

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

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

RESPONSE OF TAG MOBILE, LLC TO SHOW CAUSE ORDER

TAG Mobile, LLC (“TAG”) responds as follows to the Commission’s Order to Show Cause issued in this docket on January 14, 2016.

I. BACKGROUND

1. TAG was approved as an Eligible Telecommunications Carrier (“ETC”) by Commission Order issued in Docket No. 12-TAGC-843-ETC on November 15, 2012 (“12-843 Order” and “12-843 Docket, respectively”). In designating TAG as an ETC, the Commission found that TAG met all Federal and State ETC criteria, including the requirement that it:

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), 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);¹

The FCC has interpreted this rule as requiring a Provider to use its own facilities to provide its service, but does not require that it use its own facilities on every individual call it carries. In addition, the FCC has found that facilities obtained by a carrier as unbundled network elements (“UNEs”) qualify as the carrier’s “own facilities”², as do facilities obtained through negotiated commercial agreements.

¹ 47 U.S.C. §214(e)(1).

² *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, Docket 97-157, May 8, 1997, (“1997 Report and Order”), ¶154.

2. Kansas law adopts the federal standards for designating a provider as an ETC for Kansas Universal Service Fund (“KUSF”) purposes.³ The Commission has not established additional state-specific criteria for ETC designation.⁴ The Commission has also determined that an ETC can meet its “own facilities” obligation by providing service, in whole or in part, using UNEs or commercial agreements.⁵

3. In the 12-843 Docket, TAG explained its business plan for Kansas, including a description of its facilities and how it anticipated providing service in Kansas upon receiving ETC designation. At that time, TAG indicated it would rely on a combination of resold services obtained from underlying wireless providers that operate owned networks, and TAG Mobile-owned facilities. In Kansas, TAG stated that it intended to provide service throughout its designated service area through a combination of its own facilities and the resale of services.⁶ In explaining the unique advantages of TAG’s mobile service offerings, TAG stated that its “expansive Service Area, combined with its use of thousands of authorized retail partners for enrollment verification and payment (as required) will bring service to more underserved citizens and will make ordering and maintaining service easier on the consumer.” TAG identified its retail partners at that time as including CVS, Walgreens and Dollar General stores.⁷

4. TAG has been providing service in Kansas as an ETC since 2012. During that time its business model and its methods for provisioning service have evolved. While the FCC’s and KCC’s interpretation of the requirement for TAG to use its own facilities in providing

³ K.S.A. 66-2008(c).

⁴ See http://kcc.ks.gov/telecom/etc_facts.htm

⁵ Commission Order in Docket No. 06-GIMT-1277-GIT, *In the Matter of a General Proceeding Regarding Commercial Agreements, UNEs and ETC Designation and Payment of Support for KUSF Purposes*, issued November 11, 2006.

⁶ *Application for Designation as an Eligible Telecommunications Carrier on a Wireless Basis*, Docket No. 12-TAGC-843-ETC, filed May 22, 2012, (“TAG’s Application”), pp. 3-4, 7.

⁷ TAG’s Application, p. 16.

service remains unchanged, the manner in which TAG complies with that requirement is different than the method implemented four years ago.

5. In October of 2014, TAG began operating under a commercial agreement, entitled Independent Sales Organization (“ISO”) Agreement, with Selectel, Inc. (“Selectel Agreement” or “Agreement”). Under the terms of that Agreement, ***

[CONTAINS CONFIDENTIAL INFORMATION]

6. At the time the Selectel Agreement was executed, TAG had only expanded its service offerings into Kansas minimally due to limited resources and the demand for those resources caused by the growth of its company in other areas of the United States. Wireless lifeline service is a capital intensive business. Additionally, in 2012 the FCC had put a moratorium on allowing resale-only ETC’s into the Lifeline market, foreclosing Selectel’s ability to obtain ETC status. The Selectel Agreement allowed TAG to expand its service offerings in Kansas and reach more Kansas customers through an expanded network footprint. This is

consistent with the purpose of the federal and state universal service programs. In November of 2015, TAG and Selectel terminated the Selectel Agreement and entered into a Joint Venture Agreement that continued their partnership in providing Lifeline services under similar, but revised, terms.

