

DEC 09 2008

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Susan K. Duffy Docl
Room

In the Matter of the Application of)
Southwestern Bell Telephone Company, for)
Price Deregulation of Residential)
Telecommunications Services in the Seneca,)
Great Bend, Iola, Lyons, Pittsburg and)
Winfield, Kansas, Exchanges Pursuant to)
K.S.A. 2007 Supp. 66-2205(q)(1).)

2008.12.09 11:16:55
Kansas Corporation Commission
/S/ Susan K. Duffy

) Docket No. 09-SWBT-434-PDR

NOTICE OF FILING OF REPORT AND RECOMMENDATION

COMES NOW the Staff of the State Corporation Commission of the State of Kansas
(Staff and Commission, respectively) and submits the attached Staff Report and
Recommendation in Docket Nos. 09-SWBT-434-PDR for Commission consideration.

Respectfully submitted,



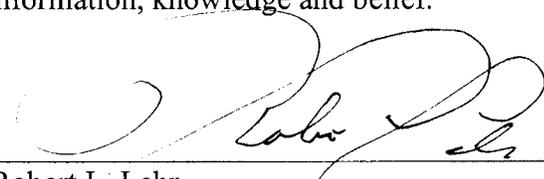
Robert L. Lehr, # 9997
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VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

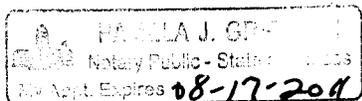
Robert L. Lehr, of lawful age, being first duly sworn upon oath states:

That he is the attorney for the Corporation Commission Staff in this matter; that he has read and is familiar with the attached Report and Recommendation and that the statements made therein are true and correct to the best of his information, knowledge and belief.



Robert L. Lehr

Subscribed and sworn to before me this 9th day of December, 2008.





Notary Public

My appointment expires: *August 17, 2011*

**MEMORANDUM
UTILITIES DIVISION**

TO: Chairman Wright
Commissioner Moffet
Commissioner Harkins

FROM: Christine Aarnes

DATE: December 5, 2008

DATE SUBMITTED TO LEGAL: 12/8/08

DATE SUBMITTED TO COMMISSIONERS: 12/09/08

RE: Docket No. 09-SWBT-434-PDR

In the Matter of the Application of Southwestern Bell Telephone Company for Price Deregulation of Residential Telecommunications Services in the Humboldt, Kansas Exchange and Business Telecommunications Services in the Seneca, Great Bend, Iola, Lyons, Pittsburg and Winfield, Kansas Exchanges Pursuant to K.S.A. 2007 Supp 66-2005(q)(1).

BACKGROUND:

This application was filed on November 21, 2008, by Southwestern Bell Telephone Company d/b/a/ AT&T Kansas ("AT&T"), and requests price deregulation of residential telecommunications services in the Humboldt exchange and business telecommunications services in the Seneca, Great Bend, Iola, Lyons, Pittsburg and Winfield exchanges in the state of Kansas pursuant to K.S.A. 2006 Supp. 66-2005(q)(1)(C) and (D).

ANALYSIS:

K.S.A. 66-2005 was amended in 2006 to include provisions that establish procedures for price deregulation of price cap regulated services. K.S.A. 66-2005(q)(1) governs price regulation for the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation. Specifically, K.S.A. 66-2005(q)(1)(C) and (D) address the price deregulation of telecommunications services of price cap carriers in exchanges in which there are fewer than 75,000 local exchange access lines served by all providers.

When considering deregulation of business lines, for exchanges with fewer than 75,000, K.S.A. 66-2005(q)(1)(C) states:

In any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial radio services in that exchange.

When considering deregulation of residential access lines, K.S.A. 66-2005(q)(1)(D) states:

In any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial radio services in that exchange.

Humboldt

The Humboldt exchange has fewer than 75,000 local exchange access lines; therefore, this application was correctly filed pursuant to K.S.A. 66-2005(q)(1)(D). In the application, AT&T indicates that Cox is a facilities-based carrier providing residential service to access lines in the Humboldt exchange. In addition to Cox, AT&T claims four carriers, Alltel Kansas Limited Partnership (“ALLTEL”), Sprint Spectrum, L.P. (“Sprint”), USCOC of Nebraska/Kansas, LLC (“US Cellular”), and T-Mobile USA, Inc., which are not affiliated with the local exchange carrier, also provide residential service as providers of Commercial Mobile Radio Service (“CMRS”) in the Humboldt exchange. In support of its claims, AT&T cites number porting information that indicates number porting data as of November 10, 2008; E911 data as of September 30, 2008; and, documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local

exchange carrier or wireless carrier.

