

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

DEC 09 2008

In the Matter of the Application of)
Southwestern Bell Telephone Company, for)
Price Deregulation of Residential and)
Business Telecommunications Services in)
the Cheney, Coffeyville, Garden Plain,)
McPherson, Plainville, Cherryvale and)
Halstead, Kansas, Exchanges Pursuant to)
K.S.A. 2007 Supp. 66-2205(q)(1).)

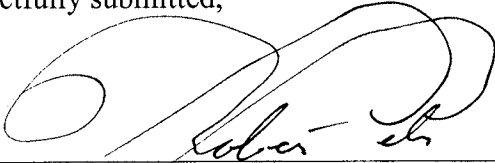
Susan K. Duffy Docket
Board

) Docket No. 09-SWBT-435-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-435-PDR for Commission consideration.

Respectfully submitted,



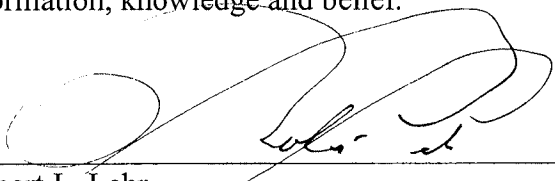
Robert L. Lehr, #9997
Litigation Counsel
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Topeka, KS 66604
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(785) 271-3167 fax

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

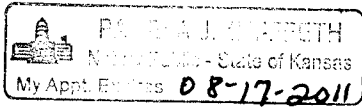
Robert L. Lehr, of lawful age, being first duly sworn upon oath states:

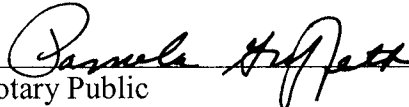
That he is the attorney for the Corporation Commission Staff in this matter; that he has read and is familiar with the attached Report and Recommendation and that the statements made therein are true and correct to the best of his information, knowledge and belief.



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-435-PDR

In the Matter of the Application of Southwestern Bell Telephone Company for Price Deregulation of Residential and Business Telecommunications Services in the Cheney, Coffeyville, Garden Plain, McPherson, Plainville, Cherryvale and Halstead, 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 and business telecommunications services in the Cheney, Coffeyville, Garden Plain, McPherson, Plainville, Cherryvale and Halstead exchanges in the state of Kansas pursuant to K.S.A. 2007 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.

Cheney

The Cheney 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) and (D). In the application, AT&T indicates that Cox Kansas Telcom, LLC (“Cox”) is a facilities-based carrier providing telecommunications service to residential and business access lines in the Cheney exchange, and CenturyTel Solutions, LLC (“CenturyTel”) is also a facilities-based carrier providing telecommunications service to business access lines in the Cheney exchange. In addition to service provided by Cox and CenturyTel, AT&T claims Alltel Kansas Limited Partnership (“ALLTEL”) and Sprint Spectrum, L.P. (“Sprint”), which are not affiliated with the local exchange carrier, also provide telecommunications service as providers of Commercial Mobile Radio Service (“CMRS”) in the Cheney 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 Cheney exchange and if the carriers provide a single-line business line to more than one customer in the Cheney exchange. The request further inquired how the service is provisioned (e.g., own facilities, resale, etc.).

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

Sprint, when asked the same questions responded affirmatively, indicating that a residential access line and a single-line business line are each provided to more than one customer in the Cheney exchange. ALLTEL indicated that it provides wireless service to more than one customer with a billing address in the Cheney exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C) and 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 both residential and business customers in the Cheney 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 and Sprint would both qualify as the second provider of telecommunications service.

Coffeyville

The Coffeyville 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) and (D). In the application, AT&T indicates that Cox is a facilities-based carrier providing residential and single-line business service to access lines in the Coffeyville exchange. In addition to Cox, AT&T claims ALLTEL and USCOC of Nebraska/Kansas, LLC ("US Cellular"), which are not affiliated with the local exchange carrier, also provide residential and single-line business service as providers of CMRS in the Coffeyville 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 Coffeyville exchange and if the carriers provide a single-line business line to more than one customer in the Coffeyville exchange. The request further inquired 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 and a single-line business access line to more than one customer in the Coffeyville, Kansas exchange using its own facilities.

ALLTEL indicated that it provides wireless service via its own facilities to more than one customer with a billing address in the Coffeyville exchange. However, US Cellular responded that it does not provide single-line wireless service to more than one customer in the Coffeyville exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C) and 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 both residential and business customers in the Coffeyville 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.

Garden Plain

The Garden Plain 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) and (D). In the application, AT&T indicates that Cox is a facilities-based carrier providing residential and business service to access lines in the Garden Plain exchange and TelCove is a facilities-based carrier providing business service to access lines in the Garden Plain exchange. In addition to service provided by Cox and TelCove, AT&T claims ALLTEL, Sprint, T-Mobile USA, Inc., and Verizon Wireless, which are not affiliated with the local exchange carrier, also provide residential and business service as providers of CMRS in the Garden Plain 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 and a single-line business access line to more than one customer in the Garden Plain 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 and a single-line business access line to more than

one customer in the Garden Plain exchange using its own facilities. TelCove, however, indicated that it does not provide a single-line business access line to any customer in the Garden Plain exchange.

