

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
 Michael C. Moffet
 Joseph F. Harkins

In the Matter of the Application of)
Southwestern Bell Telephone Company for)
Price Deregulation of Residential and)
Business Telecommunications Services in)
the Kinsley and Erie, Kansas Exchanges)
Pursuant to K.S.A. 2008 Supp. 66-)
2005(q)(1).)

Docket No. 09-SWBT-936-PDR

**ORDER APPROVING APPLICATION OF SOUTHWESTERN BELL
TELEPHONE COMPANY FOR PRICE DEREGULATION OF RESIDENTAL
AND BUSINESS TELECOMMUNICATIONS SERVICES IN THE KINSLEY
KANSAS EXCHANGE AND SUSPENDING APPLICATION WITH RESPECT
TO THE ERIE KANSAS EXCHANGE**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

1. On June 5, 2009, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T), filed this application requesting price deregulation of residential and business telecommunications services in the Kinsley and Erie exchanges in Kansas. AT&T filed its application pursuant to K.S.A. 2008 Supp. 66-2005(q)(1).

2. On June 24, 2009, Staff filed a memorandum presenting Staff's recommendation to the Commission on AT&T's application. Staff noted that in 2006 K.S.A. 66-2005, the statute governing price deregulation, was amended by the Kansas Legislature. K.S.A. 2008 Supp. 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. 2008 Supp. 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.

3. Staff notes that, when considering deregulation of business lines, K.S.A. 2008 Supp. 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 deregulate all business telecommunications 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. 2008 Supp. 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 carrier 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.

Kinsley

4. Staff's memorandum states that the Kinsley exchange has fewer than 75,000 local exchange access lines and advises the Commission of its belief that the application was correctly filed pursuant to K.S.A. 2008 Supp. 66-2005(a)(1)(C) and (D). Staff notes that in the application, AT&T indicates Cox Kansas Telecom, LLC (Cox) is a facilities-based carrier

providing both business and residential service to access lines in the Kinsley exchange. In addition to service provided by Cox, AT&T claims two carriers¹ not affiliated with the local exchange carrier also provide business and residential service as providers of commercial mobile radio services (CMRS) in the Kinsley exchange. In support of its claims, AT&T cites number porting information as of April 30, 2009, E911 data as of March 31, 2009, 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.

5. Staff indicates it issued requests for information to the carriers listed in AT&T's application, asking carriers if they provide a residential access line and a single-line business line to one or more customers in the Kinsley exchange, and asked how the services are provisioned. Cox, the nonaffiliated facilities-based carrier responded affirmatively that it provides a residential access line and a single-line business line service to one or more customers in the Kinsley exchange. Further, Alltel and United Wireless also responded affirmatively to the same question.

6. Staff states that, with this information, it appears that AT&T has demonstrated, pursuant to K.S.A. 2008 Supp. 66-2005(a)(1)(C) and (D), there are two or more 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 Kinsley exchange. As required by K.S.A. 2008 Supp. 66-2005(a)(1)(C) and (D), one nonaffiliated carrier, Cox, is a facilities-based carrier. K.S.A. 2008 Supp. 66-2005(a)(1)(C) and (D) also requires one other carrier, which can be a CMRS provider, not affiliated with AT&T or

¹Alltel Kansas Limited Partnership (Alltel), and United Wireless Communications, Inc. (United Wireless).

the facilities-based carrier providing service in the exchange. In this exchange, Alltel and United Wireless qualify as the second provider.

Erie

7. Staff states the Erie exchange has fewer than 75,000 local exchange access lines and was properly filed pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C) and (D). In the application, AT&T indicates Cox is the facilities-based carrier providing both business and residential service to access lines in the Erie exchange. In addition to service provided by Cox, AT&T claims one carrier² not affiliated with the local exchange carrier also provides business and residential service as a CMRS provider in the Erie exchange. In support of its claims, AT&T cites number porting information as of April 30, 2009, E911 data as of March 31, 2009, 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.

