

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 ON
REHEARING OF THE COMMISSION’S ORDER**

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and tenders the following Comments on the above-styled in compliance with the Commission’s Order of April 20, 2017. The Attorney General urges the Commission to reconsider its March 10, 2017 Order and adopt a solution that can better adapt to the changing availability in service and the needs of the populations served by the Kentucky Universal Service Fund (“KUSF”).

I. STATEMENT OF THE CASE

The Public Service Commission (“Commission”), on its own motion, initiated an investigation into the KUSF on February 1, 2016. The Commission’s Order initially joined as a party each local exchange carrier, commercial mobile radio service provider, every eligible telecommunications carrier (“ETC”) in Kentucky, and the Attorney General’s Office.¹ In addition to addressing the approaching insolvency of the KUSF, the issues to be reviewed were identified as: “the need for continuing the KUSF; future funding levels of KUSF; the possibility of reducing the amount of KUSF support on a permanent basis; past and projected distributions from the KUSF; and, determining the future practices for requesting and receiving support from the

¹ Order, Case No. 2016-00059 (Ky. PSC Feb. 1, 2016).

KUSF.”² After issuing and receiving answers to a number of data requests, the Commission issued a Final Order in the case on March 10, 2017. The March 10, 2017 Order concluded that the KUSF “cannot continue in its current form,” in part because of the large demand by customers receiving KUSF support for wireless service over traditional landline.³ The Commission also considered the recent updates made to the federal Lifeline program and other FCC regulations that implement a slow phasing out of landline service in favor of wireless and broadband coverage.⁴ As a result, the Commission elected to end KUSF support for wireless customers and shift support solely to the approximately 17,000 customers receiving KUSF support for landline telephone services.⁵ The Commission’s primary concern in its Order seemed to be for rural and elderly customers who could be affected by the federal Lifeline program’s shift to wireless and broadband coverage.

As a result of the Commission’s Order, three separate petitions for rehearing were filed pursuant to KRS 278.400. CTIA also filed Comments on the Commission’s Order expressing serious concern with the decision to end wireless KUSF support, specifically highlighting the growing adoption of wireless service in Kentucky and nationwide.⁶ The Joint Motion for Reconsideration filed on March 31, 2017 also referenced an important development in Kentucky telecommunications law that occurred after the Commission’s Order was issued on March 10, 2017.⁷ On March 20, 2017, Governor Bevin signed 2017 Senate Bill 10, changing the telecommunications landscape in ways that could not have been considered during the pendency of this case.⁸ In response, the Attorney General filed Comments in Support of Rehearing,

² *Id.* at 1.

³ Order, Case No. 2016-00059 (Ky. PSC March 10, 2017).

⁴ *Id.* at 8-9.

⁵ *Id.*

⁶ Case No. 2016-00059, Comments of CTIA in Response to the Commission’s March 10, 2017 Order at 1-2 (Ky. PSC April 3, 2017).

⁷ Case No. 2016-00059, Joint Motion for Reconsideration at 1-2 (Ky. PSC March 31, 2017).

⁸ *Id.*

identifying concerns regarding the effect of changing telecommunications landscapes on the Commission's March 10, 2017 Order.⁹ On April 20, 2017, the Commission granted rehearing solely on the impact of Senate Bill 10 on the Commission's decision to limit KUSF support to landline services.¹⁰ The Commission instructed parties to file testimony, comments, or briefs on the impact of Senate Bill 10 on the Commission's March 10, 2017 Order and stayed the Order pending further Order of the Commission.¹¹ In response, the Attorney General provides the following information on the impact of Senate Bill 10 on the Commission's Order.

II. COMMENTS

On March 20, 2017, Governor Bevin signed Senate Bill 10.¹² The intent of the legislation was to end Commission regulation of basic local exchange services. As part of the deregulation, the Commission will no longer ensure that service will be available to all households via traditional landline service.¹³ Although current landline customers will not be forced to give up that service, carriers no longer have to offer traditional landline service to new customers. Additionally, it is likely that most landline customers will eventually move away from traditional landline – in some cases literally. If a current landline customer moves, a carrier is not obligated to continue providing traditional landline services at the new residence. Current landline customers may also be enticed away from that service by the availability of more affordable wireless or internet-based service. In the event that a current landline customer is incentivized to switch to a wireless or internet-based service, carriers have no obligation to support a switch back to traditional landline service in the future if customers change their minds. The legislation takes effect on September 1, 2017. Once

⁹ Case No. 2016-00059, AG's Comments in Support of Rehearing (Ky. PSC April 11, 2017).

