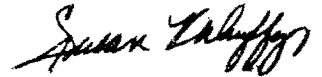


**BEFORE THE STATE CORPORATION COMMISSION      STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

SEP 03 2010

In the Matter of Staff's 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 COMMISSION STAFF**

COMES NOW Commission Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and respectfully submits these comments in response to the Commission's Order Commencing a Generic Proceeding to Address Issues Concerning the Kansas Lifeline Service Program (Commission Order) in the captioned proceeding.

**I. Introduction**

1. The Commission's Order seeks comment on certain issues set forth in the related Staff Motion filed April 13, 2010, and any other issues individual parties might have experienced with respect to the Kansas Lifeline Service Program (KLSP), or any other ways in which the Commission might be able to improve the program and its reach to Kansas consumers. The following issues were identified by Staff in its April 13 Motion:

- (a) Retention of income eligibility documents;
- (b) Annual certification requirements for eligible telecommunications carriers;
- (c) Expansion of programs triggering Lifeline eligibility; and,
- (d) Time for application of the Lifeline discount.

## II. Retention of Income Eligibility Documents

2. On April 29, 2004, the Federal Communications Commission (FCC) released its Report and Order and Further Notice of Proposed Rulemaking (FNPR) modifying its “rules to improve the effectiveness of the low-income support mechanism, which ensures that quality telecommunications services are available to low-income consumers at just, reasonable, and affordable rates.”<sup>1</sup> The FNPR adopted “federal certification and verification procedures to minimize potential abuse of these programs.”<sup>2</sup> The FNPR requires the certification and verification procedures be adopted by the federal default states, and allows non-federal default states, such as Kansas, the flexibility to adopt the FCC’s procedures or implement its own certification and verification procedures.<sup>3</sup>

3. On May 19, 2005, the Commission issued an Order Opening Docket and Establishing New Lifeline Service Requirements and Guidelines Effective June 22, 2005 (Order) in Docket No. 05-GIMT-1039-GIT (05-1039). In its 05-1039 Order, the Commission discussed the FCC’s FNPR and adopted specific requirements and guidelines for Lifeline service providers in Kansas; however, the Commission did not adopt the FCC’s rule that carriers do not need to retain the consumer’s corroborating documentation of Lifeline eligibility.

4. This issue was more recently discussed in a Kansas Universal Service Fund (KUSF) audit proceeding (Docket No. 08-SWBT-041-KSF). Solix, Inc. (Solix), the KUSF administrator at the time, made a finding that Southwestern Bell Telephone Company (SWBT) did not retain copies of the supporting documentation for Lifeline customers once the customer

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<sup>1</sup> See FCC 04-87, Report and Order and Further Notice of Proposed Rulemaking, rel. 4/29/04, WC Docket No. 03-109, ¶1.

<sup>2</sup> Id., ¶2.

<sup>3</sup> Federal default states are states that automatically use the federal Lifeline program eligibility requirements to determine state Lifeline program eligibility. Kansas is not a federal default state but has adopted many of the federal default eligibility guidelines.

service representative reviewed the information and verified that it was current and met the requirements of acceptance into the Lifeline program. However, Solix noted that SWBT was following the FCC's record-keeping rule contained in the FNPR. In response to Solix's Audit Report, SWBT stated it believed it was not required to retain such documentation. SWBT stated the Commission adopted the FCC's requirements for income-level eligibility self-certification, thus it did not think it was necessary to retain a Lifeline customer's documentation supporting their eligibility. Commission Staff filed a response to SWBT and clarified that the Commission did not adopt the FCC rule regarding not retaining corroborating documentation, but recognized some carriers may have been confused regarding what elements of the FNPR were adopted or not adopted by the Commission. The Commission issued an order finding that SWBT's reporting procedures were not materially deficient and directed Staff to open a proceeding to review the record-keeping issue.

5. Requiring carriers to retain income documentation can serve as a valuable deterrent for fraud. If carriers believe they could be audited by the Universal Service Administrative Company (USAC) or the KUSF administrator they will be more likely to ensure income documentation is complete and the customer does, in fact, qualify for the Lifeline discount under the income criterion.

6. On the other hand, requiring carriers to retain highly confidential income information on their customers obviously raises privacy and confidentiality concerns. Staff is sympathetic to these concerns, especially in light of the increasing number of identity theft cases.

