

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO THE STATE) CASE NO. 2016-00059
UNIVERSAL SERVICE FUND)

COMMENTS OF CTIA
IN RESPONSE TO THE COMMISSION’S MARCH 10, 2017 ORDER

Pursuant to 807 KAR 5:001, Section 4(11)(e), CTIA¹ files the following comments in response to the Kentucky Public Service Commission’s (“Commission’s”) March 10, 2017 Order in Case No. 2016-00059 (the “Order”).²

CTIA supports the goal of meeting universal service objectives while minimizing the economic burden on consumers, and wireless consumers in particular. This is particularly important in relation to low-income consumers, who rely on wireless service in greater numbers than middle- and high-income households. According to statistics from the Centers for Disease Control, 63.1% of households in poverty have chosen wireless-only for their telecommunications needs, compared to 48.2% of households not in poverty.³ (Many of these wireless subscribers are also dependent on their smartphones for Internet access; according to Pew Research, 21% of

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² CTIA is not currently a party to this proceeding. Based on the scope of the Commission’s review as contemplated in its February 1, 2016 Order, and the subsequent public record compiled, CTIA did not anticipate that the Commission’s review of the KUSF program would produce action targeted at wireless Lifeline providers only. However, because such action would have a significant and disparate impact on wireless carriers and consumers, CTIA respectfully submits the comments herein.

³ Centers for Disease Control, “Wireless Substitution, Early Release of Estimates from the National Health Interview Survey, January-June 2016”, December 2016, *available at* <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201612.pdf> (last accessed March 27, 2017).

adults making under \$20,000 per year have a smartphone but not home broadband service, compared to 13% across the U.S. population.⁴⁾

Therefore, CTIA is concerned with how the Commission has chosen to implement its goals in its recent Order, which would eliminate state Lifeline (low-income) support from the Kentucky USF (“KUSF”) program for wireless providers only. The Commission’s decision to eliminate wireless Lifeline support harms competition and consumers, both by eliminating consumer choice in the form of Lifeline service, and by distorting competition in the telecommunications marketplace. CTIA and its members understand and appreciate the Commission’s need to manage the size of the KUSF, but strongly object to measures that discriminate on the basis of technology, particularly when the discrimination is to the detriment of the technology favored by the consumers that the program is supposed to be serving. Any measures the Commission adopts to manage the size of the Kentucky Lifeline program must be accomplished in a competitively and technologically neutral manner.

Further, the Commission’s claims regarding the necessity of removing state wireless Lifeline support are unsubstantiated by record evidence. CTIA is particularly concerned with the Commission’s unsubstantiated assertion that elderly and rural consumers are disadvantaged in the Lifeline marketplace. By reducing elderly and rural consumers’ Lifeline service options to wireline Lifeline service only, the Commission’s Order would impact these consumers detrimentally. As the Commission itself has noted, consumers are overwhelmingly choosing wireless for Lifeline, and the Commission’s action would eliminate that choice. The

⁴ Pew Research Center, Home Broadband 2015 (Dec. 21, 2015), <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (last accessed March 27, 2017).

Commission's Order also fails to justify its rates for wireline support, which is important if the Commission's goal is to minimize the economic burden on consumers.

I. THE COMMISSION'S DECISION IS HARMFUL TO COMPETITION AND CONSUMERS IN KENTUCKY

The Commission's decision to eliminate state low-income support only for wireless consumers in Kentucky neglects the choices that Kentucky consumers have made: in particular, their overwhelming preference for wireless services. While CTIA supports the goal of minimizing the economic burden on wireless consumers, the action contemplated by the Order would harm those consumers, decrease telecommunications competition in Kentucky, and merely shift those economic burdens instead of reducing them.

As the Commission itself noted in the Order, the Commission's actions would result in "far fewer" consumers in the Kentucky wireless Lifeline program.⁵ CTIA does not contest this point. While CTIA does not have, and the Commission does not provide, statistics on the exact number of Kentucky consumers impacted by the changes to the Kentucky program, federal data suggests that nearly 93% of Kentucky Lifeline consumers have chosen wireless for their communications needs.⁶ This mirrors the large-scale consumer shift from wireline to wireless service nationwide. Consumers are choosing wireless for a variety of reasons: mobility, price, convenience, broadband access, and more. By eliminating state Lifeline support for wireless service only, and not other technologies (such as local exchange wireline service), the Commission would seriously harm the ability of wireless providers to compete for low-income

⁵ Kentucky Public Service Commission, *Press Release: PSC Ends State Low-Income Subsidy for Wireless Phones*, March 10, 2017 at 1.

