

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

In the Matter of the Application of)
Southwestern Bell Telephone Company)
d/b/a AT&T Kansas for an Order)
Confirming Relinquishment of its Eligible)
Telecommunications Carrier Designation) Docket No. 17-SWBT-158-MIS
in Specified Areas, and Notice Pursuant to)
K.S.A. 2015 Supp. 66-2006(d) of Intent to)
Cease Participation in the Kansas Lifeline)
Service Program)

**CURB'S RESPONSE TO ORDER REQUESTING ADDITIONAL BRIEFING FROM
THE PARTIES**

The Citizens' Utility Ratepayer Board (CURB) submits its response to the Kansas Corporation Commission's *Order Requesting Additional Briefing From The Parties*, filed July 11, 2017.

Background

1. On October 27, 2016, Southwestern Bell Telephone d/b/a AT&T Kansas (AT&T) filed an Application requesting relinquishment of its Eligible Telecommunications Carrier (ETC) designation in all currently designated areas except for the census blocks identified in Exhibit B to the Application.¹

2. On February 27, 2017, Commission Telecommunications Staff (Staff) filed an initial Report and Recommendation, to which AT&T and Staff filed responsive pleadings.

3. On April 4, 2017, the Citizen' Utility Ratepayer Board (CURB) was granted intervention in this docket.

¹ Application of Southwestern Bell Telephone Company for an Order Confirming relinquishment of its Eligible Telecommunications Carrier Designation in Specific Areas, and Notice of Intent to Cease Participation in the Kansas Lifeline Services Program.

4. On May 4, 2017, Staff filed a Second Report and Recommendation to which AT&T, CURB and Staff filed responsive pleadings.

5. On July 11, 2017, the Kansas Corporation Commission (Commission) issued an Order Requesting Additional Briefing from the Parties directing that briefs be filed by July 21, 2017.

6. The Commission Order of July 11, 2017 requested the Parties to brief five questions.²

7. CURB will endeavor to answer these questions in the order that they have been posed by the Commission.

Analysis and Response to Questions

A. How should 47 U.S.C. Sections 201, 202, and 214(a) be harmonized with Section 214(e)(4), such that all Section 214(e)(4) is accounted for?

8. 47 U.S.C. 201 relates to the general duties of every common carrier engaged in interstate or foreign communication by wire or radio to furnish communication service upon reasonable request.³

9. 47 U.S.C. 202 relates to unlawful action that may be taken by a common carrier and the penalties that may imposed for such unlawful acts.⁴

² The five questions the Commission requested in its Order are: a. How should 47 U.S.C. Sections 201, 202 and 214(a) be harmonized with Section 214(e)(4), such that all of Section 214(e)(4) is accounted for? b. What protections do consumers in the 932 census blocks receive by AT &T's retention of its ETC designation for those census blocks that those consumers do not receive by AT&T's adherence to Sections 201, 202 and 214(a)? c. If, after ETC relinquishment, a carrier is required under Sections 201-202 to provide all of the same voice service it provides before relinquishment to all consumers throughout its service area upon reasonable request, on a non-discriminatory basis, with just and reasonable rates and terms, then what is the point or benefit of ETC relinquishment for that carrier? d. If remaining ETCs are common carriers, and thus are legally required to serve all customers in their service area - including non-Lifeline customers - upon reasonable request, pursuant to Sections 201-202, then what is the purpose of the remaining ETCs having an ETC designation with its concomitant obligation to serve? And what good would it do to be a "Lifeline-only" ETC if Sections 201-202 obligated you to serve non-Lifeline customers? e. How can the assertion that Lifeline-only ETCs cannot be forced to undertake the voice obligations of serving all reasonable requests for service within their designated service area for non-Lifeline customers be harmonized with Sections 201-202 and 214(a)? Order Requesting Additional Briefing From The Parties.

³ 47 U.S.C. 201

10. 47 U.S.C 214(a) pertains to the need, with exceptions, for common carriers to obtain a certificate from the FCC relative to the public interest before the carrier extends lines or discontinues service.

11. It is difficult to harmonize sections 47 U.S.C. 201, 202 and 214(a) with 47 U.S.C. 214(e)(4). These federal statutory provisions are aimed at differing goals. Sections 47 U.S.C. 201, 202 and 214(a) pertain to the general duties of common carriers to provide service, but do not pertain to the eligibility of common carriers to obtain universal service funds or to provide Lifeline services. In order to obtain universal service funds, a common carrier must be designated to be an ETC under 47 U.S.C. 214(e), and must provide Lifeline service unless and until its ETC designation is relinquished. Sections 47 U.S.C. 201, 202 and 214(a) cannot be used to require common carriers to continue Lifeline services with universal service funds.

