In the Matter of:

AN INQUIRY INTO THE STATE
UNIVERSAL SERVICE FUND

CASE NO. 2016-00059

ORDER

The Commission, on its own motion, hereby initiates this administrative proceeding to investigate the current and future funding, distribution, and administration of the Kentucky Universal Service Fund ("KUSF"). The need for this investigation arises from the projected depletion of the KUSF by the end of April 2016, when it will no longer be able to meet its monthly obligation. One of the first issues to be reviewed will be the necessity for increasing the current funding mechanism or reducing the support paid to carriers, on a temporary basis, to maintain KUSF solvency during the pendency of this investigation. Other issues to be reviewed include: 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 KUSF. Each local exchange carrier ("LEC"), commercial mobile radio service provider ("CMRS provider" or "wireless carrier"), and every eligible telecommunications carrier ("ETC") in Kentucky will be made a party to this proceeding, as well as the Attorney General’s Office.
The Commission established the KUSF in Administrative Case No. 360, along with the funding and distribution mechanisms needed to administer the KUSF.\(^1\) The KUSF was created to provide state support for the federal Lifeline\(^2\) program in Kentucky. In initiating the case, the Commission stated that:

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the “Act” or the “1996 Act”), specifically provides for states to adopt mechanisms that preserve and advance universal service. Such mechanisms must be specific, predictable, and sufficient” and must not “burden the federal universal support mechanisms.” The decisions reached herein comply with those principles as well as those enumerated elsewhere in the 1996 Act. The first principle of the Universal Service Fund (“USF”) 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.\(^3\)

The KUSF provides $3.50 per month per Lifeline customer. At the time of implementation of the KUSF, the federal USF provided additional support to an ETC of 50 percent of the state support, up to $1.75 of matching support. At that time, ETCs in Kentucky accepting KUSF support received up to an additional $1.75 per month per Lifeline customer from the federal USF. In 2012, the Federal Communication Commission (“FCC”) subsequently removed the matching support and established the

\(^1\) Administrative Case No. 360, An Inquiry Into Universal Service Funding Issues (Ky. PSC May 22, 1998).

\(^2\) See, generally, 47 C.F.R. § 54.400 et seq.

\(^3\) Administrative Case No. 360, An Inquiry Into Universal Service Funding Issues (Ky. PSC May 22, 1998), Order at 1.
federal Lifeline support at $9.25 per month. Thus, ETCs receiving both federal and state support may receive up to $12.75 per month per Lifeline customer.

The KUSF is funded by a per-access line surcharge collected from all wireless carriers and LECs. The Commission initially established the surcharge at $.05. The Commission, citing changes to the projected cost of the KUSF, subsequently lowered the surcharge to $.03 per access line on November 15, 1999. Citing changes to the projected cost of the KUSF, the Commission raised the surcharge to $.05 on November 17, 2000, and increased it to $.08 on June 3, 2004. The surcharge has remained at $.08 since June 3, 2004.

On February 6, 2012, the FCC issued its Lifeline Reform Order, comprehensively reforming the low-income programs of the federal USF. As discussed supra, the Lifeline Reform Order adjusted the federal USF support to $9.25 and eliminated the matching of state USF support. The Lifeline Reform Order also: amended the eligibility requirements for the Lifeline program; changed the annual audit and recertification procedures for reporting the number of Lifeline customers to the Universal Service Administration Company ("USAC"); and clarified the Lifeline application process. On May 1, 2012, the Commission issued an Order that, inter alia: 1) adopted the FCC’s annual audit and recertification process; 2) adopted the eligibility requirement of


5 Administrative Case No. 360, An Inquiry Into Universal Service Funding Issues (Ky. PSC Nov. 16, 1998).

6 id. (Ky. PSC Nov. 15, 1999).

7 id. (Ky. PSC Nov. 17, 2000).

8 id. (Ky. PSC June 3, 2004).
household income at or below 135 percent of the federal poverty level; 3) adopted the application process in the Lifeline Reform Order; and 4) required ETCs to follow the FCC's rules and direction for annual audits.\(^9\)

The Commission designated the Kentucky Finance and Administration Cabinet ("Finance Cabinet") to administer the KUSF.\(^10\) All wireless carriers and LECs must, on a monthly basis, submit to the Finance Cabinet a form, with a copy to the Commission, showing the amount due from the carrier to the KUSF-calculated by multiplying the total number of access line by the surcharge amount.\(^11\) The carriers remit their payment to the KUSF with the form. The form also contains a line for the number of a carrier's access lines receiving Lifeline support and the requested monthly payment from the KUSF.