⁶ Data gathered from the February 2017 breakdown of USAC funding, using the USAC Funding Disbursement Tool (<http://www.usac.org/li/tools/disbursements/default.aspx>) (last accessed March 27, 2017). Of the \$2,094,677 total federal Lifeline support for Kentucky, 92.6% goes to wireless (with the rest going to a mix of local exchange carriers.)

service in Kentucky, leaving low-income consumers without the option for service they have demonstrated they overwhelmingly prefer.

Beyond its direct negative effect on consumer choice, the Commission's decision would also harm competition by distorting the competitive telecommunications market for low-income consumers in Kentucky in a manner that is technologically biased. By eliminating state wireless Lifeline support, the Commission would be giving wireline Lifeline service an explicit support advantage over competing wireless Lifeline services that can receive only federal support, a support advantage that will grow to a \$7.50 per month support differential given the Commission's plan to raise the state Lifeline support amount available to wireline providers over time.⁷ This plan is hardly competitively or technologically neutral.

Competitive neutrality has been a guiding principle of federal universal service policy since at least 1997, when the FCC stated that universal service support mechanisms and rules should "neither unfairly advantage nor disadvantage one provider over another nor unfairly favor or disfavor one technology over another."⁸ Beyond the negative policy repercussions that flow from the Commission's failure to follow that long-standing universal service principle, the Commission's plan to provide Lifeline support only to wireline carriers may violate Section 254 of the Communications Act, which indicates that states "may adopt regulations not inconsistent with the [FCC's] rules to preserve and advance universal service."⁹ Consistency with federal guidance requires the Commission to employ universal service policies that treat different

⁷ See Order, at 9-10.

⁸ Report and Order, *In re: Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, at ¶ 47 (1997).

⁹ 47 U.S.C. §254(f) (emphasis added).

technologies equally, and yet the Commission’s Order overtly favors wireline Lifeline providers over wireless.

Additionally, the Commission’s decision to limit state support to wireline telephone companies may drive wireless providers – who would have to compete with wireline providers receiving an economic advantage from the state – out of the market. As the Commission itself notes, the high number of providers in the Kentucky market is what keeps prices low, not just for wireless Lifeline services but for all competing wireless services.¹⁰ However, not all of these providers offer Lifeline service in Kentucky. By disincentivizing wireless providers from remaining in the Lifeline market in Kentucky, the Commission’s decision would directly and negatively impact that competition. Further, the Commission itself notes that “similar competitive pressures [to the wireless market] do not exist” in the wireline market.¹¹ But the wireline market does not exist in a vacuum. In terms of the greater telecommunications market, removing competition from wireless low-income providers will provide no incentive for wireline providers to keep rates low.

CTIA understands and appreciates the Commission’s need to manage the size of the KUSF, but strongly objects to measures that discriminate against some providers, but not others, on the basis of technology. The Commission could more appropriately manage the size of the KUSF in a non-discriminatory and technologically neutral manner by modifying the state Lifeline support available to all providers participating in the state Lifeline program. But managing the size of the KUSF solely by discriminating against wireless Lifeline services – particularly when consumers have demonstrated a clear preference for wireless Lifeline services

¹⁰ See Order, at 10.

¹¹ Order, at 10.

– not only harms competition, but ultimately does not serve the very consumers that the Lifeline program was intended to assist.

II. THE COMMISSION’S ORDER IS UNSUBSTANTIATED BY RECORD EVIDENCE

Troublingly, the Commission’s Order is lacking in record evidence to support its conclusions – indeed, one of the reasons CTIA was not a party to this proceeding is that there was no indication, in the record or otherwise, that such drastic action was needed to maintain state Lifeline support. In particular, the Commission notes that the FCC’s benchmark increases “may leave some of the most vulnerable Kentuckians, the elderly and those who live in rural areas with limited wireless coverage, at a disadvantage compared to other Lifeline customers.”¹² CTIA contests this unsupported claim.

The Commission presented no evidence to support its assertion that low-income rural consumers are facing issues regarding limited wireless coverage. Indeed, according to National Broadband Map statistics, 99% of Kentucky consumers can access not just wireless voice, but wireless 3G or better service as of mid-2014.¹³ If the Commission is correct that these consumers will experience increases to their wireline rates, it should be preserving their ability to rely on KUSF-supported wireless service as a competitive alternative, rather than eliminating that option. The Commission also claims that the elderly are being hurt by the FCC’s benchmark increases. Yet the Commission cited no evidence to indicate that seniors are unwilling or unable to either pay slightly more for traditional landline service or move to wireless service.¹⁴ Indeed,

¹² Order, at 9.

