

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

Before Commissioners: Susan K. Duffy, Chair  
Shari Feist Albrecht  
Dwight D. Keen

In the Matter of the Application of Southwestern )  
Bell Telephone Company for Approval of )  
Interconnection Agreement Under the ) Docket No. 08-SWBT-940-IAT  
Telecommunications Act of 1996 With )  
Bandwidth.com CLEC, LLC. )

**ORDER APPROVING AMENDED INTERCONNECTION AGREEMENT**

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and record and being duly advised in the premises, the Commission makes the following findings:

1. On January 17, 2020, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) filed an Application requesting Commission approval of an Amended Interconnection Agreement between Southwestern Bell Telephone Company and Bandwidth.com CLEC, LLC (Bandwidth). This Agreement removes certain analog Unbundled Network Elements and certain wholesale resale offerings from the original Agreement as a result of the Federal Communications Commission (FCC) Order 19-72 and the resale forbearance in the Order, which was issued August 2, 2019.<sup>1</sup> Other changes in the Agreement consist of removing the requirement

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<sup>1</sup> FCC 19-72, *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, August 2, 2019.

for DS1/DS3 Unbundled Dedicated Transport between Tier 1 wire centers and wire centers subject to forbearance under FCC Order 19-66<sup>2</sup> and Public Notice DA 19-733<sup>3</sup> dated August 1, 2019.

2. AT&T is the largest telecommunication carrier operating in Kansas and maintains the status of an “electing carrier,” with major service areas in Kansas City, Topeka and Wichita. It is headquartered in Topeka, Kansas. Bandwidth is headquartered in Raleigh, North Carolina and is registered to do business in Kansas as a Foreign Limited Liability Company. Bandwidth is a Competitive Local Exchange Carrier (CLEC) in Kansas that was granted authority in Docket No. 08-BDWT-066-COC and is an Interexchange Service Carrier as approved in Docket No. 08-BDWT-404-COC. Both companies are *active and in good standing* with the Kansas Secretary of State.

3. AT&T Kansas states that the Amendment to Interconnection Agreement entered into between AT&T Kansas and Bandwidth modifies the Interconnection Agreement by recognizing FCC regulatory changes and forbearance related to Unbundled Network Elements and wholesale resale offerings as well as the removal of the requirements relative to DS1/DS3 Unbundled Dedicated Transport. The subject Interconnection Agreement and Amendments to the Interconnection Agreement are collectively referred to herein as “amended Agreement”. AT&T Kansas indicates the amended Agreement fully complies with Section 252(e) of the Telecommunications Act of 1996 (Federal Act) and is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier.<sup>4</sup>

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<sup>2</sup> FCC 19-66, *Report And Order On Remand (WC Docket Nos. 05-25, 16-143; GN Docket No. 13-5) And Memorandum Opinion And Order (WC DOCKET NO. 18-141)*, July 12, 2019.

<sup>3</sup> FCC DA 19-733, *Wireline Competition Bureau Releases List Of Common Language Location Identification Codes For Price Cap Incumbent Local Exchange Carrier Wire Centers Subject To UNE Transport Forbearance*, August 1, 2019.

<sup>4</sup> Application at 2.

4. The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 2018 Supp. 66-1,188. K.S.A. 66-1,190 requires all telecommunications public utilities doing business in Kansas to:

...publish and file with the commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate, and shall furnish the commission copies of all rules and regulations and contracts between such telecommunications public utilities pertaining to any and all jurisdictional services to be rendered by such telecommunications public utilities.

5. Section 252(e)(2) of the Federal Act [47 U.S.C. §252(e)(2)] requires the Commission to presume that interconnection agreements entered into through negotiation and submitted for Commission approval are valid unless:

- (1) the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (2) the implementation of such an agreement (or portions thereof) is not consistent with the public interest, convenience, and authority.

