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January 27, 2017

Ms. Amy Green
Secretary to the Commission
Kansas Corporation Commission
1600 Southwest Arrowhead Road
Topeka, KS 66604-4027

RE: Docket No: 16-GIMT-575-GIT

Dear Ms. Green:

Enclosed, on behalf of YourTel America, Inc. d/b/a TerraCom, please find the *Petition for Reconsideration of the Order Granting in Part, Denying in Part YourTel's KLSP Funding Requests*, in the matter referenced above.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

/s/ *Rose Mulvany Henry*
Rose Mulvany Henry

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

In the Matter of a General Investigation to)
Address Issues Concerning the Kansas) Docket No. 16-GIMT-575-GIT
Lifeline Service Program.)

**PETITION FOR RECONSIDERATION OF THE ORDER GRANTING IN PART, DENYING
IN PART YOURTEL'S KLSP FUNDING REQUESTS**

COMES NOW YourTel America, Inc. d/b/a TerraCom ("YourTel") and through this Petition for Reconsideration ("Petition"), respectfully requests that the Commission reconsider its *Order Granting in Part, Denying in Part YourTel's KLSP Funding Requests*, issued January 12, 2017 in this docket (the "Kansas Lifeline Order"). Specifically, YourTel requests that the Commission reconsider the portion of the Kansas Lifeline Order denying YourTel's KLSP funding request for December 2016. In support of its Response, YourTel states as follows:

1. In denying YourTel's request for KLSP funding for December 2016, Paragraph 9 of the Kansas Lifeline Order states:

The Commission agrees with Staff that providing 150 additional minutes above the FCC minimum does not justify an additional \$7.77 state subsidy to YourTel. YourTel's attempt to offer unlimited minutes for ten days does not justify the KLSP subsidies. The Commission rejects YourTel's argument that it did not understand the Commission expected it to demonstrate its plan provided some additional value to Lifeline subscribers warranting receipt of KLSP. The Commission's August 8, 2012 Order designating YourTel as a ETC provided in relevant part, "[i]f 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." (*Citations omitted*).

In YourTel's Response to Staff's Report and Recommendation; Amended Lifeline

Service Offering¹, YourTel did not argue “that it did not understand the Commission expected it to demonstrate its plan provided some additional value to Lifeline subscribers warranting receipt of KLSP,” as the Kansas Lifeline Order states. Rather, YourTel argued that it did not understand that the Commission now “expects a mathematical calculation” to demonstrate that its plan provides additional value to its Lifeline subscribers warranting receipt of the KLSP, which is apparent from the Commission’s acceptance of YourTel’s December 21, 2016 proposed plan to provide 920 voice minutes per month to each Lifeline subscriber on a going forward basis.²

2. To date, the Commission has not affirmatively established a minimum number of minutes required for mobile ETCs to receive the state Lifeline discount. In its evaluation of whether YourTel’s proposed Lifeline offering of December 12, 2016 provided additional value to Lifeline subscribers warranting receipt of KLSP, because it is referenced multiple times in the Staff Report and Recommendations in this docket, the Commission Staff clearly relied on its instruction from the order approving YourTel’s ETC application from 2012 that “[i]f 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.”³ Without providing explicit instruction regarding how to quantify whether a

¹ Response of YourTel America, Inc. d/b/a TerraCom to Staff’s Report and Recommendation; Amended Lifeline Service Offering, (“YourTel Response”) Dec. 21, 2016.

² See YourTel’s Updated Lifeline Offering, filed December 21, 2016 in this docket. Through that filing, YourTel made a good faith attempt to meet the Commission Staff’s expectation regarding the required additional value to Lifeline subscribers to justify receipt of KLSP funds.

³ *In the Matter of the Application of YourTel America, Inc. to Amend its Designation as an Eligible Telecommunications Carrier in the State of Kansas*, Docket No. 12-TPCT-768-ETC, Order Expanding Eligible Telecommunications Carrier Status to Additional Service Areas, ¶ 3a., August 8, 2012.

Kansas plan “justifies the additional Lifeline funds from the KLSP,” the evaluation of whether a proposed plan justifies the additional Lifeline funds from the KLSP is essentially subjective.

3. In its April 27, 2016 Federal Lifeline Order,⁴ for the first time, the Federal Communications Commission (“FCC”) established a minimum minute requirement for purposes of receiving the federal Lifeline discount. The Federal Lifeline Order targeted a 1,000 minute minimum, with a transition period for providers to reach such minimum as of December 18, 2018, with the initial minimum set at 500 minutes as of December 1, 2016.

