifeline program so that it can play an essential role in helping low-income Americans that most need access to broadband services. In the *2016 Lifeline Order*, the FCC determined, among other things, that:

- federal Lifeline support will be allowed for robust, standalone fixed and mobile

¹ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, Rel. April 27, 2016 ("*2016 Lifeline Order*").

- broadband services;
- Lifeline providers must meet minimum service standards to receive federal Lifeline support for broadband and mobile voice services;
- a National Verifier shall be created, which will transfer the responsibility of eligibility determination away from Lifeline providers;
- the federal Lifeline program qualification criteria shall be streamlined;
- recertification shall be a rolling process; and
- a uniform Lifeline form shall be created for all subscribers receiving a federal Lifeline benefit.

Many of the new rules from the *2016 Lifeline Order*, including the change in program qualification criteria, were effective December 2, 2016.

The eligibility criteria change only applies to the federal Lifeline program. Thus, a state that has its own Lifeline fund, such as Kansas, remains free to adopt any eligibility requirements it deems necessary for the state Lifeline program.² On July 12, 2016, the Commission issued an *Order Opening Docket; Soliciting Comments; Procedure Matters and Schedule* (Opening Order) in Docket 16-GIMT-575-GIT requesting comments from all interested parties regarding what changes, if any, should be made to the Kansas Lifeline Service Program (KLSP) as a result of changes to the federal Lifeline program since the Commission last modified the KLSP in Docket No. 10-GIMT-658-GIT.

Based on comments from the telecommunications industry in Kansas and Staff's recommendation in 16-575, the Commission issued an Order on October 18, 2016, adopting the new federal eligibility criteria as the Kansas state criteria. The proposed Federal and State eligibility criteria that were effective December 2, 2016, are:

- SNAP;
- Medicaid;
- SSI;
- Federal Public Housing Program (Section 8);
- Veterans Pension Benefit and Survivors Pension;
- Bureau of Indian Affairs General Assistance program;
- Tribally-Administered Temporary Assistance for Needy Families;
- Tribal Head Start (only for those meeting its income-qualifying standard);
- Food Distribution Program on Indian Reservations; or
- an IRS defined gross income level of 135% of the federal poverty level.³

The *2016 Lifeline Order* also provided a requirement that minimum service standards adjust every year in December on a phased-in basis. The phase-in allows for increased emphasis on supporting broadband each year with a decreased emphasis on voice services. The minimum service standards to be effective December 1, 2019, are as follows:

² See *Staff Report & Recommendation*, 16-GIMT-575-GIT, September 16, 2016, pg. 4.

³ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, Rel. April 27, 2016 ("*2016 Lifeline Order*"). ¶¶ 196, 198, 202, 207-210.

- mobile voice packages require a minimum of 1,000 minutes;
- mobile broadband packages must include data usage of at least 8.75 GB per month and the speed requirement remains 3G mobile technology⁴;
- fixed broadband speed must be at least 20 Mbps downstream and 3 Mbps upstream, unless the Lifeline provider does not offer any generally available residential fixed broadband packages that meet the minimum service standard at the subscriber's residence. In such situations, the Lifeline provider may receive Lifeline support for the highest performing generally available residential fixed broadband service offering of at least 4 Mbps downstream and 1 Mbps upstream. Fixed broadband usage must be at least 1024 GB per month⁵;
- the voice Lifeline support which was previously \$9.25 drops to \$7.25 for the period of December 1, 2019, to November 30, 2021; and
- a voice and broadband Lifeline bundle **must** include a broadband offering that meets the applicable minimum service standard to be eligible for the full \$9.25 Lifeline benefit.

ANALYSIS:

The Commission derives its authority to review Local Exchange Carrier tariffs from K.S.A. 66-117(d), which states in part:

(d) Except as provided in subsection (c), no change shall be made in any rate, toll, charge, classification or schedule of charges or joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission.

In addition, K.S.A. 66-1,190 requires every public utility doing business in Kansas over which the Commission has control shall publish and file with the Commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate. The Commission has the power to prescribe reasonable rules and regulations regarding the form and filing of all schedules, tariffs and classifications of all rates, joint rates, tolls and charges, and all rules and regulations of such telecommunications public utilities as the Commission determines reasonable and appropriate.

The KCC must review rates and terms for jurisdictional telecommunications services to ensure they are "just and reasonable" pursuant to K.S.A. 66-1,189. Further, K.S.A. 66-1,189 requires the KCC to ensure that all classifications, rules, and regulations regarding the services are not unduly discriminatory or preferential.

Because telecommunications providers must constantly adapt to consumer needs, the KCC determined in Docket No. 04-GIMT-1080-GIT that rate changes made by telecommunications

⁴ FCC Public Notice, WC Docket No. 11-42, DA 19-704, Rel. July 25, 2019. See: <https://docs.fcc.gov/public/attachments/DA-19-704A1.pdf>.

⁵ FCC Public Notice, WC Docket No. 11-42, DA 19-704, Rel. July 25, 2019. See: <https://docs.fcc.gov/public/attachments/DA-19-704A1.pdf>.

providers would not be audited for their justness and reasonableness unless the changes result in the provider receiving “materially greater revenue” than its rate-of-return would necessitate.⁶

This filing makes changes to Section 3 of the tariff, page 1. The change is as follows:

- Removes the specific Lifeline credit as of December 1, 2019

The credit as of December 1, 2019, is dependent on the type of service the consumer orders and the credit is different for voice only versus voice and broadband or broadband only.

The change to the Federal Lifeline credit may increase the revenue paid by the consumer but will not change the overall amount of revenue received by the Company. Therefore, the annual regulated revenue impact will be zero or minimal.

Staff has reviewed the filing and does not have any concerns. The Company’s last tariff filing was approved in February of 2019.

RECOMMENDATION:

Staff recommends the Commission approve the replacement tariff sheet provided by Southern Kansas. The change that was provided in the new tariff sheet is not revenue affecting and is due to changes to the federal Lifeline program by the FCC. The change that the Company filed mirrors the federal requirements and is, therefore, in the public interest. The Company requests an effective date of December 1, 2019.

⁶ Prior to 2004, if a rate of return carrier asked for an increase in revenue outside a rate case, the Commission policy was to adjust the amount received for an increased rate by a corresponding decrease in draw from the KUSF, pursuant to K.S.A. 66-2005(d). However, in *Rural Telephone Service Co. v. Kansas Corporation Commission*, 31 Kan. App. 2d 760, 72 P.3d 937 (2003), the Kansas Court of Appeals held that the Commission did not have statutory authority to reduce Rural's KUSF distribution in response to increased revenue from modifications to tariff filings (Docket No. 02-RRLT-875-TAR). The Court reversed the Order reducing Rural's KUSF support, but it remanded the matter to enable the Commission to determine the reasonableness of the proposed tariff changes in light of the Court's decision to disallow a contemporaneous reduction of KUSF support, 31 Kan. App. 2d at 770. On June 4, 2004, the Commission opened a generic docket to address Staff's proposal to address tariff increases between KUSF audits. In an Order dated September 28, 2004, in that Docket (04-GIMT-1080-GIT), the Commission stated, “Staff will continue to conduct an individual evaluation of any proposed tariff revision made by a rate-of-return regulated company affecting its revenues to determine the reasonableness of the proposed rates . . . if Staff evaluates information indicating that a rate-of-return regulated carriers is receiving materially greater revenue than its authorized cost recovery and rate of return would necessitate, the Commission will consider whether to conduct an audit.”

CERTIFICATE OF SERVICE

20-SNKT-193-TAR

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 11/21/2019.

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/S/ DeeAnn Shupe

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