

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

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

In the Matter of the Application of Cox)
Kansas Telecom, LLC for Waiver of) Docket No. 18-COXT-057-MIS
Requirement to Offer Equal Access to)
Interexchange Carriers.)

ORDER ESTABLISHING BRIEFING SCHEDULE

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On August 1, 2017, Cox Kansas Telecom, LLC (Cox) filed an Application to waive the requirement to provide access to interexchange carriers within the local calling area when offering Lifeline service.¹ If granted, Cox would cease offering its customers the option to presubscribe to long-distance service offered by other providers.²

2. Cox cites a sharp decline in customer requests for stand-alone long distance, making it no longer economical to offer.³ Currently, Cox utilizes two technologies to provide service: (1) circuit-switched and (2) voice over internet protocol (VoIP).⁴ Stand-alone long distance traffic is handled over the circuit-switching network. Cox is transitioning away from the circuit-switched network, and argues it is no longer cost-effective to continue to upgrade its

¹ Application of Cox Kansas Telecom, LLC, Aug. 1, 2017, p. 1.

² *Id.*

³ *Id.*, ¶ 2.

⁴ *Id.*, ¶¶ 13, 16.

circuit-switched network for a dwindling number of customers.⁵ Cox estimates that less than 1% of its customers subscribe to stand-alone long distance service.⁶

3. On November 6, 2017, Staff filed a Report and Recommendation (R&R) advising the Commission deny Cox's Application because K.S.A. 66-1,187(p)'s definition of universal service does not allow for waiver of the equal access requirement.⁷ Staff agrees that Cox is not required to provide equal access to interexchange carriers for federal Lifeline purposes, but argues Cox is required to provide universal service as defined in K.S.A. 66-1,187(p) to low-income consumers receiving Kansas Lifeline Support Program (KLSP) assistance.⁸

4. Staff's R&R notes a potential conflict between K.S.A. 66-2002(k), which authorizes the Commission to review and modify as necessary, the definition of universal service and K.S.A. 66-1,187(p)'s definition of universal service.⁹ While Staff believes the Commission has the authority to modify the definition of universal service, it questions whether it can do so absent the Kansas Legislature amending K.S.A. 66-1,187(p).¹⁰

5. Although it is not philosophically opposed to Cox's request for a waiver based on changes in the long-distance market, Staff does not believe K.S.A. 66-1,187(p)'s definition of universal service can be ignored, and that only the Kansas Legislature has the authority to revise the definition of universal service.¹¹

6. On November 16, 2017, Cox filed its Response to Staff's Report and Recommendation, concluding there is no statutory conflict between K.S.A. 66-1,187(p) and

⁵ See *id.*

⁶ *Id.*, ¶ 19.

⁷ Report and Recommendation, Nov. 6, 2017, p. 1.

⁸ *Id.*, p. 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*, p. 5.

K.S.A. 66-2002.¹² Instead, Cox believes the statutes can be reconciled, with the more specific language in K.S.A. 66-2002(a) and (k) prevailing. Cox also disputes Staff's contention that any modification of the definition of universal service by the Commission would need to be met with a similar change by the Kansas Legislature.¹³ Lastly, Cox reiterates the minor scope of the proposed waiver – of its 700 Lifeline subscribers in Kansas, only two customers have selected anyone other than Cox as their long-distance provider.¹⁴

7. Since Cox and Staff both view the central question in this Docket as one of statutory interpretation, the Commission believes legal briefs are appropriate. The Commission requests legal briefs on the following issues:

- a) Is there are statutory conflict between K.S.A. 66-1,187(p) and K.S.A. 66-2002? If so, how should the conflict be resolved?
- b) What if any limits are there on the Commission's authority to "modify the definition of universal service and enhanced universal service" under K.S.A. 66-2002(k)?
- c) What are the potential ramifications of the Commission modifying the definition of universal service in K.S.A. 66-1,178?
- d) What are the policy implications of allowing the Commission to unilaterally modify the definition of universal service?

Briefs are limited to 15 pages. Initial briefs are due January 5, 2018. Reply briefs, which are limited to 10 pages are due January 19, 2018. After reviewing the briefs, the Commission will determine whether oral argument is appropriate.

8. The Commission designates Brian G. Fedotin, Deputy General Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone number (785) 271-3105,

¹² Response of Cox Kansas Telecom, LLC, to Staff's Report and Recommendation, Nov. 16, 2017, ¶ 6.

¹³ *Id.*, ¶ 7.

¹⁴ *Id.*, ¶ 9.

b.fedotin@kcc.ks.gov, as Prehearing Officer in this proceeding.¹⁵ The Prehearing Officer may conduct any prehearing conferences necessary to address any matters appropriately considered in a prehearing conference, including all items listed in K.S.A. 77-517(b) of the Kansas Administrative Procedure Act (KAPA). The Commission may designate other staff members to serve in this capacity.

9. The Commission approves the use of electronic service of all testimony, briefs, and orders, without requiring provision of follow-up hard copies as required by K.A.R. 82-1-216(a)(6). Testimony and briefs must be served electronically by 5:00 p.m., on the date due, without requiring service among the parties of a follow-up hard copy. The Commission directs electronic service of testimony and briefs include service on the Prehearing Officer at b.fedotin@kcc.ks.gov.

THEREFORE, THE COMMISSION ORDERS:

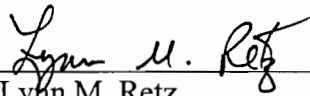
- A. The briefing schedule set forth in paragraph 7 is adopted.
- B. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.¹⁶
- C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: DEC 07 2017

BGF



Lynn M. Retz
Secretary to the Commission

¹⁵ K.S.A. 77-514; K.S.A. 77-516; K.S.A. 77-551(c).

¹⁶ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

EMAILED

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CERTIFICATE OF SERVICE

18-COXT-057-MIS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on DEC 07 2017.

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/S/ DeeAnn Shupe

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