Staff additionally queried the companies named as competitive carriers in AT&T's application. The request for information asked carriers if they provide a residential access line to more than one customer in the Humboldt exchange and how the service is provisioned.

Cox, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a residential access line to more than one customer in the Humboldt, Kansas exchange using its own facilities.

Sprint, when asked the same question, responded affirmatively, indicating that a residential access line is provisioned to more than one customer in the Humboldt exchange over Sprint's own facilities.

US Cellular responded that it provides lines of service via its own facilities in this exchange, but it does not differentiate between residential and business customers. ALLTEL indicated that it provides wireless service via its own facilities to more than one customer with a billing address in the Humboldt exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(D), there is sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to residential customers in the Humboldt exchange. As required by Kansas law, one nonaffiliated carrier, Cox, is a facilities-based carrier. The law requires one other carrier that is not affiliated with AT&T or the facilities-based carrier, which can be a provider of commercial mobile radio services, be providing service in the requested exchange. In this case, Sprint, US Cellular, and ALLTEL would all qualify as the second provider of telecommunications service.

Seneca

The Seneca exchange has fewer than 75,000 local exchange access lines; therefore, this application was correctly filed pursuant to K.S.A. 66-2005(q)(1)(C). In the application, AT&T indicates that CenturyTel Solutions, LLC ("CenturyTel") is a facilities-based carrier providing business service to access lines in the Seneca exchange. In addition to service provided by CenturyTel, AT&T claims ALLTEL, US Cellular, and Verizon Wireless, which are not affiliated with the local exchange carrier, also provide business service as providers of CMRS in the Seneca exchange. In support of its claims, AT&T cites number porting information that indicates number porting data as of November 10, 2008; E911 data as of September 30, 2008; and, documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

Staff additionally queried the companies named as competitive carriers in AT&T's application. The request for information asked carriers if they provide a single-line business access line to more than one customer in the Seneca exchange and how the service is provisioned.

CenturyTel, as the nonaffiliated facilities-based carrier stated that it does not provide service to customers in the Seneca, Kansas exchange.

US Cellular responded that it provides lines of service via its own facilities in this exchange, but it does not differentiate between residential and business customers. ALLTEL indicated that it provides wireless service via its own facilities to more than one customer with a billing address in the Seneca exchange.

With that information, it appears there is not a sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to business customers in the Seneca exchange, as required by K.S.A. 66-2005(q)(1)(C). As required by Kansas law, one nonaffiliated facilities-based carrier and one other carrier that is not affiliated with AT&T or the facilities-based carrier, which can be a provider of commercial mobile radio services, must be providing service to more than one customer in the requested exchange. In this case, ALLTEL and US Cellular would qualify as the CMRS provider of telecommunications service but there is not sufficient evidence to indicate that one nonaffiliated facilities-based carrier is providing business service to more than one customer in the Seneca exchange. The statute states that “**not more than one** of such nonaffiliated carriers or entities **shall be a provider of commercial radio services** in that exchange” (emphasis added); therefore, the Commission cannot rely on the CMRS providers to satisfy the requirements of the statute.

Great Bend

The Great Bend exchange has fewer than 75,000 local exchange access lines; therefore, this application was correctly filed pursuant to K.S.A. 66-2005(q)(1)(C). In the application, AT&T indicates that Cox is a facilities-based carrier providing business service to access lines in the Great Bend exchange. In addition to service provided by Cox, AT&T claims ALLTEL, RCC Minnesota, Inc. (“RCC”), WestLink Communications LLC (“WestLink”), and Nex-Tech Wireless, LLC (“Nex-Tech Wireless”), which are not affiliated with the local exchange carrier, also provide business service as providers of CMRS in the Great Bend exchange. In support of its claims, AT&T cites number porting information that indicates number porting data as of November 10, 2008; E911 data as of September 30, 2008; and, documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

Staff additionally queried the companies named as competitive carriers in AT&T’s application. The request for information asked carriers if they provide a single-line business access line to more than one customer in the Great Bend exchange and how the service is provisioned.

Cox, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business access line to more than one customer in the Great Bend, Kansas exchange using its own facilities.