12. Sections 47 U.S.C. 201, 202 and 214(a) are specific to common carriers engaged in interstate or foreign communication are not specifically directed toward ETCs and therefore have no applicability in this docket. None of these statutes are referenced in 47 U.S.C. 214(e)(4). Pursuant to Sections 47 U.S.C. 201 and 202, Interstate and Foreign common carriers under the jurisdiction of the Federal Communication Commission (FCC) and possibly federal court authority, have a duty to provide service upon a reasonable request at rates which are just and reasonable, without unjust or unreasonable discrimination or unreasonable preference or advantage to any party. However, if AT&T's ETC designation is relinquished under 47 U.S.C. 214(e)(4), AT&T cannot be required to provide Lifeline service under sections 47 U.S.C. 201, 202 or 214(a). Neither can the Commission order AT&T to continue to serve under any state statute, without violating the supremacy clause of the United States Constitution.

⁴ 47 U.S.C. 202

13. In view of the above discussion, and with due respect, CURB believes that the Commission should not try to harmonize 47 U.S.C. 201, 202 and 214(a) with 47 U.S.C 214(e)(4) as such subsections are not necessary when determining whether AT&T should be granted ETC relinquishment under 47 U.S.C. 214(e)(4). The evaluations performed under each subsection are different and should not be read in conjunction with one another. A request to discontinue service under 47 U.S.C. 214(a) pertains to the common carrier's general obligation to serve a community and would require filing with the FCC. It does not govern the relinquishment of ETC status which is governed by 47 U.S.C. 214(e)(4). Indeed, the FCC has already dealt with the idea that 47 U.S.C. 201, 202, and 214(a) are not sufficient to ensure continued service if an ETC relinquishes its designation. The FCC in its Forbearance Order stated that "common carrier protections under the Federal Telecommunications Act were not as robust as ETC obligations."⁵ Relinquishment under 47 U.S.C. 214(e)(4) is specific to ETCs (the focus of this docket) and is within the Commission's purview.

B. What protections do consumers in the 932 census blocks receive by AT&T's retention of its ETC designation for those census blocks that those customers do not receive by AT&T's adherence to sections 201, 202 and 214(a)?

14. On December 5, 1997, in Docket No. 98-GIMT-241-GIT, AT&T was designated as a federal and state ETC.⁶ Pursuant to 47 U.S.C. 214(e)(1):

[A] common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received. (A) offer the services that are supported by Federal universal service support mechanisms under section 254 (c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another

⁵ In The Matter Of Petition Of USTelecom For Forbearance Pursuant To U.S.C. 160 (C) From Enforcement Of Obsolete ILEC. That Inhibit Deployment Of Next Generation Networks 31 FCC Red. 6157 paragraph 119-124 (In the Matter of Petition of US Telecom).

⁶ Order Designating Southwestern Bell Telephone Company d/b/a AT&T Kansas an Electing Carrier, Docket No. 12-SWBT-014-MIS, dated August 17, 2011. 2

telecommunications carrier); and (B) advertise the availability of such services and the charges therefore using media of general distribution.⁷

15. Once designated as an ETC, AT&T customers enjoy several protections when AT&T retains its ETC designation. The obligations that flow from ETC designations “... include that the price cap carriers offer Lifeline service to qualifying households, any State ETC obligation, and the federal high-cost voice obligation to provide voice services throughout the areas”⁸. In order for AT&T to relinquish ETC designation, the requirements of 47 U.S.C. 214(e)(4)) must be satisfied. The main concerns in this docket are that the Lifeline customers served would continue to be served and that the service be provided at Lifeline rates. Compliance with 47 U.S.C. 214(e)(4) is within the authority of the Commission.

16. If AT&T’s ETC designation is relinquished, AT&T must continue to provide just and reasonable services under 47 U.S.C. 201 and 202, but AT&T is not required to provide Lifeline services. These statutes do not provide the same safeguards as afforded a customer of an ETC.

17. CURB does not believe that 47 U.S.C 214(a) is applicable to 47 U.S.C. 214(e)(4). As stated in the Federal Communication Commission (FCC) decision in its Forbearance Order on 2015;

In evaluating an application for discontinuance authority, the existence, availability, and adequacy of alternatives is one of five factors the Commission typically considers⁹. This balancing that the Commission undertakes in evaluating section 214(a) discontinuance applications differs from the section 214(e)(4) relinquishment process, where Congress made clear that the sole focus is whether all consumers that were served by an ETC would continue to be served if that ETC were to relinquish its ETC designation.¹⁰

⁷ 47 U.S.C. 214(e)(1)

⁸ In The Matter Of Petition Of USTelecom, paragraph 108 .