7. Staff notes that the Commission adopted the FCC's requirement in the FNPR that an officer of the ETC must "certify that the ETC is in compliance with state Lifeline/Link-Up income certification procedures and that, to the best of his or her knowledge, documentation of

income was presented.”<sup>4</sup> This requirement may not be as effective in deterring fraud as the requirement to retain income documentation, but it does hold carriers accountable.

8. Considering there is another protective measure in place, Staff supports eliminating the income documentation retention requirement. Staff believes the benefits of requiring carriers to retain sensitive customer income documentation do not outweigh the costs.

### **III. Annual Certification Requirements for Eligible Telecommunications Carriers (ETCs)**

9. On May 19, 2005, the Commission issued an Order Opening Docket and Establishing New Lifeline Service Requirements and Guidelines Effective June 22, 2005 in Docket No. 05-GIMT-1039-GIT (05-1039 Order). The Commission determined in its 05-1039 Order that it would adopt the FCC’s requirements for verifying and certifying income-based eligibility as set forth in 47 C.F.R. §54.410(a)(2). 47 C.F.R. §54.410(a)(2) states,

By one year from the effective date of these rules, eligible telecommunications carriers in states that do not mandate state Lifeline support must implement certification procedures to document consumer-income-based eligibility for Lifeline prior to that consumer’s enrollment if the consumer is qualifying under the income-based criterion specified in §54.409(b). Acceptable documentation of income eligibility includes the prior year’s state, federal, or tribal tax return, current income statement from an employer or paycheck stub, a Social Security statement of benefits, a Veteran Administration statement of benefits, a retirement/pension statement of benefits, an Unemployment/Workmen’s Compensation statement of benefits, federal or tribal notice letter of participation in General Assistance, a divorce decree, child support, or other official document. If the consumer presents documentation of income that does not cover a full year, such as current pay stubs, the consumer must present three consecutive months worth of the same types of document within that calendar year.

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<sup>4</sup> Id. at ¶31. The Commission adopted this requirement in its 05-1039 Order.

10. The Commission further required ETCs in Kansas to require all Lifeline and Link-Up customers to annually self-certify to the ETC, by December 31, 2005, and annually thereafter that the customers continue to be eligible for Lifeline/Link-Up benefits. However, the Commission did not adopt the requirement in 47 C.F.R. §54.410(c)(2) that requires ETCs in states that do not mandate state Lifeline support to implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers. The CFR further requires an officer of the ETC to certify under penalty of perjury that the company has income verification procedures in place and that, to the best of his or her knowledge, the company was presented with corroborating documentation, and to retain records of these certifications.

11. All ETCs are required to file an Annual Lifeline Certification and Verification form with the USAC by August 31<sup>st</sup> of each year. As required by 47 C.F.R. §54.410(c)(2), ETCs in federal default states are required to certify that the company has procedures in place to verify the continued eligibility of a statistically valid random sample of its Lifeline customers. The officer is further required to certify that its company has procedures in place to review income documentation and that, to the best of the officer's knowledge, the company was presented with documentation of the consumer's household income. The officer is further required to complete information regarding the number of customers sampled and the number of customers found to be ineligible for Lifeline support. ETCs in non-federal default states, such as Kansas, are required to complete the form but must simply certify that the carrier is complying with the procedures put in place in the state, as required by 47 C.F.R. §54.410(c)(1).

12. The FCC implemented the aforementioned procedures in 47 C.F.R. §54.410(c)(2) in 2004 in order to “ensure that the low-income support mechanism is updated, accurate, and

carefully targeted to provide support only to eligible consumers.” The FCC asserted that “verification is an effective way to prevent fraud and abuse and ensure that only eligible consumers receive benefits.”<sup>5</sup>

13. More recently, the FCC referred this issue to the Federal-State Joint Board on Universal Service (Joint Board) and stated that “the recent growth in federal low-income support and expansion of participating carriers convinces us that it is an appropriate time for the Commission to reevaluate whether it is taking all appropriate steps to ensure program integrity.”<sup>6</sup> The FCC further stated:

Because of our concerns about the continued eligibility of Lifeline customers, we ask the Joint Board to undertake a thorough review of the existing low-income verification requirements contained in the Commission’s rules. First, we ask the Joint Board to consider whether any changes should be made to the existing verification procedures in the Commission’s rules. As it does so, we ask the Joint Board to recommend ways in which the Commission can make the Commission’s rules work more efficiently and effectively. We also ask the Joint Board to consider whether the Commission should modify the nature of the annual verification data that federal default ETCs are required to submit. For example, we ask the Joint Board to consider whether the Commission should require that a higher percentage of customers be sampled than is required under the current rules. Alternatively, we ask the Joint Board to consider whether the Commission should require all federal default ETCs to verify the eligibility of all of their low-income customers on an annual basis. We also ask the Joint Board to consider whether there might be other ways to improve the statistical sampling process and to articulate the costs and benefits associated with any such approaches.

