

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of)
Southwestern Bell Telephone Company d/b/a)
AT&T Kansas for an Order Confirming)
Relinquishment of its Eligible) Docket No. 17-SWBT-158-MIS
Telecommunications Carrier Designation in)
Specified Areas, and Notice Pursuant to K.S.A.)
2015 Supp. 66-2005(d) of Intent to Cease)
Participation in the Kansas Lifeline Service)
Program)

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

The Staff of the Kansas Corporation Commission (Staff) has investigated the Application made by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) on October 26, 2016, to relinquish its Eligible Telecommunications Carrier (ETC) designation in certain portions of the state, and cease participation in the Kansas Lifeline Service Program (KLSP). Staff has prepared a Report and Recommendation (R&R) recommending the Commission take the following actions:

- 1) Confirm that AT&T has provided notice of its intent to cease participation in the KLSP and that it may cease participating in the KLSP, effective May 31, 2017, pursuant to K.S.A. 66-2006(d); and
- 2) Provide notice of AT&T's Application to all carriers designated as ETCs in AT&T's service area in Kansas and permit ETCs to file for intervention in the docket. Staff recommends motions to intervene be filed within three weeks of the Order date and include any objections to, or comments about, AT&T's filing at the time they file their motion.

WHEREFORE, Staff submits its R&R dated February 21, 2017, attached hereto, for Commission consideration.

Respectfully Submitted,



Michael Neeley, S. Ct. #25027
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STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

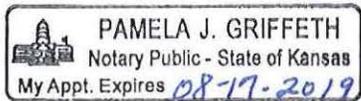
VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Notice of Filing of Staff's Report and Recommendation* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 28th day of February, 2017.



Notary Public

My Appointment Expires: August 17, 2019

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Pat Apple
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

FROM: Christine Aarnes, Chief of Telecommunications
Sandy Reams, Assistant Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: February 21, 2017

SUBJECT: Docket No. 17-SWBT-158-MIS
In the Matter of the Application of Southwestern Bell Telephone Company d/b/a AT&T Kansas for an Order Confirming Relinquishment of its Eligible Telecommunications Carrier Designation in Specified Areas, and Notice Pursuant to K.S.A. 2015 Supp. 66-2006(d) of Intent to Cease Participation in the Kansas Lifeline Service Program

EXECUTIVE SUMMARY:

On October 26, 2016, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) filed an Application requesting an Order to confirm: (1) relinquishment of its Eligible Telecommunications Carrier (ETC) designation in specified areas, effective May 31, 2017; and (2) its Notice of Intent to Cease Participation in the Kansas Lifeline Service Program (KLSP), effective May 31, 2017. AT&T filed an Amended Application on December 21, 2016.

Staff recommends the Commission issue an Order:

- 1) to confirm that AT&T has provided notice of its intent to cease participation in the KLSP and that it may cease participating in the KLSP, effective May 31, 2017, pursuant to K.S.A. 66-2006(d); and
- 2) to provide notice of AT&T's Application to all carriers designated as ETCs in AT&T's service area in Kansas and permit ETCs to file for intervention in the Docket. Staff recommends motions to intervene be filed within three weeks of the Order date and include any objections to, or comments about, AT&T's filing at the time they file their motion.

Ninety days' notice is required for electing carriers to cease participating in the KLSP, but there is no statutory deadline for relinquishing ETC authority.

ANALYSIS:

I. Notice of Intent to Cease Participation in the KLSP

Pursuant to K.S.A. 66-2006(d),

(d) Telecommunications carriers and electing carriers may cease participation in the KLSP at any time upon provision of 90-days prior written notification to the commission. Telecommunications carriers and electing carriers participating in the KLSP shall be eligible to receive KUSF support for KLSP services, but shall not be subject to any regulation by the commission based on such participation other than that provided for in subsection (z) of K.S.A. 66-2005, and amendments thereto.

AT&T is an electing carrier pursuant to K.S.A. 66-2005(x), as designated by the Commission in Docket No. 12-SWBT-014-MIS.¹ AT&T may, therefore, cease participation in the KLSP at any time upon provision of 90-days prior written notification.

AT&T states in its Application that it will send two series of notices. At least 60 days prior to May 31, 2017, it will provide notice in a separate letter via U.S. Mail to each of its affected KLSP subscribers that it will no longer offer a KLSP discount. All notices will inform each affected customer that a KLSP discount can be obtained from the remaining KLSP providers in the area and will provide the link to www.lifelinesupport.org, through which a customer may obtain carrier-specific contact information. AT&T will also send each remaining KLSP customer a second notice letter and a bill message at least 15 days prior to the effective date.² Staff has been coordinating with AT&T regarding notice language and will continue to do so.