¹⁰ Case No. 2016-00059, Order (KY. PSC April 20, 2017) at 6.

¹¹ *Id.*

¹² 2017 Ky. Acts Ch. 43.

¹³ <http://www.lrc.ky.gov/record/17RS/SB10.htm>.

the legislation becomes effective, it seems likely that the availability of landline services will more rapidly diminish in favor of newer technology as carriers shift their focus into more lucrative market segments.

Without regulation requiring them to make landline services available, carriers are free to follow market trends that show a declining interest in landline service. Data collected on user preferences indicate that customers are increasingly switching to cell phones and other mobile devices for telephone services. The increase in disbursements under both the federal Lifeline program and the KUSF after the programs were expanded to include wireless telephone service demonstrates that landlines are not a practical choice for many people who need help accessing phone service.¹⁴ In fact, traditional landlines are no longer the first choice for the majority of households in the United States. The Centers for Disease Control and Prevention (“CDC”) has collected data on wireless telephone usage compared to landline telephone usage for over 10 years.¹⁵ Over that time, cell phone use has steadily increased and shows no signs of plateauing in the near future.¹⁶ In an early release of the estimates of the National Health Interview Survey for the period of July to December 2016, a majority of American households were served only by a wireless phone for the first time.¹⁷ The preliminary survey results indicated that 50.8 percent of homes did not have a landline phone but did have at least one mobile phone.¹⁸

¹⁴ Order, Case No. 2016-00059 (Ky. PSC Feb. 1, 2016) at 5.

¹⁵ “The National Health Interview Survey Early Release Program,” National Center for Health Statistics, <https://www.cdc.gov/nchs/nhis/releases.htm#wireless> (last accessed March 10, 2017).

¹⁶ Alina Selyukh, “The Daredevils Without Landlines – And Why Health Experts are Tracking Them,” NPR, http://www.npr.org/sections/alltechconsidered/2015/12/03/458225197/the-daredevils-without-landlines-and-why-health-experts-are-tracking-them?utm_source=npr_newsletter&utm_medium=email&utm_content=20170507&utm_campaign=&utm_term (last accessed March 10, 2017).

¹⁷ “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2016,” National Center for Health Statistics, <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf> (last accessed March 10, 2017) at 1.

¹⁸ Importantly, the National Health Interview Survey does not distinguish between traditional landline services and internet-based services. Both are included in the same “landline” category as an alternative to mobile phones. See, *Id.* at 1.

The CDC data indicates that Kentucky is fairly representative of national figures. Just over half of the households in the state are served only by wireless service. Less than ten percent are served solely by landlines or internet-based landline services, such as VoIP. The rest are served by some combination of the two.¹⁹ Importantly, the Survey provides information on the demographics of customers using each type of service. Although the Survey collects data on households with wireless-only, landline-only, and those served by both wireless and landline phones, it is the first two categories which are particularly relevant to the current case. Households qualifying for KUSF and federal Lifeline subsidies would need to choose either wireless or landline service. The Survey also indicates that lower income demographics were least likely to use both services. The results demonstrate that the most vulnerable populations are increasingly choosing only wireless phone service, even among rural and elderly populations.

According to the data collected, 66.3 percent of adults living in poverty and 59 percent of adults living in near poverty lived in households with only wireless telephones during the second half of 2016.²⁰ Adults living in rented homes were significantly more likely to live in wireless-only households than adults living in a home owned by a member of the household. The gap becomes even more pronounced among adults living in rented homes with unrelated adult roommates.²¹ It is unsurprising that these figures overlap, since home ownership is traditionally a

¹⁹ Kentucky data for the year 2015 indicates that 50.2 percent of households have only wireless service, while eight (8) percent have only landline. 38.2 percent have some combination of landline and wireless service. 3.6 percent of Kentucky households have no telephone service at all. “Table 1. Modeled estimates (with standard errors) of the percent distribution of household telephone status for adults aged 18 and over, by state: United States, 2015”, National Health Interview Survey Early Release Program, National Center for Health Statistics, https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201608.pdf (last accessed March 10, 2017).

²⁰ “Wireless Substitution,” <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf> at 3.

