

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

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

In the Matter of the Application of )  
Cunningham Telephone Company Filing ) Docket No. 20-CNHT-300-TAR  
Revisions to its Lifeline Service Program )  
Language. )

**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 January 10, 2020, Cunningham Telephone Company (Cunningham) filed a request to revise its General Exchange Tariff to change language to standardize its Lifeline Service Program consistent with the Federal Communications Commission (FCC) decision in its *2016 Lifeline Order*.<sup>1</sup> Cunningham filed a replacement tariff for Section 3, 4th Revised Sheet 2, 3<sup>rd</sup> Revised Sheet 3 and 2nd Revised Sheet 4, effective, February 10, 2020.

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.

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<sup>1</sup> *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*").

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.<sup>2</sup> Accordingly, the Commission conducts its investigation regarding the reasonableness of Cunningham's request to modify tariff language to permit generic changes for further action taken by the FCC under the *2016 Lifeline Order*.

4. On January 15, 2020, the Commission Staff (Staff) issued a Report and Recommendation dated January 14, 2020, advising the Commission to grant the tariff revisions proposed by Cunningham to standardize language in its General Exchange Tariff for its Lifeline Service Program.

5. The Commission adopts Staff's analysis and recommendations of January 14, 2020, as stated in the Report and Recommendation, which is attached hereto and made a part hereof by reference, and finds that the Cunningham request should be granted. In conjunction with the request, Cunningham has provided replacement tariff revisions to be placed in effect February 10, 2020, which the Commission authorizes with the issuance of this Order.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Cunningham Telephone Company request filed in this matter on January 10, 2020, is hereby granted with the effective tariff date occurring on February 10, 2020.

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<sup>2</sup> K.S.A. 66-1,189.


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).<sup>3</sup>

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.

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 02/04/2020



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Lynn M. Retz  
Executive Director

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<sup>3</sup> K.S.A. 66-118b; K.S.A. 77-503 (c) and K.S.A. 77-531(b).

**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:** January 14, 2020

**SUBJECT:** Docket No. 20-CNHT-300-TAR  
In the Matter of Cunningham Telephone Company Filing Revisions to its Lifeline Service Program Language

**EXECUTIVE SUMMARY:**

On January 10, 2020, Cunningham Telephone Company (Cunningham) filed a request to make tariff revisions to a certain section of its General Exchange Tariff changing the verbiage to a standardized generic wording for the Company's Lifeline offering.

The Commission action date is Monday, **February 10, 2020**.

The normal thirty-day interval falls on a Sunday, February 9, 2020.

**BACKGROUND:**

On April 27, 2016, the FCC released the *2016 Lifeline Order*<sup>1</sup> 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.

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<sup>1</sup> *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*").

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. To alleviate multiple filings by the Company, Staff recommended the Company file generic wording referencing where the most recent FCC rules may be obtained, eliminating the need for annual updates to change the rules.

## **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 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.<sup>2</sup>

This filing makes changes to Section 3 of the tariff, pages 2, 3 and 4. The change is as follows:

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<sup>2</sup> 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.”

- Removes the specific Lifeline rules effective December 1, 2019, and refers to where the specific FCC rules applicable at the time may be found.

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

**RECOMMENDATION:**

Staff recommends the Commission approve the replacement tariff sheet provided by Cunningham. The change that the Company filed references the federal requirements generically and is less costly to the Company. This generic wording alleviates the need for annual updates and, therefore, reduces the cost passed through to the ratepayer and is in the public interest. The Company requests an effective date of February 10, 2020.

## CERTIFICATE OF SERVICE

20-CNHT-300-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 02/04/2020.

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/S/ DeeAnn Shupe  
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DeeAnn Shupe

\* Denotes those receiving the Confidential version