

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of a General Investigation of)
TAG Mobile, LLC to Show Cause Why This)
Commission Should Not Initiate Sanctions and) Docket No. 16-TAGC-323-SHO
Fines and Cancel, Suspend and Revoke Any)
Authority the Carrier Currently Holds.)

ORDER TO SHOW CAUSE

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. On November 15, 2012, in Docket No. 12-TAGC-843-ETC (12-843), the Commission issued an Order granting Eligible Telecommunications Carrier (ETC) status to TAG Mobile, LLC (TAG) for Lifeline support in specific wire centers served by Southwestern Bell Telephone Company, d/b/a AT&T Kansas (AT&T) in Kansas. The Commission's Order designated TAG as a Lifeline-Only ETC for the purpose of receiving federal and state Lifeline support.

2. Pursuant to 47 U.S.C. § 214(e)(1), properly designated ETCs are eligible to receive universal service support and must "throughout the service area for which the designation is received – (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier)." Moreover, 47 C.F.R. 54.201(a)

provides that “only eligible telecommunications carriers designated under this subpart shall receive universal service support.”

3. K.S.A. 66-2008(b) provides that telecommunications entities properly designated as ETCs “both under subsection (e)(1) of section 214 of the federal act and by the commission” shall receive KUSF distributions.

4. In 2012, the Federal Communications Commission (FCC) forbore from section 214(e)(1)’s “own facilities” requirement for carriers that are, or seek to become, federal Lifeline-only ETCs, subject to certain conditions.¹ However, this forbearance only applies to federally-supported universal service, not to ETCs who want to receive Kansas Universal Service Fund (KUSF) support.²

5. On December 23, 2015, Commission Staff (Staff) submitted a Report and Recommendation (R&R) to the Commissioners, a copy of which is attached hereto and made a part hereof by reference. Staff indicates that in the 12-843 docket, TAG agreed to meet the facilities requirement of K.S.A. 66-2008(b) by using a combination of its own facilities and resale of other carriers’ services to offer universal service.³ Further, TAG agreed to route Public Switched Telephone Network traffic, international traffic, operator services, and directory assistance calls directly through a switch it owns in California.⁴

6. The Commission’s Order granting Lifeline-Only ETC status to TAG in the 12-843 docket required TAG to meet three conditions. TAG must:

- (1) pass through the KUSF Lifeline discount in its entirety to its new and existing customers;
- (2) provide Lifeline service through its own facilities or a combination of its own facilities and another carrier’s services; and

¹ *Lifeline Reform Order*, FCC 12-11 (2012) at ¶ 368.

² See K.S.A. 66-2008(b).

³ R&R, p. 3.

⁴ R&R, p. 3.

(3) file quarterly reports pursuant to Staff's recommendation in the docket.

7. Staff further found that Selectel, Inc. (Selectel) is offering Lifeline service in Kansas through TAG's ETC designation.⁵ Selectel has no ETC status in Kansas, which is required to provide Lifeline service in Kansas.⁶ According to Staff, Selectel is affiliated with TAG as an Independent Sales Organization contracted to TAG.⁷ TAG provided Staff a copy of its Independent Sales Organization Agreement with Selectel,⁸ and pursuant to the Agreement, TAG is not providing voice telephony service to low-income consumers as required by 47 C.F.R. 54.101(a), nor is TAG utilizing its own facilities or a combination of its own facilities and resale of another carrier's services.⁹ Thus, Staff found that TAG is in violation of 47 U.S.C. 214(e)(1), K.S.A. 66-2008(b), and the Commission's Order designating TAG as an ETC in the 12-843 docket.¹⁰

8. Moreover, Staff believes TAG is not passing along its entire Lifeline discount to the consumer, also in contravention of the Commission's 12-843 Order.¹¹

9. Based on Staff's findings in its R&R, Staff recommends the Commission open a proceeding requiring TAG Mobile, LLC to show cause why TAG should not be subject to sanctions and fines and its ETC designation should not be cancelled, suspended and/or revoked. Staff also recommends the Commission direct the KUSF third-party administrator, GVNW Consulting, Inc (GVNW), to immediately cease providing Lifeline support to TAG until this issue is resolved and the Commission directs GVNW to resume payments.

⁵ R&R, p. 3.

⁶ R&R, p. 4 (Redacted version).

⁷ R&R, p. 4.

⁸ See Exhibit A (Confidential)

⁹ R&R, p. 4.