7. As a result of the service arrangement reached between TAG and Selectel, TAG's access lines in Kansas began to increase substantially. This was noticed by Commission Staff, who responded by requesting a copy of TAG's contract with Selectel. This resulted in Staff filing its Report and Recommendation ("16-323 R&R") with the Commission dated December 23, 2015. In the 16-323 R&R Staff states that TAG's ETC designation was contingent upon TAG meeting three conditions:

- a) TAG must pass through the KUSF Lifeline discount in its entirety to its new and existing customers;
- b) TAG must provide Lifeline service via its own facilities or a combination of its own facilities and another carrier's services; and
- c) TAG must file quarterly reports.⁸

Staff alleges that TAG violated federal and state requirements as follows:

- a) TAG is not passing along the entire Lifeline discount to the consumer;
- b) TAG is not utilizing its own facilities or a combination of its own facilities and resale of another carrier's services; and
- c) TAG is not providing consumers with voice telephony service.⁹

Staff's allegations of violations by TAG are incorrect, as discussed in detail below.

⁸ Staff R&R, p. 3.

⁹ Staff R&R, pp. 1, 4.

II. RESPONSE TO STAFF'S ALLEGATIONS OF VIOLATIONS

A. TAG Has Met the Requirement to Provide Service Using Its Own Facilities or a Combination of Its Facilities and Resale of Another Carrier's Services.

8. The FCC does not require a carrier to use its "own facilities" on each call it carries. It need only provide services overall using its own facilities and resale of another carrier's services. Further, the FCC defines "own facilities" to include the use of facilities owned by another carrier if they are leased by the ETC via UNEs or commercial agreements. In other words, the FCC's interpretation of the requirement in 47 U.S.C. §214(e)(1)(A) permits the partnership arrangement developed between TAG and Selectel for provisioning Lifeline service in Kansas.

9. Similarly, since Kansas law adopts the federal standards for designating a provider an ETC for purposes of the Kansas Lifeline Service Program, and the Commission has not established additional state-specific criteria for ETC designation, TAG's arrangement with Selectel also meets the requirements of K.S.A. 66-2008.

10. TAG is unaware of any requirement that 100% of all calls made by TAG's Lifeline customers have to be carried, at least in part, by facilities owned by TAG. While such an arrangement would certainly meet the "own facilities" requirement in 47 U.S.C. §214(e)(1), as reported in Staff's R&R in the 12-843 Docket¹⁰, this is not a minimum standard adopted by the FCC or the KCC. ETC providers can employ other facility arrangements and still meet the requirements of the law. That is what TAG has done. Since 2012, TAG has continued to provide service in Kansas using its own switch. In addition to providing service over TAG's

¹⁰ "Staff believes TAG's facilities meet the "own facilities" requirement in 47 U.S.C. §214(e)(1) if it sends 100% of its voice traffic, emergency calls excluded, through its switch, and TAG is eligible to be designated an ETC for low-income FUSF and KUSF support when using its own wireless facilities or a combination of its own facilities and resale." Staff's Report and Recommendation dated October 30, 2012, attached to the Commission's *Order on ETC Application* issued November 15, 2012, pp. 11- 12.

facilities, some of TAG's traffic has been handled using the facilities of other carriers, including facilities obtained by Selectel. In Staff's 16-323 R&R, Staff presents its conclusion that this arrangement violates the FCC and Kansas rules, but provides no analysis or supporting authority as to why this arrangement falls outside of the rules.

11. TAG has been providing consumers in Kansas with voice telephony service, and it has utilized its own facilities or a combination of its own facilities and resale of another carrier's services in the provisioning of that service. Staff's allegations of violations in this regard should be rejected.

B. TAG Has Applied the Lifeline Discount to the Calling Plans Offered by TAG in Kansas.

12. Under FCC orders, Commission orders, and Kansas law, the carrier requesting low-income Lifeline wireless ETC designation must show that:

Lifeline customers will be able to apply the Lifeline discount to any calling plan offered by the carrier. Additionally, the entirety of the Kansas Lifeline Service Program ("KLSP") discount will be passed along to the end user consumer. If the carrier offers the same service plans in other states that do not have additional support on top of federal Lifeline subsidies, the carrier will offer a plan in Kansas that justifies the additional Lifeline funds from the KLSP.¹¹

