COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

JOINT COMMENTS

Airvoice Wireless, American Broadband and Telecommunications Company, Boomerang Wireless, i-wireless LLC, Ready Wireless, SI Wireless, LLC, and Telrite Corporation, through counsel, file these comments in response to the Commission's April 20, 2017 Order which granted rehearing "solely to consider the impact of the enactment of Senate Bill 10 on the Commission's decision to limit KUSF support to landline services only."[1] As explained below, this major change in Kentucky telecommunications law seriously undermines the Commission's reasoning to target state Lifeline support only to legacy basic exchange services. Wireline Lifeline services are overwhelmingly *the last choice* not only for Kentucky's poor, but for Kentucky's largest landline provider. The Commission's attempt to prop them up is destined to fail. If the Commission wants its Lifeline program to benefit Kentuckians statewide it should continue to support economical wireless service options for the poor.

I. IF THE COMMISSION DOES NOT PRESERVE STATE SUPPORT FOR WIRELESS CUSTOMERS THE CHANGE IN STATE LAW WILL EFFECTIVELY END THE KENTUCKY UNIVERSAL SERVICE FUND IN RURAL KENTUCKY.

The April 20 Order correctly notes carriers that could be "impacted by" Senate Bill 10 are designated as eligible telecommunications carriers for the purpose of receiving Lifeline

[1] The joint commenters strongly disagree with the Commission's description of the effects of the FCC's *Lifeline Modernization Order* in the April 20, 2017 Order as justification for the legal errors in the March 10, 2017 Order, but will reserve those disagreements until the Commission has issued a final and appealable order.

support and have the responsibilities "*attendant to that designation under federal law*."[2] Since neither the March 10 nor April 20 orders are specific as to which incumbent local exchange carriers the Commission is describing or which ones it intends to favor in the future, the joint commenters will focus on the ETC responsibilities attendant to the largest "landline" providers serving rural areas in the Commonwealth.

Of the three carriers that elected alternative regulation under KRS 278.543, incumbent local exchange carriers AT&T Kentucky and Windstream serve the vast majority of Kentucky's counties, including rural or semi-rural counties like Bell, Clinton, Estill, Floyd, Hickman and Martin, just to name a few. The Commission's own map depicting these exchange territories is attached to these comments and available here. Although these exchange territories are quite large and include some of the poorest communities in the state, AT&T Kentucky and Windstream, while designated as ETCs, serve a disproportionately small percentage of Lifeline eligible consumers in them. Why? The answer is a matter of consumer preference that has little to do with income, poverty, or eligibility for Lifeline.

Kentuckians prefer mobile services, not landlines. As AT&T Kentucky has explained, alternative technologies like wireless services are increasingly the first choice for Kentuckians.[3] As for the low income consumers eligible for Lifeline, the preference is likely greater since many poor Kentuckians lack a permanent home and cannot order or rely on fixed services like landlines. AT&T Kentucky surely knows this too, and could not have been clearer when it filed its petition for rehearing in this case:

> Lifeline customers in Kentucky overwhelmingly prefer wireless service to landline service—while overall Lifeline subscribership in Kentucky continues to rise, AT&T Kentucky's Lifeline subscribership has declined by more than 90% since 2008, to the

[2] April 10 Order at 6, emphasis added, citing 47 U.S.C. § 214(e).
[3] *See* Comments of AT&T Kentucky at 3-4.

> point that AT&T Kentucky has less than 1,700 retail Lifeline subscribers in the entire state.[4]

If the goal of the state Lifeline program is actually to promote universal service for Kentucky's poor, the subsidy should reduce the cost of services consumers (including the poor) actually want. In addition, the subsidy should favor services a consumer *can actually obtain and use*. Effective this year for areas served by electing carriers like AT&T Kentucky, traditional "landline" service may no longer be obtainable, and by enacting Senate Bill 10 the General Assembly has made sure there is nothing the Commission can do to change that.

Since AT&T Kentucky is an ETC and was the only electing carrier that testified in support of Senate Bill 10, it is worth considering how the legislation could affect AT&T's interest in providing Lifeline services in the future. Beginning September 1, 2017 the Commission shall not regulate the availability of "landline facilities necessary to provide basic local exchange service."[5] In addition, "the commission shall not impose any requirements or otherwise regulate the terms, conditions, rates, *or availability* of any retail service of the modifying utility."[6] The new law will effectively halt the installation of "landline" service statewide, including in rural exchanges, as AT&T Kentucky and other electing carriers fill future service orders using other voice technology, including wireless service not eligible for state support unless the Commission reconsiders its March 10 Order.