6. On February 19, 2020, the Commission Staff (Staff) submitted its Report and Recommendation, advising the Commission to approve the amended Agreement between AT&T Kansas and Bandwidth. Citing Section 252(e) of the Federal Act, Staff acknowledges the amended Agreement fully complies with Section 252(e) of the Federal Act and supports approval of the Agreement as being consistent with the public interest and convenience and necessity. Staff accordingly recommends the Commission grant AT&T Kansas' Application and approve the amended Agreement.

7. The Commission adopts Staff's recommendation of February 19, 2020, as stated in its Report and Recommendation, which is attached and made a part of this Order, and finds that AT&T Kansas' Application should be granted, and the amended Agreement between AT&T Kansas and Bandwidth be approved.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. Southwestern Bell Telephone Company d/b/a AT&T Kansas' Application filed January 17, 2020, is hereby granted and the amended Interconnection Agreement between AT&T Kansas and Bandwidth.com CLEC, LLC is hereby approved.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>5</sup>

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 03/05/2020



Lynn M. Retz  
Executive Director

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<sup>5</sup> K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

Susan K. Duffy, Chair  
Shari Feist Albrecht, Commissioner  
Dwight D. Keen, Commissioner

Laura Kelly, Governor

## REPORT AND RECOMMENDATION

### UTILITIES DIVISION

**TO:** Chair Susan K. Duffy  
Commissioner Shari Feist Albrecht  
Commissioner Dwight D. Keen

**FROM:** Paula Artzer, Senior Telecommunications Analyst  
Christine Aarnes, Chief of Telecommunications  
Jeff McClanahan, Director of Utilities

**DATE:** February 19, 2020

**SUBJECT:** 08-SWBT-940-IAT  
In the Matter of the Application of Southwestern Bell Telephone Company for  
Approval of Interconnection Agreement Under the Telecommunications Act of  
1996 With Bandwidth.com CLEC

#### **EXECUTIVE SUMMARY:**

On January 17, 2020, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) filed an Application for approval of an Interconnection Agreement Amendment (Amendment) between AT&T and Bandwidth.com CLEC, LLC (Bandwidth). Staff recommends approval of the filing.

#### **BACKGROUND:**

On December 18, 2019, AT&T and Bandwidth entered into an Amended Agreement for the removal of certain analog Unbundled Network Elements (UNE) (Analog Loops) and certain wholesale resale offerings from the original Agreement per the Federal Communications Commission (FCC) Order FCC 19-72, FCC UNE and resale forbearance Order dated August 2, 2019<sup>1</sup>. Additional modifications were made to the Agreement to remove the requirement for DS1/DS3 Unbundled Dedicated Transport (DS1/DS3 UDT) between Tier 1 wire centers and/or

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<sup>1</sup> FCC 19-72, *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Released August 2, 2019; <https://docs.fcc.gov/public/attachments/FCC-19-72A1.pdf>.

wire centers subject to UDT forbearance under Order FCC 19-66<sup>2</sup> and Public Notice DA 19-733<sup>3</sup>, dated August 1, 2019. Any analog UNE qualifying service ordered before February 1, 2020, considered existing embedded base, is grandfathered until August 2, 2022. Any DS1/DS3 qualifying service considered UDT embedded base, ordered on or before January 11, 2020, is grandfathered until July 12, 2022. AT&T filed for approval of this Amended Agreement between AT&T and Bandwidth. The Amendment expires concurrent with the existing Agreement.

The original FCC rules were imposed under the Telecommunications Act of 1996 and were written to require Incumbent Local Exchange Company (ILEC) companies to lease the existing facilities to Competitive Local Exchange Company (CLEC) companies at wholesale prices. The rules allowed the CLEC to compete in the telecommunications market against the ILEC without the upfront expense of constructing the CLEC's own telecommunications network. The current FCC Orders remove the requirement for the ILEC to provide CLEC access to certain analog facilities owned by the ILEC provided over copper. As telecommunications companies transition to newer Internet Protocol (IP) technologies with fiber facilities, the copper facilities are being replaced. The initial rules were written based on the Time Division Multiplexing (TDM) technology that was utilized at that time which worked with analog copper facilities. Telecommunications companies are updating their company infrastructure to remain competitive. The rules applying to TDM and copper facilities no longer apply.