¹⁰ R&R, p. 4.

¹¹ R&R, p. 4.

10. The Commission finds all of Staff's findings and recommendations to be reasonable and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. TAG Mobile, LLC shall show cause, within thirty (30) days of receipt of this Order, why it should not be subject to sanctions and fines and its ETC designation should not be cancelled, suspended and/or revoked.

B. GVNW shall immediately cease providing Lifeline support to TAG Mobile, LLC until this issue is resolved and the Commission directs GVNW to resume payments.


C. The parties have fifteen (15) days, plus three (3) days if served by mail, from the date this order was served, to petition the Commission for reconsideration. K.S.A. 66-118; K.S.A. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: JAN 14 2016



Amy L. Green
Secretary to the Commission

MJD

Order Mailed Date

JAN 15 2016

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Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

REDACTED
CONFIDENTIAL INFORMATION DENOTED BY ** **

REPORT AND RECOMMENDATION
UTILITIES DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: December 23, 2015

SUBJECT: Docket No. 16-TAGC-323-SHO
In the Matter of a General Investigation of TAG Mobile, LLC to Show Cause Why this Commission Should Not Initiate Sanctions and Fines and Cancel, Suspend and Revoke Any Authority the Carrier Currently Holds.

EXECUTIVE SUMMARY:

TAG Mobile, LLC (TAG) filed an Application in Docket No. 12-TAGC-843-ETC (Docket 12-843) requesting it be designated an Eligible Telecommunications Carrier (ETC) for Lifeline support in specific wire centers served by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) in Kansas. The Commission granted TAG's request in an Order dated November 15, 2012.

TAG is required to offer the services that are supported either using its own facilities or a combination of its own facilities and resale of another carrier's services and to pass along the Lifeline discount in its entirety to Lifeline customers. Staff does not believe TAG is in compliance with the Federal Communications Commission's (FCC) rules, federal and state statutes, and Commission Orders in Kansas; therefore, Staff recommends the Commission open a proceeding to require TAG to show cause why it should not be subject to sanctions and fines and its ETC designation should not be cancelled, suspended and/or revoked. Staff further recommends the Commission direct GVNW Consulting, Inc. (GVNW) to immediately cease providing Lifeline support to TAG until this issue is resolved and the Commission directs GVNW to resume payments.

BACKGROUND:

TAG is a limited liability company organized under the laws of the state of Texas and a wholly-owned subsidiary of Amvensys Capital Group, LLC. TAG is authorized to conduct business as a foreign limited liability company in the state of Kansas and its status is “active and in good standing.”

TAG has been designated by the Commission as a Lifeline-Only ETC in specific AT&T wire centers in Kansas for the purpose of receiving federal and state Lifeline support.

Pursuant to 47 U.S.C. § 214(e)(1),

(1) A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received – **(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services** (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefor using media of general distribution (emphasis added).

Kansas law adopts the federal standards, contained in 214(e)(1), for designating a provider as an ETC for Kansas Universal Service Fund (KUSF) purposes. K.S.A. 66-2008(b) states:

Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

In 2012, the FCC forbore from applying the facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the federal Lifeline program, subject to certain conditions. Specifically, the FCC forbore from the “own-facilities” requirement for carriers that are, or seek to become, federal Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with certain 911 requirements; and (2) the carrier must file, and the FCC must approve, a compliance plan providing specific information regarding the carrier’s service offerings and outlining the measures the carrier will take to implement the FCC’s Lifeline obligations.¹

¹ See *Lifeline Reform Order*, FCC 12-11 at ¶ 368.

TAG filed its Compliance Plan with the FCC and it was approved on August 8, 2012.² Although the FCC has granted blanket forbearance from the facilities requirement to TAG and other carriers for federal support purposes, the FCC's blanket forbearance only applies to federally-supported universal service and not state-supported universal service. Thus, carriers need to meet the "own facilities" requirement in order to be eligible for KUSF support.

In Docket No. 12-843, TAG indicated that, in order to meet the facilities requirement, it will use a combination of its own facilities and resale of other carriers' services (Sprint Spectrum, LLC and Cellco Partnership d/b/a Verizon Wireless) to offer universal service. TAG stated it is a facilities-based Mobile Virtual Network Operator with a variety of facilities owned by TAG. Specifically, TAG indicates it owns a Class 5 switch, which is located in Los Angeles, California. TAG also owns a network call controller, which is located in Dallas, TX. Additional computer databases and calling platforms owned by TAG are located in Pensacola, Florida. TAG also obtains services through commercial mobile radio service providers that TAG uses in combination with the services provided through Company-owned facilities.

