

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received
on

Before Commissioners: Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright

MAY 10 2012

by
State Corporation Commission
of Kansas

In the Matter of the Application)
of Lifeline Phone Service, Inc. for)
a Certificate of Convenience and)
Authority to Provide Exchange) Docket No. 12-LLPT-714-COC
Telecommunications Service on a)
Resold Basis Within the State of)
Kansas)

NOTICE OF FILING OF REPORT AND RECOMMENDATION

Staff hereby files a Report and Recommendation, attached hereto and made a part hereof by reference. The Report and Recommendation provides analysis of the application of lifeline Phone Service, Inc. and makes a recommendation denying same to the Commission.

Respectfully submitted,



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Mark Sievers, Chairman
Ward Loyd, Commissioner
Thomas E. Wright, Commissioner

Sam Brownback, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

PATRICE PETERSEN-KLEIN
EXECUTIVE DIRECTOR

MAY 09 2012

STATE CORPORATION
COMMISSION

TO: Chairman Mark Sievers
Commissioner Ward Loyd
Commissioner Thomas E. Wright

FROM: Christine Aarnes

DATE: May 7, 2012

DATE SUBMITTED TO EXECUTIVE DIRECTOR: 5/9/12 R

DATE SUBMITTED TO LEGAL: 5.9.12 R

DATE SUBMITTED TO COMMISSIONERS: 5-10-12

SUBJECT: 12-LLPT-714-COC (CLEC)
In the Matter of the Application of Lifeline Phone Service, Inc. for a Certificate of Convenience and Authority to Provide Exchange Telecommunications Service on a Resold Basis Within the State of Kansas.

EXECUTIVE SUMMARY:

Lifeline Phone Service, Inc. (LPS) has filed with the Kansas Corporation Commission to offer local exchange telecommunications services in the state of Kansas. Staff does not believe it would be in the public interest to grant this request; therefore, it recommends the Commission deny the Application.

BACKGROUND:

On March 23, 2012, LPS filed this Application requesting authority to engage in the business of a Competitive Local Exchange Carrier (CLEC) as a reseller of local exchange services on a statewide basis.

On April 5, 2012, LPS filed a Motion for Expedited Adjudication of its Application. In its Motion, LPS stated that it had been servicing customers in the Wichita area since September 2009. LPS further stated that its Application should be expedited to protect customers from losing telephone services because it believed the Commission may "suspend" Connect Insured

Telephone, Inc. d/b/a Connect IT's (Connect IT) Certificate of Convenience and Authority, allegedly leaving approximately 2,000 customers without service.

On April 6, 2012, Staff filed its Response to the Motion. In its Response, Staff explained that the Commission had not taken any action to "suspend" Connect IT's Certificate of Convenience and Authority and further explained that the Commission adopted procedures in Docket No. 01-GIMT-649-GIT to help protect consumers from loss of service if and when a carrier stops operating in the state. The procedures were adopted by the Commission in 2002, submitted to the Kansas Secretary of State's Office to be published in the January 9, 2003, edition of the Kansas Register. The regulations, K.A.R. 82-13-1 and K.A.R. 82-13-2 became effective on January 24, 2003.

On April 25, 2012, the Commission issued its Order denying LPS' Motion. In its Order, the Commission found no support in the record for LPS' assertion that "the Commission 'may' suspend Connect IT's license". Furthermore, the Commission found that Kansas customers would be adequately protected by Kansas law in the event Connect IT's license were to be suspended. The Commission's Order described the process set forth in K.A.R. 82-13-2(b), which requires any competitive local exchange carrier that ceases operation in the state to provide at least 30 days notice to its customers. If the CLEC does not provide this notice or simply abandons service, the underlying carrier must provide service for a limited time. As the Commission's Order explains, this process must be followed whether the carrier voluntarily ceases or is suspended. Additionally, the regulations allow the Commission to require any other notice that it deems necessary.

ANALYSIS:

Pursuant to K.S.A. 66-131, no common carrier or public utility shall transact business in the state of Kansas until it shall have obtained a certificate from the Commission that public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in the state.