The KUSF has declined since mid-2012, and the solvency of the fund is now in jeopardy. The KUSF had a peak monthly surplus of almost $11 million in May 2012. In October 2015, that surplus had dwindled to just over $400,000. Prior to April 2012, the average monthly distribution from the KUSF was approximately $215,000. The average monthly distribution in 2012 after April was approximately $567,400. In subsequent years, the average monthly distribution has been approximately: $612,500 in 2013; $592,400 in 2014; and $557,500 in 2015. The average monthly payments into the KUSF for 2015 averaged approximately $439,400. Therefore, for 2015, the KUSF experienced an average monthly shortfall of approximately $118,000.

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\(^9\) Case No. 2012-00146, Lifeline Reform (Ky. PSC May 1, 2012.)

\(^10\) Administrative Case No. 360, An Inquiry Into Universal Service Funding Issues (Ky. PSC May 22, 1998), Order at 38.

Since its inception, 52 carriers have, at some point, received disbursements from the KUSF.\textsuperscript{12} As discussed earlier, the KUSF had its highest surplus in May 2012, and the surplus began to decrease in the following months. Coincidentally, beginning in April 2012 through the remainder of 2012, eight carriers made their first draw from the KUSF.\textsuperscript{13} Since the beginning of 2013, eight additional carriers have made their first draw from the KUSF.\textsuperscript{14} The majority of the new recipients of the KUSF after May 2012 were Mobile Virtual Network Operators ("MVNO"), but whether or not this is of any significance is not yet known.

The Commission, during this investigation, must first address the pressing need for solvency of the KUSF. The Commission has calculated that to maintain the existing $3.50 reimbursement rate, the current monthly per-line surcharge will need to be increased from $.08 to $.14 as soon as possible, or current support will need to be decreased from $3.50 per line to approximately $2.00 per line as soon as possible. The Commission will seek immediate comment on such action from the parties and the public. The Commission will then enter an interim Order setting forth its findings on the issue of temporarily increasing the KUSF per-line surcharge or reducing the per-line support during the pendency of this proceeding.

The procedural schedule for this proceeding is attached as an Appendix to this Order. That schedule includes dates for requesting intervention, filing testimony,

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\textsuperscript{12} Some of these carriers no longer draw from the KUSF, having either ceased doing business in the Commonwealth or having voluntarily relinquishing their ETC designation.

\textsuperscript{13} These carriers are: 1) Absolute Home Phones, Inc.; 2) Affordable Phone Service; 3) Budget PrePay, Inc. (the wireless entity for Budget PrePay); 4) dPi Teleconnect, LLC; 5) Easy Telephone Services Company; 6) i-wireless, LLC; 7) Cricket Communications; and 8) Tag Mobile, LLC.

\textsuperscript{14} These carriers are: 1) Airvoice Wireless, LLC; 2) AmeriMex Communications Corp.; 3) Blue Jay Wireless, LLC; 4) Boomerang Wireless, LLC; 5) Global Connections Inc. of America; 6) Q Link Wireless, LLC; 7) SI Wireless, LLC; and 8) Telrite Corporation d/b/a Life Wireless.
discovery, and one or more informal conferences. Although all LECs, wireless carriers, and ETCs in Kentucky have been made parties to this proceeding, the Commission recognizes that some of the carriers may not have an interest in this proceeding. For example, carriers that pass the cost of the surcharge onto their customers and do not participate in the Lifeline program, or ETCs that do not receive KUSF support, may not want to participate in this proceeding. Therefore, the Commission will allow each carrier that is not an ETC in Kentucky receiving both federal USF and state support the opportunity to individually or jointly file, within 30 days of the date of this Order, a written request setting forth the reasons why withdrawal as a party is appropriate. The parties to this case are listed in the attached service list. Each carrier that remains a party to this case will be required to individually or jointly file initial testimony in accordance with the schedule in the Appendix.

Each party shall file testimony as directed by this Order. The initial testimony of the carriers and ETCs, and other parties that choose to file testimony, should address, but not be limited to: the need for continuing the KUSF; the possibility of reducing the amount of KUSF support; how to review distributions from the KUSF to determine the accuracy of the distributions; future funding of the KUSF; and future practices for requesting and receiving support from the KUSF, with an emphasis on ensuring the accurate reporting of lines receiving Lifeline support and requested KUSF support.

IT IS THEREFORE ORDERED that:

1. This proceeding is opened to develop a record upon which the Commission can make changes as necessary to the funding, administration, and future of the Kentucky Universal Service Fund.
2. All local exchange carriers in Kentucky, all Commercial Mobile Radio Service Providers in Kentucky, all Eligible Telecommunications Carriers in Kentucky, and the Attorney General's Office are made parties to this proceeding.

3. A person who submits a motion to intervene after February 26, 2016, and upon a showing of good cause is granted full intervention, shall accept and abide by the existing procedural schedule.

