**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

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

**JOINT COMMENTS OF AIRVOICE WIRELESS, AMERICAN BROADBAND AND TELECOMMUNICATIONS COMPANY, BLUE JAY WIRELESS, LLC, BUDGET WIRELESS, I-WIRELESS LLC, READY WIRELESS, AND TELRITE CORPORATION**


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## SUMMARY

The Commission has long committed to promoting technology neutral, universal connections to the state's telecommunications network, including by creating a state low income fund nearly twenty years ago. Over the past several years, that commitment to universal service has fostered vibrant competition among carriers dedicated to meeting the communications needs of low income Kentuckians. The Commission's public awareness efforts have included a message to eligible Kentuckians to contact telephone service providers to see if they qualify. Joint Commenters are among the wireless industry providers that answered that call to action, affirming the Commission's own belief that mobile telecommunications can be especially valuable to low income citizens looking to improve their lives. Still, even though the Commission's decade-long effort to promote and explain its Lifeline program has increased participation, *fewer than half* of eligible citizens in Kentucky subscribe to Lifeline service.

In its February 1, 2016 Order establishing this inquiry the Commission identified an immediate funding issue it must address before considering other issues pertinent to Lifeline service. But the current funding crisis is not a systemic failure and will not require radical changes. Nor is the current state of the fund a sign the Commission's efforts to promote its low income program were misplaced or went too far. To the contrary, under the Commission's supervision, the quality and value of services available to low income Kentuckians has been maintained and improved, even as some incumbent wireline providers have scaled back their Lifeline efforts. As we discuss below, the Lifeline market in Kentucky offers numerous choices

for low income citizens, especially for wireless services, and increased participation among qualified low income consumers is evidence of progress.

But the objective of universal service, *i.e.* broad and diverse participation in telecommunications, remains fragile. To protect it, Kentucky's support for its program should be maintained, and the best way to do it is to make a modest adjustment in monthly customer charges while maintaining current low income support so ETCs may continue efforts to serve Kentucky's poor and maintain telephone subscription rates in the state.

Airvoice Wireless, American Broadband and Telecommunications Company, Blue Jay Wireless, LLC, Budget Wireless, i-wireless LLC, Ready Wireless, and Telrite Corporation (together "Joint Commenters") by their undersigned counsel, hereby comment on the Commission's February 1, 2016 Order in the captioned inquiry.

## I. THE COMMISSION SHOULD ADJUST THE CUSTOMER CONTRIBUTION AMOUNT IN SUPPORT OF THE KENTUCKY LOW INCOME FUND

The Federal Communications Commission ("FCC") established the Lifeline program in 1985 to ensure that low-income consumers had access to affordable, landline telephone service in the wake of the divestiture of AT&T.[1] Since then, and later with the support of this Commission, the Lifeline program has ensured that qualifying low-income Americans have the opportunities and security that telephone service brings, including being able to find jobs, access health care, and connect with family.

As the FCC noted last year,

> many states administer their own low-income programs designed to ensure that their residents have affordable access to telephone service and connections. These activities provide the states the opportunity and flexibility to develop new and innovative ways to make the Lifeline program more effective and efficient, and ultimately bring recommendations to the Commission for the implementation of improvements on a national scale.[2]

[1] *In the Matter of Lifeline and Link Up Reform and Modernization et al*. FCC 15-71, 30 FCC Rcd 7818, Further Notice of Proposed Rulemaking, n. 1 (citation omitted) (June 22, 2015) ("*Lifeline Reform FNPRM*").
[2] *Lifeline Reform FNPRM* at ¶ 2 (footnote omitted).

### A. State support has enabled broader participation by users and carriers.

Universal connectivity for all Kentuckians in all areas of the Commonwealth provides substantial benefits, including increased opportunities to find work, learn, access emergency services, interact with others, and participate in society in ways only possible through telecommunications. The Lifeline program, by supporting access to wireless service, has helped provide that communications connectivity for low-income consumers, along with the benefits of mobility.

In 1997, the Commission found "evidence of record of the demonstrated need in Kentucky for a Lifeline program" and said it would "embrace the full amount of credit available for Lifeline assistance."[3] Since then, the Commission has never wavered in support of universal service. Moreover, the General Assembly has taken affirmative steps to preserve the Commission's commitment to universal service, even while it reduced Commission authority over many competitive retail telecommunications services. When KRS 278.54611 was codified in 2005, deregulating retail wireless services, it included a savings clause related to Commission authority over ETCs.[4] And when non-basic wireline services were deregulated a year later, the legislature specifically preserved the Commission's authority related to the state low income fund.[5] Clearly, there is statutory support for the Commission to maintain the Kentucky Universal Service Fund.

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[3] *In the Matter of an Inquiry into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate, Adm. Case No. 355* (November 26, 1997).
[4] KRS 278.54611(4).
[5] KRS 278.542(1)(i) (Lifeline Service Program).