²¹ 71.5 percent of adults living in rented homes had only wireless telephones, compared to 40.9 percent of adults living in homes owned by a member of the household. 83.7 percent of unrelated adult roommates lived in households with only wireless telephones. *Id.* at 2-3.

marker of financial stability. Additionally, adults living in wireless-only households were also more likely to have experienced financial barriers to needed health care.²²

Although the Commission expressed concern that the rising costs of traditional landline service would leave elderly and rural populations without phone service, the data indicate that those demographics are also changing their phone service. Adults living in the South, which includes Kentucky, were more likely than adults in any other region to live in households with only wireless phones.²³ Although adults living in metropolitan areas were more likely to live in wireless-only households, 47 percent of adults in nonmetropolitan areas lived in wireless-only households as well.²⁴ Similarly, the proportion of adults aged 45 and over using wireless-only service has continuously increased. Currently, almost forty percent of that demographic lives in a wireless-only household. The proportion of wireless-only adults aged 45 and over continued to increase steadily to the most recent figure of 39.7 percent. Although adults between 45 and 64 years of age remain almost twice as likely to live in wireless-only households as those aged 65 and over, the percentage of those aged 65 and over living in wireless-only households has also continuously risen to 23.5%, an increase of 10% in three years.²⁵

Given these trends in both consumer choice and the carriers' expressed desires, it seems inevitable that the adoption of Senate Bill 10 indicates that a final shift will soon occur to wireless and internet-based service. Nationwide, infrastructure has been one of the ongoing problems with maintaining and updating telecommunications services. The struggle of repairing and replacing increasingly obsolete copper based landlines has been ongoing for several years, with utilities

²² *Id.* at 3.

²³ 55.5 percent of adults in the South live in households with wireless-only service. *Id.* at 3.

²⁴ *Id.*

²⁵ *Id.* at 3, 6.

struggling to find both materials and skilled employees for aging infrastructure.²⁶ At the same time, switching to wireless and internet-based phone systems requires its own infrastructure which has not always been available in nonmetropolitan areas.

The KentuckyWired project, administered by the Kentucky Communications Network Authority (KCNA), is one step towards extending that infrastructure into underserved communities.²⁷ Private partnerships are instrumental to constructing the network and should be able to acquire access to the network in order to provide service directly to customers.²⁸ The extension of the network into new territory is likely to encourage a number of providers to expand internet-based phone services as an alternative to continuing to maintain aging landline infrastructure to serve an ever-shrinking group of customers. Given the cost of maintaining the system and the declining customer base to support it, it is debatable whether increased state support for landline customers under KUSF would make a measurable difference in supporting current landline customers, especially as federal support is gradually ended.

If universal service is the true goal of the KUSF, then its long-term planning must take into account the increasing obsolescence of traditional landline phone service. The Commission's Order expressed concerns with recent changes to federal regulations and other market factors which has increased the cost of traditional landline services, particularly in rural areas. The Attorney General shares the Commission's concern that rural populations continue to have access to telephone service. Without guaranteed access to traditional landline service in the future, however, directing the entirety of the KUSF's disbursements to landlines seems unlikely to

²⁶ Martin Kaste, "Is It The End Of The Line For The Landline?", NPR, <http://www.npr.org/sections/alltechconsidered/2013/11/18/246001725/have-we-reached-the-end-of-the-landline> (last accessed March 10, 2017).

²⁷ <http://kentuckywired.ky.gov/about/Pages/kcna.aspx> (last accessed March 10, 2017).

²⁸ <http://kentuckywired.ky.gov/SiteCollectionDocuments/Press%20Release/KYW%20Quick%20Facts%201-20-17.pdf> (last accessed March 10, 2017).

accomplish that goal. As the percentage of people without access to a telephone begins to increase again, it is imperative that we search for a long term solution that will help close the access gap.²⁹

III. CONCLUSION

With the adoption of Senate Bill 10 into state law, it is clear that the General Assembly recognized the continuing trend towards new forms of voice service. As ever-increasing numbers of customers elect to abandon traditional landline service and adopt wireless or internet-based telephone services, many carriers are shifting their focus into new infrastructure and discouraging customers from choosing landline service. Now that basic local exchange service will no longer be regulated, customers may find themselves without a meaningful choice between landline and wireless service. Lifeline customers choosing to retain landline services will also be affected over time by the withdrawal of federal support over the next five years. In attempting to assist these customers, the Commission's March 10 Order creates a short term solution for a continuously evolving problem. Although the Order prevents the nearing insolvency of the KUSF and attempts to fill in the gaps left by the federal program, it cannot adapt with the continuously changing landscape of available service. Without the ability to require carriers to provide basic local exchange service, the Commission may eventually find itself administering a Fund unable to assist the populations it is intended to assist. The Attorney General urges the Commission to reconsider its Order and adopt a more gradual solution that can be reexamined as more information on the needs of the customers served by the KUSF becomes available.

²⁹ "Wireless Substitution," <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf> at 2-3.

Respectfully submitted,

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