

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

In the Matter of Totah Communications, Inc.)
Filing Tariff Revisions to Federal Lifeline) Docket No. 20-TTHT-201-TAR
Support)

ORDER APPROVING TARIFF REVISIONS

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

1. On October 29, 2019, Totah Communications, Inc. (Totah) filed an Application to revise its General Exchange Tariff. The requested revisions modified the dollar amounts associated with Federal Lifeline credits to inform customers of the reduced subsidy for voice-only service. The revisions specifically identified Federal (Broadband Service) as receiving \$9.25 per month and Federal (Voice-only Service) as receiving \$7.25 per month from the federal Lifeline program. Totah requested an effective date of December 1, 2019, per FCC 16-38.¹

2. On November 12, 2019, Totah filed a replacement tariff to remove reference to a specific dollar amount and instead state in the tariff that the Federal Lifeline credit received by a customer will be the maximum amount authorized by the Federal Communications Commission (FCC) and will be applied to qualifying service as determined by the FCC. This change was also made to the Kansas Lifeline Service Program (KLSP) language.

¹See Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund, 81 FR 33026-01 (May 24, 2016). Prior to December 1, 2019, voice-only support will be set at \$9.25 per month. Beginning December 1, 2019 the support amount will decline to \$7.25 per month; beginning December 1, 2020, it will decline further to \$5.25 per month. Id. at ¶ 43.

3. K.S.A. 66-1,190 requires telecommunications public utilities doing business in Kansas to “publish and file with the commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate, and shall furnish the commission copies of all rules and regulations and contracts between such telecommunications public utilities pertaining to any and all jurisdictional services to be rendered by such telecommunications public utilities.”

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

5. K.S.A. 66-117(d) states in part:

(d) Except as provided in subsection (c), no change shall be made in any rate, toll, charge, classification or schedule of charges or joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission.

6. Commission Staff (Staff) submitted a Report and Recommendation regarding the proposed tariff revisions on November 14, 2019, attached hereto and made a part hereof by reference. Staff explained that the FCC has adopted numerous modifications to the Federal Lifeline program and that the proposed tariff language is consistent with those requirements. Furthermore, the proposed tariff language is consistent with the Commission’s modifications to the KLSP adopted in Docket No. 16-GIMT-575-GIT. Staff noted the tariff revisions did not affect the company’s revenue and found the tariff revisions to be in the public interest. Staff recommended approval.

7. The Commission finds Staff’s findings and recommendation to be reasonable and hereby adopts the same.

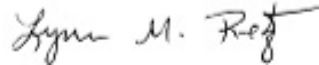
IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

- A. Totah's replacement tariff filed November 12, 2019, is approved effective December 1, 2019.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 11/26/2019



Lynn M. Retz
Executive Director

REV

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

FROM: Kelly Mabon, Senior Telecommunications Analyst
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: November 14, 2019

RE: Docket No. 20-TTHT-201-TAR
In the Matter of Totah Communications, Inc. Filing Tariff Revisions to Federal Lifeline Support

EXECUTIVE SUMMARY:

On October 29, 2019, Totah Communications, Inc. (Totah) filed a request to make tariff revisions to a certain section of its General Exchange Tariff changing the verbiage for the Company's Lifeline offering. These changes are to reflect the modifications made by the Federal Communications Commission (FCC) in the Lifeline Modernization Order and the Kansas Corporation Commission's (the Commission or KCC) Order in 16-GIMT-575-GIT (16-575).

The Commission action date is **Thursday, November 28, 2019.**

BACKGROUND:

The Kansas Corporation Commission derives its authority to review Local Exchange Carrier tariffs from K.S.A. 66-117(d), which states in part:

(d) Except as provided in subsection (c), no change shall be made in any rate, toll, charge, classification or schedule of charges or joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission.

In addition, K.S.A. 66-1,190 requires every public utility doing business in Kansas over which the Commission has control, to publish and file with the Commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate. The Commission has the power to prescribe reasonable rules and regulations

regarding the form and filing of all schedules, tariffs and classifications of all rates, joint rates, tolls and charges and all rules and regulations of such telecommunications public utilities as the Commission determines reasonable and appropriate.

The KCC must review rates and terms for jurisdictional telecommunications services to ensure they are “just and reasonable” pursuant to K.S.A. 66-1,189. Further, K.S.A. 66-1,189 requires the KCC to ensure that all classifications, rules, and regulations regarding the services are not unduly discriminatory or preferential.