⁹ Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collections 18 FCC Red 22737, 22742 paragraph 8 (2003)

¹⁰ In The Matter Of Petition Of USTelecom, paragraph 119.

Further the FCC has stated:

Section 214(e)(4) enables an ETC to seek relinquishment of its ETC designation, and requires states (or the Commission if it designated the ETC) to “ensure that all customers served by the relinquishing carrier will be continued to be served.” Through this relinquishment process, Congress gave states and the Commission the authority to grant relinquishments for the ETCs that they designated and obligated states and the Commission, when doing so, to ensure that the customers served by the relinquishing carrier will continue to be served and that the other ETCs serving the area will have sufficient notice of the relinquishment to enable them to prepare to take on additional customers from the relinquishing carrier. Because we view US Telecom’s requested forbearance as yielding an analogous result to what would occur in the case of a relinquishment — i.e., consumers in areas where price cap carriers are ETCs with associated obligations today would, post-forbearance, lose the ability to invoke those protections — our section 10(a)(2) analysis is informed by the consumer protection goals identified in section 214(e)(4). Most fundamentally, the section 214(e)(4) relinquishment process allows for the states (or the Commission, if applicable) to conduct an inquiry at a sufficiently granular level to ensure that the customers in that area “will continue to be served.”¹¹

18. The ETC designation allows the focus to be on continuation of service and not on the five factor balancing test that the FCC has employed in telecommunication discontinuance cases. Potentially, if using the five factor balancing test, continuation of service could be outweighed by the other four factors, and thereby pass the test without ensuring continuation of service.

19. It is important to note that the ETC designation protects customers in high-cost census blocks. Minus this designation, it is unclear whether customers will be offered voice service at a reasonable rate. The FCC states in its Forbearance Order of 2015:

That conditions are absent that would permit us to reasonably predict that customers will continue to be served with voice service at reasonably comparable rates if the price cap carrier no longer has this obligation. These census blocks are by definition high-cost or extremely high-cost, and therefore we cannot assume the incumbent will continue to offer voice service in the same way, at reasonably comparable rates, for the indefinite future without the relevant ETC obligation. We need to ensure that every consumer living in that census block will have an

¹¹ In The Matter Of Petition Of USTelecom, paragraph 111

alternative option for such voice service in the absence of the price cap carrier having the obligation to serve those consumers.¹²

20. Additionally, the FCC Forbearance Order states:

We are also not persuaded that relying on the section 214(a) discontinuance process would be sufficient to protect consumers if we were to forbear from ETC designations in all census blocks where price cap carriers do not receive high-cost support. Although the Commission will take into account whether prices will increase for consumers, the inquiry is based on “whether alternative services are priced so high that most users cannot afford to purchase them,” not whether low-income consumers will be able to purchase services. And the Commission has made clear that any increase in charges for alternative services is just one of five factors that the Commission balances in evaluating section 214(a) discontinuance applications and that this factor can be outweighed by other considerations.¹³

ETC designation would ensure that AT&T remains under Commission authority and that the consumers will continue to be served at a just and reasonable rate under universal service fund requirements.

C. If, after ETC relinquishment, a carrier is required under Sections 201-202 to provide all of the same voice service it provides before relinquishment to all consumers throughout its service area upon reasonable request, on a non-discriminatory basis, with just and reasonable rates and terms, then what is the point or benefit of ETC relinquishment for that carrier?

21. AT&T states that once allowed to relinquish their ETC designation they will then simply be a common carrier and “... will continue to be required by federal law to provide voice service to all customers throughout its service area “upon reasonable request” on a nondiscriminatory basis with “just and reasonable” rates and terms.”¹⁴ However, it must be noted that when a common carrier takes on the additional obligations of a ETC it is agreeing to do so in exchange for the privilege of becoming eligible to receive Federal subsidies. It must comply with 47 U.S.C 214(e)(1) requiring it to offer the services that are supported by the Federal universal support mechanisms under 47 U.S.C. 254(c), using its own facilities or a

¹² In The Matter Of Petition Of USTelecom, paragraph 120

¹³ In The Matter Of Petition Of USTelecom, paragraph 121

¹⁴ AT&T Kansas Response to Staff’s Second Report and Recommendation, paragraph 15.

combination of its own facilities and resale; and it must advertise the availability of such services and charges therefor using media of general distribution.¹⁵ The ETC designation requires AT&T to provide universal service to all consumers under 47 U.S.C. 254 that are served by AT&T and that these services be at reasonable rates and terms as governed by 47 U.S.C. 254. Allowing AT&T to relinquish its ETC will not ensure these protections. It will allow AT&T to be free of the added ETC obligations of offering services supported by the Federal Universal Support Fund (FUSF), utilizing their own facilities or advertising. Additionally allowing relinquishment may well remove AT&T from Commission authority. Thus allowing ETC relinquishment would greatly benefit AT&T while at the same time being a detriment of its customers.