TAG indicated it has the capability of determining the types of calls and percentage of calls that will route through its switch. In order to meet the "own facilities" requirement in Kansas, TAG stated that it will route Public Switched Telephone Network traffic, international traffic, operator services, and directory assistance calls directly through its switch.

Staff filed a Report and Recommendation dated October 30, 2012, in Docket 12-843, recommending approval of TAG's request for designation as a Lifeline-Only ETC for federal and state support purposes in specific service areas, contingent upon meeting the following three conditions: 1) TAG must pass through the KUSF Lifeline discount in its entirety to its new and existing customers; 2) TAG must provide Lifeline service via its own facilities or a combination of its own facilities and another carrier's services; and 3) TAG must file quarterly reports, as discussed in the Staff Report and Recommendation. The Commission issued an Order on November 15, 2012, in which it found Staff's analysis, findings, and recommendations to be reasonable and thereby adopted the same.

Staff recently learned that Selectel, Inc. (Selectel) is offering Lifeline service in Kansas via TAG's ETC designation. Pursuant to Selectel's Compliance Plan on file with the FCC, Selectel is owned by Compass Atlantic Inc. (66.67%) and Matthew O'Flaherty (33.33%). Compass Atlantic is a holding company organized under the laws of the state of Delaware. It is a wholly owned subsidiary of Compass Capital Incorporated, which is organized under the laws of the province of Ontario, Canada. Selectel is the operating company and the Company does not have any other affiliates.³

² https://apps.fcc.gov/edocs_public/attachmatch/DA-12-1286A1.pdf

³ <http://apps.fcc.gov/ecfs/comment/view?id=60001097545>, last viewed December 22, 2015.

Selectel has not applied for nor been granted ETC designation in Kansas, which is required in order to provide Lifeline service in Kansas. Furthermore, pursuant to federal regulation 47 C.F.R. § 54.201(a), "only eligible telecommunications carriers designated under this subpart shall receive universal service support."

ANALYSIS:

Staff issued Data Request (DR) 2 requesting TAG explain its affiliation with Selectel. TAG indicated in its response that Selectel is an Independent Sales Organization contracted to TAG Mobile.

Staff followed up with DR 4, requesting a copy of the contract between TAG and Selectel and noting that if TAG considers any of the information contained within the contract confidential, it should file it in accordance with K.A.R. 82-1-220a. TAG provided its response to DR 4 on October 9, 2015, and a copy of its Independent Sales Organization Agreement (Agreement) with Selectel. TAG did not request confidential treatment of the Agreement pursuant to K.A.R. 82-1-220a nor was it marked confidential; however, according to the Agreement, the terms and conditions of the Agreement are deemed confidential. Therefore, out of an abundance of caution, Staff is treating the terms and conditions of the Agreement as confidential. A copy of the Agreement is attached to this Report and Recommendation as Confidential Exhibit A.

According to the Agreement, **

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Pursuant to the Agreement, TAG is not providing low-income consumers with voice telephony service as specified in 47 C.F.R. § 54.101(a). Instead, the Agreement **

** TAG is not utilizing its own facilities or a combination of its own facilities and resale of another carrier's services, in direct conflict with 47 U.S.C. § 214(e)(1), K.S.A. 66-2008(b), and the Commission's November 2012 Order designating TAG as an ETC.

In addition, the Commission's November 2012 Order requires TAG to pass along the entirety of the Lifeline discount to its new and existing customers. For each Lifeline line, TAG receives \$9.25 in federal support and \$7.77 in state support, for a total of \$17.02. According to the Agreement, **

** It appears that TAG is not passing along the entire Lifeline discount to the consumer; instead, **

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RECOMMENDATION:

Staff recommends the Commission open a proceeding for TAG to show cause why it should not be subject to sanctions and fines and its ETC designation should not be cancelled, suspended and/or revoked. Furthermore, Staff recommends the Commission direct GVNW to immediately cease providing Lifeline support to TAG until this issue is resolved and the Commission directs GVNW to resume payments.

CERTIFICATE OF SERVICE

16-TAGC-323-SHO

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on **JAN 14 2016**.

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/S/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date

JAN 15 2016