

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

In the Matter of a General Investigation to)
Address Issues Concerning the Kansas Lifeline) Docket No. 15-GIMT-575-GIT
Service Program.)

INITIAL COMMENTS OF CTIA - THE WIRELESS ASSOCIATION[®]

COMES NOW CTIA – The Wireless Association[®] (“CTIA”)¹ and pursuant to the *Order Opening Docket; Soliciting Comments; Procedural Matters and Schedule* (“Order”) issued on July 12, 2016, by the State Corporation Commission of the State of Kansas (“Commission”), submits the following initial comments in response to the Report & Recommendation (“R&R”) of the Commission Staff (“Staff”) attached to the Order and dated June 29, 2016.

I. INTRODUCTION

1. Staff’s R&R explains that the Federal Communications Commission (“FCC”) has made numerous changes to the federal Lifeline program over the past year and that some of those changes could impact carriers operating in Kansas and the administration of the Kansas Lifeline Service Program (“KLSP”).² The Order adopts Staff’s recommendation in the R&R that the Commission solicit comments regarding what changes, if any, the Commission should make to the KLSP as a result of recent changes to the federal Lifeline program.

¹ CTIA (www.ctia.org) represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C. A list of CTIA’s members can be found at <http://www.ctia.org/about-us/current-members>.

² Order, ¶3.

2. Staff's R&R identifies nine categories of issues Staff believes could have an impact on the KLSP: (1) Program Eligibility and Income Criterion; (2) Minimum Mobile Voice Requirements; (3) Broadband Requirement for Lifeline; (4) Snapshot Date; (5) Lifeline Eligibility Documentation Retention; (6) Resale of Lifeline & Requirement for CLECs to Offer Lifeline; (7) Forms; (8) List of Supported Services; and (9) Recertification & De-enrollment. CTIA directs its comments to the third category – Broadband Requirement for Lifeline.

II. THE COMMISSION SHOULD ENSURE ANY KUSF CHANGES MINIMIZE THE BURDEN ON CONSUMERS

3. As a general comment, CTIA asks the Commission to keep in mind that the Kansas Universal Service Fund (“KUSF”) is funded through a surcharge imposed upon consumers, so it is important to adopt policies that avoid increasing the size of the KUSF and its related surcharge. Any increase in KUSF obligations impacts directly the financial burden on consumers, including low income households. At present, Kansas wireless consumers pay a combined state and local rate of 13.53% in taxes, fees and government surcharges on their wireless service (19.99% including federal fees and surcharges), leaving Kansas consumers to bear the 10th highest tax, fee and government surcharge burden in the nation.³ As the Commission deliberates on the matters outlined in Staff's R&R, CTIA requests that the cost impact on consumers of any changes being considered be kept at the forefront of the discussion.

III. THE COMMISSION DOES NOT HAVE AUTHORITY TO IMPOSE A BROADBAND REQUIREMENT FOR LIFELINE

4. Staff explains that the FCC has determined that the federal Lifeline program will transition to funding only broadband services after a transition period.⁴ Comments are requested on (1) how the FCC's requirement will affect the KLSP, (2) whether the Commission

³ The Tax Foundation, “Record High Taxes and Fees on Wireless Consumers in 2015” <http://taxfoundation.org/article/record-high-taxes-and-fees-wireless-consumers-2015>

⁴ Staff's R&R, p. 7.

should consider adding a broadband service requirement to the KLSP, and (3) whether the Commission would have the authority to do so. The threshold question is whether the Commission has the authority to include broadband services in the KLSP. CTIA asserts that the Commission lacks such authority. K.S.A. 66-2006 defines the parameters of the KLSP and the Commission's authority and obligations regarding the program, and it does not allow the KLSP to be used to promote or subsidize broadband services.

A. *Broadband Service is Not a Service Included in the Kansas Definition of Universal Service and it Cannot be Included in the Kansas Lifeline Service Program.*

5. The Kansas Telecommunications Act of 1996 ("KTA") is a comprehensive body of law enacted to foster local telecommunications service competition in Kansas. It also established the parameters for creation of the KLSP,⁵ directing the Commission to establish the KLSP pursuant to K.S.A. 66-2006. K.S.A. 66-2006 states that "[t]he purpose of the KLSP shall be to promote the provision of *universal service by local exchange carriers* to persons with low income. The KLSP shall be targeted to maintain affordable rates for residential local exchange service." (Emphasis added.)

6. K.S.A. 66-1,187(p) states that "[u]niversal service" means telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching⁶ with vertical service capability⁷; E-911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services."

7. Reading these two statutes together, it is clear that the legislature intended the KLSP to support traditional voice service. Standalone broadband does not include the services

⁵ K.S.A. 66-2002(f).

⁶ "Stored program controlled switching" refers to computer-managed call routing.

⁷ "Vertical services" generally refer to add-on services to telephone service. Examples include call waiting, conference calling, and speed dialing.

and facilities listed in K.S.A. 66-1,187(p). Further, broadband includes features *not* covered by the universal service definition.