In making the determination as to whether the public convenience will be promoted by the transaction of said business, the Commission determined that it would look at a number of factors when determining whether a particular application is consistent with the public interest. The factors may include, but are not limited to the provider's technical, managerial, and financial capabilities.¹ Staff will discuss the provider's technical, managerial, and financial qualifications and follow with further analysis and a recommendation.

Managerial Qualifications

The Application lists Mr. Rick Laham as the Owner, Director, and sole stockholder of LPS.² Exhibit 2 to the Application is a description of the Applicant's managerial qualifications, which indicates Mr. Rick Laham has "been a Competitive Local Exchange Carrier from 1998 through

¹ See *In the Matter of a General Investigation into Competition within Telecommunications Industry in the State of Kansas*, Docket No. 190,492-U, 94-GIMT-478-GIT, Order, Issued May 5, 1995, ¶¶ 28-31.

² The Articles of Incorporation also indicate Mr. Rick Laham is the sole incorporator.

2012.” Exhibit 2 also lists Mr. James Laham as the Manager with 6+ years of management experience, as well as provisioning, customer service, and computer skills training.

1. Problems Involving Prior Companies Managed by Applicant’s Principals

Mr. Rick Laham previously held Certificates of Convenience and Authority under the names of Local Phone Service, Inc. and Local Phone Services, Inc.

Local Phone Service, Inc. was granted a Certificate of Convenience and Authority to resell switched local exchange telecommunications service and exchange access service in Kansas on November 26, 1997, in Docket No. 98-LPST-289-COC. The Commission cancelled Local Phone Service, Inc.’s Certificate on September 18, 2002, because: 1) Local Phone Service, Inc. had not reported to the KUSF since February 1999; 2) its mail had been returned to the KUSF Third Party Administrator as “undeliverable” since February 2001; and 3) it had forfeited with the Kansas Secretary of State its authority to do business in the state of Kansas.

Local Phone Services, Inc. was granted a Certificate of Convenience and Authority to resell switched local exchange telecommunications services within the state of Kansas on February 19, 2002, in Docket No. 02-LCLT-576-COC. The Application lists Mr. L.E. Hisken as President and Mr. Rick Laham as key management personnel. Mr. Laham is reported as Treasurer and Vice President of the Corporation in Annual Reports filed with the Kansas Secretary of State’s Office.

The Commission opened numerous proceedings with regard to Local Phone Services, Inc. including the following:

- a) *In the Matter of the General Investigation of Local Phone Services, Inc. to Show Cause Why This Commission Should Not Initiate Sanctions and Fines and Cancel, Suspend and Revoke Any Authority the Carrier Currently Holds*, Docket No. 04-LCLT-835-SHO. The proceeding was opened because of the following: 1) the Company was 630 days delinquent in paying Kansas Universal Service Fund assessments, as required by K.S.A. 66-2008; 2) the Company had not remitted contributions or worksheets to the KUSF Third Party Administrator; and, 3) the Company was delinquent in paying Commission assessments, as required by K.S.A. 66-1502 and 66-1503. The proceeding was closed in an Order dated June 26, 2006, as a result of a procedural impediment in that the Commission had not issued an Order requiring LPS to show just cause why the Commission should not initiate sanctions or fines, and cancel, suspend, or revoke the Company’s authority to conduct business in Kansas. In the June 26, 2006, Order, the Commission ordered staff to file a memorandum within 10 business days to open a new investigation proceeding of Local Phone Services, Inc. and the issues cited above. (The Commission opened Docket No. 07-LCLT-011-GIT on July 11, 2006.)
- b) *In the Matter of the Audit of Local Phone Services, Inc. for Kansas Universal Service Fund (KUSF) Purposes*, Docket No. 05-LCLT-053-KSF. The proceeding was opened to conduct an audit of Local Phone Services, Inc. to verify assessments owed to the KUSF, to provide instruction to the Company on KUSF collection and remittance processes, and to provide recommendations regarding such processes to the Company. The December 30, 2004, Audit Report, which was filed by the KUSF Third Party Administrator and covered the audit period from May 2002 to July 2004, contained the following findings:

- 1) Local Phone Services, Inc. offered long distance services without obtaining proper authority to do so; 2) the Company did not report actual revenues to the KUSF; 3) the Company lacked financial documentation to support revenue reported to the KUSF; and 4) the Company may have provided Lifeline credits to ineligible customers.
- c) *In the Matter of the Application of Local Phone Services, Inc. for a Certificate of Convenience and Authority to Transact the Business of an Interexchange Services Provider Within the State of Kansas*, Docket No. 07-LCLT-020-COC. While conducting the KUSF audit, the KUSF Third Party Administrator discovered Local Phone Services, Inc. had been providing interexchange services since January 2003 without having obtained a Certificate from the Commission to provide such services. On September 13, 2004, Local Phone Services, Inc. filed an Application to provide interexchange services in the state of Kansas.
- d) *In the Matter of the General Investigation of Local Phone Services, Inc.*, Docket No. 07-LCLT-011-GIT. The proceeding was opened to determine whether sanctions, fines, and/or revocation of Local Phone Services, Inc.'s authority to conduct business in Kansas were appropriate.

The Commission ultimately consolidated Docket Nos. 05-LCLT-053-KSF, 07-LCLT-020-COC, and 07-LCLT-011-GIT in an Order dated January 12, 2006. In the consolidated Docket, Staff and Local Phone Services, Inc. entered into a Stipulated Settlement Agreement (SSA) that was filed with the Commission on February 8, 2008. The SSA was approved by the Commission on February 21, 2008. The SSA required Local Phone Services, Inc. to, among other things: 1) pay to the KUSF past due amounts totaling \$67,628; 2) pay to the Commission past due assessments in the amount of \$32,068.26; and 3) refund \$14,004 to its Lifeline customers. Local Phone Services, Inc. was required to pay a minimum of \$3,000 per month to the KUSF administrator and a minimum of \$1,800 per month to the Commission for past due amounts. The parties agreed that if the Company breached any terms of the SSA, the Company would voluntarily surrender its Certificates to provide service in Kansas. Staff filed three Notices of Breach to the SSA. The Commission had not issued Orders on any of the Notices of Breach prior to Local Phone Services, Inc.'s request to cancel its Certificates.

On September 25, 2009, the Commission received a letter, dated September 22, 2009, from Mr. Troy Guillet, CEO and co-owner of Connect IT. Mr. Guillet's letter indicated Local Phone Services, Inc. was exiting the Kansas market and Connect IT purchased Local Phone Services, Inc.'s customer base and most of its assets, and that customers would be transitioned to Connect IT.

On October 13, 2009, the Commission received a letter from Mr. Rick Laham. Mr. Laham stated that Local Phone Services, Inc. was exiting the Kansas market and that it sold its customer base and most of its assets to Connect IT. In his letter, which is attached as Exhibit A, Mr. Laham stated Local Phone Services, Inc. wished to relinquish its authority to provide telecommunications services in Kansas and requested the Commission take all actions necessary to cease its Certificates and close all Dockets in which Local Phone Services, Inc. was a participant. The Commission issued an Order on January 25, 2010, cancelling Local Phone Services, Inc.'s Certificates to provide interexchange and competitive local exchange services.

2. Operating Without a Certificate

As discussed previously, pursuant to K.S.A. 66-131, no common carrier or public utility shall transact business in the state of Kansas until it shall have obtained a certificate from the Commission that public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in the state.

“Telecommunications public utility” is defined in K.S.A. 66-1,187(n) as “any public utility, as defined in K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages, as defined in K.S.A. 66-104, and amendments thereto, **or the provision of telecommunications services in or throughout any part of Kansas.**”[emphasis added] “Telecommunications service” is defined in K.S.A. 66-1,187(o) as the “provision of a service for the transmission of telephone messages, or two-way video or data messages.”

On April 5, 2012, LPS filed its Motion for Expedited Adjudication of its Application in which it provides evidence indicating that it (under the name of EdRick, Inc.³) entered into an Agreement to Provide Wholesale CLEC Services (Agreement) in September 2009 with a competitive local exchange carrier, Connect IT, to purchase local telephone exchange services for the purpose of: 1) obtaining local telephone numbers to resell to its subscribers; and 2) collecting access revenues through the funds received by Connect IT. According to the Agreement, “the parties shall take all necessary steps to enable the Customer [EdRick, Inc.] to provision local telephone services.”