AT&T is the largest local exchange carrier operating in Kansas. The Company's largest service areas are Kansas City, Topeka, and Wichita. AT&T is headquartered in Topeka, Kansas.

Bandwidth is headquartered in Raleigh, North Carolina, and is registered as a Foreign Limited Liability Corporation. Bandwidth received Certificates of Convenience and Authority on January 22, 2008, in Docket 08-BDWT-404-COC to provide Interexchange Services and 08-BDWT-405-COC to provide CLEC service in the State of Kansas. Bandwidth is registered with the Kansas Secretary of State's office and is "active and in good standing" with that office.

## **ANALYSIS:**

The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 66-1,188. K.S.A. 66-1,190 requires all telecommunications public utilities doing business in Kansas over which the Commission has control to "publish and file with the commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate, and shall furnish the commission copies of all rules and regulations and contracts between such telecommunications public utilities pertaining to any and all jurisdictional services to be rendered by such telecommunications public utilities."

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<sup>2</sup> FCC 19-66, Report And Order On Remand (WC Docket Nos. 05-25, 16-143; GN Docket No. 13-5) And Memorandum Opinion And Order (WC DOCKET NO. 18-141), Released July 12, 2019; <https://docs.fcc.gov/public/attachments/FCC-19-66A1.pdf>.

<sup>3</sup> FCC DA 19-733, Wireline Competition Bureau Releases List Of Common Language Location Identification Codes For Price Cap Incumbent Local Exchange Carrier Wire Centers Subject To UNE Transport Forbearance, Released August 1, 2019; <https://docs.fcc.gov/public/attachments/DA-19-733A1.pdf>.

The U.S. Congress and the FCC have pre-empted certain aspects of state regulation of interconnection between telecommunications carriers. Section 252(e)(2) of the Federal Telecommunications Act of 1996 (47 U.S.C. §252(e)(2)) requires the Commission to presume that interconnection agreements entered into through negotiation and submitted for Commission approval are valid unless:

- 1) the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- 2) the implementation of such an agreement (or portions thereof) is not consistent with the public interest, convenience, and necessity.

AT&T affirms that implementation of this Amendment complies fully with Section 252(e) of the Federal Act because the Amendment to the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier.

Staff does not have any concerns regarding this Application. Staff reviewed the Amendment and did not find any language that discriminates against other telecommunications carriers not a party to the Agreement or language that is inconsistent with the public interest, convenience, and necessity. Partial changes made to the Agreement by this Amendment are in compliance with FCC Orders.

**RECOMMENDATION:**

Staff recommends the Commission grant approval of this Amendment to the Interconnection Agreement between AT&T Kansas and Bandwidth. Staff finds no evidence of discrimination against other parties and finds that approval is in the public interest.

## **CERTIFICATE OF SERVICE**

08-SWBT-940-IAT

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 03/05/2020.

LISA JILL FREEMAN, VICE PRESIDENT & REGULATORY  
COMPLIANCE OFFICER  
BANDWIDTH.COM CLEC, LLC  
900 MAIN CAMPUS DR STE 500  
RALEIGH, NC 27606  
Fax: 919-238-3571  
ljfreeman@bandwidth.com

WALKER HENDRIX, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
w.hendrix@kcc.ks.gov

BRUCE A. NEY, AVP -SENIOR LEGAL COUNSEL  
AT&T KANSAS  
816 CONGRESS AVE  
SUITE 1100  
AUSTIN, TX 78701-2471  
Fax: 512-870-3420  
bruce.ney@att.com

/S/ DeeAnn Shupe

DeeAnn Shupe