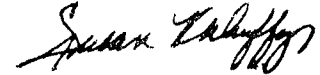


**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

STATE CORPORATION COMMISSION

In the Matter of the Application of)
Southwestern Bell Telephone)
Company for Price Deregulation of)
Residential Telecommunications)
Services in the Abilene, Chanute, Clay)
Center, Ellsworth, Emporia,)
Independence, Minneapolis, Neodesha)
and Parsons, Kansas Exchanges)
Pursuant to K.S.A. 2008 Supp. 66-)
2005(q)(1).)

SEP 14 2009



Docket No. 10-SWBT-019-PDR

**SOUTHWESTERN BELL TELEPHONE COMPANY'S PETITION FOR LIMITED
RECONSIDERATION OF ORDER APPROVING APPLICATION OF
SOUTHWESTERN BELL TELEPHONE COMPANY FOR PRICE DEREGULATION OF
RESIDENTIAL TELECOMMUNICATIONS SERVICES IN THE ABILENE, CHANUTE,
ELLSWORTH, EMPORIA, INDEPENDENCE, NEODESHA AND PARSONS, KANSAS
EXCHANGES AND DENYING APPLICATION IN THE CLAY CENTER AND
MINNEAPOLIS, KANSAS EXCHANGES**

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T") pursuant to K.S.A. 66-118b, K.S.A. 2008 Supp. 77-529 and K.A.R. 82-1-235, and petitions the Kansas Corporation Commission ("KCC" or "Commission") for limited reconsideration of its Order Approving Application of Southwestern Bell Telephone Company for Price Deregulation of Residential Telecommunications Services in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha and Parsons, Kansas exchanges and Denying Application in the Clay Center and Minneapolis, Kansas exchanges, dated August 26, 2009 (hereinafter the "Order"), in the above referenced docket. AT&T specifically seeks reconsideration of that part of the Order denying the price deregulation application as it relates to the Clay Center and Minneapolis, Kansas exchanges and imposes new regulatory burdens on the price deregulation process. In support of its petition, AT&T shows the Commission as follows:

Summary

1. AT&T appreciates the Commission's approval of at least a portion of its application. However, just as in other recent price deregulation proceedings brought by AT&T the Commission's determination in this proceeding once again implicitly requires that verified or other unspecified, but detailed, consumer-specific information be scrutinized and provided as part of the application process in order to confirm that wireless service is available to customers in a specific exchange.

2. The Commission's Order in the instant proceeding and the Commission's recent determinations Docket Nos. 09-SWBT-936-PDR and 09-SWBT-937-PDR, involve substantially similar factual and legal issues. AT&T believes the Commission's Order in the instant proceeding, especially in light of the determinations made in the other referenced dockets, is unreasonable, arbitrary and capricious; fails the test for Commission orders enunciated by the Kansas Supreme Court in *Zinke & Trumbo, Ltd. v. Kansas Corporation Comm'n*, 242 Kan. 470, 474-75, 749 P.2d 21 (1988); and results in unexplained, inconsistent rulings without an explanation as required by law. *Western Resources, Inc. v. Kansas Corporation Comm'n*, 30 Kan. App. 2d 348, 360, 42 P.3d 162, *rev. denied*, 274 Kan. 1119 (2002).

Relevant Procedural History

3. On July 6, 2009, AT&T filed its application for price deregulation of residential telecommunications services in its Abilene, Chanute, Clay Center, Ellsworth, Emporia, Independence, Minneapolis, Neodesha and Parsons, Kansas exchanges.

4. On July 10, 2009, the Commission issued its order granting the Citizen's Utility Ratepayer's Board ("CURB") petition to intervene.

5. On July 17, 2009, the Commission, pursuant to K.S.A. 2008 Supp. 66-2005(q)(4), issued an order suspending AT&T's application until August 26, 2009.

6. On August 21, 2009, the Commission Staff filed its Report and Recommendation in this proceeding. With regard to the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha and Parsons exchanges, the Staff concluded that "AT&T has demonstrated that the requirements of K.S.A. 66-2005(q)(1)(D) have been satisfied . . ." *Staff Report and Recommendation* at p. 13. However, with regard to the Clay Center and Minneapolis exchanges, the Staff recommended denial of AT&T's application and concluded that the statutory requirements had not been met. *Staff Report and Recommendation* at p. 13.

