

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.

Dodge City

4. Staff's memorandum states that the Dodge City 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(q)(1)(C). Staff notes that in the application, AT&T indicates Cox Kansas Telcom, LLC (Cox) is a facilities-based carrier providing business service to access lines in the Dodge City exchange. In addition to service provided by Cox, AT&T claims four carriers¹ not affiliated with the local exchange carrier also provide business and residential service as providers of commercial mobile radio services (CMRS) in the Dodge City 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,

¹ Alltel Kansas Limited Partnership (Alltel), United Wireless Communications, Inc. (United Wireless), WestLink Communications, LLC (WestLink) and RCC Minnesota, Inc. (RCC).

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 single-line business line to one or more customers in the Dodge City exchange, and how the services are provisioned. Cox, the nonaffiliated facilities-based carrier responded affirmatively that it provides a single-line business line to one or more customers in the Dodge City exchange. Further, Alltel, WestLink, RCC 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), there are two or more telecommunications carriers or other entities not affiliated with AT&T as the local exchange provider, providing telecommunications services to business customers in the Dodge City exchange. As required by K.S.A. 2008 Supp. 66-2005(a)(1)(C), one nonaffiliated carrier, Cox, is a facilities-based carrier. K.S.A. 2008 Supp. 66-2005(a)(1)(C) also requires one other carrier, which can be a CMRS provider, not affiliated with AT&T or the facilities-based carrier, to be providing service in the exchange. In this exchange, Alltel, WestLink, RCC and United Wireless qualify as the second provider.

Garden City

7. Staff states the Garden City exchange has fewer than 75,000 local exchange access lines and the application was properly filed pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C). In the application, AT&T indicates Cox is the facilities-based carrier providing business service to access lines in the Garden City exchange. In addition to service provided by

Cox, AT&T claims four carriers² not affiliated with the local exchange carrier also provide business service as CMRS providers in the Garden City 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 carrier named in AT&T's application asking if the carrier provides a single-line business line to one or more customers in the Garden City exchange. Cox, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business line to one or more customers in the Garden City exchange. Alltel, United Wireless, RCC, and WestLink also responded in the affirmative when asked the same question.

9. Staff states that, with the information from Cox, Alltel, WestLink, United Wireless, and RCC, it appears that AT&T has demonstrated, pursuant to K.S.A. 2008 Supp. 66-2005(a)(1)(C), there are two or more telecommunications carriers or other entities not affiliated with AT&T as the local exchange provider providing telecommunications services to business customers in the Garden City exchange. As required by K.S.A. 2008 Supp. 66-2005(a)(1)(C), one nonaffiliated carrier, Cox is a facilities-based carrier. K.S.A. 2008 Supp. 66-2005(a)(1)(C) 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, WestLink, RCC, and United Wireless all qualify as the second provider of telecommunications service.

² Alltel, WestLink, United Wireless, and RCC.

Humboldt

10. Staff states the Humboldt exchange has fewer than 75,000 local exchange access lines and the application was properly filed pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C). In the application, AT&T indicates Cox and TelCove Operations, LLC (TelCove) are facilities-based carriers providing business service to access lines in the Humboldt exchange. In addition to service provided by Cox and TelCove, AT&T claims three carriers³ not affiliated with the local exchange carrier also provide business service as CMRS providers in the Humboldt 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.

11. Staff notes it issued a request for information to the competitive carriers named in AT&T's application asking if the carrier provide a single-line business line to one or more customers in the Humboldt exchange. Cox, as a nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business line to one or more customers in the Humboldt exchange. TelCove, as a nonaffiliated facilities-based carrier responded in the negative, that it does NOT provide a business access line to any customers in the Humboldt exchange. Sprint, US Cellular, and Alltel also responded in the affirmative when asked the same question.

12. Staff states that, with the information from Cox, TelCove, Alltel, Sprint, and US Cellular, it appears that AT&T has demonstrated, pursuant to K.S.A. 2008 Supp. 66-2005(a)(1)(C), there are two or more nonaffiliated telecommunications carriers or other entities not affiliated with AT&T as the local exchange provider, providing telecommunications services

³ Alltel, Sprint Spectrum, L.P. (Sprint), and USCOC of Nebraska/Kansas, LLC (US Cellular).

to business customers in the Humboldt exchange. As required by K.S.A. 2008 Supp. 66-2005(a)(1)(C), one nonaffiliated carrier, Cox is a facilities-based carrier. K.S.A. 2008 Supp. 66-2005(a)(1)(C) 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, Sprint, and US Cellular all qualify as the second provider of telecommunications service.

Larned

13. Staff states the Larned exchange has fewer than 75,000 local exchange access lines and the application was properly filed pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C). In the application, AT&T indicates Cox is a facilities-based carriers providing business service to access lines in the Larned exchange. In addition to service provided by Cox, AT&T claims three carriers⁴ not affiliated with the local exchange carrier also provide business service as CMRS providers in the Larned 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.