4. The entire purpose of this proceeding was to determine what modifications needed to be made to the KLSP as a result of the Federal Lifeline Order and other Lifeline changes at the federal level in the year preceding the establishment of this docket. The Commission Staff declined to recommend, and therefore the Commission did not adopt, a minimum mobile voice requirement for KLSP purposes as a result of the Federal Lifeline Order. Although it is now apparent, if the Commission Staff had simply concluded that in its opinion the FCC’s minimum requirement of 500 minutes equated to the federal Lifeline discount of \$9.25 (e.g. each minute is valued at \$0.0185), which presumably would have been adopted by the Commission in its October 18, 2016 Order in this docket,⁵ then an objective criterion would have been established to propose a Lifeline plan that justifies additional Lifeline funds from the KLSP. Rather than trying to develop a revised plan based on subjective analysis, the proposal of a compliant plan would have been straightforward. As a result of the Commission Staff’s Report and Recommendation filed on December 15, 2016, as noted in YourTel’s Response, and as

⁴ *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 (“Federal Lifeline Order”).

⁵ Order Modifying Kansas Lifeline Service Program (KLSP) Requirements; Soliciting Further Comment, October 18, 2016.

approved by the Commission in the Kansas Lifeline Order, it is clear that a Lifeline plan offering voice, various calling features and unlimited texting must include at least 420 voice minutes above the mandatory federal minimum of 500 to justify receipt of additional KLSP funds.⁶ Even if the Commission did not affirmatively establish a minimum mobile voice requirement for receipt of KLSP funds through this docket, it appears to have established such minimum de facto through the Kansas Lifeline Order, or at least the expectation that the additional “value” provided to Kansas Lifeline subscribers shall be determined through the monetary equivalent calculation referenced above.

5. In the Kansas Lifeline Order, the Commission also concluded that YourTel’s offering of unlimited voice minutes for the months of December and January to its subscribers did not justify receipt of the KLSP funds for December 2016. Based on its conclusion to deny December 2016 funding, the Commission’s analysis apparently only focused on the minutes available to subscribers for the ten day period between December 21, 2016 and December 31, 2016.⁷ YourTel asserts that focusing the analysis to that timeframe only does not accurately capture the full benefit received by a subscriber. Rather, when analyzing the benefits provided to a subscriber, the Commission must view this in the same way a subscriber experiences it. The Commission’s analysis assumes all subscriber billing cycles began on December 1, 2016, which is incorrect. When a YourTel subscriber initiates service, the date on which service is initiated begins that subscriber’s billing cycle, and as such, the period that most subscribers received

⁶ $\$0.0185 * 420 \text{ minutes} = \7.77 (the Kansas Lifeline discount).

⁷ Although the Commission refers to a ten day period for December regarding the application of the unlimited minutes, YourTel intended to file the YourTel Response on December 20, 2016 but was unable to make the filing by 5:00pm on that date. However, YourTel did send the unlimited voice offering text message to its Kansas subscribers on that date, therefore technically, subscribers received eleven days of unlimited voice calls in December 2016.

unlimited service was more than the ten days used in the prior analysis. In fact, it is one of the reasons that YourTel determined that unlimited voice minutes through the end of January 2017 would ensure that its subscribers received the full benefit intended. There can be no doubt that a full billing cycle of unlimited voice minutes far exceeds the \$7.77 KLSP discount.

6. If the Commission remains unconvinced that a full billing cycle of unlimited voice minutes warrants the grant of KLSP funding to YourTel for December 2016 funding, then a review of the Commission's evaluation of the December 21, 2016 through December 31, 2016 timeframe is necessary. Despite the fact that varying billing cycles complicate the analysis performed by the Commission, YourTel asserts the Commission's ten day period analysis is incorrect because it fails to account for the original, updated Lifeline plan filed on December 12, 2016 that provided each subscriber 650 voice minutes. That the Commission eventually denied YourTel's request for December 2016 funding had no bearing on the provision of such minutes to YourTel's subscribers as of December 12, 2016. Thus, if the Commission is satisfied that 420 additional voice minutes over the federal minimum of 500 warrants receipt of additional KLSP funding, then the correct analysis to determine whether the benefit provided to YourTel's subscribers justifies receipt of such funding should be to analyze the benefit available to the subscribers during the period of December 12, 2016 and December 31, 2016. The Commission was apparently skeptical that YourTel's subscribers received a benefit warranting receipt of KLSP funding for December, presumably because it concluded that a ten day period (including the biggest holiday of the year) was not enough for a subscriber to reasonably utilize⁸ the

