

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

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

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

**ORDER OPENING DOCKET; SOLICITING COMMENTS; PROCEDURAL MATTERS
AND SCHEDULE**

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:

1. K.S.A. 66-2002(f) states that on or before January 1, 1997, the Commission shall “establish, pursuant to K.S.A. 66-2006, and amendments thereto, the Kansas lifeline service program, hereinafter referred to as the KLSP.”
2. K.S.A. 66-2006(a) states: “[o]n or before January 1, 1997, the commission shall establish the Kansas lifeline service program, hereinafter referred to as the KLSP. The purpose of the KLSP shall be to promote the provision of universal service¹ by local exchange carriers to persons with low income. The KLSP shall be targeted to maintain affordable rates for residential local exchange service. The commission shall approve a means test to determine the eligibility of customers for such low-income assistance.”
3. Commission Staff (Staff) submitted a Report and Recommendation (R&R) to the Commission dated June 29, 2016, attached hereto and made a part hereof by reference. Staff

¹K.S.A. 66-2002(k) requires the Commission to periodically review, and if necessary modify the definition of “universal service.”

stated that the Federal Communications Commission (FCC) has made numerous changes to the federal Lifeline program over the past year. Staff believes several of the federal Lifeline changes could impact carriers operating in Kansas, and the administration of the KLSP. Staff recommended that the Commission open a proceeding to solicit comments from the telecommunications industry regarding what changes, if any, it should make to the KLSP as a result of the federal Lifeline changes.

4. Staff's R&R contains a recitation of relevant FCC orders that it believes could have an impact on the KLSP. The R&R also contains analyses of specific topics for consideration.

5. The Commission agrees with Staff that a docket should be opened for the purpose of soliciting comments regarding any necessary KLSP changes that should be adopted given the FCC's changes to the federal Lifeline program.

Entry of Appearance Required to Actively Participate

6. All known telecommunications providers in Kansas shall be made a party to this proceeding and will be served a copy of this order opening an investigation into the KLSP. However, providers that wish to actively participate in the proceeding shall file an Entry of Appearance before making any filing in the docket or appearing at any hearing. The Commission desires entries of appearances to be filed within ten (10) days after the issuance of this order, but late filed entries will be accepted. Any party who does not enter their appearance after being served with this order shall not be allowed to file comments or pleadings, nor participate in any potential hearings. Such parties will only receive service of the Commission order referenced in ordering clause F., below.

Electronic Service

7. All entries of appearance should state whether the party consents to electronic service, and identify an e-mail address where other parties may serve their comments and pleadings if the party consents to electronic service.

8. Parties who enter their appearance are not required to consent to electronic service, but it is strongly encouraged.

Scope of Comments

9. Staff's R&R contains a listing of federal Lifeline changes, a listing of the related KLSP rules that may be impacted, and Staff's preliminary analysis. The Commission understands that parties may disagree with Staff's initial remarks and/or consider other issues to be relevant and worthy of discussion.

10. Parties shall review Staff's R&R, and comment upon the issues identified. Parties are also invited to comment upon other issues pertaining to the KLSP that it believes the Commission needs to address.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. This docket is hereby opened, for purposes of investigating and/or modifying the KLSP in light of the changed federal Lifeline rules.

B. All telecommunications providers desiring to actively participate shall enter their appearance, as explained above.

C. Active participants shall file their comments in response to Staff's R&R by August 8, 2016.

D. Active participants shall file reply comments by August 22, 2016.

E. Staff shall file a Report and Recommendation based upon all comments and reply comments by September 23, 2016.

F. Active participants may reply to such Report and Recommendation by October 7, 2016. Thereupon, the Commission shall issue an order modifying and/or adopting KLSP rules as it deems necessary and proper in order to fulfill its duties under statute. The Commission's order will be based upon the written record unless an evidentiary hearing is requested, granted, and held.

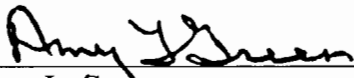
G. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 77-529(a)(1).

H. 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.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: JUL 12 2016



Amy L. Green
Secretary to the Commission

MRN

Order Mailed Date

JUL 13 2016

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Jay Scott Emler
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

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

DATE: June 29, 2016

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

EXECUTIVE SUMMARY:

The Federal Communications Commission (FCC) has made numerous changes to the federal Lifeline program over the past year. The FCC made a few changes in its *2015 Lifeline Order*¹ and many additional changes in its *2016 Lifeline Order*.² Kansas Corporation Commission (KCC or Commission) Staff (Staff) has reviewed the Orders and believes aspects of the Orders will impact carriers operating in Kansas and the Kansas Lifeline Service Program (KLSP). Thus, Staff recommends the KCC issue an Order seeking comment on what changes should be made in Kansas and to the KLSP.