14. Staff echoes the FCC’s sentiments and believes that although the Joint Board is currently reviewing whether to bolster the FCC’s current verification requirements, this Commission should at least adopt the certification and sampling requirements currently required

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<sup>5</sup> Id. at ¶ 33.

<sup>6</sup> See FCC 96-45, Order, rel. 5/4/10, WC Docket No. 03-109, ¶26.

by the FCC of ETCs in federal default states. That is, ETCs in Kansas should be required to certify to the Commission that the company has procedures in place to verify the continued eligibility of a statistically valid random sample of its Lifeline customers. The officer should be further required to certify that their company has procedures in place to review income documentation and that, to the best of the officer's knowledge, the company was presented with documentation of the consumer's household income. The officer should be further required to complete information regarding the number of customers sampled and the number of customers found to be ineligible for Lifeline support.

15. Staff notes that the Commission may want to review this issue again, once the Joint Board issues its Recommended Decision and the FCC acts upon the Joint Board's recommendations. However, Staff believes adopting the current FCC verification requirements at this time is a good first step.

#### **IV. Expansion of programs triggering Lifeline eligibility**

16. Currently, Kansas consumers that receive the following low-income assistance are eligible for the KLSP: Food Stamps, General Assistance, Supplemental Security Income (SSI), Temporary Assistance to Families, Medicaid, United Tribes Food Distribution Program, Bureau of Indian Affairs General Assistance, Tribally Administered Temporary Assistance for Needy Families, Head Start (only those meeting its income-qualifying standard), and the Free School Lunch Program. Additionally, customers that can provide verification that their income falls within 150% of the federal poverty level are also eligible for the KLSP discount.

17. Staff suggests the Commission consider adding the Low Income Energy Assistance Program (LIEAP) to its list of eligible programs for the KLSP discount. To qualify

for the LIEAP, the gross income of all persons living at the address may not exceed 130% of the federal poverty level. Thus, all LIEAP participants would currently qualify for the KLSP under the income criterion; therefore, the addition of this program should not, theoretically, increase the size of the fund. Adding this program to the list of qualifying programs would simply make it easier for LIEAP participants to participate in the KLSP by eliminating the hurdle of having to prove their income yet again, to the telephone company. The addition of the LIEAP to the list of qualifying programs for the KLSP would also be consistent with the federal Lifeline eligibility criteria.

18. Staff recognizes the LIEAP is not a continuous program, rather it offers low-income customers utility assistance one time per year. Participants must re-apply and qualify annually in order to continue to receive LIEAP assistance. Analogous to the KLSP participants that qualify based on participation in other social programs, LIEAP participants would need to verify on an annual basis that they continue to participate in the LIEAP program or their account would revert back to the non-Lifeline rate.

19. The Kansas Department of Social and Rehabilitative Services implemented a new program titled Grandparents as Caregivers since the Commission last reviewed its list of eligible programs. The Grandparents as Caregivers program provides financial assistance to grandparents or other qualifying relatives raising children, if certain eligibility requirements are met including income and resource guidelines. However, income and resource guidelines only apply to the child(ren). Grandparents or other qualifying relatives do not have to provide verification of their own income or resources. Thus, households that participate in the Grandparents as Caregivers program are not necessarily low-income households since only the child(ren)'s income is considered.



20. The purpose of the KLSP is to promote the provision of universal service by local exchange carriers to persons with low income. Staff does not believe adding this program to the list of qualifying programs would further that goal. Thus, Staff does not recommend the Commission add the Grandparents as Caregivers to its list of qualifying programs for the KLSP.

21. The name of the Food Stamp program has changed since it was added to the list of programs. For clarification purposes, Staff recommends the Food Stamp program be recognized under its new name - Supplemental Nutrition Assistance Program (SNAP).

#### **V. Time for application of the Lifeline discount**

22. The Commission's Office of Public Affairs and Consumer Protection has fielded numerous complaints regarding the length of time it takes carriers to implement the Lifeline discount on a customer's account following verification that the customer qualifies for the Lifeline discount. Some customers have complained that it takes months for the discount to be applied to their account.