4. Unless otherwise provided by Commission Order, any party filing a paper shall comply with the electronic filing procedures set forth in 807 KAR 5:001, Section 8, and shall file with the Commission an original in paper medium and an electronic copy.

5. Responses by parties and comments by the public on the issue of temporarily raising the KUSF per-line monthly surcharge from $.08 to $.14, or decreasing the KUSF support to approximately $2.00 per line, during the pendency of this proceeding shall be filed no later than February 22, 2016.

6. Any other public comments by non-parties shall be in writing and shall be filed prior to any hearing or shall be presented at the hearing.

7. The procedural schedule set forth in the Appendix, attached hereto and incorporated herein, shall be followed.

8. a. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with an original in paper medium and an electronic copy to the Commission.

   b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a
governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Any party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. Any party filing testimony shall comply with the electronic filing procedures set forth in 807 KAR 5:001, Section 8, and shall file with the Commission an original in paper medium and an electronic copy.

f. Any party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

9. Motions for extensions of time with respect to the schedule herein shall be made in writing. Parties are advised that due to the time-sensitive nature of this proceeding, such motions will be granted only upon a showing of good cause.

10. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

11. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.
Responses by parties and comments by the public on the issue of temporarily raising the KUSF per line monthly surcharge from $.08 to $.14, or decreasing the KUSF support to approximately $2.00 per line, during the pendency of this proceeding shall be filed no later than 02/22/2016.

Motions for intervention and any motions from carriers to be removed from this case shall be filed no later than 02/26/2016.

Initial testimony shall be filed individually or jointly by each party no later than 03/07/2016.

Initial requests for information shall be filed no later than 04/06/2016.

Responses to initial requests for information shall be filed no later than 04/27/2016.

An informal conference, beginning at 10:00 a.m. Eastern Daylight Time shall be held at the Commission's offices to address procedural issues and other issues raised in testimony 05/11/2016.

Response testimony by any party shall be filed no later than 06/01/2016.

Supplemental requests for information shall be filed no later than 06/22/2016.

Responses to supplemental requests for information shall be filed no later than 07/13/2016.

Any request for an evidentiary hearing shall be filed no later than To be scheduled.
Francis X Ahearn  
CEO  
BCM One, Inc.  
521 5th Avenue, 14th Floor  
New York, NY  10175  

*Omar Aqel  
Vice President  
PLATINUMTEL COMMUNICATIONS, LLC d/b/a  
8108 South Roberts Road  
Justice, IL  60458  

*John Barnicle  
President  
Airus, Inc.  
840 S Canal Street, 7th Floor  
Chicago, IL  60607  

*Don Aldridge  
CEO  
AmeriMex Communications Corp. dba SafetyNet  
200 Mansell Ct E, Suite 105  
Roswell, GA  30076  

*Issa Asad  
Managing Member  
Q Link Wireless, LLC  
499 East Sheridan Street, Suite 400  
Dania, FL  33004  

*John Barnicle  
President  
Peerless Network of Kentucky, LLC  
222 S Riverside Plaza, Suite 2730  
Chicago, IL  60606  

*Tina Allen  
Senior Compliance Manager  
Easy Telephone Service Company dba Easy  
4352 SE 95th Street  
Ocala, FL  34480  

*Jim Bahri  
CEO  
Air Voice Wireless, LLC  
2425 Franklin Road  
Bloomfield Hill, MI  48302  

*Jeanne Berges  
Vice President and Corporate Counsel  
NetZero Wireless, Inc.  
21255 Burbank Blvd, Suite 400  
Woodland Hills, CA  91367  

*Jeff S Ansted  
President  
American Broadband and Telecommunications  
1 Seagate, Suite 600  
Toledo, OH  43699  

*David Bailey  
VP Business Development  
BullsEye Telecom, Inc.  
25925 Telegraph Road, Suite 210  
Southfield, MI  48033  

*Susan J Berlin  
Counsel, Regulatory Affairs  
Nextel West Corporation  
3065 Akers Mill Road SE, 7th Floor  
Mailstop GAATLD0704  
Atlanta, GA  30339  

*Jeff S Ansted  
President  
American Broadband and Telecommunications  
1 Seagate, Suite 600  
Toledo, OH  43699  

*David Bailey  
VP Business Development  
BullsEye Telecom, Inc.  
25925 Telegraph Road, Suite 210  
Southfield, MI  48033  

*Susan J Berlin  
Counsel, Regulatory Affairs  
NPCR, Inc. dba Nextel Partners  
3065 Akers Mill Road SE, 7th Floor  
Mailstop GAATLD0704  
Atlanta, GA  30339  