BACKGROUND:

In 2012, the FCC took important steps to reform the federal Lifeline program. The reforms adopted in the *2012 Lifeline Order* focused on changes to eliminate waste, fraud, and abuse in the federal Lifeline program by, among other things: setting a savings target; creating a National Lifeline Accountability Database (NLAD) to prevent multiple carriers from receiving support for the same household; and confirming a one-per-household rule applicable to all consumers and federal Lifeline providers in the program. The FCC also

¹ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No 11-42, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, Rel. June 22, 2015, (“*2015 Lifeline Order*”).

² *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*”).

sought comment on its proposals in its Further Notice of Proposed Rulemaking (FNPRM).³ The KCC reviewed and implemented the 2012 reforms in Docket No. 10-GIMT-658-GIT (Docket 10-658).

In its *2015 Lifeline Order*, the FCC took further steps to adopt rules and procedures regarding administration of the federal Lifeline program to root out waste, fraud, and abuse. The FCC also put in place measures that increase accountability, efficiency, and transparency in the federal program. Specifically, among other things, the FCC:

- established a uniform “snapshot” date each month for federal Lifeline providers to calculate their number of subscribers for the purpose of federal reimbursement;
- eliminated the requirement that incumbent local exchange carriers (ILECs) must resell retail Lifeline-discounted service, and limited reimbursement for federal Lifeline service to Lifeline providers directly serving Lifeline customers; and
- required federal Lifeline providers to retain documentation demonstrating subscriber eligibility.

On April 27, 2016, the FCC released the *2016 Lifeline Order* 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. In the *2016 Lifeline Order*, the FCC determined, among other things, that:

- federal Lifeline support will be allowed for robust, standalone fixed and mobile broadband services;
- Lifeline providers must meet minimum service standards to receive federal Lifeline support for broadband and mobile voice services;
- a National Verifier shall be created, which will transfer the responsibility of eligibility determination away from Lifeline providers;
- the federal Lifeline program qualification criteria shall be streamlined;
- recertification shall be a rolling process; and
- a uniform Lifeline form shall be created for all subscribers receiving a federal Lifeline benefit.

The rules adopted by the FCC in its *2015 Lifeline Order* are effective on given dates throughout the 2016 calendar year, and many of the new rules from the *2016 Lifeline Order* will be effective December 1, 2016 or 60 days after the date when the FCC receives Paperwork Reduction Act (PRA) approval from the Office of Management and Budget (OMB).

Many of the FCC federal Lifeline program rules adopted in the 2015 and 2016 Orders do not necessitate action on the part of the KCC; however, there are some issues identified

³ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No 11-42, Report and Order and Further Notice of Proposed Rulemaking; Rel. Feb. 6, 2012, (“*2012 Lifeline Order*”).

by Staff that need to be addressed. Staff recommends the KCC issue an Order soliciting comment on these issues and any other Lifeline issues identified by interested parties.

ANALYSIS:

1. Program Eligibility and Income Criterion

A. Federal Requirement

In order to increase efficiency and to improve the program for consumers, Lifeline providers, and other participants, the FCC determined it would streamline eligibility for federal Lifeline support by eliminating some of the programs that are currently eligible programs and adding one new program as an eligible program for the federal Lifeline program.

Specifically, beginning on the later of December 1, 2016 or 60 days following PRA approval, low-income households who qualify for and receive Supplemental Nutrition Assistance Program (SNAP), Medicaid, Supplemental Security Income (SSI), Federal Public Housing Assistance (FPHA), or the Veterans Pension & Survivors Pension benefit will be eligible for enrollment in the federal Lifeline program. The FCC amended its rules to remove the Low-Income Home Energy Assistance Program (LIHEAP), National School Lunch Program's free lunch program, and Temporary Assistance to Needy Families (TANF), but retained its income criterion of 135% of the federal poverty level⁴ and added the Veterans Pension & Survivors Pension benefit as a newly eligible program.⁵ Subscribers enrolled prior to December 1, 2016, under any of the retired eligibility criteria will be eligible until their next re-certification.⁶

In addition, the FCC determined that low-income consumers living on tribal lands receiving Bureau of Indian Affairs General Assistance, Tribally administered Temporary Assistance for Needy Families, Head Start (only those households meeting its income qualifying standard), and the Food Distribution Program on Indian Reservations will remain eligible for federal Lifeline. The FCC determined that continuing to support low-income consumers living on Tribal lands through these Tribal-specific eligibility programs outweighs the limited administrative difficulties.⁷

B. Kansas Requirement

Currently, the FCC allows states to establish eligibility for the federal program. Therefore, states are able to add to the list of eligible programs as well as modify the income criterion. For example, in Kansas, consumers participating in the General Assistance and the Food Distribution Program and households at or below 150% of the

⁴ The FCC also amended the definition of income in 47 C.F.R. § 54.400(f) to align with the Internal Revenue Service's definition of income.

⁵ *2016 Lifeline Order*, ¶ 167.

⁶ Pursuant to new 47 CFR § 54.409(a).

⁷ *Id.* at ¶¶ 209-210.

federal poverty level⁸ are eligible for both the state and federal Lifeline programs whereas those consumers would not have been eligible under the FCC's eligibility list.