In addition, according to the Sworn Declaration of Rick Laham, which was attached to Applicant’s Motion, Mr. Laham states under oath:

In 2009, after relinquishing my certificates, I entered into an Agreement to Provide Wholesale CLEC Services (the Agreement) with Connect Insured Telephone, Inc. d/b/a Connect I.T., for the purchase of local telephone exchanges services, for the purpose of obtaining telephone numbers that could then be resold to my subscribers.

Furthermore, in correspondence sent to Commission Staff on April 25, 2012, Mr. Laham indicates “we are still providing the customer service, long distance, and for a few hundred Connect IT customers, voice mail, and Internet in Kansas.” Staff sent Data Request 1.3 to Applicant on April 26, 2012, requesting further information on how the services are currently being provided. In response to Data Request 1.3, Mr. Laham indicates he owns his own equipment and facilities consisting of three calling card switches and servers housed and collocated in Los Angeles, CA. He indicates the Company uses these facilities for the provisioning of unlimited long distance.

³ Pursuant to the Articles of Incorporation for EdRick, Inc., the Directors are Mr. Rick Laham and Mr. Lawrence E. Hisken. The Agreement is signed by Mr. Rick Laham.

It is evident that Applicant has provided local and interexchange telecommunications services to Kansas customers since 2009 without a Certificate to transact the business of a public utility in the state. In addition, as discussed above, it was discovered during a KUSF audit in 2004 that Mr. Laham's former company, Local Phone Services, Inc., provided interexchange services to customers without a Certificate, as well.

In addition, contrary to Mr. Laham's sworn declaration, Mr. Laham did not enter into the Agreement to resell Connect IT's telephone services after it relinquished its Certificates. Rather, Mr. Laham signed the Agreement on September 5, 2009, and requested its Certificates be cancelled in a letter dated October 13, 2009. According to the letter, Local Phone Services, Inc. exited the Kansas market and sold its customer base and most of its assets to Connect IT. The Agreement provided with Applicant's Motion does not appear to support the prior contention that he entered into the Agreement after relinquishing his Certificates or that he intended to exit the Kansas telecommunications market.

3. Enforcement Proceedings Initiated by Other Entities

Question 10. E. of the Application requests a "list of enforcement proceedings or criminal charges involving applicant or its principals in connection with the provision of telecommunications services within the last five (5) years anywhere in the United States." In response, the Applicant states "General investigation into Local Phone Service, Inc." but fails to provide further details or mention any of the enforcement proceedings of which its principles have been involved.

Staff's initial search indicates Mr. Rick Laham has been involved in numerous enforcement proceedings within the last 5 years, including the following:

1. *In the Matter of Local Phone Services, Inc.*, EB-05-IH-0913, NAL/Acct. No. 200632080168, FRN No. 0008358343. The Enforcement Bureau of the Federal Communications Commission (FCC) released a *Forfeiture Order* on August 29, 2006, in which it imposed a monetary forfeiture of Local Phone Services, Inc.'s willful and repeated violations of 47 U.S.C. § 254(d) and 47 C.F.R. §§ 54.706(a), 54.711(a). The noted violations involved Local Phone Services, Inc.'s failure to timely submit certain Telecommunications Reporting Worksheets and failure to timely contribute to the Federal Universal Service Fund.
2. Sedgwick County District Court No. 07ST1760SA, Kansas Department of Revenue v. Local Phone Services, Inc., 2405 E. Pawnee St., Wichita, KS 67211, Sales Tax Warrant, \$594,677.92, November 26, 2007.
3. Sedgwick County District Court No. 08ST1606SA, Kansas Department of Revenue v. Rickey D. Laham, 2311 N. Tee Time Ct., Wichita, KS 67205, Sales Tax Warrant, \$475,824.10, October 14, 2008.
4. Sedgwick County District Court No. 10ST1471SA, Kansas Department of Revenue v. EdRick, Inc. dba Connect IT, 2405 E. Pawnee St., Wichita, KS 67211, Sales Tax Warrant, \$400,910.03.
5. Sedgwick County District Court No. 10ST1470SA, Kansas Department of Revenue v. Rickey D. Laham, 2311 N. Tee Time Ct., Wichita, KS 67205, Sales Tax Warrant, \$48,021.39, October 26, 2010.