Nex-Tech Wireless, when asked the same questions, responded affirmatively, indicating that it provides a business access line to more than one customer in the Great Bend exchange. ALLTEL indicated that it provides service to more than one customer with a billing address in the Great Bend

exchange. WestLink responded that it has 214 active subscribers in the Great Bend exchange, but that it doesn't differentiate between residential and business subscribers.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C), there is sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to business customers in the Great Bend exchange. As required by Kansas law, one nonaffiliated carrier, Cox, is a facilities-based carrier. The law requires one other carrier that is not affiliated with AT&T or the facilities-based carrier, which can be a provider of commercial mobile radio services, be providing service in the requested exchange. In this case, Nex-Tech Wireless, ALLTEL, and WestLink would all qualify as the second provider of telecommunications service.

Iola

The Iola exchange has fewer than 75,000 local exchange access lines; therefore, this application was correctly filed pursuant to K.S.A. 66-2005(q)(1)(C). In the application, AT&T indicates that Cox is a facilities-based carrier providing business service to access lines in the Iola exchange. In addition to service provided by Cox, AT&T claims ALLTEL, Sprint, and US Cellular, which are not affiliated with the local exchange carrier, also provide business service as providers of commercial mobile radio services in the Iola exchange. In support of its claims, AT&T cites number porting information that indicates number porting data as of November 10, 2008; E911 data as of September 30, 2008; and, documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

Staff additionally queried the companies named as competitive carriers in AT&T's application. The request for information asked carriers if they provide a business access line to more than one customer in the Iola exchange and how the service is provisioned.

Cox, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a business access line to more than one customer in the Iola, Kansas exchange using its own facilities.

ALLTEL indicated that it provides wireless service to more than one customer with a billing address in the Iola exchange. US Cellular indicated that it does not distinguish between single-line residential and single-line business wireless service, but it does provide single-line wireless service to more than one customer in the Iola exchange. Sprint responded affirmatively, that it does provide a single-line business access line to more than one customer in the Iola exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C), there is sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to business customers in the Iola exchange. As required by Kansas law, one nonaffiliated carrier, Cox, is a facilities-based carrier. The law requires one other carrier that is not affiliated with AT&T or the facilities-based carrier, which can be a provider of commercial mobile radio services, be providing service in the requested exchange. In this case, ALLTEL, Sprint, and US Cellular would all qualify

as the second provider of telecommunications service.

Lyons

The Lyons exchange has fewer than 75,000 local exchange access lines; therefore, this application was correctly filed pursuant to K.S.A. 66-2005(q)(1)(C). In the application, AT&T indicates that Cox is a facilities-based carrier providing business service to access lines in the Lyons exchange. In addition to service provided by Cox, AT&T claims ALLTEL, US Cellular, and Sprint, which are not affiliated with the local exchange carrier, also provide business service as providers of commercial mobile radio services in the Lyons exchange. In support of its claims, AT&T cites number porting information that indicates number porting data as of November 10, 2008; E911 data as of September 30, 2008; and, documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

Staff additionally queried the companies named as competitive carriers in AT&T's application. The request for information asked carriers if they provide a business access line to more than one customer in the Lyons exchange and how the service is provisioned.

Cox, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business access line to more than one customer in the Lyons, Kansas exchange using its own facilities.

ALLTEL indicated that it provides wireless service to more than one customer with a billing address in the Lyons exchange. US Cellular indicated that it does not distinguish between single-line residential and single-line business wireless service, but it does provide single-line wireless service to more than one customer in the Lyons exchange. Sprint responded affirmatively, that it does provide a single-line business access line to more than one customer in the Lyons exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C), there is sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to business customers in the Lyons exchange. As required by Kansas law, one nonaffiliated carrier, Cox, is a facilities-based carrier. The law requires one other carrier that is not affiliated with AT&T or the facilities-based carrier, which can be a provider of commercial mobile radio services, be providing service in the requested exchange. In this case, ALLTEL, US Cellular, and Sprint would all qualify as the second provider of telecommunications service for residential service.