The FCC, however, amended its rules in its *2016 Lifeline Order* to remove state-specified eligibility criteria for federal Lifeline support. The FCC determined that allowing the states to continue to develop tailored rules for federal Lifeline assistance would eliminate many of the efficiencies gained by modernizing the eligibility criteria. By streamlining the criteria, the FCC is able to transition the program to modern approaches for eligibility determinations, verification, and annual recertification, including the establishment of a National Verifier. The FCC further asserts that the selected list of federal assistance programs allows for a technology-based system by leveraging existing databases.⁹

The eligibility criteria change only applies to federal Lifeline program. Thus, a state that has its own Lifeline fund, such as Kansas, remains free to adopt any eligibility requirements it deems necessary for the state Lifeline program.

As discussed above, the KCC previously determined that households at or below 150% of the federal poverty level and participants, excluding dependents, of the following programs would qualify for the KLSP:

- TANF;
- SNAP;
- General Assistance;
- Medicaid;
- SSI;
- Food Distribution Program;
- LIHEAP;
- Federal Public Housing Program (Section 8);
- National School Lunch Program;
- Bureau of Indian Affairs General Assistance program;
- Tribally-Administered Temporary Assistance for Needy Families;
- Tribal Head Start (only for those meeting its income-qualifying standard);
- Tribal National School Lunch program; and
- Food Distribution Program on Indian Reservations.¹⁰

⁸ The FCC income criterion is at or below 135% of the federal poverty level.

⁹ Id. at ¶¶ 212, 215-216.

¹⁰ When the KLSP was created in 1997, the Commission initially determined that participants of Aid to Dependent Children (now known as TANF), Food Stamps (now known as SNAP), General Assistance, Medicaid, SSI and the Food Distribution Program would qualify for the KLSP. In 2003, the Commission added an income threshold of 150% of the federal poverty level as an additional eligibility criterion, as well as the programs adopted by the FCC for individuals living on tribal lands. In 2005, following the FCC's adoption of the same programs for the federal program, the Commission added the National School Lunch program for individuals not living on tribal lands as well as TANF, which was already an eligible program under its former name Aid to Dependent Children, to the list of eligible programs for the KLSP. In 2011, the Commission added the LIHEAP and the Section 8 federal public housing program to the list of Lifeline-eligible programs.

Unless the KCC revises the eligibility criteria for the KLSP, beginning December 1, 2016 or 60 days following PRA approval, low-income households who qualify for and receive TANF, General Assistance, Food Distribution Program, LIHEAP, National School Lunch Program, and the Tribal National School Lunch Program, or are at or between 135% and 150% of the federal poverty level, will remain eligible for the state Lifeline program, but not the federal Lifeline program.

Continuing to permit the aforementioned participants to participate in the KLSP would allow those consumers to continue to qualify for the KLSP discount (\$7.77), but they would not qualify for the federal Lifeline discount (\$9.25). It could, however, create consumer confusion and administrative difficulties for eligible telecommunications carriers (ETCs) if the federal and state Lifeline eligibility requirements differ.

Another potential area of concern is how any change to the KLSP eligibility requirements would comport with the Kansas Department of Children and Families' (DCF)¹¹ automatic enrollment process, as mandated by K.S.A. 66-2006. K.S.A. 66-2006 was modified by the Kansas Legislature in 2008 to establish an automatic enrollment process for those low-income consumers participating in the Kansas DCF programs. In accordance with the statute, DCF implemented a process in 2009 whereby participating carriers sign a confidentiality agreement and receive a copy of a listing of those persons residing in Kansas that participate in two KLSP eligibility programs, TANF and SNAP, and who have consented to the release of their personal information to the KLSP carrier. The listing is provided to the thirteen participating carriers every six months.

DCF is, however, in the process of implementing a new computer system, which will provide participating carriers with a monthly listing of Kansas participants in the TANF, SNAP, and LIHEAP programs, but does not specify which particular program for which the participant qualifies. Based on conversations with DCF, Staff understands that it would likely be a costly change request for DCF to make any adjustments to its computer system and it would have to be prioritized with other DCF work efforts.

C. Recommendation

Staff suggests the KCC solicit comment on whether it should revise its KLSP eligibility criteria to match the federal criteria. Staff suggests comments include an explanation of the benefits and drawbacks to aligning the state Lifeline eligibility requirements with the federal program eligibility requirements. Staff further suggests the Commission request comment on the affect any change may have on DCF's listing, including whether a revision of the KLSP eligible programs would create issues with compliance with the statute.

¹¹ The Kansas Department of Children and Families was previously known as Social and Rehabilitative Services.