7. On August 26, 2009, the Commission issued its order approving AT&T's application for price deregulation of residential telecommunications services in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha and Parsons exchanges, but denying price deregulation of residential telecommunications services in the Clay Center and Minneapolis exchanges. In denying that part of the application concerning the Clay Center and Minneapolis exchanges, the Commission concluded that "AT&T has not sufficiently demonstrated that there is a second provider, other than Big River as the nonaffiliated facilities-based provider, providing telecommunications services to more than one residential customer." Order at ¶ 47.

Petition for Reconsideration

8. AT&T hereby requests the Commission reconsider those portions of its August 26th Order denying AT&T's application for price deregulation of residential telecommunications services in the Clay Center and Minneapolis, Kansas exchanges.

9. In pre-Docket No. 09-SWBT-936-PDR price deregulation application proceedings, AT&T consistently agreed with Staff's understanding and treatment of the wireless industry and its competitive position in the market. Staff's verification process and interpretation of the wireless information provided by AT&T was seen as sufficiently demonstrating that in the identified exchanges, two or more nonaffiliated telecommunications carriers, including wireless carriers, were providing service to residential and business customers. Until only recently, the evidence and information brought forward by AT&T concerning wireless competitors was also consistently found to meet and satisfy its statutory burden of proof for price deregulation by the Commission.

10. Suddenly and inexplicably, as a result of proceedings in Docket Nos. 09-SWBT-936-PDR and 09-SWBT-937-PDR (hereinafter the "936 and 937 Dockets"), that changed and the Commission, at the urging of CURB, seemingly created and imposed additional, more burdensome regulatory verification requirements on the statutory burden of proof for price deregulation. SWBT recognizes and appreciates that the Commission has now clarified its position on the imposition of additional, burdensome regulatory verification requirements urged by CURB. The commission rejected any such requirements in its determinations in the 936 and 937 Dockets.¹

11. Unfortunately, in its Order denying the portion of AT&T's application in the instant proceeding now at issue, the Commission chose to adopt and carry forward the

¹ Order Denying SWBT Petition for Reconsideration, Docket No. 09-SWBT-936-PDR, dated Sept. 9, 2010, at ¶¶ 12-13 ("936 Order"); Order Denying Southwestern Bell Telephone Company's Petition for Limited Reconsideration of a Portion of the Order Approving Application for Price Deregulation of Business Telecommunications Services in the Lindsborg, Kansas Exchange, Docket No. 09-SWBT-937-PDR, dated Sept. 9, 2009, at ¶¶ 13, 14 ("937 Order") [hereinafter jointly referred to as the "936 and 937 Reconsideration Orders"].

same heightened verification and documentation requirements it has since disavowed. “In order to ensure consistency, the Commission reaches the same conclusion in this docket, as it held in the 936 and 937 dockets regarding sufficiency of the supporting documentation provided by AT&T.” Order at ¶ 45. Except in the *936 and 937 Reconsideration Orders*, the Commission now clearly states that it did not adopt CURB’s position and, though adopting Staff’s position recommending additional verification requirements, it

‘did not order AT&T to ‘provide copies of bill statements and/or verified statements from the subscriber and location documentation with its future applications in order for AT&T to fully demonstrate that the requirements of the statute have been met.’ Rather, the Commission viewed Staff’s suggestion as a helpful suggestion that AT&T should consider.²

12. The Commission indisputably carried into this proceeding and imposed on AT&T’s application, what can only be characterized as implicit requirements advocated and relied upon in other proceedings after AT&T’s application in the instant proceeding had already been filed. Yet, even though the Commission now states that no such additional verification requirements exist, SWBT’s application for price deregulation in the Clay Center and Minneapolis exchanges was denied for the very same reasons brought forward and advocated by CURB in the 936 and 937 Dockets, the perceived need for additional verification and proof of wireless competition. A result, the Commission’s Order in the instant proceeding, as well as those in the 936 and 937 Dockets, are directly at odds with price deregulation determinations made in prior proceedings.

² 936 Order at ¶¶ 12, 13; 937 Order at ¶¶ 13, 14.

13. In all instances prior to the 936 and 937 Dockets, as well as this proceeding, the price deregulation application process involved AT&T providing exchange-specific collateral from wireless companies as evidence that wireless service is available to consumers. The KCC staff recognized, as apparently did the Commission, that:

wireless carriers typically do not differentiate between residential or business customers; **the rate and service are the same regardless of the type of customer subscribing to the service and the service is available and provided to residential and business customers alike.**

Order at ¶¶ 16, 32. (Emphasis added). AT&T believes that understanding to be accurate, reasonable, and based upon the expertise and knowledge of the Staff. Accordingly, it had not previously served as an impediment to price deregulation in Kansas.

