

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**ATTORNEY GENERAL’S COMMENTS REGARDING COMMISSION’S ORDER
DATED MAY 20, 2019**

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and hereby tenders the following comments regarding the Kentucky Public Service Commission (“Commission”)’s Order dated May 20, 2019 (“Order”) in the above-styled matter.

A. Background

In 1985, the Federal Communications Commission (“FCC”) established the Lifeline Assistance Program to insure that low-income consumers had access to affordable landline telephone service.¹ In so doing, the FCC recognized that “[a]ccess to telephone service has become crucial to full participation in our society and economy” and that “an increase in fixed charges for telephone service” could “cause a significant number of subscribers to cancel service.”² Universal Service Funds (“USF”)s were created by the Federal Telecommunications Act of 1996 (“FTA”),³ which provided that “. . . [q]uality services should be

¹ 47 U.S.C.A. §§ 151, 154, 201 and 205. *See also*, *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶ 329 (1997)(“1997 Universal Service Order”), and 47 CFR §54.400 et. seq.

² MTS and WATS Market Structure; and Establishment of a Joint Board; Amendment, Report and Order, 50 Fed. Reg. 939, 941-942 (Jan. 8, 1985). *See also* the FCC’s own description of the Lifeline program, “Since 1985, the Lifeline program has provided a discount on phone service for qualifying low-income consumers to ensure that all Americans have the opportunities and security that phone service brings, including being able to connect to jobs, family and emergency services.” <https://www.fcc.gov/general/lifeline-program-low-income-consumers>.

³ 47 U.S.C.A. § 151, et seq. The FTA also ensured the continuation of the Lifeline Assistance Program.

available at just, reasonable, and affordable rates” and that “[c]onsumers in all regions of the Nation, including low-income consumers . . . should have access to telecommunications and information services.”⁴ In 1997, the FCC revised the Lifeline Assistance Program to apply nationwide and required all eligible telecommunications carriers (“ETC”s) at that time to offer Lifeline service.⁵ The Lifeline monthly discount is provided as a subsidy to ETCs to provide service to low-income customers at a reduced cost. In response to the FTA’s mandate, the Commission in 1998 established the Kentucky Universal Service Fund (“KUSF”).⁶ In doing so, the Commission noted:

“The first principle of the . . . [KUSF] created herein is to ensure that quality service is provided at just, reasonable, and affordable rates. Ensuring that quality service is available to all Kentuckians at reasonable rates has been a primary goal of this Commission since its inception.”⁷

As the Commission’s Order notes, significant changes occurring in the past several years clearly warrant a re-examination of the categories of telecommunications service selected for KUSF reimbursement:

- First, the unmistakable trend in decreasing usage of landlines in favor of wireless service has become more widespread and entrenched.⁸
- Second, the FCC’s 2016 *Lifeline Modernization Order*⁹ created a schedule for the gradual phasing-out of support for Lifeline voice-only service (currently set to terminate Dec.

⁴ 47 U.S.C.A. § 254(b)(1), (3). The USF now provides support for four programs to advance different universal service goals: the Connect America Fund, Lifeline, Schools and Libraries, and Rural Health Care.

⁵ 1997 Universal Service Order, ¶¶ 346, 347.

⁶ Administrative Case No. 360, *An Inquiry Into Universal Service Funding Issues* (Ky. PSC May 22, 1998).

⁷ *Id.*, p. 1.

⁸ Order at p. 2. In addition, data tracked by the U.S. Centers for Disease Control and Prevention confirm the continuation of this trend. National Center for Health Statistics, “*The National Health Interview Survey Early Release Program, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2018*,” <https://www.cdc.gov/nchs/nhis/releases.htm#wireless>.

⁹ In Re: *Lifeline and Link Up Reform and Modernization* (WC Docket No. 11-42), et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016); *see also* 47 C.F.R. § 4.403(a)(2).