2. Minimum Mobile Voice Requirements

A. Federal Requirement

Prior to the *2016 Lifeline Order*, the FCC declined to establish minimum service requirements for Lifeline providers. However, the FCC previously said that, while it did not adopt minimum service requirements for any ETCs offering Lifeline service, the FCC expects all ETCs to continue to offer low-income subscribers innovative and sufficient service plans. In addition, with the exception of Consumer Cellular, the FCC has yet to approve a compliance plan with less than 250 minutes of free voice calling per month.¹²

However, in its *2016 Lifeline Order*, the FCC determined that requiring mobile Lifeline providers to offer 1,000 voice calling minutes is appropriate. Based on recently available data, the FCC stated it is clear that a “substantial majority” of Americans already subscribe to plans that offer 1,000 or more minutes because none of the smartphone plans have limited minutes and 77% of cell phones in the U.S. are smartphones. The FCC believes that requiring mobile voice providers to offer 1,000 minutes to consumers is consistent with its statutory directive to ensure that Lifeline consumers have access to the same services to which a substantial majority of Americans subscribe.

In order to be mindful of providers’ concerns about affordability and feasibility of immediately requiring providers to offer 1,000 minutes, the FCC developed a transition period beginning with an initial minimum standard of 500 voice minutes per month increasing over time to 1,000 minutes on December 1, 2018.¹³

The FCC declined to adopt a minimum amount of minutes for fixed voice service because providers typically offer unlimited calling; therefore, the FCC found that fixed voice service is reasonably comparable and affordable for low-income consumers.¹⁴

B. State Requirement

The KCC has not adopted a specific minimum number of minutes of usage per se. However, the KCC does require the entirety of the KLSP discount to be passed along to the end user consumer and, if the carrier offers the same service plans in other states that do not provide support in addition to the federal Lifeline subsidy, the carrier must offer a plan in Kansas that justifies the additional Lifeline funds from the KLSP.¹⁵ In other words, if a provider offers a calling plan with 250 minutes in states without a state Lifeline program, the KCC requires the provider to offer a calling plan with additional value to justify receiving the additional \$7.77 state discount.

¹² <https://www.fcc.gov/general/lifeline-compliance-plans-etc-petitions>, last viewed June 28, 2016.

¹³ *2016 Lifeline Order*, ¶¶ 100-101.

¹⁴ *Id.* at ¶ 99.

¹⁵ Docket No. 12-TAGC-843-ETC, November 15, 2012 Order; Docket No. 12-TPCT -768-ETC, August 8, 2012 Order; and Docket No. 10-GIMT-658-GIT, August 17, 2011 Order.

To date, two mobile wireless providers, TAG Mobile, LLC and YourTel America, Inc., have been designated as ETCs and are thus eligible to receive the KLSP discount. As indicated above, the KCC has required the aforementioned carriers (and any new carrier that meets the Kansas ETC criteria) to provide a calling plan that justifies receipt of the additional \$7.77 state discount. Both providers currently offer 500 minutes per month to KLSP-eligible customers.

C. Recommendation

The FCC requires mobile voice Lifeline providers to offer at least 500 minutes per month by December 1, 2016; 750 minutes per month by December 1, 2017; and 1,000 minutes per month by December 1, 2018; therefore, Staff suggests the KCC solicit comment on an appropriate amount of minutes to require mobile Lifeline providers to offer in order to continue receiving the KLSP discount.

3. Broadband Requirement for Lifeline

A. Federal Requirement

As part of its modernization efforts, the FCC found that Lifeline services must include a broadband offering after the transition period set forth. The federal Lifeline discount will no longer apply to a voice-only offering following the extended transition period, except in census blocks with only one Lifeline provider. The FCC determined it would use a multi-year transition period ending in 2021. After this transition, the FCC will continue to support voice service when bundled with a broadband service which meets the minimum service standards.¹⁶

However, with respect to any area where a provider is the only Lifeline provider, consistent with the transition defined, the provider will retain its ETC obligations as a Lifeline provider and may receive Lifeline support up to \$5.25 per month for standalone voice service provided to eligible subscribers.¹⁷

During the initial phase-in period, from December 1, 2016 through November 30, 2019, a voice and broadband Lifeline bundle must include at least one supported service (voice or broadband) meeting the minimum service standards applicable at that time. From December 1, 2019 to November 30, 2021, a voice and broadband Lifeline bundle must include a Broadband Internet Access Service (BIAS) offering that meets the broadband minimum service standards applicable at that time in order to receive the full \$9.25 benefit. From December 1, 2019 to November 30, 2021, a voice and broadband Lifeline bundle with a broadband offering that does not meet the applicable mobile broadband minimum service standards but does meet the mobile voice minimum service standard

¹⁶2016 Lifeline Order, ¶ 52.

¹⁷Id. at ¶ 53.

may receive the applicable support level for standalone mobile voice. However, support will be reduced.