*Marcello Anzalone  
CFO  
Touchtone Communications, Inc.  
16 South Jefferson Road  
Whippany, NJ  07981  

*Jim Balvanz  
CFO  
Boomerang Wireless, LLC  
955 Kacena Road, Suite A  
Hiawatha, IA  52233  

*Fernanda H Biehl  
Senior Director, Regulatory Affairs  
Fiber Technologies Networks, LLC  
196 Van Buren Street, Suite 250  
Herndon, VA  20170  

*Marcello Anzalone  
CFO  
Touchtone Communications, Inc.  
16 South Jefferson Road  
Whippany, NJ  07981  

*James T Balvanz  
CFO  
Ready Wireless, LLC  
955 Kacena Road, Suite A  
Hiawatha, IA  52233  

*Carl W Billek  
Senior Regulatory Counsel  
IDT America, Corp.  
520 Broad Street  
Newark, NJ  07102-3111  

*Denotes Served by Email  
Service List for Case 2016-00059
Denotes Served by Email

Service List for Case 2016-00059

Ruth Conley
CEO
Foothills Rural Telephone Cooperative
1621 Kentucky Route 40 W
P. O. Box 240
Staffordville, KY 41256

Terry Corbin
Manager
Wild Telecommunications, Inc.
220 Greenbriar Road
Lexington, KY 40503

Ed Corr
Vice President Tax
CMN-RUS, Inc.
8837 Bond Street
Overland Park, KS 66214

Todd Crandall
CFO
West Kentucky Rural Telephone Cooperative
237 North Eighth Street
P. O. Box 649
Mayfield, KY 42066-0649

Stephen M Crane
Vice President Tax
CMN-RUS, Inc.
8837 Bond Street
Overland Park, KS 66214

Myloc Dinh
Counsel
Total Call Mobile, Inc.
1411 W 190th Street, Suite 650
Gardena, CA 90248

Dee DiCicco
Controller
Global Connection Inc. of America dba Stand Up
5555 Oakbrook Pkwy, Suite 620
Norcross, GA 30093

Jie Cui
Senior Analyst
CTC Communications Corp. db/a EarthLink
225 Cedar Hill Street, Suite 111
Marlborough, MA 01752

Brent Cummings
COO
Communications Venture Corporation db/a
1616 Directors Row
Fort Wayne, IN 46808

Jess DiPasquale
COO
Brent Cummings
Communications Venture Corporation db/a
1616 Directors Row
Fort Wayne, IN 46808

David R Davis
General Manager
South Central Rural Telephone Cooperative
1399 Happy Valley Road
P. O. Box 159
Glasgow, KY 42141

David R Davis
CEO
South Central Telcom, LLC
1399 Happy Valley Road
P. O. Box 159
Glasgow, KY 42141

Matt Dean
Regulatory Agent
AltaWorx, LLC
c/o Telecom Professionals, Inc.
P. O. Box 720128
Oklahoma City, OK 73172

Michael Ebaugh
Sr. Accountant
Leslie County Telephone Company, Inc.
22076 Main Street
Hyden, KY 41749

Linda Deleare
Regulatory Compliance Manager
Matrix Telecom, Inc. dba Excel
433 East Las Colinas Blvd, Suite 500
Irving, TX 75039

Michael Ebaugh
Sr. Accountant
Lewisport Telephone Company, Inc.
30 Pell Street
Lewisport, KY 42351

Steve Crea
CFO
Nexus Communications, Inc.
3629 Cleveland Avenue, Suite C
Columbus, OH 43224

Dee DiCicco
Controller
Global Connection Inc. of America
5555 Oakbrook Pkwy, Suite 620
Norcross, GA 30093

Michael Ebaugh
Senior Accountant
Salem Telephone Company
221 East Main Street
Salem, KY 42078
*Ryan B Elswick  
Vice President  
Sunset Fiber, LLC  
333 Fraley Avenue  
Duffield, VA 24244

*Erla Erlingsdottir  
Sr. Director of Telephony Services  
Wide Voice, LLC  
410 South Rampart, Suite 390  
Las Vegas, NV 89145

*Kelly Faul  
Director, Regulatory Affairs  
Nextlink Wireless, LLC  
13865 Sunrise Valley Drive  
Herndon, VA 20171

*Charles Forst  
Director Regulatory Reporting  
Zayo Group, LLC  
1621 18th Street, Suite 100  
Denver, CO 80202

Paul D Gearheart  
VP / General Manager  
Gearheart Communications Company, Inc. dba  
20 Laynesville Road  
P. O. Box 160  
Harold, KY 41635

Steve Fenker  
President  
Nexus Communications, Inc.  
3629 Cleveland Avenue, Suite C  
Columbus, OH 43224