14. The Commission's own rules and regulations require that an order shall contain "a concise and specific statement of the relevant law and basic facts that persuade the commission at arriving at its decision." K.A.R. 82-1-232(a)(3). This means that the findings must be "specific enough to allow judicial review of the reasonableness of the order." *Zinke & Trumbo, Ltd.*, 242 Kan. at 45. There is simply no substantial competent evidence supporting the Commission's action in this proceeding. Further, in the instant proceeding there is simply no explanation or findings as to why the Commission has changed its interpretation and application of the statute in manner that is inconsistent and contradicts with prior Commission orders.

[A] regulatory body has authority to change positions on an issue if the new position is supported by substantial competent evidence. . . . However, our courts also have recognized that when an administrative agency deviates

from a policy it had adopted earlier, it must explain the basis for the change. . . . Where the KCC rules in a manner inconsistent with a previous decision, the law requires the commission to explain its change in position.

Western Resources, 30 Kan. App. 2d at 360. (Citations omitted).

15. If the Commission did not adopt CURB's onerous requirements; if there exist no additional or heightened regulatory verification requirements for price deregulation applications as a result of the 936 and 937 Orders; and if, as the KCC Staff recognized, as it has many times before when recommending application approval, in its verification process that AT&T cannot control whether a wireless carrier differentiates between business and residential consumers³; then on what basis was SWBT's application for price deregulation in the Clay Center and Minneapolis exchanges denied? The Commission's Order in the instant proceeding provides no reasonable or reviewable explanation, especially in light of prior Commission orders granting price deregulation under similar circumstances.

16. The Commission's apparent reliance on "suggested" requirements of additional or higher level of "verification" of the provisioning of any specific wireless or even facilities-based service in this proceeding, effectively turns back the clock on the 2006 legislative rewrite of the price deregulation provisions of K.S.A. 66-2005(q). Such "suggestions" disregard everything known to be true about the most competitive segment of the telecommunications marketplace – wireless services. It ignores the realities of what it takes financially to actually provide cellular or wireless service in Kansas' smaller communities and more rural exchanges like Clay Center and Minneapolis, unlike certain of the CLEC models of competition.

³ Order at 16.

17. The move from company provided information and collateral regarding wireless service coverage and availability areas to a implicit requirement of verified, customer-specific information appears to contemplate or promote an unfounded theory that while a wireless carrier offers service in a specific area, they may not actually be providing service to any individual business or residential customers in that area. This contemplation ignores the fact and the reality that economics of wireless service are very different than competitive local exchange carrier (“CLEC”) telephone service. For example, a reselling CLEC might incur very little fixed cost in order to claim that they are offering service in a certain geography because they rely on the ILEC network. Consequently, a resale CLEC may claim that their service is available in various geographic areas when they actually are not providing any service at all. In sharp contrast, wireless carriers must incur very large, fixed costs (e.g. towers, transmission equipment, backhaul facilities, switching arrangements, interconnection facilities) in order to claim that service is available in a certain geographic area. One broad estimate is that a carrier must process about 300,000 minutes of use each month in order to simply break-even on the fixed cost of providing service from one cell tower. In view of these significant requirements, coupled with pervasive evidence that the global culture is transitioning to wireless services, it is just not practical to question whether a national wireless carrier such as Verizon/Alltel or U.S. Cellular would include a specific Kansas community/exchange in their coverage map, have cell sites in the area, but not actually be serving any customers. The Commission should be willing to rely on exchange/community-specific sales collateral from national wireless carriers as evidence that wireless service is being provided rather than a statutory interpretation

that ignores the reality of the marketplace and imposes significant new regulatory burdens not intended by the Kansas legislature when it rewrote the statute in 2006.

