

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>AN INQUIRY INTO THE STATE UNIVERSAL</b>	)	<b>CASE NO.</b>
<b>SERVICE FUND</b>	)	<b>2016-00059</b>

**JOINT COMMENTS OF AIR VOICE WIRELESS LLC, AMERIMEX COMMUNICATIONS CORP. D/B/A SAFETYNET WIRELESS, BOOMERANG WIRELESS, LLC, I-WIRELESS LLC, READY WIRELESS, SI WIRELESS LLC AND TELRITE CORPORATION**

Air Voice Wireless LLC, Amerimex Communications Corp. d/b/a SafetyNet Wireless, Boomerang Wireless LLC, i-Wireless LLC, SI Wireless LLC and Telrite Corporation (collectively “Joint Commenters”) by their undersigned counsel, hereby submit their response to the Commission’s request for comments on the four issues identified in its Order of May 20, 2019.

**Effects of Elimination of “Rate Floor” on Price of Landline Lifeline Service**

Joint Commenters are wireless service providers, do not provide wireline service, and therefore are not in the best position to predict the response of Kentucky’s wireline Eligible Telecommunication Carriers. Rural local exchange carriers (“RLECs”) to whom the Federal Communications Commission’s (“FCC”) rule applied are better positioned to address this issue. The FCC in its Order noted that the rate floor created “a perverse incentive for carriers to raise local rates, harming consumers in rural areas and making telephone service less affordable.”<sup>1</sup> It further noted that with the elimination of the rate floor “prices in competitive areas can freely adjust to competitive levels.”<sup>2</sup> It is clear that the elimination of the rate floor creates more flexibility for RLECs to lower their prices for non-basic service in Kentucky. If RLECs that are

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<sup>1</sup> *In the Matter of Connect America Fund*, FCC 19-32, 2019 FCC Lexis 890 at \*12 (Apr. 15, 2019).

<sup>2</sup> *Id.* at \*20.

ETCs continue to apply Lifeline support as a rate reduction, the price of landline Lifeline service might be reduced.

### **Factors Contributing to the Declining Number of Landline Lifeline Customers**

The decline in landline Lifeline customers corresponds to the general decline in residential fixed services as customers have migrated to mobile voice services.<sup>3</sup> AT&T Kentucky has noted that Kentucky consumers in general and Kentucky Lifeline consumers in particular “overwhelmingly prefer modern wireless services to legacy landline line service.”<sup>4</sup> Between 2005 and 2015, AT&T Kentucky saw the number of its legacy ILEC residential landline customers decrease by 62 percent.<sup>5</sup> Between 2008 and 2017, its Lifeline subscribership declined by approximately 91 percent.<sup>6</sup> The Commission noted this occurrence when permitting AT&T Kentucky to relinquish its ETC status last year.<sup>7</sup>

This preference for wireless service is likely greater among low income customers eligible for Lifeline service. National surveys conducted by the Centers for Disease Control show that adults living in poverty and near poverty are more likely than higher income adults to be living in households with only wireless telephones.<sup>8</sup> In his testimony in this proceeding, Charles Campbell explained this occurrence:

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<sup>3</sup> The Centers for Disease Control report that in the period from January-June 2015 to January-June 2018 the percentage of households with wireless-only service has increased from 47.4 percent to 54.9 percent and landline without wireless has decreased from 7.6 percent to 5.4 percent. Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2018* (National Center for Health Statistic Dec. 2018) at 5, available at <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201812.pdf> (last visited June 18, 2019).

<sup>4</sup> AT&T’s Comments on Rehearing at 3 (filed May 10, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> AT&T Kentucky’s Response to the Wireless ETCs First Request for Information, Item 2 (filed Feb. 21, 2018 in *Petition of AT&T Communications for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas*, Case No. 2017-00416 (Ky. PSC filed Oct. 20, 2017)).

<sup>7</sup> *Petition of AT&T Communications for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas*, Case No. 2017-00416 (Ky. PSC Mar. 23, 2018) at 2 (noting that AT&T’s “wireline residential customer base, which includes wireline Lifeline subscribers, has decreased substantially because customers are replacing wireline service with wireless and voice over Internet protocol services.”).

<sup>8</sup> Blumberg and Luke, *supra*, at 2.

The benefits of mobility certainly extend to low income individuals, especially those looking for better employment. And some low income customers have no other option than wireless service. Many poor people are homeless. They do not have a fixed address where they could obtain wireline services. Also, the FCC rules allow only one Lifeline account per household. Even if they have a home, given the choice, qualified low income customers increasingly choose mobile services over a landline. Also, the initial costs of establishing wireless service compare favorably to the costs and potential delays of installing fixed service.<sup>9</sup>

The declining number of landline Lifeline customers can also be attributed to recent legislation to further deregulate the retail telephone industry in Kentucky. In 2015, the Kentucky General Assembly enacted KRS 278.5435, which deregulated basic local exchange service statewide, except for exchanges with fewer than 15,000 housing units. In 2017, it enacted Senate Bill 10,<sup>10</sup> which removed the rural exception and prohibits the Commission from regulating the availability of “landline facilities necessary to provide basic local exchange service”<sup>11</sup> or imposing “any requirements or other regulate the terms, conditions, rates or availability of any retail service of the modifying utility.”<sup>12</sup>

The practical effect of Senate Bill 10 is to permit carriers to cease the installation of “landline” service, even in rural areas, and to fill new service orders using other voice technology, including wireless. Furthermore, by stripping the Commission of its authority to impose any obligation on a carrier to provide retail service, Senate Bill 10 permits a carrier to cease providing Lifeline service.<sup>13</sup> Shortly after Senate Bill 10 became effective, AT&T Kentucky, the state’s largest wireline carrier, relinquished its ETC status.<sup>14</sup> It advised the

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<sup>9</sup> Direct Testimony of Chuck Campbell at 4 (filed March 7, 2016).