23. Staff suggests the Commission consider requiring carriers to apply the KLSP discount to a customer's account within one month (maximum) following verification that the customer qualifies for the Lifeline discount. Staff sees no reason for a delay in applying the discount; therefore, Staff believes one month allows carriers adequate time to process any associated paperwork and apply the discount.

#### **VI. Application of Resale Discount on Lifeline Lines**

24. Pursuant to Section 251(c)(4)(A) of the Federal Telecommunications Act, incumbent local exchange carriers (ILECs) have the duty "to offer for resale at wholesale rates

any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” In implementing this requirement, the Commission required SWBT and United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink) to file their proposed avoided cost methodology for the purpose of establishing a wholesale discount rate in compliance with 47 U.S.C. §251(c)(4)(a) and §252(d)(3). With regard to SWBT, the Commission approved the Stipulation and Agreement submitted by SWBT, Staff, and AT&T Communications of the Southwest, Inc., which allows competitive local exchange carriers (CLECs) to take the aggregated discount of 21.6 percent.<sup>7</sup>

25. It has been brought to Staff’s attention in recent months that SWBT is applying the Lifeline discount *prior* to applying the resale discount. If the Lifeline credit is applied *prior* to applying the appropriate resale discount factor (e.g., 21.6%), the Lifeline discount is effectively discounted by 21.6% as well. In response to Staff Request for Information (RFI) 1.1, SWBT cites the following example of how it calculates the wholesale bill for a carrier with a Lifeline consumer that subscribes to the Complete Choice Basic residential bundle:

|                              |                 |
|------------------------------|-----------------|
| Complete Choice Basic (CCB)  | \$23.00         |
| Less Lifeline Credits        | <u>-\$11.27</u> |
| Retail Rate for CCB          | <u>\$11.73</u>  |
| Less Resale Discount (21.6%) | -\$2.53         |
| Rate Billed to CLEC          | <u>\$9.20</u>   |

Conversely, if SWBT applies the Lifeline discount *after* it applies the resale discount, one arrives at the following results:

|                              |                 |
|------------------------------|-----------------|
| Complete Choice Basic (CCB)  | \$23.00         |
| Less Resale Discount (21.6%) | <u>-\$4.97</u>  |
| Wholesale Rate for CCB       | <u>\$18.03</u>  |
| Less Lifeline Credits        | <u>-\$11.27</u> |
| Rate Billed to CLEC          | <u>\$6.76</u>   |

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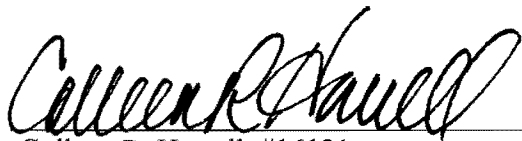
<sup>7</sup> Docket No. 97-SCCC-149-GIT, Order Granting Motion to Approve Stipulation and Cancelling Procedural Schedule, March 10, 2000.

By applying the resale discount before the Lifeline credit, the Lifeline credit is passed through in its entirety; however, when the resale discount is applied after the Lifeline credit, the discount is not passed through in its entirety. It is reduced by 21.6 percent, which, in this instance, is \$2.44 per line.

26. 47 C.F.R. §54.403 **requires** carriers, among other things, to certify that they will pass through the full amount of support to their qualifying low-income consumers. It seems to Staff that a carrier that deducts the Lifeline credit prior to applying the appropriate resale discount amount is not passing through the full amount of support received and is in violation of the aforementioned CFR.

27. Staff sent RFIs regarding this issue to CenturyLink, as well; however, Staff is pleased to report that CenturyLink's response indicates it applies the Lifeline credit after the resale discount is applied.

Respectfully submitted,

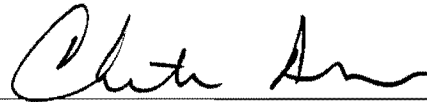


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  ) ss.  
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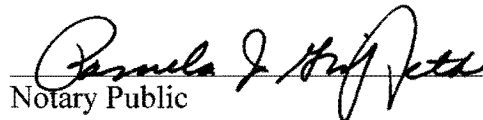
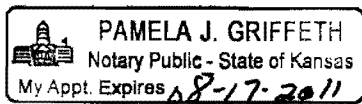
**VERIFICATION**

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, *Comments of Commission Staff*, 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 3rd day of September, 2010.



\_\_\_\_\_  
Notary Public

My Appointment Expires: August 17, 2011

CERTIFICATE OF SERVICE

10-GIMT-658-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Comments of Commission Staff was placed in the United States mail, postage prepaid, or hand-delivered this 3rd day of September, 2010, to the following:

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