Empirical observation provides reasons for the Commission to continue with the low income support policy judgments it made in 1997-1998, while making necessary adjustments to the contribution amounts, as it has three other times in the intervening years.[6] The current level of low income funding has narrowed the gap in subscribership between and among different income levels.

In 2014, the U.S. Census Bureau reported that approximately 18.8% of Kentuckians lived below the poverty level.[7] However, during that same general time frame, the FCC reported only 6% of Kentucky's population received Lifeline benefits.[8] This disparity strongly suggests that while Lifeline providers in Kentucky are helping to maintain telephone subscribership, there are many more Kentuckians who could benefit from the program, but are still not participating. Public awareness efforts supported through state funding are a way to reduce the disparity.

More recent statistics suggest Kentucky's state support is having a positive impact on universal service without distorting incentives for low income customers. According to a recent Universal Service Administrative Company ("USAC") report to the FCC, 269,941 Kentucky subscribers are shown in the National Lifeline Accountability Database, out of 705,000

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[6] *See February 1 Order* at p. 3 (discussing other adjustments to the per access line surcharge).

[7] U.S. Census Bureau: State and County QuickFacts: http://quickfacts.census.gov/qfd/states/21000.html (visited February 16, 2016).

[8] The U.S. Census Bureau estimated Kentucky's population as 4.413 million in 2014. 253,320 subscribers obtained Lifeline service during the year. Universal Service 2015 Monitoring Report, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0129/DOC-337019A1.pdf

Kentucky households eligible for support, a participation rate of 38%.[9] This compares favorably to the average participation rate of 26% nationwide.

There is no evidence that Kentucky is providing an overly generous Lifeline benefit, since more than half of eligible Kentuckians do not avail themselves of the current program, and about one in ten Kentuckians with income below $10,000 does not have household telephone service.[10]

Participation is greater in some regions of Kentucky, and where best it is as a result of more ETCs with wireless coverage entering the market and developing a variety of promotional and outreach strategies to reach qualified customers otherwise untouched through more traditional marketing channels. After all, as the Commission and the FCC have noted, many low income customers are not even aware that a support program exists.

Wider availability of mobile Lifeline service in Kentucky is due, in part, to the FCC's decision in its 2012 *Lifeline Reform Order*[11] to grant conditional blanket forbearance of the facilities requirement for Lifeline-only ETCs. Removing that entry barrier had a positive effect: an accelerated increase in the number of Eligible Telecommunications Carriers in Kentucky. In turn, that increase in consumer options spurred broader public awareness of the Lifeline program, with a corresponding increase in the number of Lifeline customers served. Those

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[9] USAC Data on the federal Universal Service Lifeline Program, Docket No. 11-42 (February 12, 2016) (available at http://apps.fcc.gov/ecfs/comment/view?id=60001396146) ("*February 12 USAC USF Report*")

[10] *2015 Universal Service Monitoring Report*, Household Voice Penetration by State and Income, 2015, Table 6.8 (available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0129/DOC-337019A1.pdf).

[11] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012).

changes—which occurred during a persistent recession—improved telephone subscribership, but also caused strains on the Kentucky Universal Service Fund. Of course, the fund's only income is from an eight cent end user charge that has not changed for more than ten years.

### B. State support also enables qualifying low income Kentuckians to benefit from services and features not available in states that do not provide similar support.

In its *Lifeline Reform FNPRM*, the FCC said combined state and federal contributions to Lifeline have long been a critical part of the Lifeline program and expressed interest on ways to further encourage states to provide additional subsidies for Lifeline.[12] Several of the Joint Commentors have urged the FCC to recognize Kentucky and other states for their efforts to increase low income support, by making available a matching federal subsidy in any state that provides its own supplemental subsidy and allowing the "state to serve as a laboratory of Lifeline innovation, enabling the federal program to learn lessons from state successes or miscues to better improve the functioning of the federal program."[13] If the FCC creates a matching subsidy in the future, Kentucky would be a logical choice to benefit.

But for now, the FCC's aspiration to increase state funding occurs against the backdrop of federal support levels that have not changed in four years, remaining today at $9.25 per line per month despite regulatory changes affecting the costs of Lifeline services. FCC requirements flowing from the *2012 Lifeline Reform Order*[14] have necessarily increased many costs of doing business. For example, wireless ETCs are now required to recertify their entire customer base

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[12] *Lifeline Reform FNPRM, ¶ 128.*
[13] *See* Comments of the Lifeline Connects Coalition, WC Docket No. 11-42 et al. (filed August 31, 2015) (available at http://apps.fcc.gov/ecfs/document/view?id=60001223367).
[14] *2012 Lifeline Reform Order*, 27 FCC Rcd. 6656, 6673 ¶ 33.

each year. While Joint Commenters support reform measures to ensure support is being properly used, this and similar requirements necessarily affect the cost of providing service, and also result in the annual de-enrollment of some subscribers that likely continue to meet Lifeline eligibility guidelines.