In light of the inexorable march into a wireless future the Commission's concern about preserving traditional exchange service at the expense of the wireless industry seems misplaced, as to facts, and law. *Without citing any record evidence*, the March 10 Order speculates "landlines" are the only option for many of Kentucky's poorest citizens eligible for Lifeline then

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[4] AT&T Kentucky's Petition for Rehearing at n. 2.
[5] *See* 2017 Ky. Acts Ch. 43.
[6] KRS 278.5435(3)(a) (emphasis added).

leaps to conclude that funneling state support to local exchange carriers will ensure Lifeline services will be available in the future for eligible consumers who do not have them today.

Before the recent change in law, such reasoning may have had superficial appeal. After all, until the 2017 enactment rural exchanges in Kentucky were still subject to Commission jurisdiction, at least with respect to "basic local exchange service."[7] Arguably the Commission could have combined the carrot of increased Lifeline subsidies (influencing consumer demand) with the stick of "carrier of last resort" obligations to make "landline" Lifeline service an option for some customers. Senate Bill 10 erases that possibility.

The Commission's ability to require service in rural exchanges—preserved in 2015 legislation—*was removed* by the 2017 law. That change alone requires the Commission to reconsider its decision. Why? The Commission cannot force an electing carrier like AT&T Kentucky to provide Lifeline service. Electing carriers no longer have a state law obligation to provide *any* retail services, including Lifeline.

What about federal law obligations? In its filing Windstream says that nothing about Senate Bill 10 affects the obligations of a modifying utility under *federal* law, citing KRS 278.5435. This is stating the obvious. Unstated is the fact that federal law, 47 U.S.C. § 214(e)(4), allows carriers in competitive exchanges to withdraw as ETCs upon notice to a state commission, as Windstream Norlight did in Kentucky in 2015 (in Case No. 2015-00081) and AT&T price cap carriers have done in various states this year. As an electing carrier and an incumbent carrier without a wireless offering, Windstream may have reasons to understate the significance of Senate Bill 10. The Commission's March 10 order diverts money from wireless

[7] KRS 278.5435, enacted in 2015, deregulated basic local exchange service statewide, expect for in exchanges with fewer than 15,000 housing units. *See* 2015 Ky. Acts ch. 2, sec. 1. 2017 Senate Bill 10 removes the rural exemption, and electing carriers are no longer required to provide any retail services in the state. In other words, state law no longer creates a carrier of last resort obligation for an electing carrier like AT&T Kentucky.

consumers to help shore up Windstream's Lifeline discount. Whether or not Windstream intends to become an enthusiastic Lifeline provider, its Lifeline plan is not available in every exchange served by wireless ETCs, let alone statewide.

As for Kentucky's largest electing carrier, Senate Bill 10 may set the stage for AT&T to relinquish its ETC status, as it has recently done in nearby states. If that happens, the state Lifeline fund will no longer benefit all of the rural poor the Commission seems concerned about. A low income person who moves to Winchester could face the very real possibility of being eligible for state support but having no carrier that can utilize it to their benefit. If universal service is truly the goal, discriminating in this way is not the method to achieve it.

II. IF AT&T KENTUCKY RELINQUISHES ITS ETC STATUS THERE WILL BE NO STATE OR FEDERAL LIFELINE SUPPORT FOR LANDLINES IN MUCH OF RURAL KENTUCKY.

AT&T Kentucky has the largest study area in the state, yet provides Lifeline service today to a modest number of Kentuckians. As discussed above, effective September 1, 2017 AT&T Kentucky may choose to eliminate "landline" service anywhere in Kentucky, including in the rural areas that, according the March 10 Order, lack landline competition. It seems obvious that AT&T's future plans may include voice services, but probably not "landlines."

AT&T's push for retail service deregulation understandably has been driven by its business interest in exiting lines of business that no longer make sense while conserving capital for broadband expansion. As for basic local exchange service, AT&T has made no secret that it does not see a future for "landlines" or plain old telephone service ("POTS") anywhere. According to AT&T, plain old telephone service has "no relevance in the 21st Century."[8]

[8] Comments of AT&T Services, Inc., WC Dkt. No. 10-90 (filed September 9, 2015) (Appendix A), available at https://www.fcc.gov/ecfs/filing/60001299470.

AT&T also does not hide the fact that it does not want to be a carrier of last resort in Kentucky or anywhere else. AT&T and other price cap carriers have urged the FCC to de-link Lifeline from the ETC designation and make Lifeline participation voluntary. AT&T has described the FCC's price cap carrier ETC regime as obsolete and unfair, because it requires AT&T to offer Lifeline service in areas where AT&T is ineligible for high-cost support, including in parts of Kentucky. AT&T has repeatedly argued before the FCC and federal appellate courts that it is "unnecessary to require any of AT&T's price cap carrier affiliates to continue participating in the Lifeline program."[9] AT&T has also supported state legislation to exempt itself from state Lifeline programs where participation has been mandatory under state law. Texas is a fresh example. 2017 Senate Bill 1003, which passed the Texas House of Representatives on May 8, 2017[10] and awaits the Governor's signature, will exempt AT&T Texas from a section in the state utilities code that requires it to provide access to Lifeline service.[11]

The point here is not to criticize AT&T's business decisions or legal positions concerning its legacy telephone services. Rather, it is to illustrate that AT&T has no enthusiasm for continuing to participate in Lifeline programs that require it to offer landlines. Absent enthusiasm from AT&T Kentucky, how will Kentucky's poor be served in the future? Since Senate Bill 10 laid the foundation for AT&T Kentucky to turn away service requests from customers it does not wish to serve, including in rural areas, it seems clear that choices for the poor will be diminished later this year. This is not speculation. Recent activity in four nearby states is instructive.