*Lisa Jill Freeman  
VP and Regulatory Compliance  
Bandwidth.com CLEC, LLC  
900 Main Campus Drive, Suite 500  
Raleigh, NC 27606

*Leo Giardina  
Managing Director  
American Telephone Company, LLC  
1600 Caleb's Path Extension F12  
Suite 203  
Hauppauge, NY 11788

*Tammy Ferber  
Controller  
AmeriVision Communications, Inc. d/b/a Affinity 4  
999 Waterside Drive, Suite 1910  
Norfolk, VA 23510

*Lisa Jill Freeman  
VP and Regulatory Compliance  
Bandwidth.com, Inc. - Venture Center III - 5th Floor  
900 Main Campus Drive  
Raleigh, NC 27606

*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Utility & Rate  
1024 Capital Center Drive  
Suite 200  
Frankfort, KENTUCKY 40601-8204

*Denotes Served by Email
*Denotes Served by Email

Service List for Case 2016-00059

**John F Jennings**  
CFO  
Big River Telephone Company, LLC  
24 South Minnesota  
P. O. Box 1608  
Cape Girardeau, MO  63702

**Kelly Jesel**  
CFO  
Telrite Corporation  
4113 Monticello Street  
Covington, GA  30014

**Kelly Jesel**  
CFO  
Telrite Corporation dba Life Wireless  
4113 Monticello Street  
Covington, GA  30014

**Anthony W Jett**  
President  
IIS Group, LLC  
1015 Virginia Drive  
Ft. Washington, PA  19034

**Glenn Johnston**  
Defense Mobile Corporation  
518 Riverside Avenue, 2nd Floor  
Westport, CT  06880

**Coral Johnston**  
Secretary  
ProNet Communications, Inc.  
1775 Eagle Drive  
P. O. Box 966  
Morehead, KY  40351

**Kim Jones**  
Accounting Supervisor  
T.V. Service, Inc.  
P. O. Box 789  
Hindman, KY  41822

**Wally Justice**  
Director of Operations  
Eastern Telephone & Technologies  
106 Power Drive  
Pikeville, KY  41501

**Kelly Jesel**  
CFO  
Telrite Corporation  
4113 Monticello Street  
Covington, GA  30014

**Ed Kazar**  
Vice President  
Spectrotel, Inc. db/a Touch Base  
3535 State Highway 66, Suite 7  
Neptune, NJ  07753

**Randy Kiesel**  
Regulatory Analyst  
Metro FiberNet, LLC  
3701 Communications Way  
Evansville, IN  47715

**Andrew M Klein**  
Counsel  
IPC Network Services, Inc.  
1250 Connecticut Ave, NW  
Suite 200  
Washington, DC  20036

**Ron Kooistra**  
Regulatory Analyst  
EarthLink Business, LLC  
2851 Charlevoix Drive SE, Suite 209  
Grand Rapids, MI  49546

**Jeff Korn**  
Chief Legal Officer  
Crexendo Business Solutions, Inc.  
1615 S 52nd Street  
Tempe, AZ  85281

**Roberta Kraus**  
General Counsel  
Lycamobile USA, Inc.  
24 Commerce Street, Suite 100  
Newark, NJ  07102

**Mark G Lammert**  
Tax Preparer  
Auravox, LLC  
c/o Compliance Solutions, Inc.  
740 Florida Central Pkwy, Suite 2028  
Longwood, FL  32750

**Mark G Lammert**  
Tax Preparer  
COMM-CORE, LLC  
c/o Compliance Solutions, Inc.  
740 Florida Central Pkwy, Suite 2028  
Longwood, FL  32750

**Mark G Lammert**  
Tax Preparer  
iNET Communications, LLC  
c/o Compliance Solutions, Inc.  
740 Florida Central Pkwy, Suite 2028  
Longwood, FL  32750

**Mark G Lammert**  
Tax Preparer  
PanTerra Networks, Inc.  
c/o Compliance Solutions, Inc.  
740 Florida Central Pkwy, Suite 2028  
Longwood, FL  32750

**Mark G Lammert**  
Tax Preparer  
Puretalk Holdings, LLC  
c/o Compliance Solutions, Inc.  
740 Florida Central Pkwy, Suite 2028  
Longwood, FL  32750

**Mark G Lammert**  
Tax Preparer  
S-Net Communications, Inc.  
c/o Compliance Solutions, Inc.  
740 Florida Central Pkwy, Suite 2028  
Longwood, FL  32750
*Mark G Lammert
Tax Preparer
Select Communications, LLC
c/o Compliance Solutions, Inc.
740 Florida Central Pkwy, Suite 2028
Longwood, FL 32750

*Scott Loggins
President
OneTone Telecom, Inc.
100 Century Plaza
Suite 9-1
Seneca, SC 29672