Fortunately, however, in Kentucky and other states with additional low income support, state funds enable competitors to offer options not available in states without similar support. As an example, Telrite believes it was the first ETC in Kentucky to provide its Lifeline customers with an Android-based smartphone instead of the basic "flip-phone" handset typical among other wireless ETCs, a practice that continues today. The Wi-Fi capability of such a device may provide the first on-ramp to the Internet for many low income customers. But owing to the additional state Lifeline support available in Kentucky, Telrite added some 3G data service to its Kentucky offering. This enhancement was unique to Kentucky. Since Telrite enhanced its Kentucky plan, i-wireless and Airvoice have begun providing Wi-Fi-enabled devices as a standard feature of their Lifeline offerings. Even when Internet access is enabled through something as modest as a smartphone, it can provide a vital communications connection for a low income customer. As Consumers Union told the FCC last year, "For many vulnerable populations, including rural consumers, low-income consumers, and consumers living in communities of color, a mobile device is the first – and sometimes the only – means to access the Internet."[15] Enhanced Lifeline benefits like Wi-Fi-enabled smartphones complement efforts to deploy public broadband in low income neighborhoods, like the Louisville Metro initiative to

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[15] *See* Comments of Consumers Union, WC Docket No. 11-42 et al. (filed August 31, 2015) (available at http://apps.fcc.gov/ecfs/document/view?id=60001223332).

provide free Wi-Fi-based Internet access to residents of western Louisville at two of the busiest bus stops on Market Street.[16]

This connection can be especially important to allow folks to stay in touch with family, friends, doctors and the like and, no less importantly, can be an important link to aid those looking for work. As an example, one service linking job seekers with hourly jobs – SnagAJob at http://www.snagajob.com/ launched cell phone apps to aid job seekers and now receives the great majority of its applications via those cell phone apps. Even with limited data available, having a "smart phone" that can access the internet via Wi-Fi (which is available at many locations including public libraries, fast food restaurants and stores such as Walmart) gives many Kentucky Lifeline subscribers critical contact with the greater world.

In addition, the competition among ETCs has increased the number of service options available to low income customers. Some providers offer voice-only options, others provide a mix of voice and text services, and there has been a general trend toward increasing numbers of voice minutes available in connection with Lifeline plans. Other innovative plans include rollover minutes for Lifeline. At least two ETCs participating in Kentucky Lifeline provide 500 minutes of voice usage per month to new users, which is 150 minutes more per month than the largest wireless ETC in the state that does not participate in Kentucky Lifeline.

[16] https://louisvilleky.gov/news/mayor-announces-more-free-wi-fi-part-west-louisville-neighborhood

### C. The Commission previously adjusted contribution amounts necessary to maintain the $3.50 monthly support and should do so again while evaluating Kentucky's Lifeline program.

Since it began the Lifeline program in 1998, the Commission has periodically seen the need to adjust the monthly end user charge to meet the changing needs of the fund. None of those changes was large, and none drew objection. The Commission is considering a mere six cent increase to a charge that has held constant for eleven years. That modest increase would not drastically change overall monthly telecommunications expenses for consumers and would be comparable to other increases (and decreases) the Commission has directed in the past eighteen years. Moreover, average prices for wireless service have declined dramatically since the customer charge was last changed. In 2004, the average monthly revenue per active wireless customer was $52.54. By 2014, that amount had declined by almost six dollars per month, to $46.64.[17] To put things in perspective, a six cent increase in an average wireless customer's monthly bill equates to an increase of approximately 0.0013%. In light of the overall decline in the price of wireless service, this nominal change needed to preserve the Kentucky Lifeline program at current levels is inconsequential.

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[17] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 13-135, *Eighteenth Report*, Table II.D.i (available at: https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1487A1.pdf).

## II. REDUCING SUPPORT FOR LOW INCOME TELECOMMUNICATIONS PROGRAMS MAY UNDERMINE THE COMMISSION'S STATED GOAL OF MAINTAINING UNIVERSAL SERVICE IN KENTUCKY

### A. A flash cut reduction in support may drive additional ETCs from Kentucky.

Against the backdrop of new Lifeline compliance requirements adopted in 2012 by the FCC, some ETCs have made the business decision to no longer participate in Lifeline programs and focus instead on competing in the broader, unsubsidized consumer market. Some of the largest carriers serving Kentucky have curtailed or eliminated Lifeline participation nationwide.[18]

One reason is the costs of regulatory compliance, which effectively reduce the value of state and federal support. As AT&T has explained to the FCC, regulatory costs for the Lifeline program combined with enforcement risks "can be a powerful deterrent to participation from a diverse range of providers."[19] The high administrative expenses associated with Lifeline reform have been noted by the FCC itself, which estimated in 2013 that ETCs would spend more than $624 million in administrative costs to comply with federal Lifeline program requirements.[20]

Among these program requirements affecting cost of service are those related to determining Lifeline eligibility. The FCC has said Lifeline providers face "significant" administrative burdens in verifying eligibility under its new rules.[21] As examples, carriers are

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[18] AT&T Mobility, Verizon Wireless, and Cricket Communications are examples of ETCs no longer offering Lifeline Service in Kentucky.

