

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

Before Commissioners: Dwight D. Keen, Chair
 Susan K. Duffy
 Andrew J. French

In the Matter of the Application of Everfast)
Fiber Networks LLC for a Certificate of) Docket No. 23-EFNT-258-COC (CLEC)
Convenience and Authority to Provide Local)
Exchange and Exchange Access Service, and)
Interexchange Service Within the State of)
Kansas)

ORDER GRANTING CLEC CERTIFICATE

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 records and being duly advised in the premises, the Commission makes the following findings:

1. On August 23, 2022, Everfast Fiber Networks, LLC (Everfast or Company) filed an Application with the Commission requesting a Certificate of Convenience and Authority to provide competitive local exchange and exchange access (CLEC) services in the Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) study area. Everfast stated that it intends to offer services in the Kansas City exchange, to include the following exchange zones and municipalities: Fairway, Kansas City, Merriam, Mission, Mission Woods, Roeland Park, Westwood, and Westwood Hills in the Kansas City Zone; Leawood, Lenexa, Overland Park, Prairie Village, and Shawnee in the Melrose Zone; and Olathe in the Olathe Zone. Everfast's Application provided details surrounding its operations, management, organizational structure, and finances. On September 30, 2022, Everfast filed a Supplement to its Application clarifying that it is seeking certification only in AT&T Kansas' study area and not within any exchanges served by a rural Local Exchange Carrier (RLEC). On October 7, 2022, Everfast filed an

Additional Supplement providing additional details regarding its management team. Everfast is also seeking authority to operate as an interexchange carrier (IXC), which is being handled by the Commission in Docket No. 23-EFNT-260-COC.

2. K.S.A. 66-131 states: “No common carrier or public utility... shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state.”

3. K.S.A. 66-2005(w) states in part:

[T]elecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission’s approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas...

4. Commission Staff (“Staff”) submitted a Report and Recommendation in regards to the Application on October 25, 2022, attached hereto as Exhibit A and made a part hereof by reference. Staff found that Everfast is properly registered with the Kansas Secretary of State’s Office and its status is “active and in good standing.” Staff found that based upon the information provided by Everfast, it possesses the necessary technical, managerial, and financial abilities to provide CLEC service in Kansas. Staff noted that Everfast’s goal is to build a Gigabit-capable network to provide video, telecommunications, and broadband services to both residential and business customers. Staff also noted that Everfast will need to file its own CLEC intrastate access

tariff prior to offering such services. Staff found that all other aspects of Everfast's Application were acceptable and granting of its Application would benefit the general public. Staff recommended approval of the Application.

5. The Commission finds Staff's findings and recommendations to be reasonable and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Everfast's Application for a Certificate of Convenience and Authority to provide competitive local exchange and exchange access service within AT&T Kansas' study area is approved.

B. The Company shall register with the Kansas Universal Service Fund (KUSF) and identify the appropriate remittance and payment election via the Company Identification and Operations form. KUSF registration with Vantage Point Solutions (VPS), the KUSF Administrator, should occur within 30 days of this Order. Within 30 days of generating Kansas intrastate assessable retail revenue, the Company shall submit the relevant Carrier Remittance Worksheets and assessment payments to VPS.

C. The Company is reminded to notify the Commission immediately of any change in address or contact information, file timely Annual Interrogatories, maintain current registration with the Kansas Secretary of State's Office, and pay all Commission and KUSF assessments in a timely manner. The Company must also have approved interconnection agreements on file with the Commission, as applicable.

D. 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).¹

¹K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 11/01/2022



Lynn M. Retz
Executive Director

MRN

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Dwight D. Keen, Chair
Susan K. Duffy, Commissioner
Andrew J. French, Commissioner

FROM: Steve Garrett, Senior Telecommunications Analyst
Sandy Reams, Assistant Chief of Telecommunications
Bryan Seamans, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: October 25, 2022

SUBJECT: Docket No. 23-EFNT-258-COC

In the Matter of Application of Everfast Fiber Networks LLC for a Certificate of Convenience and Authority to Provide Local Exchange and Exchange Access Service, and Interexchange Service Within the State of Kansas (CLEC).

EXECUTIVE SUMMARY

On August 23, 2022, Everfast Fiber Networks LLC (Everfast) applied for a Certificate of Convenience and Authority (COC) to provide competitive local exchange and exchange access carrier (CLEC) services in Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) study area. Everfast states it intends to offer services in the Kansas City exchange, to include the following exchange zones and municipalities:¹ Fairway, Kansas City, Merriam, Mission, Mission Woods, Roeland Park, Westwood, and Westwood Hills in the Kansas City Zone; Leawood, Lenexa, Overland Park, Prairie Village, and Shawnee in the Melrose Zone; and Olathe in the Olathe Zone.

On September 30, 2022, Everfast filed a Supplement to Application clarifying that it was seeking certification only in AT&T Kansas' study area and not within any exchanges served by a rural Local Exchange Carrier (LEC) (Supplement to Application).

On October 7, 2022, Everfast filed its Additional Supplement to Application to provide information about the management team for Everfast's Kansas operations (Additional Supplement to Application).

¹ Application, ¶ 10A.

Staff recommends Commission grant approval of this Application and grant Everfast a COC to provide CLEC services in AT&T Kansas' study areas. If Everfast seeks to provide CLEC services within any other LEC's service area, the Company will need to file an Application requesting authority to provide CLEC service within the service area.

BACKGROUND

As discussed within this Report and Recommendation (R&R), Everfast is acquiring certain assets and operations of Consolidated Communications, Inc. (Consolidated) to offer services. Everfast's purchase of Consolidated is not subject to approval by the Commission.