*Colleen Martin
General Counsel
Flowroute Inc.
1221 2nd Avenue, Suite 330
Seattle, WA 98101

*Mark G Lammert
Tax Preparer
Xact Associates, LLC
c/o Compliance Solutions, Inc.
740 Florida Central Pkwy, Suite 2028
Longwood, FL 32750

*Joe Londeree
Regulatory Analyst
BetterWorld Telecom, LLC
11951 Freedom Drive, 13th Floor
Reston, VA 20190

*Laura Matosian
VP Operations
ComTech 21, LLC
One Barnes Park South
Wallingford, CT 06492

*Enrique Landivar
Tax Manager
Telefonica USA, Inc.
1111 Brickwell Avenue, 10th Floor
Miami, FL 33131

*Elizabeth Love
Controller
Kentucky RSA #3 Cellular General Partnership,
2902 Ring Road
P. O. Box 5012
Elizabethtown, KY 42701

*Tamika S Mayes
Sr Attorney, U.S. Counsel Group
OnStar, LLC dba Telematics Services
300 Renaissance Center
MC 482-C16-B16
Detroit, MI 48265

*Jill Leonetti
Controller
Consumer Cellular, Incorporated
7204 SW Durham Road, Suite 300
Portland, OR 97224

*Elizabeth Love
Controller
Kentucky RSA #4 Cellular General Partnership,
2902 Ring Road
P. O. Box 5012
Elizabethtown, KY 42701

*Nancy McCarty
Sr Tax Director
Level 3 Communications, LLC
1025 Eldorado Blvd
Broomfield, CO 80021

*Tony Vande Linde
Business Operations Manager
Access Fiber Group, Inc.
201 Summit Parkway
Birmingham, AL 35209

*James MacKenzie
President, CEO, Treasurer, Secretary
WiMacTel, Inc.
13515 I Circle
Omaha, NE 68137

*Nancy McCarty
Sr Tax Director
TelCove Operations, LLC
1025 Eldorado Blvd
Broomfield, CO 80021

*Colleen Lockett
Manager, Regulatory Compliance
Intrado Communications, Inc.
1601 Dry Creek Drive
Longmont, CO 80503

*Robert Manire
Accounting Manager
ExteNet Systems, Inc.
3030 Warrenville Road, Suite 340
Lisle, IL 60532

*Joe McClung
President
Bluegrass Telephone Company, Inc. dba
101 Mill Street
Leitchfield, KY 42754

*Denotes Served by Email
*Ken Melley  
Operations Manager  
Infinity Communications, LLC  
20110 Messina  
San Antonio, TX  78258

*Barbara Meyer  
Controller  
X5 OpCo LLC  
1008 Western Avenue, Suite 400  
Seattle, WA  98104

*Christina Meyering  
Controller  
Ting, Inc.  
96 Mowat Avenue  
Toronto, ON  M6K3M1

*Robert Millar  
Associate General Counsel  
Crown Castle NG Central, LLC  
2000 Corporate Drive  
Canonsburg, PA  15317

*Joel Miller  
General Counsel  
Access One, Inc.  
820 W Jackson Blvd, Suite 650  
Chicago, IL  60607

*Mary Ann Mitchell  
Vice President  
Rosebud Telephone, LLC  
501 W Main Street  
P. O. Box 597  
Rosebud, TX  76570

*Marylouise Miller  
Accountant  
Credit Union Wireless, LLC  
451 Division St NE  
Salem, OR  97309

*Mary PCS Michigan, LLC  
MetroPCS Michigan, LLC  
12920 SE 38th Street  
Bellevue, WA  98006

*Dennis D Moffit  
Senior Counsel  
Cebridge Telecom KY, LLC dba Suddenlink  
520 Maryville Centre Drive  
Suite 300  
St. Louis, MO  63141

*Dennis D Moffit  
Senior Counsel  
Zultys, Inc.  
785 Lucerne Drive  
Sunnyvale, CA  94085

*Dennis D Moffit  
Senior Counsel  
Virgin Mobile USA, L.P.  
3065 Akers Mill Road, SE  
MS: GAA4TLD0704  
Atlanta, GA  30339

*Barbara Meyer  
Controller  
X5 OpCo LLC  
1008 Western Avenue, Suite 400  
Seattle, WA  98104

*Christina Meyering  
Controller  
Ting, Inc.  
96 Mowat Avenue  
Toronto, ON  M6K3M1

*Robert Millar  
Associate General Counsel  
Crown Castle NG Central, LLC  
2000 Corporate Drive  
Canonsburg, PA  15317

*Joel Miller  
General Counsel  
Access One, Inc.  
820 W Jackson Blvd, Suite 650  
Chicago, IL  60607