⁸ YourTel asserts that a subscriber need only be *provided* the benefit and cannot control whether a subscriber actually utilizes such benefit. Notwithstanding, the Commission's skepticism that unlimited minutes during a ten day period warranted receipt of KLSP funds seems to be based on analysis that includes a "utilization" component during such ten day period.

requisite 420 additional voice minutes benefit (or, 42 minutes per day). However, the analysis should have been whether, over a twenty day period, a subscriber could have reasonably utilized a 270 additional voice minutes benefit (or, 13.5 minutes per day), which represents the real discrepancy between the 920 target and the 650 voice minutes provided to YourTel's Kansas Lifeline subscribers as of December 12, 2016.

7. As previously stated in its original filing requesting December 2016 funding, and in the YourTel Response, YourTel sincerely regrets the errors it made with respect to implementation of its amended calling plan for December 2016. Ultimately, YourTel provided, and its Lifeline subscribers utilized, more than the additional 420 voice minutes allotted by YourTel within the month of December. Each YourTel Lifeline subscriber in Kansas was timely afforded the additional value deemed satisfactory to the Commission to justify the grant of YourTel's request for December 2016 KLSP funding.

8. YourTel has uniquely served Lifeline customers throughout the State of Kansas since 2003. YourTel takes pride in its position in the Kansas Lifeline marketplace. The company remains committed to meeting the needs of low income consumers in Kansas, and providing an affordable alternative for such consumers. YourTel looks forward to offering more innovative voice and data plans to Kansas Lifeline consumers in 2017 and beyond. It is YourTel's hope that the Commission views YourTel's long and continued presence in the Kansas market as a positive for Kansas consumers.

9. Under either scenario presented in this Petition, YourTel provided its Kansas Lifeline subscribers with a benefit to justify KLSP funding for December 2016. YourTel provided unlimited voice minutes to its customers for the remainder of December 2016 and all of January 2017 to ensure that its subscribers were provided a benefit that far exceeded the state

Lifeline discount. Alternatively, and using the ten day analysis apparently used by the Commission for its review, even under the most conservative review of YourTel offerings during December 2016, a subscriber would only need to be provided an additional 270 voice minutes, or 27 minutes per day, between December 21, 2016 and December 31, 2016 to reach the Commission's 920 target minimum, approved on a de facto basis through the Kansas Lifeline Order. YourTel's offering of unlimited voice minutes from throughout the ten day period undoubtedly far exceeded the 270 voice minute minimum.

WHEREFORE, in light of the information provided in this Petition, YourTel respectfully requests that the Commission reconsider its decision to deny YourTel's request for KLSP funding for December 2016. Either scenario provided in this Petition supports the conclusion that YourTel's Kansas subscribers were afforded equal to or more than the number of minutes this Commission has determined provide the additional value required to justify receipt of KLSP funding, and as such, the Commission must reconsider its decision and grant YourTel's KLSP funding request for December 2016.

Respectfully submitted,



Rose Mulvany Henry, KS Bar 16209

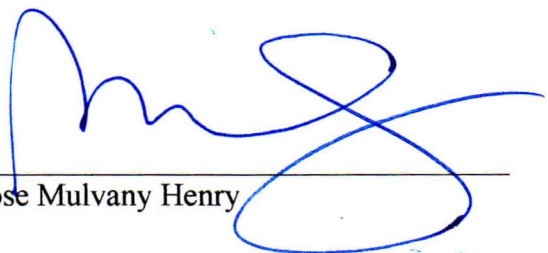
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VERIFICATION

K.S.A. 53-601

STATE OF KANSAS)
) ss.
COUNTY OF WYANDOTTE)

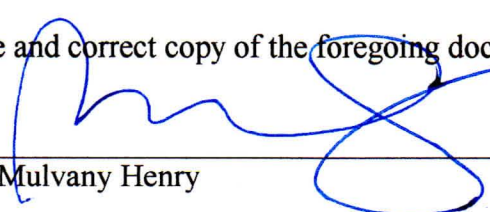
I, Rose Mulvany Henry, verify under penalty of perjury that I have caused the foregoing Petition for Reconsideration to be prepared on behalf of YourTel America, Inc. d/b/a TerraCom; and that the contents thereof are true and correct to the best of my knowledge and belief.



Rose Mulvany Henry

CERTIFICATE OF SERVICE

I do hereby certify that on January 27, 2017, a true and correct copy of the foregoing document has been served on the following via electronic mail.



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