14. Staff notes it issued a request for information to the competitive carriers named in AT&T's application asking if the carrier provides a single-line business line to one or more customers in the Larned exchange. Cox, as a nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business line to one or more customers in the Larned exchange. US Cellular, WestLink and Alltel also responded in the affirmative when asked the same question. Staff indicates wireless carriers typically do not distinguish between residential

⁴ Alltel, US Cellular, and WestLink.

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 the wireless industry and not something AT&T could control or change.

15. Staff states that, with the information from Cox, Alltel, WestLink, and US Cellular, it appears that AT&T has demonstrated, pursuant to K.S.A. 2008 Supp. 66-2005(a)(1)(C), 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 Larned exchange. As required by K.S.A. 2008 Supp. 66-2005(a)(1)(C), one nonaffiliated carrier, Cox is a facilities-based carrier. K.S.A. 2008 Supp. 66-2005(a)(1)(C) 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, WestLink, and US Cellular all qualify as the second provider of telecommunications service.

Lindsborg

16. Staff states the Lindsborg exchange has fewer than 75,000 local exchange access lines and the application was properly filed pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C). In the application, AT&T indicates Cox is a facilities-based carriers providing business service to access lines in the Lindsborg exchange. In addition to service provided by Cox, AT&T claims three carriers⁵ not affiliated with the local exchange carrier also provide business service as CMRS providers in the Lindsborg 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

⁵ Alltel, US Cellular, and WestLink.

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.

17. Staff notes it issued a request for information to the competitive carriers named in AT&T's application asking if the carrier provides a single line business line to one or more customers in the Lindsborg exchange. Cox, as a nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business line to one or more customers in the Lindsborg exchange. US Cellular and Alltel also responded in the affirmative when asked the same question. WestLink responded in the negative, that it does not provide a single-line business line to one or more customers in the Lindsborg exchange. 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 the wireless industry and not something AT&T could control or change.

18. Staff states that, with the information from Cox, Alltel, WestLink, and US Cellular, it appears that AT&T has demonstrated, pursuant to K.S.A. 2008 Supp. 66-2005(a)(1)(C), 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 Lindsborg exchange. As required by K.S.A. 2008 Supp. 66-2005(a)(1)(C), one nonaffiliated carrier, Cox is a facilities-based carrier. K.S.A. 2008 Supp. 66-2005(a)(1)(C) 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 and US Cellular qualify as the second provider of telecommunications service.

Recommendation

19. Staff believes AT&T has demonstrated that the requirements of K.S.A. 2008 Supp. 66-2005(q)(1)(C) have been satisfied in the Dodge City, Garden City, Humboldt, Larned, and Lindsborg exchanges. Staff recommends the Commission grant AT&T's request for price deregulation in these exchanges, pursuant to K.S.A. 2008 Sup. 66-2005(q)(1)(C).

CURB's Response and Opposition to Staff Report and Recommendation

20. 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 Lindsborg, Kansas exchange. CURB indicated that it is opposed to the Commission granting AT&T request in this exchange since AT&T could not identify with specificity any entity other than Cox that is providing business telecommunications service. CURB notes Alltel and US Cellular could only respond to Staff's data requests that they provide wireless service to more than one customer in the Lindsborg exchange, but that neither wireless carrier could differentiate between residential and business customers.

21. As CURB points out, K.S.A. 66-2005(q)(1)(C) requires 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 customers." CURB argues that this means "that the nonaffiliated carriers must be actually providing business service to customers, not that they are providing residential or business service to customers. Since Alltel

and US Cellular don't distinguish between residential and single-line business wireless customers, there has been no demonstration by AT&T that either company is actually providing *business* service in the Lindsborg exchange. Without further evidence, it is entirely possible that all of the wireless service provided in the Lindsborg exchange is residential." (emphasis in original. CURB also argues that the statute's plural use of the word "customers" means that the nonaffiliated carriers must provide business or residential service to more than one customer. CURB points out that "since Alltel and US Cellular don't distinguish between residential and single-line business wireless customers, there has been no demonstration by AT&T that either company is providing service to more than one business customer (plural)."

Findings and Conclusion

22. The Commission finds and concludes that AT&T has met the requirements of K.S.A. 2008 Supp. 66-2005(q)(1)(C) with respect to the Dodge City, Garden City, Humboldt, and Larned exchanges and approves AT&T's application for price deregulation of business telecommunications services in the Dodge City, Garden City, Humboldt, and Larned, Kansas, exchanges.

23. With respect to the Lindsborg 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 business telecommunications services in Dodge City, Garden City, Humboldt, and Larned, Kansas exchanges is granted.

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

B. 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).

C. 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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