The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 66-1,188 and K.S.A. 66-2005(z). The Commission derives its authority to certificate and decertificate public utilities from K.S.A. 66-131. Pursuant to K.S.A. 66-131, the Commission must review all certification and decertification Applications to determine whether the "public convenience" will be promoted by granting the request.

ANALYSIS

Everfast is a Delaware company with its headquarters located at 33 Benedict Place, Greenwich, Connecticut 06830. The Company was properly registered with the Kansas Secretary of State's office on May 19, 2022, as a Limited Liability Company and is currently "active and in good standing" with the Secretary's office. Everfast is wholly-owned by Boulevard Digital Partners Holding Company, LLC.²

Everfast is in the process of completing all necessary regulatory approvals and registrations with the Federal Communications Commission (FCC) to operate in Kansas.³ The Company identified its President, Vice Presidents, and Treasurer⁴ and provided its regulatory contact's name and contact information.⁵ The Company also provided an organizational chart.⁶

Everfast's Kansas management team has prior telecommunications experience, including with Hawai'i Telecom, Frontier Telecommunications, AT&T Services, SureWest Communications, Birch Telecom, and Everest Connections.⁷ The management team has experience with network operations, including construction, maintenance, engineering, design, and operations, business services, and marketing, and management of statewide telecommunications systems.⁸ Mr. Metcalfe, a principal investor in and owner of Everfast, is also the Co-Managing Partner and Chief Executive Officer Astatine Investment Partners. Mr. Slazek is also a member of Astatine's Global Investment Team. The Company plans to employ fewer than 100 employees.⁹

Everfast submitted a signed Telecommunications Carrier Code of Conduct with its Application.¹⁰

² *Id.*, ¶ 13.

³ Everfast's confidential response to Staff Data Request (DR) 2.

⁴ Application, ¶ 8.

⁵ *Id.*, ¶ 7, Additional Supplement to Application.

⁶ Everfast's response to Staff DR 3.

⁷ Additional Supplement to Application, ¶ 1.a.-d.

⁸ *Id.*

⁹ Application, ¶ 10.B.

¹⁰ *Id.*, ¶19; Exhibit D.

The Company also provided comparative Income Statements and Balance Sheets for 2018 – 2020,¹¹ as well as a management discussion addressing “significant activity that may impact either the Income Statement or Balance Sheet.”¹²

Since Everfast does not own any telecommunications services in the U.S., Staff requested additional information from the Company regarding the 2018 – 2020 comparative Income Statements and Balance Sheets provided with the Application. Everfast’s response to Staff Data Request (DR) 2 explained that it is acquiring Consolidated’s Kansas facilities and operations and, therefore, provided Consolidated’s financial statements with its Application.¹³ Everfast also provided the Income Statement and Balance Sheet for the year ended December 31, 2021. Everfast seeks to provide video, telecommunications, and broadband services to both residential and business customers within AT&T Kansas’ service area and, specifically, in the Kansas City metropolitan area including the following municipalities: Kansas City, Overland Park, Fairway, Roeland Park, Shawnee, Lenexa, Leawood, Olathe, Prairie Village, Westwood, Westwood Hills, Mission, Merriam, and Mission Woods. Everfast has no long-term plans to expand service beyond its original service area.¹⁴

Everfast’s acquisition of Consolidated’s Kansas operations and facilities is occurring via an arms-length transaction. The transaction includes all network facilities, installed conduit and fiber, routers, cable modems and boxes, and similar equipment, real property, leases, and access agreements; customer and vendor contracts, assignable permits, certain intellectual property, accounts receivable, security deposits and specific prepaid amounts, warranty rights related to tangible assets and books and records of the business, cars, trucks and other vehicles, and inventories.¹⁵ Everfast will deploy the necessary above and underground facilities and equipment to provide service and is committed to maintaining and upgrading its facilities.¹⁶ Everfast has not entered into any Interconnection or Pole Attachment Agreements, but will do so after the transaction with Consolidated is completed.

Everfast explained that its goal is to build a Gigabit-capable network¹⁷ to provide video, telecommunications, and broadband services to both residential and business customers. Everfast intends to concur in Consolidated Communications, Inc.’s Kansas CLEC tariff, however, for business customers, Everfast intends to also offer services pursuant to Individual Customer-Based (ICB) agreements.¹⁸ Everfast will need to file its own CLEC intrastate access tariff prior to offering such services.

To the extent that the Company’s presence in Kansas will increase consumer options for services, Staff believes the general public would benefit from Commission approval of this Application.

¹¹ *Id.*, Confidential Exhibit A.

¹² *Id.*, and ¶ 14.C.

¹³ See also Application, ¶ 19.

¹⁴ *Id.*, Item 5 and 10.A.

¹⁵ Everfast’s response to Staff DR 1.

¹⁶ Application, ¶ 10.

¹⁷ Application, Item 14.C.

¹⁸ *Id.*, ¶ 10A.

RECOMMENDATION:

Staff recommends the Commission issue an order granting a Certificate of Convenience and Authority to Everfast to provide CLEC services within AT&T Kansas' study area. The Commission should direct the Company to register with Vantage Point Solutions, the Kansas Universal Service Fund (KUSF) Administrator, within 30 days of an Order granting the Company's Application, through the appropriate KUSF remittance and payment election via the Company Identification and Operations. Within 30 days of generating Kansas intrastate assessable retail revenue, the Company shall submit the relevant Carrier Remittance Worksheets and assessment payments to VPS.

The Company is reminded to notify the Commission immediately of any change in address or contact information, file timely Annual Interrogatories, maintain current registration with the Kansas Secretary of State's Office, and pay all Commission and Kansas Universal Service Fund assessments in a timely manner.

CERTIFICATE OF SERVICE

23-EFNT-258-COC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 11/01/2022.

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/S/ KCC Docket Room

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