

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

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

In the Matter of Totah Communications Filing)
Revisions to its Lifeline Service Program) Docket No. 20-TTHT-329-TAR
Language.)

ORDER APPROVING TARIFF REVISIONS

NOW, 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 January 28, 2020, Totah Communications (“Totah”) filed an Application to revise its General Exchange Tariff. Totah seeks to remove reference to the specific federal Lifeline rules effective December 1, 2019, and instead refer more generally to the rules found in the Federal Communications Commission’s (FCC’s) regulations. Totah requested an effective date of February 27, 2020.

2. 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.”

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

4. 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.

5. Commission Staff (“Staff”) submitted a Report and Recommendation regarding the proposed tariff revisions on February 4, 2020, attached hereto and made a part hereof by reference. Staff explained that an April 27, 2016, Order from the FCC set minimum service standards for Federal Lifeline every year in December on a phased-in basis.¹ To alleviate multiple filings by the company, Staff informally recommended the company file generic references to where the most recent FCC rules may be obtained, thus eliminating the need for annual updates. Because the generic wording is less costly to the company and ratepayers due to less frequent tariff revisions, Staff recommended approval.

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

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

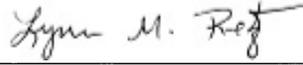
- A. Totah’s tariff revisions are approved effective February 27, 2020.
- B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of issuing such further order, or orders, as it may deem necessary.

¹In the Matter of Lifeline & Link Up Reform & Modernization, 31 F.C.C. Rcd. 3962 (2016).

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 02/13/2020



Lynn M. Retz
Executive Director

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

Laura Kelly, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

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

DATE: February 4, 2020

SUBJECT: Docket No. 20-TTHT-329-TAR
In the Matter of Totah Communications Filing Revisions to its Lifeline Service Program Language.

EXECUTIVE SUMMARY:

On January 28, 2020, Totah Communications (Totah) filed a request to make tariff revisions to a certain section of its General Exchange Tariff changing the verbiage to a standardized generic wording for the Company's Lifeline offering.

The Commission action date is Thursday, **February 27, 2020**.

BACKGROUND:

On April 27, 2016, the FCC released the *2016 Lifeline Order*¹ 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* also 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. To alleviate multiple filings by

¹ *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*").

the Company, Staff recommended the Company file generic wording referencing where the most recent FCC rules may be obtained, eliminating the need for annual updates to change the rules.

ANALYSIS:

The 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 shall 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.²

This filing makes changes to Section 3 of the tariff, pages 2, 3, and 4. The change is as follows:

- Removes the specific Lifeline rules effective December 1, 2019, and refers to where the specific FCC rules applicable at the time may be found.

² 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.”

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

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

RECOMMENDATION:

Staff recommends the Commission approve the replacement tariff sheet provided by Totah. The change that was provided in the new tariff sheet is due to changes to the Federal Lifeline program by the FCC. The change that the Company filed references the Federal requirements generically and is less costly to the Company. This generic wording alleviates the need for annual updates and, therefore, reduces the cost passed through to the ratepayer and is in the public interest. The Company requests an effective date of February 27, 2020.

CERTIFICATE OF SERVICE

20-TTHT-329-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 02/13/2020.

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/s/ DeeAnn Shupe

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