¹³ See National Broadband Map: Kentucky Summary, *available at* <https://www.broadbandmap.gov/summarize/state/kentucky> (last accessed March 27, 2017).

¹⁴ Additionally, the Commission cites no public source for its claim that wireline Lifeline consumers are predominantly elderly. (Order, at 8.) If the applicable demographic data the Commission is drawing its conclusions

research has indicated that elderly consumers are overwhelmingly adopting wireless service.¹⁵ As such, the Commission’s action risks becoming a self-fulfilling prophecy: the Commission cites increased harm to elderly and rural consumers, but by eliminating a valuable and potentially more affordable choice for those consumers, it is the Commission’s action itself which is creating such harm.

Further, the Commission presents no evidence to support its conclusion that “we do not believe that removing KUSF support from wireless Lifeline will have a substantial impact on the current competitive market.”¹⁶ As noted above (section I, *supra*), logic dictates that making it more difficult for wireless providers to offer low-income service in Kentucky will necessarily harm competition to the detriment of consumers, and forcing wireless consumers to subsidize only wireline service will assuredly have an impact on competition.

Finally, in addition to eliminating state support for vulnerable Lifeline consumers, the Commission’s action would eventually increase state support for wireline Lifeline to \$7.50 per month, a rate which is also unsupported by any evidence. Such an increase would create a \$16.75 monthly subsidy (state and federal) in Kentucky for the very limited purpose of wireline Lifeline

from is from USAC but is not publicly available, CTIA has concerns about such data being shared with and used by the Commission.

¹⁵ Macher, Jeffrey T. and Mayo, John W. [The Wireless Revolution: Are the Elderly Keeping Up?](https://cbpp.georgetown.edu/sites/cbpp.georgetown.edu/files/Mayo_Macher-wireless-revolution-are-elderly-keeping-up.pdf) Georgetown University, May 2012, available at https://cbpp.georgetown.edu/sites/cbpp.georgetown.edu/files/Mayo_Macher-wireless-revolution-are-elderly-keeping-up.pdf (last accessed March 27, 2017), at 4 (“The adoption of wireless telephony by the elderly has been pronounced, especially over the past decade. Although cellular telephony was first introduced in 1983, only 41 percent of elderly households possessed wireless subscription service in 2003. But by 2010, wireless adoption among the elderly has grown to nearly 80 percent. Four out of five elderly households today possess wireless service as an alternative to traditional landline service. Second, the growth of wireless only elderly households has been significant: from one percent in 2003 to 14.5 percent by 2010. Among the nominally most vulnerable elderly households—those living in poverty—we find that roughly 22 percent have “cut the cord” by dropping their landline telephone subscription all together. While it is still true that the level of wireless only elderly households is lower than the average across all other U.S. households, this demographic segment is indeed embracing the wireless revolution and “catching up” to the younger population.”) Further, CDC data indicates that number of wireless-only households continues to rise among the elderly: as of 1st half 2016, 21.1% of households aged 65 and over are wireless-only. See fn3, *supra*.

¹⁶ Order, at 10.

service. If the Commission's goal is to limit the economic burden on consumers, the amount of support granted should be clearly justified by substantial evidence.

III. CONCLUSION

CTIA understands and appreciates the Commission's need to manage the size of the KUSF, and supports the goal of meeting universal service objectives while minimizing the economic burden on consumers. However, the Commission's action, while lowering the state KUSF surcharge rate for Lifeline, would harm consumers in a number of other ways: by eliminating an option which consumers have expressed a strong preference for, by reducing competition, by violating principles of competitive and technological neutrality, and by distorting the competitive economics of the telecommunications marketplace through application of a policy that discriminates against wireless carriers. If such action is justified, it must be supported by ample evidence to counter-balance these harms, but no such evidence is contained in the record. Accordingly, on behalf of CTIA's members and their Kentucky wireless customers, CTIA expresses the serious concerns with the Commission's Order found herein.

Respectfully submitted,

/s/ Benjamin J. Aron

Benjamin J. Aron
Director, State Regulatory and External
Affairs
CTIA®

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2017, I served a true and correct copy of the Comments of CTIA in Response to the Commission's March 10, 2017 Order via electronic filing to all parties in the case above.

/s/ Benjamin J. Aron

Benjamin J. Aron
Director, State Regulatory and External
Affairs
CTIA®