The FCC’s minimum service standards phase-in schedule is illustrated as follows:

FCC's Minimum Service Standards and Schedule				
Date	Mobile Voice	Mobile Broadband	Fixed Broadband	Support Amount
Later of December 1, 2016 or 60 days after PRA approval	500 minutes	500 megabytes (MB) monthly at 3G speeds	Speed: 10/1 Usage Allowance: 150 GB Usage Allowance: 150 GB	\$9.25*
December 1, 2017	750 minutes	1 gigabyte (GB)	Speed: Updated annually based on the 30th percentile of speeds reported nationally on Form 477 Usage Allowance: Updated annually based on CAF standard or "substantial majority"	\$9.25*
December 1, 2018	1,000 minutes	2 GB	Speed: Updated annually based on the 30th percentile of speeds reported nationally on Form 477 Usage Allowance: Updated annually based on CAF standard or "substantial majority"	\$9.25*
December 1, 2019	1,000 minutes	Updated annually based on 70% of the calculated average mobile data usage per household.	Speed: Updated annually based on the 30th percentile of speeds reported nationally on Form 477 Usage Allowance: Updated annually based on CAF standard or "substantial majority"	7.25**
December 1, 2020	1,000 minutes	Updated annually based on 70% of the calculated average mobile data usage per household.	Speed: Updated annually based on the 30th percentile of speeds reported nationally on Form 477 Usage Allowance: Updated annually based on CAF standard or "substantial majority"	\$5.25
December 1, 2021	1,000 minutes	Updated annually based on 70% of the calculated average mobile data usage per household.	Speed: Updated annually based on the 30th percentile of speeds reported nationally on Form 477 Usage Allowance: Updated annually based on CAF standard or "substantial majority"	\$0
* From December 1, 2016 through November 30, 2019, a mobile bundle of voice and data services must include <u>at least one</u> supported service (voice or broadband) meeting the minimum service standard applicable at that time for such supported service.				
** From December 1, 2019 to November 30, 2021 a voice and broadband Lifeline bundle must include a broadband offering that meets the applicable minimum service standard to be eligible for the full \$9.25 benefit.				

B. State Requirement

Kansas does not currently require KLSP providers to provide broadband and Staff is unsure whether it would have the authority to do so.

C. Recommendation

Staff recommends the Commission seek comment on any issues related to this requirement, including: (1) how the FCC’s BIAS requirement will affect the KLSP; (2) whether the KCC should consider imposing a similar requirement; and (3) whether the KCC would have the authority to do so.

4. Snapshot Date

A. Federal Requirement

The FCC determined in its *2015 Lifeline Modernization Order* that establishing a uniform snapshot date during the month to determine the number of eligible consumers for which an ETC would seek reimbursement for that month would produce many benefits. The

benefits include: (1) reducing the risk that two ETCs receive full support for providing service for the same subscriber in the same month; (2) easing the transition to a reimbursement process that calculates support based on the number of subscribers in the NLAD; and (3) making it easier for the federal Lifeline administrator to adopt uniform audit procedures. The FCC concluded that its snapshot date would be the first day of the month. This rule goes into effect on September 1, 2016.

B. Kansas Requirement

Kansas has a snapshot date as well. The KCC requires carriers to report to the KUSF Administrator, GVNW Consulting, Inc., the number of facilities-based lines eligible to receive the KLSP discount in service on the last day of the month being reported. Carriers are not to include pro-rated connects, disconnects, or reconnects that occurred during the month.¹⁸

C. Recommendation

Although the number of subscribers is unlikely to vary much between the last day of the month and the first day of the following month, Staff recommends the KCC solicit comment on whether it should revise its requirement to report the number of KLSP lines on the first day of the month instead of the last day of the month, as is currently required.

5. Lifeline Eligibility Documentation Retention

A. Federal Requirement

Prior to the *2012 Lifeline Order*, the FCC's rules merely required an individual to self-certify to his or her carrier, under penalty of perjury, that he or she was enrolled in a qualifying assistance program for the federal Lifeline program, but no proof of program eligibility was required to be presented. The FCC did, however, require documentation be presented for income-based eligibility for the federal Lifeline program.

In its *2012 Lifeline Order*, the FCC revised its rules related to document retention. The FCC required ETCs to examine certain documentation to verify a consumer's program or income-based eligibility but prohibited ETCs from retaining copies of the documentation. Instead, the FCC directed ETCs to review the documentation and keep accurate records detailing how the consumer demonstrated his or her eligibility for the federal Lifeline program. In support of its decision to prohibit the retention of eligibility documents, the FCC cited to comments that raised concerns such as the risk related to retaining sensitive subscriber eligibility documentation and the burden on ETCs.¹⁹

¹⁸ <http://www.gvnw.com/Portals/0/kusf/instructions/2016/Instructions.pdf> , last viewed June 24, 2016.

¹⁹ *2012 Lifeline Reform Order*, ¶¶ 99-110.

Subsequent to the *2012 Lifeline Order*, TracFone Wireless, Inc. (TracFone) filed a Petition for Reconsideration arguing the FCC should require all ETCs to retain program-based eligibility documentation for not less than three years, in accordance with the rules on record retention. TracFone later broadened its request to allow ETCs to retain documentation related to both program and income-based eligibility.