Sprint, when asked the same questions responded affirmatively, indicating that a residential access line and a single-line business line are each provided to more than one customer in the Garden Plain exchange. ALLTEL indicated that it provides service to more than one customer with a billing address in the Garden Plain exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C) and 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 both residential and business customers in the Garden Plain 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 and Sprint would both qualify as the second provider of telecommunications service.

McPherson

The McPherson 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) and (D). In the application, AT&T indicates that Cox is a facilities-based carrier providing residential and business service to access lines in the McPherson exchange. In addition to service provided by Cox, AT&T claims ALLTEL, Sprint, US Cellular, and WestLink Communications LLC (“WestLink”), which are not affiliated with the local exchange carrier, also provide residential and business service as providers of CMRS in the McPherson 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 and a single-line business access line to more than one customer in the McPherson 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 and a single-line business access line to more than one customer in the McPherson exchange using its own facilities.

ALLTEL indicated that it provides service to more than one customer with a billing address in the McPherson exchange. WestLink responded that it has 12 active subscribers in the McPherson exchange, but it does not differentiate between residential and business subscribers. Sprint, when

asked the same questions responded affirmatively, indicating that a residential access line and a single-line business line are each provided to more than one customer in the McPherson 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 McPherson exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C) and 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 both residential and business customers in the McPherson 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, WestLink, US Cellular, and Sprint would all qualify as the second provider of telecommunications service.

Plainville

The Plainville 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) and (D). In the application, AT&T indicates that Nex-Tech, Inc. (“Nex-Tech”) is a facilities-based carrier providing residential and business service to access lines in the Plainville exchange. In addition to service provided by Nex-Tech, AT&T claims ALLTEL, Nex-Tech Wireless, RCC Minnesota, Inc., and Sprint, which are not affiliated with the local exchange carrier, also provide residential and business service as providers of CMRS in the Plainville 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 and a single-line business access line to more than one customer in the Plainville exchange and how the service is provisioned.

Nex-Tech, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a residential access line to more than one customer and a single-line business access line to more than one customer in the Plainville exchange. Nex-Tech’s response indicates that its customers are served via Nex-Tech’s facilities where they do exist and via UNE-P and resale over AT&T’s facilities where Nex-Tech facilities do not exist.

ALLTEL indicated that it provides service to more than one customer with a billing address in the Plainville exchange. Sprint and Nex-Tech Wireless, when asked the same questions responded affirmatively, indicating that a residential access line and a single-line business line are each provided to more than one customer in the Plainville exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C) and 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 both residential and business customers in the Plainville exchange. As required by Kansas law, one nonaffiliated carrier, Nex-Tech, 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 and Sprint would both qualify as the second provider of telecommunications service. Although this issue is moot since ALLTEL and Sprint would both qualify as the second provider of telecommunications service, Staff notes that it does not believe Nex-Tech Wireless would qualify as the second provider since it is affiliated with the facilities-based provider, Nex-Tech.

Cherryvale

The Cherryvale 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) and (D). In the application, AT&T indicates that Cox and CenturyTel are facilities-based carriers providing residential and business service to access lines in the Cherryvale exchange. In addition to service provided by Cox and CenturyTel, AT&T claims ALLTEL and US Cellular, which are not affiliated with the local exchange carrier, also provide residential and business service as providers of CMRS in the Cherryvale 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 and a single-line business access line to more than one customer in the Cherryvale 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 and a single-line business access line to more than one customer in the Cherryvale, Kansas exchange using its own facilities. CenturyTel, however, indicated that it does not provide service to customers in the Cherryvale exchange.

ALLTEL indicated that it provides service to more than one customer with a billing address in the Cherryvale exchange. US Cellular, however, indicates that it does not provide service to customers in the Cherryvale exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C) and 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 both residential and business customers in the Cherryvale 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.

Halstead

The Halstead 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) and (D). In the application, AT&T indicates that Cox is a facilities-based carrier providing residential and business service to access lines in the Halstead exchange and TelCove is a facilities-based carrier providing business service to access lines in the Halstead exchange. In addition to service provided by Cox and TelCove, AT&T claims ALLTEL and US Cellular, which are not affiliated with the local exchange carrier, also provide residential and business service as providers of CMRS in the Halstead 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 and a single-line business access line to more than one customer in the Halstead 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 and a single-line business access line to more than one customer in the Halstead exchange using its own facilities. TelCove, however, indicated that it does not provide a single-line business access line to any customer in the Halstead exchange.

ALLTEL indicated that it provides service to more than one customer with a billing address in the Halstead 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 Halstead exchange.

With that information, it appears that as required by K.S.A. 66-2005(q)(1)(C) and 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 both residential and business customers in the Halstead 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 and US Cellular would both 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)(C) and (D) have been satisfied in the Cheney, Coffeyville, Garden Plain, McPherson, Plainville, Cherryvale and Halstead exchanges in the state of Kansas pursuant to K.S.A. 2007 Supp. 66-2005(q)(1)(C) and (D). Thus, Staff recommends the Commission grant AT&T's request for price deregulation in the Cheney, Coffeyville, Garden Plain, McPherson, Plainville, Cherryvale and Halstead exchanges, pursuant to K.S.A. 66-2005(q)(1)(C) and (D).

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


CERTIFICATE OF SERVICE

09-SWBT-435-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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