[19] Comments of AT&T, WC Docket No. 11-42 et al., p. 6 (filed August 31, 2015) (available at http://apps.fcc.gov/ecfs/document/view?id=60001223321).

[20] *See* FCC Paperwork Reduction Act Supporting Statement, 3060-0819 (October 2013), (available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201410-3060-011).

[21] *Lifeline Reform FNPRM*, ¶ *88.*

responsible to review applications and supporting documents, and must recertify as to the continued eligibility of Lifeline recipients each year.

Those program controls to ensure accuracy come at an unavoidable, worthwhile cost. Verifying eligibility and explaining the Lifeline program often requires a personal, face-to-face, time-consuming approach, including through direct approaches in low income neighborhoods. Not all carriers participate in such programs. But vulnerable populations cannot be reached effectively without them, because changes to the federal Lifeline program intended to reduce waste, fraud and abuse have also made it harder for low income applicants to understand and complete program documents. Many of the Kentucky ETCs enter low-income areas and use a combination of retail stores and temporary locations near homeless shelters, community kitchens and counseling centers, bringing the necessary hardware to process applications and confirm eligibility. These efforts reach eligible citizens who cannot enroll online (lacking Internet access) or have other issues that would be barriers to enrollment but for face-to-face outreach with an agent trained to explain the program.

In addition, when ETCs consider outreach efforts to more vulnerable populations, they do so knowing the reality that "eligible customers may struggle to complete an application due to lack of literacy or language skills."[22] Many eligible consumers cannot complete the Lifeline application process without access to scanners and photocopiers.[23] As a result, successful

[22] *Lifeline Reform FNPRM, ¶ 205* (citing GAO, *Telecommunications: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program,* GAO-15-335, at 28 (Mar. 2015).
[23] *Id.* ¶ 120.

completion of the application process requires direct human interaction and assistance, imposing labor costs beyond what carriers may experience when providing traditional wireless services.

Kentucky's existing state Lifeline subsidy provides significant incentive for ETCs in Kentucky to go the extra distance to promote universal service goals. A reduction in state Lifeline subsidies may make it uneconomical for the remaining ETCs to continue their targeted outreach efforts and could further decrease the number of ETCs willing to serve Lifeline customers in Kentucky.

### B. Reducing state support will reduce incentives to promote outreach to rural Kentuckians eligible for Lifeline

Kentucky's low income population is distributed statewide, but participation rates vary widely. When participation rates are categorized by Kentucky Congressional district, it is apparent that universal service goals of the Kentucky low income program are not being met in many rural areas of the state:

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| KY01 | KY | Ed Whitfield (R-KY) | 32,161 | 27.09% |
| KY02 | KY | Brett Guthrie (R-KY) | 32,759 | 33.11% |
| KY03 | KY | John A. Yarmuth (D-KY) | 52,928 | 51.68% |
| KY04 | KY | Thomas Massie (R-KY) | 30,893 | 33.78% |
| KY05 | KY | Harold Rogers (R-KY) | 82,772 | 57.36% |
| KY06 | KY | Andy Barr (R-KY) | 38,538 | 31.92% [24] |

As the data shows, in District 3, which includes Louisville, the current participation rate is slightly more than half of those eligible. The rate is similar in District 5. But the percentage of *eligible* Kentuckians actually participating is only 27% in District 1. There may be many factors that influence these outcomes. Some communities with significant low income populations may be beyond the coverage areas of one or more ETCs providing wireless service.

[24] *February 12 USAC USF Report.*

But if there are challenges to reaching eligible Kentuckians, reducing state support can only make such matters worse.

## III. CONCLUSION

The Commission must choose between sharply reducing its support of the most economically vulnerable Kentuckians and making a very modest, if not inconsequential, increase in user fees to promote universal service. While the Commission gathers data to inform its longer term plans to meet Universal Service Fund goals, it should first act to maintain current support levels for the Kentucky Lifeline program, by adding six cents to the monthly end user charge that funds Kentucky's Lifeline program.

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 February 22, 2016 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 February 22, 2016; 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 February 22, 2016.

I further certify that I am the authorized agent for the entities filing these Joint Comments and possess the facilities to receive electronic transmissions.

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Douglas F. Brent