8. Staff notes it issued a request for information to the competitive carriers named in AT&T's application asking if the carrier provides a residential access line and a single line business line to one or more customers in the Erie exchange. Cox, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a residential access line and a single-line business line to one or more customers in the Erie exchange. Alltel also responded in the affirmative when asked the same question. Staff indicates wireless carriers typically do not distinguish between residential and business customers – the rate and service are the same regardless of the type of customer subscribing to the service – and the service is available and provided to residential and business customers alike. This is a customary practice for carriers in

² Alltel.

the wireless industry and not something AT&T could control or change. Because of this, Staff sent a follow-up data request to Alltel on June 23, 2009, to be confident that Alltel's level of service would be sufficient to satisfy the requirements as the second nonaffiliated telecommunications carrier. Staff asked Alltel if it provides an access line to more than four customers in the Erie exchange and how the service is provisioned. Alltel responded that it did provide service to more than four customers in the Erie exchange; as a result Staff feels confident that one or more lines could be residential lines and one or more lines could also be business lines.

9. Staff states that, with the information from Cox and Alltel, it appears that AT&T has demonstrated, pursuant to K.S.A. 2008 Supp. 66-2005(a)(1)(C) and (D), 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 Erie exchange. As required by K.S.A. 2008 Supp. 66-2005(a)(1)(C) and (D), one nonaffiliated carrier, Cox is a facilities-based carrier. K.S.A. 2008 Supp. 66-2005(a)(1)(C) and (D) also requires one other carrier, which can be a CMRS provider not affiliated with AT&T or the facilities-based carrier providing service in the exchange. In this exchange, Alltel qualifies as the second provider of telecommunications service.

Recommendation

10. Staff believes AT&T has demonstrated that the requirements of K.S.A. 2008 Supp. 66-2005(q)(1)(C) and (D) have been satisfied in the Kinsley and Erie exchanges. Staff recommends the Commission grant AT&T's request for price deregulation in these two exchanges, pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C) and (D).

CURB's Response and Opposition to Staff Report and Recommendation

11. On June 25, 2009, the Citizens' Utility Ratepayer Board (CURB) filed its response and opposition to Staff's June 24, 2009 Report and Recommendation. CURB's opposition to AT&T's request for price deregulation concerned only the Erie, Kansas exchange. CURB indicated that it is opposed to the Commission granting AT&T's request in this exchange since AT&T could not identify with specificity any entity other than Cox that is providing residential or single-line business telecommunications service. CURB argues that Staff's statement that it "feels confident" that one or more lines "could be" residential lines and one or more lines "could also be" business lines fails to comply with "two statutory requirements."

12. As CURB points out, K.S.A. 66-2005(a)(1)(C) and (D) require a "demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are non affiliated with the local exchange carrier, providing local telecommunications service to [business] [residential] *customers*." (emphasis in original) CURB notes that the plural form of "customer" requires residential service to more than one residential customer, and single-line business service to more than one single-line business customer.

13. CURB further notes that these same statutory provisions require the requesting local telecommunications carrier demonstrate that the nonaffiliated carrier must be actually providing residential, or business service to customers, not that they "could be" providing residential or business service to customers. CURB argues that, because of this, AT&T's application "does not contain substantial competent evidence upon which the Commission can

grant price deregulation of business or residential local service in the Erie exchange under K.S.A. 66-2005(a)(1)(C) or (D).”

Findings and Conclusion

14. The Commission finds and concludes that AT&T has met the requirements of K.S.A. 2008 Supp. 66-2005(q)(1)(C) and (D) with respect to the Kinsley exchange and approves AT&T’s application for price deregulation of residential and business telecommunications services in the Kinsley, Kansas exchange.

15. With respect to the Erie exchange, the Commission finds it appropriate to suspend AT&T’s filing for an additional 30 days, to Monday, July 27, 2009, in order to allow time for additional investigation of AT&T’s application and consideration of Staff’s Report and Recommendation and CURB’s objection thereto.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The application of Southwestern Bell Telephone Company d/b/a AT&T Kansas for price deregulation of residential and business telecommunications services in the Kinsley, Kansas exchange is granted.

B. The application of Southwestern Bell Telephone Company d/b/a AT&T Kansas for price deregulation of residential and business telecommunications services in the Erie, Kansas exchange is suspended for 30 days, until Monday, July 27, 2009.

C. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2008 Supp. 77-529(a)(1).

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

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chr.; Moffet, Com; Harkins, Com.

Dated: JUN 26 2009

ORDERED MAILED

JUN 29 2009

 **EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

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