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Filed Date: 10/25/2018  
State Corporation Commission  
of Kansas

October 25, 2018

Lynn M. Retz  
Secretary to the Commission  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, Kansas 66604-4027

Re: KCC Docket No. 17-SWBT-158-MIS

Dear Ms. Retz:

Attached for electronic filing in the above referenced docket, you will find AT&T Kansas' Reply to Staff's Response to AT&T Kansas' Request for Oral Argument.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. A. Ney", with a stylized flourish at the end.

Bruce A. Ney  
AVP - Senior Legal Counsel

Attachment

cc: Parties of Record

**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.	)	
66-2006(d) of Intent to Cease Participation in the	)	
Kansas Lifeline Services Program.	)	

**AT&T KANSAS' REPLY TO STAFF'S RESPONSE  
TO AT&T KANSAS' REQUEST FOR ORAL ARGUMENT**

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T Kansas") in reply to Staff's opposition to oral argument. In AT&T Kansas' view, the more information the Commission has regarding the AT&T Kansas Application and the issues Staff has raised in response, the better able the Commission will be to render a decision which reflects the facts and applicable law. Accordingly, for its reply, AT&T Kansas shows the Commission as follows:

1. In its Response to the Staff's Third Report and Recommendation, AT&T Kansas expressed for the third time in this proceeding, as the applicant, a request to present to the Commission oral argument and/or participate in an evidentiary hearing.<sup>1</sup>

2. Staff has chosen to oppose AT&T Kansas' request to be heard, in person, on its own Application.<sup>2</sup> In doing so, Staff keys its opposition on AT&T Kansas' use of the term "oral argument" in its request and notes that there is "no statutory entitlement to oral argument and

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<sup>1</sup> AT&T Kansas' Response to Staff's Third Report and Recommendation, Docket No. 17-SWBT-158-MIS, filed Oct. 15, 2018 at ¶ 23; *see*, AT&T Kansas' Reply to Staff's Response to AT&T Kansas' Response to Staff's Second Report and Recommendation, Docket No. 17-SWBT-158-MIS, filed June 1, 2017 at ¶ 22; *see also*, Order Setting Procedural Schedule, Docket No. 17-SWBT-158-MIS, filed June 28, 2018 at p. 3, fn. 9 (noting AT&T's reservation of its right to request an evidentiary hearing and agreement to extend the Commission Order due date).

<sup>2</sup> Staff's Response to AT&T's Response, Docket No. 17-SWBT-158-MIS, filed Oct. 22, 2018 at pp. 4-5, ¶¶ 11-14.

[AT&T Kansas'] request to hold oral argument over its entire Application is overly broad.”<sup>3</sup>

Staff likewise asserts that due process does not require the Commission to afford AT&T Kansas a hearing or oral argument on its Application.<sup>4</sup>

3. Nothing in Kansas law prevents the Kansas Corporation Commission from holding a formal hearing, evidentiary or otherwise, to hear argument (or testimony) on questions of law or fact relating to an application to relinquish a telecommunication carrier's Eligible Telecommunications Carrier (“ETC”) designation; if there were such statutory provisions, surely Staff would have cited them. While Staff cites provisions of the Kansas Administrative Procedures Act (“KAPA”) concerning “oral argument” relating to an appeal of an “initial order”<sup>5</sup> to an agency head, controlling are the provisions of K.S.A. 66-106, which endows the Commission with statutory authority to:

adopt reasonable and proper rules and regulations to govern its proceedings, . . . , and to regulate the mode and manner of all investigations, tests, audits, inspections and **hearings not specifically provided for herein**, . . .<sup>6</sup>

The Commission is authorized to hold hearings, evidentiary or for oral argument, on matters, including applications like that of AT&T Kansas, not otherwise specifically addressed under Chapter 66 of Kansas Statutes Annotated or the KAPA. The fact that Staff cannot identify a specific statute which employs the term “oral argument” does not and cannot preclude the Commission from conducting a hearing to hear argument of counsel on a matter before it. Such

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<sup>3</sup> *Id.* at ¶ 11.

<sup>4</sup> *Id.* at ¶ 12.

<sup>5</sup> Staff's Response at ¶ 12.