1, 2021),¹⁰ and provides that federal Lifeline support will eventually apply only to broadband internet access service, either as a stand-alone service or bundled with voice service. In its Order dated March 10, 2017 the Commission increased the KUSF landline Lifeline subsidy for eligible low-income customers to a maximum of \$7.50 to match on a cent-for-cent basis the amount of the federal Lifeline support decrease due to the pending federal phase-out.¹¹

- Third, in order to further protect landline Lifeline customers, the Commission on May 1, 2017 eliminated the KUSF wireless Lifeline subsidy.
- Fourth, nearly one year after proposing the phase-out of federal Lifeline support for voice-only service, the FCC in a 2017 Notice of Proposed Rulemaking (“NPRM”) began to express second thoughts regarding its phase-out of the federal support for Lifeline voice-only service.¹² However, it appears that the potential for a reduced or eliminated phase-out is now facing an uncertain future, as a federal court just recently remanded that NPRM to the FCC for further review.¹³
- Last, on May 31, 2019 the FCC issued a NPRM in its Universal Services Contribution Methodology proceeding.¹⁴ This 2019 NPRM proposes, *inter alia*, to adopt a cap on

¹⁰ Lifeline support for voice service is scheduled to decrease from \$9.25 per month to \$7.25 per month as of December 1, 2019, then decrease by another \$2.00 to \$5.25 per month as of December 1, 2020, and after December 1, 2021 Lifeline support for voice service will be zero.

¹¹ By Order dated April 20, 2017, the Commission stayed the enforcement of its March 10, 2017 Order, in order to determine the effect that enactment of Senate Bill 10 (2017 Ky. Acts Ch. 43), which amended portions of KRS 278.5435, would have on the Commission’s decision to limit KUSF solely to landline Lifeline customers.

¹² In Re: *Bridging the Digital Divide for Low-Income Consumers*, (WC Docket No. 17-287), et al., Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475 ¶¶ 75-76 (2017) (*Bridging the Digital Divide for Low-Income Consumers*); review granted, order vacated sub nom. *National Lifeline Ass’n v. Federal Communications Comm’n*, 915 F.3d 19 (2019), withdrawn from bound volume, opinion amended and superseded, 921 F.3d 1102 (D.C. Cir. 2019), remanded to FCC for new notice-and-comment rulemaking proceeding.

¹³ *National Lifeline Ass’n v. Federal Communications Comm’n*, 921 F.3d 1102 (D.C. Cir. 2019).

¹⁴ WC Docket No. 06-122.

the overall size of the USF, together with protocols for allocation of support among the four USF programs in the event changes in demand for universal service support and costs increase. In light of the fact that funding levels of the federal Lifeline program could soon change, it becomes even more imperative for the Commission to insure that ETCs with landlines in Kentucky can receive the KUSF share of Lifeline funding in order to incentivize them to retain landlines in operable condition.

B. Commission's Requests for Comments

1. The Effect the FCC's Elimination of the "Rate Floor" Will Have on the Price of Landline Lifeline service.

The Attorney General agrees with the FCC 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.”¹⁵ Ratepayers, particularly those in vulnerable populations such as low-income and elderly, should not be subjected to regulatory regimes incentivizing endless rate increases. The elimination of this “perverse incentive” should allow Kentucky RLECs to reduce rates. The Attorney General also agrees with the comments of the Wireless Joint Commenters,¹⁶ and those of the Exchange Carriers¹⁷ that if those RLECs that are also ETCs continue to apply Lifeline support as a rate reduction, the price of Lifeline service could be reduced, especially for landline Lifeline customers in rural areas.

2. Factors Contributing to the Decline in the Number of Landline Lifeline Customers and Whether the Trend is Expected to Continue.

¹⁵ In Re: *Connect America Fund*, WC Docket No. 10-90, FCC 19-32, 2019 WL 1651224 (F.C.C.)(April 15, 2019), p. 3.

¹⁶ Comments of Wireless Joint Commenters, filed June 18, 2019, at pp. 1-2.

¹⁷ Comments of Exchange Carriers, filed June 18, 2019, at p. 4.

The Attorney General agrees with the Wireless Joint Commenters, and the Exchange Carriers that the decided trend away from wireline to wireless and broadband-IP is frequently part and parcel of mere consumer preference.¹⁸ In other instances, however, many Lifeline providers have obtained the FCC’s multi-state ETC designation, thus foregoing the right to draw from the KUSF¹⁹ in order to concentrate on broadband or other USF goals.²⁰ Furthermore, many carriers have simply abandoned their landline business.²¹

The Commission should also carefully note that the Exchange Carriers have experienced a lower rate of potential customers qualifying for Lifeline service since the implementation of standardized verification of Lifeline eligibility through the Universal Service Administration Company (“USAC”), rather than the previous regime of local verification. As the Exchange Carriers note, “. . . it is possible many Lifeline eligible customers have been intimidated by the enhanced USAC recertification process, including the transition to the Lifeline National Eligibility Verifier, which has led to them failing to submit the required information and losing their Lifeline eligibility.”²²

3. Factors Contributing to the Decline in Requests for Payments from the KUSF Since the Commission stayed the March 10, 2017 Order.