<sup>10</sup> 2017 Ky. Acts. Ch. 43.

<sup>11</sup> KRS 278.5435(4)(b).

<sup>12</sup> KRS 278.5435(3)(a).

<sup>13</sup> Federal law presents no obstacle to such action in competitive exchanges. 47 U.S.C. §214(e)(4) permits carriers in competitive exchanges to withdraw as ETCs upon notice to a state commission.

<sup>14</sup> *Petition of AT&T Communications for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas*, Case No. 2017-00416 (Ky. PSC filed Oct. 20, 2017).

Commission that wireless carriers were effectively replacing its services and noted that they “are meeting the needs of Lifeline eligible customers in the relinquishment area.”<sup>15</sup>

**Factors Contributing to the Decline in Requests for Payment  
from the Kentucky Universal Service Fund (“KUSF”)**

A likely factor in the decline of requests for payment from the KUSF is the FCC’s proposal to exclude wireless resellers from participating in the federal Lifeline program.<sup>16</sup> This proposal has been widely criticized not only by resellers, but by wireless licensees, public interest groups, and state commissions.<sup>17</sup> Issued in December 2017, the proposal represented an existential threat to many wireless ETCs and likely discouraged them from continuing targeted outreach efforts to the poor. It may have also decreased the number of ETCs willing to serve Lifeline customers, including in Kentucky.<sup>18</sup> The decrease in requests for disbursements from the KUSF mirrors a similar decrease in disbursements from the Federal Lifeline Program, which in 2018 fell 10.5 percent from 2017 levels and 25.6 percent from 2016 levels.<sup>19</sup>

Other factors may also have contributed to the decline in requests for reimbursement. For example, the unemployment rate in Kentucky has fallen from 5.2 percent in January 2016 to four percent in April 2019.<sup>20</sup> As a result some previous eligible customers have found employment and been able to migrate from Lifeline services to standard retail offerings.

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<sup>15</sup> *Supra*, Note 6.

<sup>16</sup> See *Bridging the Digital Divide for Low-Income Consumers*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10498-10500 (2017).

<sup>17</sup> The FCC’s proposal to exclude wireless resellers from Lifeline appears questionable in light of a recent D.C. Circuit Court of Appeals decision, *Nat’l Lifeline Ass’n v. FCC*, 915 F.3d 19 (D.C. Cir. 2019), in which the Court rejected as arbitrary and capricious the FCC’s decision to exclude resellers from providing Lifeline service on Tribal lands.

<sup>18</sup> See generally Wireless ETCs Joint Motion for Reconsideration at 11 (filed Mar. 31, 2017) (discussing how existing subsidies provide incentives for ETCs to promote Universal Service goals).

<sup>19</sup> *Universal Service Contribution Methodology*, Notice of Proposed Rulemaking, WC Docket No.06-122, FCC 19-46 (May 31, 2019) at 5.

<sup>20</sup> Bureau of Labor Statistics, Local Area Unemployment Statistics (Kentucky), available at [https://data.bls.gov/timeseries/LASST210000000000003?amp%253bdata\\_tool=XGtable&output\\_view=data&include\\_graphs=true](https://data.bls.gov/timeseries/LASST210000000000003?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true) (last visited June 16, 2019).

## Modification of March 10, 2017 Order to Support Voice-Only Lifeline Offerings of Wireline and Wireless Carriers

The record of this proceeding contains no support for a policy that favors one class of ETCs over another for the purpose of KUSF support.<sup>21</sup> As a legal matter, the KUSF should be technology neutral.<sup>22</sup> As a policy matter, the Joint Commenters believe the Commission should modify its earlier Orders and make clear that KUSF support is available for any ETC providing voice services, even if the ETC *also* provides any broadband service mandated by the FCC for ETCs. Finally, both the collection and distribution of KUSF funds should be competitively neutral. Providers that do not support KUSF (*i.e.* by remitting the KUSF surcharge from non-Lifeline subscribers in the state) should not expect to draw support from it.

### Conclusion

Events since the Commission's issuance of its Order of March 10, 2017 have significantly altered the regulatory landscape upon which the Commission based its decision. Under present conditions in which the KUSF has adequate funds to continue support for poor Kentuckians, demand for wireline Lifeline service has declined, and eligible Lifeline subscribers have demonstrated an increasing preference for wireless service, the Commission should modify its Order of March 10, 2017 to make KUSF support available to the Lifeline offerings of wireline **and wireless** carriers that include voice service as part of any offering required by the FCC.

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<sup>21</sup> See, e.g., Wireless ETCs Joint Motion for Reconsideration at 7-9; AT&T's Petition for Rehearing at 1-2 (filed Apr. 3, 2017); Comments of CTIA in Response to the Commission's March 10, 2017 Order at 6-8 (filed Apr. 3, 2017).

<sup>22</sup> See 47 USC § 253(b) (providing that states may impose requirements that preserve and advance universal service on a "competitively neutral basis"); 47 USC § 254(f) (providing that a state may adopt regulations to preserve and advance universal service that are not inconsistent with FCC universal service rules); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8876 at ¶ 47 ("Universal service support mechanisms should be competitive neutral. In this context, competitive neutral means that universal support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another.").

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Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

In accordance with 807 KAR 5:001, Section 8, I certify that the Joint Commenters' 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 Public Service Commission on June 18, 2019; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that on or before June 20, 2019 this Response in paper medium will be delivered to the Public Service Commission.



Gerald E. Wuetcher