Pittsburg

The Pittsburg exchange has fewer than 75,000 local exchange access lines; therefore, this application was correctly filed pursuant to K.S.A. 66-2005(q)(1)(C). In the application, AT&T indicates that Cox and TelCove Operations, LLC ("TelCove") are facilities-based carriers providing business service to access lines in the Pittsburg exchange. In addition to service provided by Cox and TelCove, AT&T claims ALLTEL, US Cellular, Nex-Tech Wireless, and WestLink, which are not affiliated with the local exchange carrier, also provide business service as providers of commercial

mobile radio services in the Pittsburg exchange. In support of its claims, AT&T cites number porting information that indicates number porting data as of November 10, 2008; E911 data as of September 30, 2008; and, documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

Staff additionally queried the companies named as competitive carriers in AT&T's application. The request for information asked carriers if they provide a single-line business access line to more than one customer in the Pittsburg exchange and how the service is provisioned.

Cox, as a nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business access line to more than one customer in the Pittsburg, Kansas exchange using its own facilities. TelCove, however, indicated that it does not provide a single-line business access line to any customer in the Pittsburg exchange.

ALLTEL indicated that it provides service to more than one customer with a billing address in the Pittsburg exchange. US Cellular indicated that it does not provide single-line wireless service to more than one customer in the Pittsburg exchange. Nex-Tech Wireless responded that it has no customers in the Pittsburg exchange. WestLink also responded that it does not have any customers in the Pittsburg exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C), there is sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to residential customers in the Pittsburg exchange. As required by Kansas law, one nonaffiliated carrier, Cox, is a facilities-based carrier. The law requires one other carrier that is not affiliated with AT&T or the facilities-based carrier, which can be a provider of commercial mobile radio services, be providing service in the requested exchange. In this case, ALLTEL would qualify as the second provider of telecommunications service.

Winfield

The Winfield exchange has fewer than 75,000 local exchange access lines; therefore, this application was correctly filed pursuant to K.S.A. 66-2005(q)(1)(C). In the application, AT&T indicates that Cox and TelCove are facilities-based carriers providing business service to access lines in the Winfield exchange. In addition to service provided by Cox and TelCove, AT&T claims ALLTEL, Sprint, and US Cellular, which are not affiliated with the local exchange carrier, also provide single-line business service as providers of commercial mobile radio services in the Winfield exchange. In support of its claims, AT&T cites number porting information that indicates number porting data as of November 10, 2008; E911 data as of September 30, 2008; and, documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

Staff additionally queried the companies named as competitive carriers in AT&T's application. The request for information asked carriers if they provide a single-line business access line to more than

one customer in the Winfield exchange and how the service is provisioned.

Cox, as a nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business access line to more than one customer in the Winfield, Kansas exchange using its own facilities. TelCove, however, indicated that it does not provide a single-line business access line to any customer in the Winfield exchange.

ALLTEL indicated that it provides service to more than one customer with a billing address in the Winfield exchange. US Cellular indicated that it does not distinguish between single-line residential and single-line business wireless service, but it does provide single-line wireless service to more than one customer in the Winfield exchange. Sprint responded affirmatively, that it does provide a single-line business access line to more than one customer in the Winfield exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C), there is sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to business customers in the Winfield exchange. As required by Kansas law, one nonaffiliated carrier, Cox, is a facilities-based carrier. The law requires one other carrier that is not affiliated with AT&T or the facilities-based carrier, which can be a provider of commercial mobile radio services, be providing service in the requested exchange. In this case, ALLTEL, Sprint, and US Cellular would all qualify as the second provider of telecommunications service.

RECOMMENDATION:

Staff believes AT&T has demonstrated that the requirements of K.S.A. 66-2005(q)(1)(D) have been satisfied in the Humboldt exchange and the requirements of K.S.A. 66-2005(q)(1)(C) have been satisfied in the Great Bend, Iola, Lyons, Pittsburg and Winfield exchanges, but not in the Seneca exchange. Thus, Staff recommends the Commission grant AT&T's requests for price deregulation of residential service in the Humboldt exchange pursuant to K.S.A. 66-2005(q)(1)(D), and for single-line business service in the Great Bend, Iola, Lyons, Pittsburg, and Winfield exchanges pursuant to K.S.A. 66-2005(q)(1)(C). Staff recommends the Commission deny AT&T's request for single-line business price deregulation in the Seneca exchange pursuant to K.S.A. 66-2005(q)(1)(C).

cc: Don Low Susan Duffy Pat Shurtz
Tom Stratton Colleen Harrell Bob Lehr

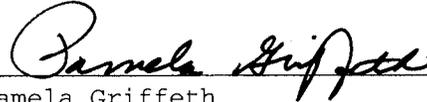
CERTIFICATE OF SERVICE

09-SWBT-434-PDR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 9th day of December, 2008, to the following:

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