8. Had the legislature intended to promote the provision of broadband via the KLSP, it would have specified its inclusion, especially since "broadband" is a defined statutory term.⁸ A unilateral decision by the Commission to expand the scope of the program would not only exceed its authority, but would also impose a burden on consumers in the form of a surcharge that is greater in scope, and perhaps amount, than was contemplated by the legislature.⁹

9. Past Commission Orders have not provided a detailed analysis of the parameters or boundaries of Lifeline services, but the Commission has recognized that “the intent of the KLSP was to provide qualifying subscribers with a credit to offset the costs of *local phone service*,”¹⁰ and that “the State Act requires the Commission establish the Kansas Lifeline Service Program (KLSP) to assist low income persons in retaining and obtaining *telephone service*.”¹¹ (Emphasis added.) These statements are consistent with the underlying statutory framework that does not include, or allow inclusion of, broadband service as a service to be provided as part of the KLSP.

⁸ K.S.A. 66-1,187(a) (definition of broadband). The omission of broadband from the KLSP contrasts with the legislature’s inclusion of broadband for other universal service purposes. For instance, K.S.A. 66-1,187(q) defines “Enhanced Universal Service” as including "broadband capable facilities to" schools, libraries, etc. Thus, the legislature’s omission of broadband from the KLPS must be interpreted as intentional.

⁹ Other indicia that the KLSP is limited to voice service comes from an examination of K.S.A. 66-2008, which addresses KUSF funding and distributions. K.S.A. 66-2008(d)(1) provides that the Commission may periodically review the KUSF to determine if the costs to provide *local service* justify modification of the KUSF. K.S.A. 66-2008(d)(2) states that KUSF support reduction reviews shall be based on the forward-looking costs of providing *basic voice service*. Since the classification of broadband as an interstate service suggests that it cannot be deemed a *local service*, see *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5803-04 ¶¶ 431-32 (2015) (“*Open Internet Order*”), and since broadband is not basic voice service, the language and structure of K.S.A. 66-2008 suggests that broadband is outside the scope of the KUSF, and consequently outside the scope of the KLSP.

¹⁰ 07-GIMT-1353-GIT, Order issued August 12, 2008, ¶1.

¹¹ 94-GIMT-478-GIT, Order issued December 27, 1996, ¶127.

IV. CONCLUSION

10. CTIA respectfully submits that the Commission does not possess the necessary jurisdiction and authority to order that broadband services be made available through the KLSP. As such, the Kansas KLSP cannot be modified to mirror the federal lifeline program. As to the other matters being considered by the Commission in this docket, CTIA requests the Commission keep at the forefront of its deliberations the burden additional KUSF surcharges place on all wireless consumers, including low-income individuals.

Respectfully submitted,

/s/ Glenda Cafer

Glenda Cafer (#13342)

(785)271-9991

Terri Pemberton (#23297)

(785)232-2123

CAFER PEMBERTON LLC

3321 SW 6th Avenue

Topeka, Kansas 66606

(785) 233-3040 (fax)

glenda@caferlaw.com

terri@caferlaw.com

COUNSEL FOR CTIA

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 8th day of August, 2016 to:

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
m.neeley@kcc.ks.gov

BRUCE A. NEY, ATTORNEY
SOUTHWESTERN BELL TELEPHONE CO. D/B/A AT&T KANSAS
TELEPORT COMMUNICATIONS AMERICA
816 CONGRESS
SUITE 1100
AUSTIN, TX 78701
bruce.ney@att.com

MARK E. CAPLINGER
MARK E. CAPLINGER, P.A.
7936 SW INDIAN WOODS PL
TOPEKA, KS 66615-1421
mark@caplingerlaw.net

BENJAMIN ARON
DIRECTOR, STATE REGULATORY AND EXTERNAL AFFAIRS
CTIA – THE WIRELESS ASSOCIATION®
1400 16TH STREET, NW SUITE 600
WASHINGTON, DC 20036
(202)736-3216
BARON@CTIA.ORG

COLLEEN R. JAMISON
JAMES M. CAPLINGER, CHARTERED
823 SW 10TH AVE
TOPEKA, KS 66612-1618
COLLEEN@CAPLINGER.NET

DEBORAH KUHN, ASSISTANT GENERAL COUNSEL
MCI COMMUNICATIONS SERVICES D/B/A VERIZON BUSINESS SERVICES
205 N MICHIGAN AVE 7TH FLR
CHICAGO, IL 60601
deborah.kuhn@verizon.com

DAVID E. BENGTON, ATTORNEY
STINSON LEONARD STREET LLP
1625 N WATERFRONT PKWY STE 300
WICHITA, KS 67206
david.bengtson@stinson.com

JOHN R. IDOUX, DIRECTOR KANSAS GOVERNMENTAL AFFAIRS
UNITED TELEPHONE CO. OF KANSAS D/B/A CENTURYLINK
600 NEW CENTURY PKWY
NEW CENTURY, KS 66031
john.idoux@centurylink.com

KEVIN K. ZARLING
UNITED TELEPHONE CO. OF KANSAS D/B/A CENTURYLINK
400 W 15TH ST STE 315
AUSTIN, TX 78701-1647
KEVIN.K.ZARLING@CENTURYLINK.COM

/s/ Glenda Cafer

Glenda Cafer