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[9] *See id.* at pp. 2-5.
[10] http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=85R&Bill=SB1003
[11] http://www.legis.state.tx.us/tlodocs/85R/analysis/html/SB01003H.htm

In exchanges where the company does not receive high cost funding AT&T is taking steps to relinquish ETC designations and stop providing Lifeline discounts altogether. Within the past few months AT&T relinquished its ETC status in Alabama,[12] Kansas,[13] Missouri,[14] and Oklahoma,[15] states where legislatures have enacted alternative regulatory statutes comparable to Senate Bill 10. The Kansas and Missouri relinquishments may be especially enlightening here. AT&T is exiting the Missouri Lifeline program even though Missouri provides monthly support of $6.50/line, nearly double Kentucky's support level. The support amount under the Kansas Lifeline fund is even greater than the maximum future support proposed by the March 10 Order, at $7.77. If that isn't enough to persuade AT&T to participate in Kansas, it suggests there is no business case at all for "landline" based Lifeline service in a competitive environment. The numbers for Kentucky bear this out. Review of Universal Service Administrative Company records suggests that in February of this year there were about 200,000 wireless Lifeline users and only about 15,000 wireline Lifeline users in the Commonwealth.[16] Increasing the state subsidy at the expense of wireless Lifeline competition will not change the outcome in Kentucky either. This is because the disruptive effects of wireless competition are not only beneficial, they

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[12] *Implementation of the Universal Service Requirements of Section 254 of the Telecommunications Act of 1996*, Docket No. 25980 (Ala. PSC March 7, 2017) (confirming relinquishment of ETC status for AT&T Alabama).
[13] *In the Matter of the Application of Southwestern Bell Telephone Company d/b/a AT&T Kansas for an Order Confirming Relinquishment of its Eligible Telecommunications Carrier Designation in Specified Areas, and Notice Pursuant to K.S.A. 2015 Supp. 66-2006(d) of Intent to Cease Participation in the Kansas Lifeline Service Program*, Docket No. 17-SWBT-158-MIS (Kan. Corp. Comm. April 27, 2017) (recognizing AT&T's decision to cease participation in Kansas Lifeline Fund and establishing schedule for request to relinquish ETC designation).
[14] *In the Matter of Southwestern Bell Telephone Co. d/b/a AT&T Missouri's Notice of Relinquishment of its Eligible Telecommunications Carrier Designation Pursuant to 47 U.S.C. § 214(e)(4) and Notice of Withdrawal from State Lifeline and Disabled Programs*, File No. IO-2017-0132 (Mo. PSC January 11, 2017).
[15] *Application of Southwestern Bell Telephone Co. d/b/a AT&T Oklahoma for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation*, Cause No. PUD 201600455, Order No. 661226 (Okla. Corp. Comm. Feb. 22, 2017) (confirming relinquishment of ETC status, ending federal Lifeline subsidy even in exchanges where AT&T Oklahoma will continue to provide basic local exchange service).
[16] https://usac.org/li/tools/disbursements/results.aspx.

are permanent. To use an analogy about disruption in a different industry, discriminating against Netflix isn't going to save Blockbuster.

CONCLUSION

Senate Bill 10 signals a legislative preference favoring investment in newer technologies, not landlines. The decline in "landlines" is not because of structural problems in the Universal Service programs, it is because consumer preferences for voice services have shifted to mobile services. Tilting a low income subsidy in favor of legacy "landlines" will only reduce the effectiveness of the state Lifeline program. The Commission should reconsider its March 10 Order and confirm that all Kentuckians qualified for the federal Lifeline program are eligible for support from the Kentucky Universal Service Fund. The joint commenters request the Commission to consider an informal conference for all stakeholders to discuss the best ways to promote universal service in a changing telecommunications environment.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF ELECTRONIC FILING PROCEDURES

In accordance with 807 KAR 5:001, Section 8, I certify that the May 10, 2017 electronic filing of these Joint Comments is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Commission on May 10, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of this Objection will be mailed to the Commission by first class United States mail, postage prepaid, on May 10, 2017.

I further certify that I am the authorized agent for the entities filing this Motion and possess the facilities to receive electronic transmissions.

Douglas F. Brent