*Mary Ann Mitchell  
Vice President  
Rosebud Telephone, LLC  
501 W Main Street  
P. O. Box 597  
Rosebud, TX  76570

*Marylouise Miller  
Accountant  
Credit Union Wireless, LLC  
451 Division St NE  
Salem, OR  97309

*Richard Monto  
SVP External Affairs  
Neutral Tandem-Kentucky, LLC  
550 West Adams Street, Suite 900  
Chicago, IL  60661

*Matt O'Flaherty  
President  
SelecTel, Inc. db/a SeleTel Wireless  
1825 N Bell Street  
Freemont, NE  40504

*Denotes Served by Email  
Service List for Case 2016-00059
*Joseph O'Hara  
Assistant Treasurer  
Common Point, LLC  
3243 Meadowbrook  
Springfield, IL 62711

*Caryn Ochoa  
Controller  
WDT Wireless Telecommunications, Inc.  
13644 Neutron Road  
Dallas, TX 75244

*Vincent M Paladini  
Senior Counsel, Regulatory  
Time Warner Cable Information Services  
13820 Sunrise Valley Drive  
Herndon, VA 20171

*Brian Pancoast  
Controller  
CityNet Kentucky, LLC  
100 Citynet Drive  
Bridgeport, WV 26330

*Jean Parker  
Legal Director  
Credo Mobile, Inc.  
101 Market Street, Suite 700  
San Francisco, CA 94105

*Kimm Partridge  
Corporate Secretary  
inContact, Inc. d/b/a UCN, Inc.  
7730 South Union Park Avenue  
Suite 500  
Midvale, UT 84047

*Jason Pate  
CFO  
Tennessee Independent Telecommunications  
211 Commerce Street, Suite 610  
Nashville, TN 37201

*Terry Pavek  
CFO  
Sage Telecom Communications, LLC  
10440 N Central Expressway  
Suite 700  
Dallas, TX 75231

*Terry Pavek  
CFO  
Sage Telecom Communications, LLC  
10440 N Central Expressway  
Suite 700  
Dallas, TX 75231

*Ben Plikerd  
Managing Member  
UnityComm, LLC  
P. O. Box 250  
Syracuse, IN 46567

*L. Barbee J Ponder  
Manager / Director  
Globalstar USA, LLC  
300 Holiday Square Blvd  
Covington, LA 70433

*Mark Pavol  
Regulatory Manager  
YMax Communications Corp.  
222 Lakeview Avenue, Suite 1600  
West Palm Beach, FL 33401

*Kevin Photiades  
Regulatory Manager  
Telecom Management, Inc. dba Pioneer  
39 Darling Avenue  
South Portland, ME 04106

*Vic Pierni  
CFO  
GC Pivotal, LLC  
180 N LaSalle, Suite 2430  
Chicago, IL 60601

*Christopher Pemberton  
DataCenter, LC  
455 South Fourth Street  
Suite 1446  
Louisville, KY 40202

*Thomas E Preston  
CEO  
Duo County Telephone Cooperative Corporation,  
2150 N Main Street  
P. O. Box 80  
Jamestown, KY 42629

*Kenny Perkins  
Account Manager  
Local Access LLC  
c/o RTC Associates, LLC  
3075 Breckinridge Blvd, Suite 425  
Duluth, GA 30096

*David E Price  
Compliance Officer  
Konatel, Inc. dba telecom.mobi  
1910 Minno Drive, Suite 210  
Johnstown, PA 15905

*Hance Price  
Staff Attorney  
The Electric & Water Plant Board of the City of  
317 W Second Street  
P. O. Box 308  
Frankfort, KY 40602

*Jack W Pruittie  
Owner  
Jack W. Pruittie dba First Phone  
3281-B Fort Campbell Blvd  
Clarksville, TN 37042
*Jeanne Shearer  
VP - State Government Affairs  
PAETEC Communications, LLC  
4001 N Rodney Parham Road  
Little Rock, AR  72212

*Jeanne Shearer  
VP - State Government Affairs  
Windstream NTI, LLC  
130 W New Circle Road, Suite 170  
Lexington, KY  40505

*Anna Sokolin-Meiman  
VP Regulatory Affairs  
MCC Telephony of the South, LLC  
One Mediacom Way  
Mediacom Park, NY  10918

*Jeannie Shearer  
VP - State Government Affairs  
US LEC of Tennessee, LLC dba PAETEC  
4001 N Rodney Parham Road  
Little Rock, AR  72212

*Jeanne Shearer  
VP - State Government Affairs  
Windstream NuVox, LLC  
130 W New Circle Road, Suite 170  
Lexington, KY  40505