AT&T has approximately 2,500 KLSP customers. AT&T states that all affected KLSP customers may continue to receive service from AT&T, although the KLSP discount will be removed as of the relinquishment date, May 31, 2017.

II. ETC Relinquishment

On December 5, 1997, in Docket No. 98-GIMT-241-GIT, AT&T was designated as a federal and state ETC in the exchanges listed in Attachment A to this Report and Recommendation. Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an ETC shall be eligible to receive universal service support in accordance with section 254 of the Federal Act and shall, throughout the service area for which the designation is received— (A) offer the services that are supported by Federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC); and (B) advertise the availability of such services and the charges using media of general distribution.

¹ *Order Designating Southwestern Bell Telephone Company d/b/a AT&T Kansas an Electing Carrier*, Docket No. 12-SWBT-014-MIS, dated August 17, 2011.

² Application, ¶¶ 19-20.

As an ETC, AT&T has historically been eligible to receive state and federal universal service fund support for high-cost areas as well as reimbursement for the Lifeline program for offering universal service to low-income consumers at discounted prices. Pursuant to K.S.A. 66-2008(c)(5), AT&T discontinued receiving Kansas Universal Service Fund (KUSF) high-cost support effective January 1, 2014. Effective August 2015, AT&T discontinued receiving federal Frozen High Cost Support and began receiving Connect America Cost Model support from the Federal Universal Service Fund.

In this Application, AT&T seeks to relinquish its federal and state ETC designation in all areas of the state except the census blocks identified in Exhibit B to its Application. AT&T states that relinquishment of its ETC designation in specified areas in Kansas is prompted by changes to the federal universal service program. Specifically, AT&T states that the Federal Communications Commission has changed its approach to disbursing high-cost universal service fund support for price cap regulated carriers at the federal level. Under the new approach, an ETC like AT&T can only receive funding to support and deploy broadband-capable networks in FCC-identified high-cost census blocks in its service areas. AT&T states that a carrier must remain an ETC in the Connect America Fund (CAF) II census blocks in order to receive CAF II support. AT&T is retaining its ETC designation in the CAF II census blocks, but wishes to relinquish its ETC designation in the census blocks for which AT&T is no longer eligible for high-cost support.³

AT&T states, that after relinquishment, it will continue to offer and provide service in the relinquishment area; however, Staff notes that it would be under no obligation to do so. AT&T states that the only impact will be that it will no longer provide the Lifeline discount in the relinquishment area.⁴

Pursuant to 47 U.S.C. § 214(e)(4),

A State commission...shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission...of such relinquishment. **Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission...shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.** The State commission...shall establish a time, not to exceed one year after the State commission...approves such relinquishment under this paragraph, within which such purchase or construction shall be completed. (Emphasis added).

³ Id. at ¶ 7.

⁴ Id. at ¶ 11.

The section 214(e)(4) relinquishment process allows for the states to conduct an inquiry at a sufficiently granular level to ensure that customers in the specified area “will continue to be served.” The Commission must find that the area to be relinquished is served by at least one other ETC and, prior to permitting the relinquishing ETC to cease providing universal service, the Commission shall require the remaining ETC(s) to ensure that all customers served by the relinquishing carrier will continue to be served. The relinquishment process not only entails an evaluation of what ETCs are present in an area at a given point in time, but also of the practical ability of those providers to take on additional consumers as might be needed once the relinquishing carrier is no longer an ETC subject to associated obligations in that area. This process may include allowing sufficient time for the remaining ETC(s) to purchase or construct adequate facilities within a defined time period.

AT&T states it will continue to serve existing customers in the relinquished area if this Application is granted, but it would be under no obligation to do so. In addition, AT&T would be under no obligation to serve new customers as AT&T is not subject to a state Carrier of Last Resort obligation.

In accordance with 47 U.S.C. § 214(e)(4), Staff believes it is appropriate for the Commission to provide notice of this Application to the remaining ETCs in AT&T’s service area in the state of Kansas. Staff further recommends the Commission request parties interested in intervening in this Docket to do so within three weeks of the date of the Commission Order. Motions to intervene should include any objections to, or comments about, AT&T’s filing at the time the motion is filed.

As required by section 214(e)(4), the remaining ETCs would be required to ensure that all customers served by AT&T would continue to be served. This could be problematic as some of the ETCs are designated as ETCs solely for the federal Lifeline program and may not own their own facilities. There is also the question of the ability of the remaining providers to serve consumers once the relinquishing carrier is no longer an ETC. In addition, AT&T and the remaining ETCs were designated as such by exchange or wire center, but AT&T’s relinquishment request is by census block. Therefore, ETCs should comment on these issues and any other concerns they may have regarding this request.