18. The fact is, there are more wireless subscribers in Kansas today than there are traditional end-user switched access lines.⁴ The Commission's Order, however, simply fails to recognize that, as an industry, wireless telecommunications providers offer their services in a highly competitive marketplace, without the trappings, burdens or definitions of archaic, legacy rate regulation.⁵ The wireless industry does not function or do business like a regulated local exchange company.⁶ Wireless carriers may not keep track of residential versus business customer volumes, perhaps because they do not have a regulatorily required distinction between residential and business services for rate subsidization purposes. However, through the Order in the instant proceeding, as well as the 936 and 937 Orders, the Commission penalizes AT&T by attempting to fit the wireless business model into a traditional, landline based regulatory box. Those efforts lead to an unreasonable interpretation of the statute and an unreasonable result in this proceeding. Surely, the Commission does not need customer-specific verification of wireless service provisioning to residential vs. business

⁴ Local Telephone Competition: Status as of June 30, 2008; Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, July 2009 at Tables 9, 10 and 14. According to the FCC's July 2009 Report there are approximately 1.35 million CLEC and ILEC served end-user switched access lines in Kansas, while there are roughly 2.32 million mobile wireless subscribers in the state. A difference of almost 1 million subscribers/end-users.

⁵ Further, there is also simply no statutory requirement that AT&T show there to be service to more than one residential or one business customer. Had the legislature intended such an explicit showing, it could have included such a requirement as it did when discussing how many alternative providers serve an exchange. The Kansas legislature included no such explicit requirement. Similarly, the language employed by the statute refers to "telecommunications services" and contains no requirement that a wireless carrier provide "single line business" or a "standalone residential access line."

⁶ Just one example of this is the fact that in the wireless world, a customer is not limited to the regulatory restrictions of declaring it requested service as either residence or business. Instead, a wireless customer is free to purchase one telephone and use it for both residential and business service.

customers, in an era when wireless subscribers far out number landlines in the state. When community-specific collateral from wireless carriers indicate that wireless service is available, it is not a prudent use of anyone's resources to presume that there may be no residential wireless subscribers in either the Clay Center or Minneapolis, Kansas exchanges. It is not a prudent use of AT&T or Commission resources.

19. In this proceeding Alltel, US Cellular, WestLink and Verizon Wireless, each a significant wireless service provider, who admittedly market to both **residential and business customers** in one or both of the Clay Center and Minneapolis exchanges, affirmatively told the Staff they each serve more than one consumer in the exchanges where they provide service.

20. The Commission Staff's past practice of verifying the competitive information provided by AT&T, combined with their working understanding of competitive nature of the wireless industry, ensured compliance with the statute and involved no overtly burdensome regulatory requirements aimed at making the task of seeking price deregulation more burdensome. Accordingly, AT&T requests the Commission reconsider its position in this proceeding and, instead, reaffirm and return to the reasonable and well articulated position it previously employed prior to the 936 and 937 Orders and conclude that AT&T has met its statutory burden of proof having demonstrated that the requirements of K.S.A. 66-2005(q)(1)(D) have been satisfied for the Clay Center and Minneapolis exchanges.

21. The Commission must recognize that "verification," whether ordered or simply "suggested," is a legal term of art and its use and definition in this proceeding, even if just a "suggestion" by the Commission, when applied to AT&T's application is

vague, ambiguous, arbitrary and capricious. Similarly, denial of AT&T's instant application due to "lack of verification, " when the instant application was filed before even an informal verification requirement was "suggested" and apparently relied upon, is a clear deprivation of AT&T's constitutional right to due process. Competitors are, understandably, reluctant to provide AT&T with their specific customer information; customers who have a competitor's service similarly may not wish to share this information with another competing provider; and, being required to convince a competitor's customer to provide a bill, agree to be contacted by the KCC staff, or even give a sworn statement on behalf of AT&T is at once both unduly burdensome, more likely than not unworkable and certainly not contemplated by the applicable statute.

22. AT&T urges the Commission to reconsider and affirm the methodology and statutory interpretation previously used by Staff to confirm that wireless providers do provide services in the exchanges at issue. AT&T believes the approach previously employed by the Commission was a very reasonable, logical and common sense approach to the intent, application and implementation of the statutory standard.⁷

Additional Competitive Information

23. Without waiving, compromising or conceding any issue for which AT&T seeks reconsideration in this petition, AT&T is submitting herewith copies of bills for two (2) Alltel wireless "residential" subscribers in the Clay Center, Kansas exchange (Attached hereto as "Confidential Attachment A" and made a part hereof by this reference); and, copies of bills for two (2) Alltel wireless "residential" subscribers in the

⁷ AT&T recognizes that the market is such that wireless competitors may not always differentiate billing between business and residence accounts. Nevertheless, if a national carrier confirms that it offers service generally in an area, it is both reasonable and logical to assume that the carrier serves both business and residential customers in that area.