As the Exchange Carriers point out, many of the same factors identified in the Commission’s second request for comment are similarly applicable here: the general decrease

¹⁸ See, e.g., Comments of Exchange Carriers, filed June 18, 2019, at p. 5.

¹⁹ *Id.* at p. 6.

²⁰ See footnote 4, *supra*.

²¹ See, e.g. *Petition of AT&T Communications for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas*, Case No. 2017-00416 (Ky. PSC, Final Order dated March 23, 2018).

²² Comments of Exchange Carriers, filed June 18, 2019, at p. 6. The Carriers further note that potential subscribers frequently find it difficult to navigate the on-line Lifeline National Eligibility Navigator since it requires customers to scan and upload documents – *which they are unable to do due to lack of internet service.* *Id.* at p. 7.

in demand for wireline service, fewer customers obtaining eligibility for Lifeline support, and more customers migrating to broadband-only services.²³ Moreover, the FCC's proposal to exclude wireless resellers from participating in the federal Lifeline program has doubtlessly had a similarly chilling effect.²⁴ This proposal likely also dis-incentivized some ECTs from providing Lifeline service in the Commonwealth.²⁵

4. Potential for the Commission to Vacate or Modify its March 10, 2017 Order so that the KUSF Would be Available for Support of Voice-Only Lifeline Offerings for Wireline and Wireless Carriers.

The Attorney General believes that given the issues landline carriers participating in the KUSF are facing -- decreasing customer counts, technology and consumer preference changes driving the market toward increased adoption of wireless services, and highly uncertain support from the federal Lifeline program -- the Commission must take actions to protect these carriers' ability to continue participating in the KUSF. Without such support, many of the approximately 8,800 landline participants²⁶ in the KUSF will lose their only ability to have two-way communications with others, including access to emergency services, employers, and family members. Unlike many if not most states, the Commonwealth faces many obstacles preventing the rapid adoption of new communications technologies. Those obstacles include, but are not limited to mountainous topography in the eastern part of the state that hinders transmission of wireless radio waves, and also hampers maintenance of aging landlines. In addition, Kentucky's very high poverty rate means that even if many

²³ Comments of Exchange Carriers, filed June 18, 2019, at pp. 7-8.

²⁴ See Comments of Wireless Joint Commenters, at p. 4 (*citing, Bridging the Digital Divide for Low-Income Consumers, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, supra* at note 12.)

²⁵ *Id.*

²⁶ Order, p. 2.

existing landline customers live in areas that do have access to newer communications technologies, they still may be unable to *afford* such a change. Further, it just so happens that the geographical location of many of the remaining approximately 8,800 landline customers *overlaps* with both the highest poverty rates in the state, and the most difficult topography. Facing these multiple challenges, and especially in light of the highly uncertain future of the federal landline Lifeline program, it is abundantly clear that the Commission simply *must* do whatever it can to protect the ability of Kentucky's remaining landline KUSF participants to remain in a viable program with meaningful levels of reimbursement to carriers.

The Commission's March 10, 2017 Order increases the level of KUSF support for landline Lifeline service to a maximum of \$7.50, thus increasing the support level on a cent-for-cent basis on the same timeline as the decrease of federal support for landline Lifeline service. The Attorney General encourages the Commission to lift the stay on its March 10, 2017 Order to allow this funding formula to proceed. Otherwise, the remaining Kentucky landline Lifeline users will face a critical lack of communications capability.

At some point in time, however, it is abundantly clear that wireless and broadband service will eventually supplant landline technology, the latter of which is rapidly reaching obsolescence. The Attorney General is also aware that wireless technology is rapidly evolving to enhance the ability of radio wave transmission to reach through mountainous terrain. The Commission has heretofore demonstrated its ability to modify KUSF support levels to meet the needs of all Kentuckians, and the Attorney General encourages it to continue doing so. Until such time as cost-effective wireless and/or broadband communications capabilities can be deployed state-wide, the Attorney General therefore encourages the Commission to

maintain KUSF funding at levels adequate for landline ETCs to maintain their facilities in operable condition.

Respectfully submitted,
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Certificate of Service and Filing

Counsel certifies that the foregoing is a true and accurate copy of the same document being filed in paper medium with the Commission within two business days; that the electronic filing has been transmitted to the Commission on June 20, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 20th day of June, 2019.



Assistant Attorney General