In its *2015 Lifeline Order*, the FCC granted in part TracFone's request for reconsideration and changed its rules to require carriers to retain both program and income-based eligibility documentation for the federal Lifeline program, beginning February 17, 2016. The FCC stated that it found that the overall benefits of requiring the retention of eligibility documentation outweigh the costs and concluded that reversal of the eligibility documentation prohibition is in the public interest because it will improve the auditability and enforceability of its rules, significantly reduce falsified records, and provide certainty in the industry regarding the documents that need to be retained in the event of an audit or investigation. The FCC also found that the concerns that led it to prohibit such retention in 2012, while still relevant, are largely overshadowed by the enormous benefits of requiring ETCs to retain eligibility documentation.²⁰

B. Kansas Requirement

When the KLSP was created in 1997, the KCC required KLSP participants to provide the carrier with proof of participation in any of the KLSP-eligible programs.²¹ However, when income was added as a KLSP-eligibility criterion in 2003, the KCC wanted to encourage enrollment in the KLSP and did not require proof of income eligibility. Rather, the KCC directed each carrier to develop a form for use by its customers to self-certify income eligibility.²²

In 2005, the KCC adopted several recordkeeping and document retention requirements adopted by the FCC for the federal Lifeline program. Specifically, the KCC: (1) adopted the FCC's requirements for verifying and certifying income-based Lifeline eligibility as set forth in 47 C.F.R. §54.410(a)(2); (2) required all ETCs' Lifeline customers to annually self-certify to the ETC that the customers continue to be eligible for Lifeline benefits; and (3) required Lifeline providers in Kansas to comply with the recordkeeping requirements established by the FCC in 47 C.F.R. §54.417, effective June 22, 2005. However, the KCC did not adopt the FCC's rule that carriers need not retain the consumer's corroborating documentation of Lifeline eligibility.²³

In 2011, the KCC addressed this issue again after the issue arose during a carrier audit for KUSF purposes. At that time, the FCC did not require carriers to retain copies of supporting documentation for Lifeline customers once the customer service representative reviewed the information and verified that it was current and met the

²⁰ *2015 Lifeline Order*, ¶¶ 224-232.

²¹ Docket No. 94-GIMT-478-GIT, December 27, 1996 Order.

²² Docket No. 00-GIMT-910-GIT, January 21, 2003 Order.

²³ Docket No. 05-GIMT-1039-GIT, May 19, 2005 Order.

requirements of acceptance into the Lifeline program while the KCC did require the retention of such documents. Some carriers contended that the conflicting rules created confusion.

The KCC ultimately determined it would follow the FCC's lead and believed this approach to be a sound one in order to maintain consistency between the federal and state jurisdictions and would hopefully minimize confusion or duplication of efforts. Although consumers are still required to present to their telecommunications carrier documents to prove that the consumer is eligible for the Kansas Lifeline program, either through income level or through program participation, carriers are no longer required to retain this documentation.²⁴

C. Recommendation

As discussed previously, the FCC reversed course in its *2015 Lifeline Order* in which it changed its rules to require carriers to retain both program and income-based eligibility documentation, beginning February 17, 2016.

Staff recommends the KCC solicit comment on whether it should follow the FCC's lead and require carriers to retain program and income-based eligibility documentation for KLSP purposes in order to preserve the integrity of the KLSP and protect against waste, fraud, and abuse.

6. Resale of Lifeline & Requirement for CLECs to Offer Lifeline

A. Federal Requirement

47 U.S.C § 251(c)(4) requires ILECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail rates to subscribers who are not telecommunications carriers. In 1997, to encourage competition in the Lifeline market, the FCC concluded that resellers could obtain Lifeline service from the ILEC at wholesale rates that include the Lifeline support amounts and could pass these discounts through to qualifying low-income consumers. The ILEC would then collect the federal Lifeline discount for the resold lines directly from the federal fund administrator, USAC.

However, in the *2012 Lifeline Order*, the FCC expressed concerns that permitting carriers to offer Lifeline-discounted service through resale of retail Lifeline service posed risks to the federal fund. In particular, the FCC was concerned with the possibility of over-recovery by both the ILEC and the reseller seeking reimbursement from the federal fund and the lack of direct oversight of resellers by state and federal regulators to ensure compliance with state and federal Lifeline rules.

²⁴ Docket No. 10-GIMT-658-GIT, August 17, 2011 Order.

After receiving comments regarding its concerns, the FCC determined in its *2015 Lifeline Modernization Order* that only ETCs that provide Lifeline service directly to subscribers will be eligible for reimbursement from the federal fund. The FCC determined that the change would promote transparency and protect the federal fund from potential waste and abuse. Therefore, effective August 15, 2016, the FCC will no longer provide reimbursement to ILECs who sell Lifeline-discounted service to resellers. Since the FCC will not provide reimbursement to ILECs for this purpose, the FCC forbore from requiring ILECs to resell retail Lifeline-discounted services under Section 251.²⁵

B. Kansas Requirement

When it established the KLSP in 1997, the KCC determined that all local service providers (existent LECs and CLECs) will participate in the KLSP.²⁶ Therefore, all LECs and CLECs were required to offer Kansas Lifeline service to qualifying low-income consumers.