<sup>6</sup> K.S.A. 66-106(a). (Emphasis added).

a result would be a severe and absurd limitation on the Commission's authority as a fact-finding and quasi-judicial body.

4. The Commission's rules and regulations also do not explicitly limit Commission authority to hold a formal hearing, evidentiary or otherwise, to hear oral argument on questions of law or fact relating to an application to relinquish a telecommunication carrier's ETC designation. If such a regulation or rule existed, surely Staff would have cited to it. To the contrary, for example, K.A.R. 82-1-230 clearly provides for the conduct of proceedings, specifically hearings, without limitation, related to "application[s]".<sup>7</sup>

5. Staff's hyper technical objection to AT&T Kansas' request flies in the face of the Commission's broad statutory authority to conduct proceedings and hearings in matters before it. It is important to note that AT&T Kansas never agreed to a solely "paper proceeding" for the handling of its Application; such proceedings appear to put the applicant at a disadvantage. If AT&T Kansas has failed to artfully request a hearing to the satisfaction of Staff, AT&T Kansas will clarify its request to be an "evidentiary hearing."

6. Further, Staff claims AT&T Kansas' request is overly broad and, thus, it has no idea what legal issues need to be addressed. AT&T Kansas, however, believes the remaining issues in its Application are now very well identified as a result of Staff's Third Report and Recommendation. The handful of remaining issues involve 1,323 census blocks and the Staff's desire to use a misapplication of Section 214(e) to reimpose Carrier of Last Resort ("COLR")-like obligations, previously eliminated by the Kansas legislature, on AT&T Kansas. AT&T Kansas is fully prepared to argue these issues, and, while AT&T Kansas believes the law and facts are clear, it also should have the opportunity to further elucidate the issues for the

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<sup>7</sup> K.A.R. 82-1-230(b).

Commission and address any questions, through either oral argument or the presentation of evidentiary witnesses, concerning the validity and impact of Staff's recommendations.

7. In short, AT&T Kansas wants to be sure the Commission has a full understanding of the facts and law applicable to its decision on AT&T Kansas' Application. In AT&T Kansas' view, that understanding will be aided by oral argument, where the Commissioners will be able to hear about the remaining issues and ask clarifying questions. It is difficult to understand why the Commission's own Staff wants to deny the Commission that opportunity.

WHEREFORE, AT&T Kansas respectfully renews its request for either oral argument or an evidentiary hearing on the remaining issues concerning its Application as discussed above.

Respectfully submitted,

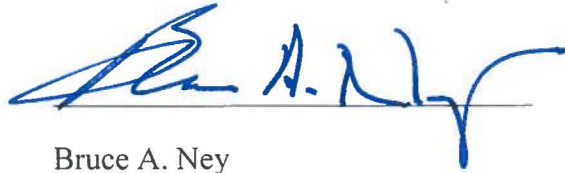
A handwritten signature in blue ink, appearing to read "Bruce A. Ney", is written over a horizontal line.

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ATTORNEY FOR SOUTHWESTERN  
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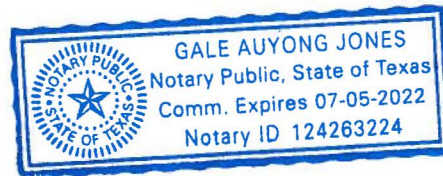
**VERIFICATION**

I, Bruce A. Ney, of lawful age, and being first duly sworn, now state: I am AVP-Senior Legal Counsel and have read AT&T Kansas' Reply to Staff's Response to AT&T Kansas' Request for Oral Argument, and verify the statements contained herein to be true and correct to the best of my knowledge and belief.

  
Bruce A. Ney

Subscribed and sworn to before me this 25<sup>th</sup> day of October 2018.

  
Notary Public



My appointment expires:

7/5/22

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing AT&T Kansas' Reply to Staff's Response to AT&T Kansas' Request for Oral Argument was electronically served this 25<sup>th</sup> day of October 2018 to:

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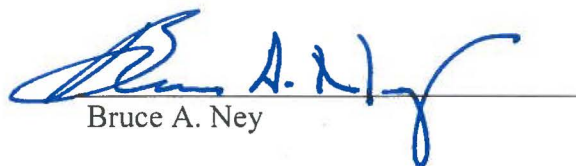
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