

**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 Twin Valley Telephone Filing)
Revisions to its Lifeline Service Program) Docket No. 20-TWVT-330-TAR
Language.)

ORDER APPROVING TARIFF REVISIONS

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 and conclusions.

I. BACKGROUND

1. On January 29, 2020, Twin Valley Telephone, Inc. (Twin Valley) filed an Application to revise two sheets in its General Exchange Tariff.¹ Twin Valley noted it was revising its Lifeline service program language per Commission Staff's (Staff) recommendation.² Twin Valley requested an effective date of February 27, 2020.³

2. Staff submitted a Report and Recommendation regarding the proposed tariff revisions on January 30, 2020.⁴ A copy of Staff's Report and Recommendation is attached hereto and incorporated into this Order by reference. Staff recommended the Commission approve Twin Valley's requested revisions.⁵

¹ Tariff for Twin Valley Telephone, p. 1 (Jan. 29, 2020).

² *See id.*

³ *See id.*

⁴ *See* Staff's Report and Recommendation (Jan. 30, 2020) (Report and Recommendation).

⁵ *See id.* at p. 3.

II. JURISDICTION

3. K.S.A. 66-117(d) 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.

4. K.S.A. 66-1,190 requires:

Every telecommunications 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, 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 shall have 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, including such protection of confidentiality as requested by the telecommunications public utility, and the utility's suppliers and customers, for contracts entered into by them, and as the commission determines reasonable and appropriate.

5. Likewise, K.S.A. 66-1,189 requires telecommunications public utilities to establish "just and reasonable" rates for all jurisdictional products and services rendered.

III. DISCUSSION

6. Twin Valley's request changes verbiage in Twin Valley's General Exchange Tariff to be more generic.⁶ In April of 2016, the FCC released its 2016 Lifeline Order, which, among other things, required minimum service standards to adjust every year in December on a phased-

⁶ See *id.* at p. 1.

in basis.⁷ This phase-in places an increased emphasis on broadband, while at the same time reduces the emphases on voice services.⁸

7. To reduce multiple filings from Twin Valley, Staff recommended Twin Valley file generic wording references to the most recent Federal Communications Commission rules. Specifically, Twin Valley's revisions remove references to Lifeline rules effective as of December 1, 2019, and, instead, refers to the applicable Federal Communications Commission rules.⁹

8. Federal Lifeline support amounts are determined by the Federal Communications Commission. Previously, Twin Valley's tariffs detailed what these amounts were.¹⁰ However, because of the phased-in approach taken in the 2016 Lifeline Order, Twin Valley was required to update its tariffs annually to accurately reflect what the current federal Lifeline support level was. Twin Valley's filings did not determine its federal Lifeline support. Rather, they merely ensured Twin Valley's Commission-approved tariffs matched the current federal Lifeline support levels.

9. Removing the specific dollar amounts from Twin Valley's tariff and replacing such with references to relevant Federal Communications Commission regulations improves administrative efficiency. The level of federal Lifeline support remains jurisdictional to the Federal Communications Commission and Twin Valley's tariffs will accurately indicate which federal regulation outlines those support levels. In addition, the generic language contained within Twin Valley's tariffs eliminates the need for continued annual filings that merely ensure the federal Lifeline support references in Twin Valley's tariff match the then-applicable Federal Communications Commission regulations.

⁷ See *id.* See also In the Matter of Lifeline & Link Up Reform & Modernization, 31 FCC Rcd. 7075, 4134, 31 FCC Rcd. 3962, 4134, 31 FCC Rcd. 7048, 4134, 2016 WL 1706939, at *135 (2016).

⁸ See Report and Recommendation, p. 1.

⁹ See *id.* at p. 2.

¹⁰ See, generally, Docket No. 20-TWVT-196-TAR.

10. Finally, Staff noted telecommunications providers must constantly adapt to consumer needs.¹¹ As such, the Commission determined rate changes made by telecommunications providers would not be audited for their reasonableness unless the changes resulted in the provider receiving “materially greater revenue” than its rate-of-return would necessitate.¹² Because utilizing generic wording is less costly to the company and ratepayers (i.e., reduces frequent tariff revisions), Staff recommended approval.¹³

IV. FINDINGS AND CONCLUSIONS

11. The Commission finds Twin Valley is subject to the Commission’s jurisdiction, as detailed above. As such, the Commission concludes it has jurisdiction to issue an order on Twin Valley’s request.

12. The Commission finds Twin Valley’s request, and the recommendation contained within Staff’s Report and Recommendation, to be reasonable and hereby adopts the same.

13. While Commission action is not required until February 28, 2020, the Commission finds it reasonable to approve Twin Valley’s proposed revisions with an effective date of February 27, 2020, as requested.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Twin Valley’s tariff revisions filed on January 29, 2020, are approved effective February 27, 2020.

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).

¹¹ See Report and Recommendation at p. 2.

¹² See *id.* See also Order Dismissing Docket, Docket No. 04-GIMT-1080-GIT (Sep. 28, 2004).

¹³ See Report and Recommendation at p. 3.

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

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 02/20/2020



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Susan K. Duffy, Chair
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Laura Kelly, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

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

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

DATE: January 30, 2020

SUBJECT: Docket No. 20-TWVT-330-TAR

In the Matter of Twin Valley Telephone Filing Revisions to its Lifeline Service Program Language

EXECUTIVE SUMMARY:

On January 29, 2020, Twin Valley Telephone, Inc. (Twin Valley) 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 Friday, **February 28, 2020**.

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.

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

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*").

recent FCC rules may be obtained, eliminating the need for annual updates to change the specific 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.²

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

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

² 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.”

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

RECOMMENDATION:

Staff recommends the Commission approve the replacement tariff sheet provided by Twin Valley. 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. Although the statutory deadline for the Commission to take action on this filing under K.S.A. 66-117 is February 28, the Company requests an effective date of February 27, 2020.

CERTIFICATE OF SERVICE

20-TWVT-330-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 02/20/2020.

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/s/ DeeAnn Shupe

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