Since that time, the 2013 Kansas Legislature passed House Bill 2201 which, among other things, revised K.S.A. 66-2006 to state that a local exchange carrier, electing carrier, or telecommunications carrier can enroll its eligible customers in the KLSP, but telecommunications carriers and electing carriers are able to withdraw participation in the KLSP at any time by providing the KCC with 90 days' notice. In essence, ILECs continue to remain required to participate in the KLSP, but CLECs and AT&T²⁷ are able to withdraw participation in the KLSP by providing the KCC with 90 days' notice.

In addition, as noted above, the FCC no longer requires ILECs to resell Lifeline service to CLECs. Staff does not believe many CLECs provide Lifeline service to their customers via resale as only 3.7 percent of all CLEC lines in Kansas were provided via resale in 2015²⁸, but recognizes that the FCC's prohibition on reselling retail Lifeline-discounted service could serve as an obstacle for CLECs wanting to provide Lifeline service.

C. Recommendation

In light of the FCC's determination to forbear from the Section 251 requirement for ILECs to resell Lifeline services and HB 2201's rule allowing CLECs and AT&T to withdrawal participation in the KLSP with 90 days' notice, Staff recommends the KCC solicit comment on whether it should continue to require CLECs to participate in the KLSP.

²⁵ *2015 Lifeline Modernization Order*, ¶¶ 244-256.

²⁶ Docket No. 94-GIMT-478-GIT, December 27, 1996 Order, ¶ 131. The Order referred to the CLECs as ALECs (Alternative Local Exchange Carrier), which is a synonym for CLECs.

²⁷ AT&T is an electing carrier.

²⁸ Calculation based on 2015 annual interrogatory data. It is unknown how many of the resold lines were Lifeline lines.

7. Forms

A. Federal Requirement

In the *FCC's 2012 Lifeline Order*, the FCC revised 47 CFR 54.410(d) to require ETCs and state Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for federal Lifeline to provide prospective subscribers Lifeline certification forms that in clear, easily understood language: (1) provide specific information regarding the federal Lifeline rules; (2) requires each prospective subscriber to provide specific identifying information; and (3) requires each prospective subscriber to certify, under penalty of perjury, specific information including that the subscriber meets the income-based or program-based eligibility criteria for receiving Lifeline and that the subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law. The FCC did not provide a specific form, just the required criteria.

In its *2016 Lifeline Order*, the FCC delegated to the FCC's Wireline Competition Bureau (Bureau) the creation of a uniform, standardized federal Lifeline form approved by the Office of Management and Budget for all subscribers receiving the federal Lifeline benefit, if the Bureau believes doing so will aid program administration.²⁹

USAC has stated that the forms will not be created by USAC or the FCC's Bureau by December 1st; therefore, interim forms will need to be utilized prior to the development of the uniform, standardized federal Lifeline form.³⁰

B. State Requirement

In response to the FCC's requirement in the *2012 Lifeline Order* for ETCs to provide prospective subscribers Lifeline certification forms that provide specific information, the KCC adopted a state Lifeline enrollment form. Beginning, June 1, 2012, the KCC required ETCs to either use the state Lifeline enrollment form or a similar company-specific form that contains the same information and filed with the KCC.³¹

C. Recommendation

If the KCC determines that it will revise its KLSP program eligibility requirements to match those approved by the FCC for the federal program, it may be appropriate to allow Lifeline providers to use the same Lifeline enrollment form approved for federal support purposes for KLSP purposes. This would allow carriers to use one form rather than two

²⁹ *2016 Lifeline Order*, ¶¶ 429-433.

³⁰ <http://www.usac.org/res/documents/li/training/2016/Lifeline-Program-Update-webinar.pdf>, last viewed June 29, 2016.

³¹ Docket No. 10-GIMT-658-GIT, March 27, 2012 Order. The Commission subsequently amended the Lifeline Form in an April 30, 2012 Order.

separate forms to enroll one customer in both the federal and state Lifeline program. Staff suggests the KCC seek comment on this proposal.

In addition, since the Bureau will not have the uniform, standardized Lifeline form completed prior to implementation of its new rules on December 1, Staff suggests the KCC seek comment on what form should be utilized by ETCs in the interim.

8. List of Supported Services

A. Federal Requirement

In its *USF/ICC Transformation Order*, the FCC eliminated its former list of nine supported services and amended 47 CFR § 54.101 to specify that “voice telephony service” is supported by federal universal service support mechanisms. In amending section 54.101, the FCC eliminated the following functionalities as supported services: dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to operator services; access to interexchange service; and access to directory assistance.³²

On December 23, 2011, the FCC affirmed that only carriers that provide voice telephony as defined under Section 54.101(a), as amended, using their own facilities will be deemed to meet the requirements of section 214(e)(1). Thus, a Lifeline-only ETC that does not meet the “own facilities” requirement of section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported “voice telephony service” under amended rule 54.101, such as access to operator service or directory assistance.