As stated above, TAG receives a total Lifeline payment of \$17.02 per line per month (\$9.25 federal and \$7.77 Kansas). Staff does not allege that TAG has failed to allow its customers to apply the Lifeline discount to any calling plan it offers, or that TAG has failed to offer a plan in Kansas that justifies the additional Lifeline funds from the KLSP. What Staff alleges is that TAG has failed to pass on the entirety of the KLSP discount to the end user consumer because

*** [CONTAINS CONFIDENTIAL INFORMATION] ***

13. Staff fails to explain how TAG paying Selectel a portion of the discount and keeping the rest supports its conclusion that TAG is not passing along the entire discount to

¹¹ KCC's *Order on ETC Application* in Docket No. 12-TACG-843-ETC, issued November 15, 2012, p. 3.

customers. In fact, there is no relationship between TAG's financial arrangement with Selectel and the question of whether or not TAG is passing along the entire discount to customers. TAG's customers are receiving - at no cost - exactly what TAG represented they would receive. TAG offers its Kansas Lifeline subscribers the Lifeline Base Plan which includes 500 local voice minutes, \$1.50 calling credit for international calling, unlimited global text messaging every 30 days from the date of activation, and a free 911/E911 compliant feature handset.¹² In fact, by partnering with Selectel, customers now receive a smart-phone from Selectel rather than the non-smart phone handset previously provided by TAG. ***

[CONTAINS CONFIDENTIAL INFORMATION]

*** If TAG were providing the service without the Selectel partnership, the customers would receive what they are receiving now and TAG would be retaining the entire \$17.02. TAG is passing on to its Lifeline customers the entirety of the discount it receives as federal and state support. The Commission should reject Staff's allegation that TAG has committed a violation in this regard.

III. SANCTIONS AND FINES

14. TAG does not believe the manner in which it has provided Lifeline service in Kansas violates FCC or Kansas law. TAG has provided service in compliance with the interpretation placed by the FCC upon 47 U.S.C. 241(e)(1), which the KCC has indicated is also followed for purposes of KUSF designation. Even if the Commission should disagree with TAG in this regard, penalties and other sanctions are unwarranted. First, TAG reasonably relied upon the FCC's interpretation, as explained herein. Second, the contractual arrangement between

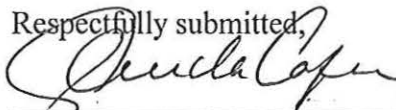
¹² See TAG's Lifeline Wireless Plan filing made with the KCC on December 14, 2015 in the 12-843 Docket, attached hereto for the Commission's convenience as Exhibit A.

TAG and Selectel allowed TAG to expand its service offerings in Kansas, and thus, increase the level of competition in the State. Finally, and most importantly, TAG's customers in Kansas have received better service than they would otherwise have had as a result of the TAG/Selectel arrangement.

15. It has always been TAG's intent to operate in Kansas in compliance with all laws, regulations and Orders of the KCC, and that goal continues to today. TAG has filed all KUSF reports and paid all assessments and is current on all other reporting requirements of the KCC. While TAG believes its arrangement with Selectel was in accordance with all FCC and KCC requirements, upon learning on January 4, 2016 that Staff felt otherwise, TAG terminated its agreement with Selectel. To the extent this Commission finds that the Selectel contract resulted in an arrangement that does not conform with the Kansas Lifeline standards, that arrangement no longer exists.

WHEREFORE, TAG Mobile, LLC respectfully requests that the Commission find TAG has not violated the federal or Kansas ETC rules, dismiss this show cause proceeding, and order such other relief as the Commission deems appropriate.

Respectfully submitted,



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ATTORNEYS FOR TAG MOBILE, LLC



Via- E-Docket

Date: December 14, 2015

To: Public Utilities Commission of Kansas

From: Araceli Aguilar, Compliance & Regulatory Affairs Supervisor

TAG Mobile, LLC
1330 Capital Pkwy.
Carrollton, Texas 75006

RE: LIFELINE WIRELESS PLAN

As per Docket No. 12-TAGC-843-ETC TAG Mobile is hereby notifying you of its intent to revise the Lifeline Wireless Plan offered today in the State of Kansas. Attached you will find a description and summary of the Lifeline wireless service plan that will be effective immediately. If there are any questions you may reach me at 214-390-5344 or araceli.aguilar@tagmobile.com. You may also direct any questions to the Director of Compliance & Regulatory Affairs, Mary Calderon at 214-390-9280 or mary.calderon@tagmobile.com.