Because telecommunications providers must constantly adapt to consumer needs, the KCC determined in Docket No. 04-GIMT-1080-GIT that rate changes made by telecommunications providers would not be audited for their justness and reasonableness unless the changes result in the provider receiving “materially greater revenue” than its rate-of-return would necessitate.¹

ANALYSIS:

On April 27, 2016, the FCC released the *2016 Lifeline Order*² in which it determined it must modernize the federal Lifeline program so that it can play an essential role in helping low-income Americans that most need access to broadband services. The *2016 Lifeline Order* provided a requirement that minimum service standards adjust every year in December on a phased-in basis. The phase-in allows for increased emphasis on supporting broadband each year with a decreased emphasis on voice services. The minimum service standards to be effective December 1, 2019, are as follows:

- mobile voice packages require a minimum of 1,000 minutes;
- mobile broadband packages must include data usage of at least 8.75 GB per month and the speed requirement remains 3G mobile technology³;
- fixed broadband speed must be at least 20 Mbps downstream and 3 Mbps upstream, unless the Lifeline provider does not offer any generally available residential fixed broadband packages that meet the minimum service standard at the subscriber’s residence. In such situations, the Lifeline provider may receive Lifeline support for

¹ Prior to 2004, if a rate of return carrier asked for an increase in revenue outside a rate case, the Commission policy was to adjust the amount received for an increased rate by a corresponding decrease in draw from the KUSF, pursuant to K.S.A. 66-2005(d). However, in *Rural Telephone Service Co. v. Kansas Corporation Commission*, 31 Kan. App. 2d 760, 72 P.3d 937 (2003), the Kansas Court of Appeals held that the Commission did not have statutory authority to reduce Rural’s KUSF distribution in response to increased revenue from modifications to tariff filings (Docket No. 02-RRLT-875-TAR). The Court reversed the Order reducing Rural’s KUSF support, but it remanded the matter to enable the Commission to determine the reasonableness of the proposed tariff changes in light of the Court’s decision to disallow a contemporaneous reduction of KUSF support, 31 Kan. App. 2d at 770. On June 4, 2004, the Commission opened a generic docket to address Staff’s proposal to address tariff increases between KUSF audits. In an Order dated September 28, 2004, in that Docket (04-GIMT-1080-GIT), the Commission stated, “Staff will continue to conduct an individual evaluation of any proposed tariff revision made by a rate-of-return regulated company affecting its revenues to determine the reasonableness of the proposed rates . . . if Staff evaluates information indicating that a rate-of-return regulated carriers is receiving materially greater revenue than its authorized cost recovery and rate of return would necessitate, the Commission will consider whether to conduct an audit.”

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*”).

³ FCC Public Notice, WC docket No. 11-42, DA 19-704, Rel. July 25, 2019. See:

<https://docs.fcc.gov/public/attachments/DA-19-704A1.pdf>.

the highest performing generally available residential fixed broadband service offering of at least 4 Mbps downstream and 1 Mbps upstream. Fixed broadband usage must be at least 1024 GB per month⁴;

- the voice Lifeline support which was previously \$9.25 drops to \$7.25 for the period of December 1, 2019, to November 30, 2021; and
- 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 Lifeline benefit.

The Company's initial filing reduced the federal Lifeline credit for voice only service from \$9.25 to \$7.25; however, several entities have requested that the FCC delay implementation of the proposed credit reduction. The FCC has an open meeting scheduled for November 22, 2019, during which the FCC could delay or cease implementation of the scheduled reduction for voice only service. As this issue is in flux, Staff asked the Company to make a subsequent filing that would make the tariff language more generic, thus allowing for subsequent FCC adjustments without the need for additional tariff filings. The filing makes changes to Section 3 of the tariff, page 1. The change is as follows:

- Deletes the specific rates listed for the federal and state Lifeline credits. The tariff includes language that indicates the federal and state credits provided to qualifying customers will be the maximum authorized by the Federal Communications Commission and the Kansas Corporation Commission.

The change to the Federal Lifeline credit will increase the revenue paid by the consumer, but will not change the overall amount of revenue received by the Company. Therefore, the annual regulated revenue impact will be zero.

Staff has reviewed the filing and does not have any concerns.

RECOMMENDATION:

Staff recommends the Commission approve the replacement tariff sheets provided by Totah. The changes that were provided in the new tariff sheets are not revenue affecting and are due to changes to the federal Lifeline program by the FCC. The changes made mirror the federal requirements and are, therefore, in the public interest. The Company requests an effective date of December 1, 2019.

⁴ FCC Public Notice, WC docket No. 11-42, DA 19-704, Rel. July 25, 2019. See: <https://docs.fcc.gov/public/attachments/DA-19-704A1.pdf>.

CERTIFICATE OF SERVICE

20-TTHT-201-TAR

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 11/26/2019.

MARK M. GAILEY, PRESIDENT & GENERAL MANAGER
TOTAH COMMUNICATIONS, INC.
101 MAIN ST
PO BOX 300
OCHELATA, OK 74051-0300
Fax: 918-535-2701
mmgailey@totelcsi.com

TOM MAURER, DIRECTOR
TELCOM SUPPORT SERVICES
2708 ST CHRISTOPHER CIRCLE
MANHATTAN, KS 66502-2216
Fax: 785-473-7337
tmaurer@tssks.com

ROBERT VINCENT, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
r.vincent@kcc.ks.gov

/S/ DeeAnn Shupe

DeeAnn Shupe