Minneapolis, Kansas exchange (Attached hereto as "Confidential Attachment B" and made a part hereof by this reference). Because these consumers are not AT&T customers, and at several of the customers' request for confidentiality, their personal Alltel bills are being filed herewith under seal as proprietary and confidential information and redacted copies of the bills are not being provided. Under the Commission imposed requirements, AT&T had to seek out these non-AT&T consumers and ask their cooperation in this proceeding. Accordingly, AT&T will not risk or be responsible for any personal information that could inadvertently be released or supplied through an improperly redacted bill. Thus, no redacted version will be supplied by AT&T in this proceeding.

24. AT&T urges the Commission to find and conclude that this additional competitive information supports AT&T's arguments herein and its application for price deregulation in the instant proceeding.

WHEREFORE, for AT&T respectfully requests an order of the Commission granting its petition for reconsideration of Commission's August 26, 2009 Order in the above captioned proceeding for the above and foregoing reasons.

Respectfully submitted,




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Company d/b/a AT&T Kansas

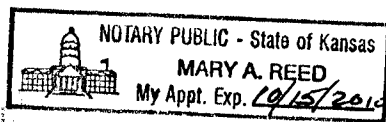
VERIFICATION

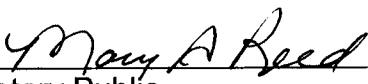
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Cindy Swoboda, of lawful age, and being first duly sworn, now state: I am Area Manager – Regulatory Relations. I have read Southwestern Bell Telephone Company’s Petition for Limited Reconsideration of Order Approving Application of Southwestern Bell Telephone Company for Price Deregulation of Residential Telecommunications Services in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha and Parsons, Kansas Exchanges and Denying Application in the Clay Center and Minneapolis, Kansas Exchanges, and verify the statements contained herein to be true and correct to the best of my knowledge and belief.


Cindy Swoboda

Subscribed and sworn to before me this 11th day of September, 2009.




Notary Public

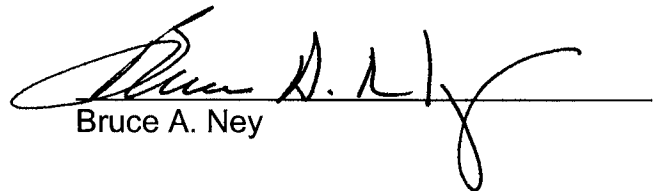
My appointment expires: October 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of Southwestern Bell Telephone Company's Petition for Limited Reconsideration of Order Approving Application of Southwestern Bell Telephone Company for Price Deregulation of Residential Telecommunications Services in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha and Parsons, Kansas Exchanges and Denying Application in the Clay Center and Minneapolis, Kansas Exchanges was sent via U.S. Mail or hand-delivered on this 11th day of September, 2009, to:

Colleen Harrell
Litigation Counsel, Telecommunications
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
HAND DELIVER

Steve Rarrick
CURB
1500 SW Arrowhead Road
Topeka, KS 66604-4027
HAND DELIVER


Bruce A. Ney

CONFIDENTIAL INFORMATION

(Located in Docket Room)

In the Matter of the Application of Southwestern
Bell Telephone Company for Price Deregulation of
Residential Telecommunications Services in the
Abilene, Chanute, Clay Center, Ellsworth,
Emporia, Independence, Minneapolis, Neodesha and
Parsons, Kansas Exchanges Pursuant to K.S.A.
2008 Supp.66-2005(q) (1).

10-SWBT-019-PDR

Confidential Attachments A and B
To SWBT Petition for Limited Reconsideration

FILE DATE:

September 14, 2009



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September 14, 2009

Susan K. Duffy
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

STATE CORPORATION COMMISSION

SEP 14 2009

Re: KCC Docket No. 10-SWBT-019-PDR

Dear Ms. Duffy:

Enclosed you will find an original and seven copies of Southwestern Bell Telephone Company's Petition for Limited Reconsideration of Order Approving Application of Southwestern Bell Telephone Company for Price Deregulation of Residential Telecommunications Services in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha and Parsons, Kansas Exchanges and Denying Application in the Clay Center and Minneapolis, Kansas Exchanges, for filing in the above referenced docket.

Sincerely,

Bruce A. Ney
General Attorney

BAN:mr
Enclosures

cc: Parties of Record