Technical

In support of its technical qualifications, the Applicant indicates it will not have any problems following and meeting the Commission's Quality of Services Standards and Billing Practices Standards. Applicant further states it is not providing telecommunications service in any other state.

Financial

The Applicant did not provide any evidence in its Application indicating that it has the financial ability to transact the business of a competitive local exchange carrier. Furthermore, as discussed above, LPS' principals have a pattern of not paying Commission assessments and KUSF assessments in a timely manner. As further evidenced in the proceedings discussed above, LPS' principals appear to have had difficulties paying and reporting to the Kansas Department of Revenue and the FCC, as well.

Additional Analysis of Application

In response to Question 10. D. of the Application, Applicant responded that no state or federal entity had denied certification to their Company or taken any enforcement action against Applicant's service operations. Based on the information discussed above, Staff believes Applicant's response is inaccurate, or at a minimum, not fully accurate. The FCC's Enforcement Bureau initiated enforcement action against LPS for not paying federal USF and for not filing required forms with the Universal Service Administrative Company. In addition, the Commission opened numerous proceedings involving enforcement actions against Local Phone Services, Inc., which Applicant neglected to list.

Question 10. E. of the Application requests a list of enforcement proceedings or criminal charges involving Applicant or its principals in connection with the provision of telecommunications services within the last five years anywhere in the United States including, but not limited to: injunctions, cease and desist orders, civil lawsuits, consent decrees, assurances of voluntary compliance, civil investigative demands (CID's) or subpoenas. In response, the Applicant stated "General investigation into Local Phone Service, Inc." Once again, Staff believes Applicant's response to be inaccurate. As discussed above, Staff's research returned numerous court proceedings and enforcement actions involving LPS' principals, in addition to the Commission proceedings.

Staff believes the general public would not benefit from the Commission's approval of this Application. Applicant has provided false information in its Application and has repeatedly violated state statutes, including operating without a Certificate.

RECOMMENDATION:

Staff recommends the Commission deny LPS' request for a Certificate of Convenience Authority to provide resold local exchange and access services within the State of Kansas. Staff further recommends the Commission order Applicant to immediately cease providing intrastate telecommunications services in the state of Kansas.

cc: Patrice Petersen-Klein, Executive Director
Jeff McClanahan, Director of Utilities

Local Phone Services, inc dba Best Phone

October 9, 2009

Via certified mail, return receipt requested

STATE CORPORATION COMMISSION

To Whom it May Concern
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

OCT 13 2009



Re: Notice regarding for Best Phone's relinquishment of operating authority

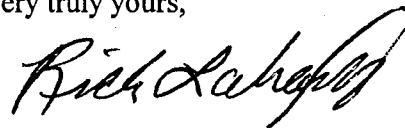
Dear Sir or Madam:

Local Phone Service Inc. d/b/a Best Phone ("Best Phone") has elected to leave the Kansas market and Connect Insured Telephone Inc. d/b/a Connect IT ("Connect IT") has acquired its customers and most of its other assets. A copy of the customer notice to this effect was sent to the Commission at the end of September, 2009.

At this point, Best Phone hereby relinquishes its authority to provide telecommunications services within Kansas, and requests that the Commission take the steps necessary to complete the revocation of Best Phone's certificate(s) and close any dockets in which Best Phone is a participant.

Please let us know if you have any questions or concerns.

Very truly yours,



Rick Laham

cc Sandy Reams, via email

CERTIFICATE OF SERVICE

12-LLPT-714-COC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 10th day of May, 2012, to the following:

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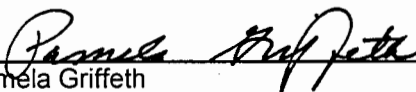
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