To be in compliance with the rules, Lifeline-only carriers that seek ETC designation after December 29, 2011, as well as such carriers that had previously obtained ETC designation prior to December 29, 2011 on the basis of facilities associated solely with, for example, access to operator service or directory assistance, must either use their own facilities, in whole or in part, to provide the supported “voice telephony service” or obtain forbearance from the “own-facilities” requirement from the FCC. For Lifeline-only ETCs designated prior to December 29, 2011, to avoid disruption to consumers and to provide sufficient time for ETCs to take further action related to the “own-facilities” requirement for Lifeline providers, the FCC implemented the amended rule July 1, 2012.³³

B. State Requirement

The KCC administers the KUSF pursuant to Kansas statutes and in particular, K.S.A. 66-2008. Subsection (b) states that, “pursuant to the federal act,” distributions from the

³² *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, Rel. November 18, 2011, (“*USF/ICC Transformation Order*”), ¶ 78.

³³ *In the Matter of Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, Rel. December 23, 2011.

KUSF will be made available to entities deemed eligible both under 47 U.S.C. 214(e)(1) and by the Commission. Pursuant to 47 U.S.C. § 214(e)(1),

(1) A common earner designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received - (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, 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); and (B) advertise the availability of such services and the charges therefor using media of general distribution.

Thus, a carrier deemed eligible to receive universal service support must offer the supported services throughout its designated service area, either using its own facilities or a combination of its own facilities and resale of another carrier's services, and advertise the availability of the services and charges using media of general distribution.

K.S.A. 66-1,187(p) defines "universal service" as "telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E-911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services." However, K.S.A. 66-2002(a) provides that the KCC shall "[a]dopt a definition of "universal service" and "enhanced universal service," pursuant to subsections (p) and (q) of K.S.A. 66-1,187, and amendments thereto." In addition, K.S.A. 66-2002(k) states that the KCC shall "commencing on June 1, 1997 and periodically thereafter, review and, to the extent necessary, modify the definition of universal service and enhanced universal service, and KUSF, taking into account advances in telecommunications and information technology and services."

C. Recommendation

Staff recommends the KCC solicit comment on whether the KCC should redefine its definition of "universal service" to align with the FCC's list of supported services.

9. Recertification & De-enrollment

A. Federal Requirement

Pursuant to the *2016 Lifeline Order*, prior to the implementation of the National Verifier in a state, the FCC requires providers to conduct an initial eligibility determination for every enrolling customer, regardless of whether that customer had previously received Lifeline-discounted service from another provider. That provider must then recertify the customer's eligibility 12 months after the subscriber's service initiation date with that provider. After the National Verifier has been implemented in a state, the National

Verifier's eligibility records will permit the initiation of a Lifeline-discounted service. If a subscriber changes Lifeline providers during the course of a year, the National Verifier will only need to recertify eligibility 12 months after the subscriber's first service initiation date and every 12 months thereafter. The rules related to rolling recertification will be effective for all enrollments made beginning the later of January 1, 2017 or upon PRA approval. Subscribers enrolled on or after such date will be subject to recertification requirements at the end of the 12-month period that begins with their service initiation date. For subscribers enrolled prior to January 1, 2017, recertification for 2016 will be conducted in accordance with current Lifeline practices and requires recertification by December 31, 2016. Beginning July 1, 2017, all subscribers enrolled prior to January 1, 2017, will need to be recertified on a rolling basis based on the subscriber's service initiation date.³⁴

The FCC further revised its rules to require a subscriber to be given 60 days to respond to recertification efforts and, consistent with its other de-enrollment rules, non-responsive subscribers will be de-enrolled within five days following the expiration of the 60-day response window.

In addition, the FCC revised 47 C.F.R. § 54.405(e)(1) to require de-enrollment within five business days after the expiration of the subscriber's time to demonstrate eligibility and adopted 47 C.F.R. § 54.405(e)(5) requiring service providers to de-enroll a subscriber who has requested de-enrollment within two business days after making such request.³⁵

B. State Requirement

The KCC determined in its March 27, 2012 Order in Docket 10-658 that carriers shall continue to use the re-certification process ordered in Docket No. 05-GIMT-1039-GIT. Carriers are allowed to contact their subscribers in any number of ways including: in person; in writing; by phone; by text message; by email; or otherwise through the Internet to confirm the continued eligibility of the subscriber. Carriers are to file their aggregated re-certification data in the 10-658 Docket by January 31, 2013 and every year thereafter.

On March 4, 2013, the KCC issued an Order in which it closed the 10-658 Docket and ordered carriers to continue to file their aggregated re-certification data by January 31 each year in an annual compliance docket.

C. Recommendation

Staff recommends the KCC solicit comments on what, if any, changes should be made by the KCC regarding ETC recertification, including whether the KCC should adopt the FCC's de-enrollment rules for the KLSP.

³⁴ 2016 Lifeline Order, ¶¶ 416-418.

³⁵ Id. at ¶¶ 420-421.

RECOMMENDATION:

Staff recommends the KCC issue an Order requesting comments and reply comments on the aforementioned Lifeline issues and on any additional Lifeline issues identified by the parties.

CERTIFICATE OF SERVICE

16-GIMT-575-GIT

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