Sincerely,

A handwritten signature in cursive script that reads "Araceli Aguilar".

Araceli Aguilar
Compliance & Regulatory Affairs





TAG MOBILE, LLC KANSAS WIRELESS LIFELINE PLAN

TAG Mobile will offer its Kansas Lifeline subscribers the Lifeline Base Plan. The Plan includes 500 local voice minutes, \$1.50 calling credit for international calling, and unlimited global text messaging every 30 days from date of activation, and a free 911/E911 compliant feature handset ("new" or in "like new" condition will be provided based on availability).

While the Lifeline Plus plans offer Unlimited minutes and texts, this does not mean unreasonable use. Once a customer reaches a certain threshold he or she will be connected to our Customer Service Department to determine whether high usage is due to commercial use or technical problems. After discussion with the customer, the Customer Service Department will complete its review and will return the customer to normal status. The customer will never be cut off during a billing cycle for excessive use. TAG Mobile reserves the right to notify and disconnect any account for excessive or abusive use at the end of their billing cycle.

TAG Mobile's plans will also have "top-ups" available for all consumers for adding additional airtime and high speed data. Data "top-ups" are available in \$3, \$12, and \$20 increments. Minutes are available in \$5 and \$10 increments, and will be decremented at various rates depending on the destination country to which calls are placed. TAG Mobile will also offer International Long Distance (ILD) Add-on plans for \$5 or \$10.

Network	Plan	Minutes	Messaging	Data	Retail Price	Cost to LL Customer
Pre-Paid Lifeline and Lifeline Plus Plans						
T-Mobile / Sprint / Verizon	Lifeline Base	500 Domestic + \$1.50 ILD Credit	Unlimited	Not Included	Not Available	FREE
T-Mobile / Sprint	Unlimited/\$20	Unlimited Domestic + \$1.50 ILD Credit	Unlimited	1GB LTE + Unlimited 2G	\$30.00	\$20.00
T-Mobile / Sprint	Unlimited/\$30	Unlimited Domestic + \$1.50 ILD Credit	Unlimited	2.5GB LTE + Unlimited 2G	\$40.00	\$30.00
Verizon	Unlimited/\$25	Unlimited Domestic + \$1.50 ILD Credit	Unlimited	1GB 3G + Unlimited 2G	\$35.00	\$25.00
Verizon	Unlimited/\$35	Unlimited Domestic + \$1.50 ILD Credit	Unlimited	2.5GB 3G + Unlimited 2G	\$45.00	\$35.00
Verizon	Unlimited/\$30	Unlimited Domestic + \$1.50 ILD Credit	Unlimited	1GB LTE + Unlimited 2G	\$40.00	\$30.00
Verizon	Unlimited/\$40	Unlimited Domestic + \$1.50 ILD Credit	Unlimited	2.5GB LTE + Unlimited 2G	\$50.00	\$40.00



**TAG MOBILE, LLC KANSAS
WIRELESS LIFELINE PLAN**

Network	Plan	Minutes	Messaging	Data	Retail Price	Cost to LL Customer
Top-Ups / Add-Ons						
T-Mobile / Sprint / Verizon	LTE Top-Up 100	N/A	N/A	100 MB	N/A	\$3.00
T-Mobile / Sprint / Verizon	LTE Top-Up 500	N/A	N/A	500 MB	N/A	\$12.00
T-Mobile / Sprint / Verizon	LTE Top-Up 1000	N/A	N/A	1000 MB	N/A	\$20.00
T-Mobile / Sprint / Verizon	Airtime \$5	Varied, depending on destination country.	N/A	N/A	N/A	\$5.00
T-Mobile / Sprint / Verizon	Airtime \$10	Varied, depending on destination country.	N/A	N/A	N/A	\$10.00
T-Mobile / Sprint / Verizon	ILD \$5	Unlimited to Mexico Landlines Plus 100 to Mexico Cellular	N/A	N/A	N/A	\$5.00
T-Mobile / Sprint / Verizon	ILD \$10	Unlimited to 80 Countries	N/A	N/A	N/A	\$10.00

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above was electronically served, hand-delivered or mailed, postage prepaid, this 17th day of February, 2016 to:

Michael Duenes, Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Mary Calderon
TAG MOBILE, LLC
1330 Capital PKWY
Carrollton, TX 75006



Glenda Cafer