Staff has reviewed AT&T’s Application and has issued several rounds of discovery. Staff will continue to review the discovery responses, Application, and issue additional discovery, as necessary. Staff will file a second Report and Recommendation within three weeks of the deadline for motions to intervene.

RECOMMENDATION:

Staff recommends the Commission issue an Order:

- 1) to confirm that AT&T has provided notice of its intent to cease participation in the KLSP and that it may cease participating in the KLSP, effective May 31, 2017, pursuant to K.S.A. 66-2006(d); and

- 2) to provide notice of AT&T's Application to all carriers designated as ETCs in AT&T's service area in Kansas and permit ETCs to file for intervention in the Docket.⁵ Staff recommends motions to intervene be filed within three weeks of the Order date and include any objections to, or comments about, AT&T's filing at the time they file their motions.

⁵ The carriers designated as ETCs in AT&T's service areas are listed on Attachment B to this Report and Recommendation.

**SWBT-KANSAS
EXCHANGES**

| | | |
|------------------------|---------------------|---------------------|
| Abilene | Gypsum | Parsons |
| Almena | Halstead | Pawnee Rock |
| Andale | Hamilton-Virgil | Peabody |
| Anthony | Hanover-Hollenberg | Phillipsburg-Kirwin |
| Arkansas City | Harper | Pittsburg |
| Atchison | Hartford | Plains |
| Attica | Hays | Plainville |
| Atwood | Herington | Pratt |
| Basehor | Herndon | Protection |
| Belleville | Howard | Reading |
| Beloit | Hoxie | Sabetha |
| Bird City | Humboldt | Salina |
| Blue Rapids-Waterville | Hutchinson | Scandia |
| Bucklin | Independence | Scott City |
| Burns | Iola | Sedan-Peru |
| Caney | Jewell | Seneca |
| Canton | Kansas City | Severy |
| Cedar Vale | Kingman | Smith Center |
| Chanute | Kinsley | Solomon |
| Chapman | Lacrosse | St. Francis |
| Chase | Larned | St. Paul |
| Cheney | Lawrence | Stafford |
| Cherryvale | Leavenworth-Lansing | Stockton |
| Chetopa | Leon | Sublette |
| Clay Center | Liberal | Tonganoxie |
| Clinton | Lincoln | Topeka |
| Coffeyville | Lindsborg | Towanda |
| Colby-Gem | Lyons | Treeco |
| Coldwater | Manhattan | Washington |
| Concordia | Mankato | Wellington |
| Cottonwood Falls | Marion | Wichita |
| DeSoto | Marquette | Williamsburg |
| Dodge City | Marysville | Winfield |
| Douglass | McDonald | Yates Center |
| El Dorado | McPherson | |
| Ellsworth-Lorraine | Meade | |
| Elwood | Medicine Lodge | |
| Emporia | Minneapolis | |
| Erie | Minneola | |
| Eudora | Moline | |
| Eureka | Mount Hope | |
| Florence | Neodesha | |
| Fort Scott | Newton | |
| Fowler | Nickerson | |
| Frankfort | Norcorator | |
| Garden City | Norton | |
| Garden Plain | Oakley | |
| Goodland | Oberlin | |
| Great Bend | Ottawa | |
| Greensburg | Paola | |

Competitive ETCs in AT&T's Service Area

Boomerang Wireless, LLC
Budget Prepay, Inc.
Cellular Network Partnership
Cox Kansas Telcom, LLC
Global Connection, Inc. of America
H&B Cable Service, Inc.
i-wireless, LLC
NE Colorado Cellular, Inc.
Nex-Tech Wireless, LLC
Nex-Tech, Inc.
Q Link Wireless, LLC
S&T Communications, LLC
Sage Telecom Communications, LLC
TAG Mobile, LLC
Telrite Corporation
Tempo Telecom, LLC
TracFone Wireless, Inc.
United Wireless, Inc.
USCOC of Nebraska/Kansas, LLC
Virgin Mobile USA, LP
YourTel America, Inc.

CERTIFICATE OF SERVICE

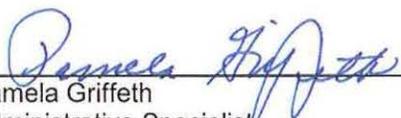
17-SWBT-158-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served by electronic service on this 28th day of February, 2017, to the following:

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