*Anna Sokolin-Meiman  
VP Regulatory Affairs  
MCC Telephony of the South, LLC  
One Mediacom Way  
Mediacom Park, NY  10918

*Brent A Shelton  
Manager of Telecom & Info System  
MuniNet Fiber Agency  
1500 Broadway Street  
Paducah, KY  42001

*Brent A Shelton  
Manager of Telecom & Info System  
The Electric Plant Board of the City of Paducah,  
1500 Broadway Street  
Paducah, KY  42001

*Beth Stewart  
Controller  
Easton Telecom Services, LLC  
3046 Brecksville Road  
Summit II, Unit A  
Richfield, OH  44286

*Adriana Solar  
CFO  
Flatel Wireless, Inc dba Zing PCS  
P. O. Box 211192  
Royal Palm Bch, FL  33421

*Jeffrey W Small  
SVP  
CSL Kentucky System, LLC  
4001 N. Rodney Parham Road  
Little Rock, AR  72212

*Ashar Syed  
CEO  
Tele Circuit Network Corporation  
1815 Satellite Blvd, Suite 504  
Duluth, GA  30097

*Glenn P Story  
CFO  
EOS Mobile Holdings, LLC  
640 Fairway View Terrace  
Southlake, TX  76092

*Glenn P Story  
CFO  
EOS Mobile Holdings, LLC  
640 Fairway View Terrace  
Southlake, TX  76092

*Beth Stewart  
Controller  
Easton Telecom Services, LLC  
3046 Brecksville Road  
Summit II, Unit A  
Richfield, OH  44286

*Jeremy Smuckler  
General Counsel, North America  
ACN Communication Services, LLC  
1000 Progress Place  
Concord, NC  28025

*Andrew Taber  
President & CEO  
Pix Wireless, LLC  
21346 Saint Andrews Blvd, Suite 225  
Boca Raton, FL  33433

*Andrew Taber  
President & CEO  
Pix Wireless, LLC  
21346 Saint Andrews Blvd, Suite 225  
Boca Raton, FL  33433

*Anita Taff-Rice  
Counsel  
RCLEC, Inc.  
1547 Palos Verdes, #298  
Walnut Creek, CA  94597

*Denotes Served by Email  
Service List for Case 2016-00059
*Michael Tague
President
Win.Net Telecommunications, Inc.
P. O. Box 4189
Louisville, KY  40204

*Masato Takei
CFO
KDDI America, Inc.
825 Third Avenue, 3rd Floor
New York, NY  10022

*Tony A Taylor
E.D. - External Affairs
BellSouth Telecommunications, LLC dba AT&T
601 W Chestnut Street
4th Floor East
Louisville, KY  40203

*Lakisha Taylor
Product Coordinator
Budget PrePay, Inc. dba Budget Mobile
1325 Barksdale Blvd, Suite 200
Bossier City, LA  71111

*Masato Takei
CFO
KDDI America, Inc.
825 Third Avenue, 3rd Floor
New York, NY  10022

*Jason Tapolci
President
VoIPStreet, Inc. d/b/a VoIP Innovations
Eight Penn Center West, Suite 101
Pittsburgh, PA  15276

*Lakisha Taylor
Product Coordinator
Budget PrePay, Inc. dba Budget Phone
1325 Barksdale Blvd, Suite 200
Bossier City, LA  71111

*Greg Tapscott
Controller
Southern Light, LLC
107 St. Francis Street
Suite 1800
Mobile, AL  36602

*Tony A Taylor
E.D. - External Affairs
Cricket Wireless, LLC
601 West Chestnut Street
4th Floor
Louisville, KY  40203

*Timmy Thurston
President & Manager
Velocity Networks of Kentucky, Inc.
120 East Third Street
P. O. Box 263
Russellville, KY  42276

*Tony A Taylor
E. D. - External Affairs
AT&T Corp.
601 W Chestnut Street
4th Floor East
Louisville, KY  40203

*Tony A Taylor
E.D. - External Affairs
New Cingular Wireless PCS, LLC dba AT&T
601 W Chestnut Street
4th Floor East
Louisville, KY  40203

*Tony A Taylor
E.D. - External Affairs
BellSouth Long Distance, Inc. dba AT&T Long
601 W Chestnut Street
4th Floor East
Louisville, KY  40203

*Tony A Taylor
E.D. - External Affairs
Teleport Communications America, LLC
601 W Chestnut St, 4th Floor East
Louisville, KY  40203

*Rick Thayer
Sr. Corp Counsel
tw telecom of kentucky llc
1025 Eldorado Blvd.
Broomfield, CO  80021

*Janet Troxell
Tax Director
Vanco US, LLC
200 South Wacker Drive, Suite 1600
Chicago, IL  60606

*Denotes Served by Email

Service List for Case 2016-00059