D. If remaining ETCs are common carriers, and thus are legally required to serve all customers in their service area - including non-Lifeline customers - upon reasonable request, pursuant to Sections 201-202, then what is the purpose of the remaining ETCs having an ETC designation with its concomitant obligation to serve? And what good would it do to be a "Lifeline-only" ETC if Sections 201-202 obligated you to serve non-Lifeline customers?

22. Lifeline-only ETCs appear to also be common carriers under 47 U.S.C. 201-202. If that is the case then we must look at the difference in the requirements of service placed on each. An ETC designation allows AT&T to receive Federal universal support through 47 U.S.C. 254. 47 U.S.C. 214(e)(1) provides, in part, that, “a common carrier designated as an ETC shall be eligible to receive universal service support in accordance with section 254 of the Federal Act and shall, throughout the service area for which the designation is received offer the services that are supported by the federal universal support mechanisms...”¹⁶

23. A common carrier designation under 47 U.S.C. 201(a) states that “it shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to

¹⁵ 47 U.S.C. 214(e)(1)

¹⁶ U.S.C. 47 214(e)(1)

furnish such communication service upon reasonable request”.¹⁷ “Reasonable request” indicates that it is physically, technically and economically possible for the carrier to provide service. Not all customer requests will meet these requirements.

24. Clearly there are separate standards of service for an ETC and a common carrier. ETCs must provide service throughout their service area while a common carrier must only provide service upon reasonable request. It appears that by being simply a common carrier, the entity, will still have to supply service if reasonable, however, it is not obligated to do so in the whole service area. This is a great advantage to a common carrier. It would seem that the only benefit to remaining an ETC or a Lifeline-only ETC would be to allow it to continue to receive Federal universal support.

E. How can the assertion that Lifeline-only ETCs cannot be forced to undertake the voice obligations of serving all reasonable requests for service within their designated service area for non-Lifeline customers be harmonized with Sections 201-202 and 214(a)?

25. CURB does not believe that the assertion can be harmonized. Common carriers have an obligation to provide interstate and foreign service upon reasonable request. However, attempting to receive reasonable service under 47 U.S.C. 201-202 is not the same as being guaranteed service under 47 U.S.C. 214(e)(4). 47 U.S.C. 214(e)(4) does not ask if there are other common carriers in the relinquishment areas, it simply asks if there are other ETCs that are able to ensure all AT&T customers will continue to be served. As noted in prior pleadings:

Staff cannot recommend that AT&T be allowed to relinquish its 214(e)(1) voice obligations in the 932 census blocks because the statutory requirements in 214(e)(4) have not been met. First, there is not another high-cost ETC in the 932 census blocks and Lifeline-only ETCs are designated for just that – to provide Lifeline service to eligible low-income consumers. Some Lifeline-only ETCs market solely to Lifeline customers and do not provide telecommunications services to non-Lifeline customers. Other Lifeline-only ETCs provide service to customers who do not qualify for Lifeline; however, their ETC designation is

¹⁷ U.S.C. 47 201(a)

strictly limited to Lifeline. Second, most federal Lifeline-only ETCs have received forbearance from the facilities requirement and are pure wireless resellers – meaning they do not own their own facilities. Instead, they rely on the infrastructure, including spectrum, of their underlying carriers. Third, Lifeline-only wireline facilities-based ETCs, such as Cox Kansas Telcom, LLC, are not required to provide Lifeline service beyond the area equal to the provider's own service area. Therefore, for all of the aforementioned reasons, a Lifeline-only ETC cannot be forced to undertake the voice obligations of serving all reasonable requests for service within their designated service area for non-Lifeline customers.¹⁸

26. As shown above, in the 932 census blocks in which Staff has recommended denial it cannot be ensured that all AT&T customers will continue to be served as the ETCs that remain are Lifeline-only and are not adequate substitutes for high-cost landline ETCs.

WHEREFORE, CURB respectively thanks the Commission for the opportunity to respond to the questions posed in its *Order Requesting Additional Briefing From The Parties*.

Respectfully submitted,



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¹⁸ Staff's Second Report and Recommendation, page 9

CERTIFICATE OF SERVICE

17-SWBT-158-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 21st day of July, 2017, to the following:

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