

BEFORE 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) Docket No. 17-SWBT-158-MIS
Telecommunications Carrier Designation in)
Specified Areas, and Notice Pursuant to K.S.A.)
2015 Supp. 66-2005(d) of Intent to Cease)
Participation in the Kansas Lifeline Service)
Program)

**STAFF'S UPDATE TO ITS JULY 21, 2017, RESPONSE TO ADDITIONAL
COMMISSION QUESTIONS**

The Staff of the Kansas Corporation Commission ("Staff" and "Commission," respectively) hereby provides an update to its July 21, 2017, *Staff's Response to Additional Commission Questions* (Response) regarding the request of Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) to relinquish its eligible telecommunications carrier (ETC) designation throughout the state except in census blocks where the Federal Communications Commission (FCC) provides Connect America Fund Phase II (CAF II) subsidy support.

Update to Staff's Response

1. For clarity, Staff will restate the original questions posed by the Commission and provide any necessary updates.

Question 1: 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?

2. At the time of Staff's previous filing, Staff indicated that the 47 U.S.C. § 214(a) discontinuation process involved a short 60 day automatic approval process (for dominant carriers)

and that the FCC was considering further reforms including a 10 day “grandfathering” process for legacy services.¹

3. While retaining the 60 day automatic approval process for services that have current customers (for dominant carriers), the FCC has since adopted a grandfathering process for low-speed (i.e. below 1.544 Mbps) legacy voice services that involves a 10 day comment period and a 25 day auto-grant period (unless the FCC notifies the applicant otherwise).²

4. Furthermore, on June 8, 2018, the FCC ruled that it would forbear entirely from applying the discontinuance approval obligations set forth in § 214(a) for carriers choosing to discontinue services for which the carrier has had no customers and no reasonable request for service for at least the immediately preceding 30 days.³

5. These changes notwithstanding, Staff would re-iterate its position that §§ 201, 202, and 214(a) are irrelevant to this case. 47 U.S.C. § 214(e)(4) requires the Commission to ensure *remaining ETC(s)* continue to provide service, as opposed to AT&T or common carriers generally.

Question 2: What protections do customers 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)?

6. The ETC designation protections include: 1) ensured continued service; 2) reasonably comparable rates; and 3) the ability to seek redress from the Commission. These protections are not afforded by Sections 201, 202, and 214(a).

¹See Staff’s Response to Additional Commission Questions, p. 4-5 (July 21, 2017) (Response); 47 C.F.R. § 63.71(f).

²See Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 11128, ¶ 84, WC Docket No. 17-84 ¶ 85, 92 (Rel. Nov. 29, 2017); 47 C.F.R. § 63.71(k)(1)(ii) and (k)(3).

³Second Report and Order, 2018 WL 2932189 ¶ 15, WC Docket No. 17-84 (Rel. June 8, 2018).

7. Since the time of Staff's original pleading, the US Court of Appeals for the District of Columbia⁴ ruled on AT&T's appeal of the FCC's Dec. 17, 2015 Forbearance Order.⁵ The Forbearance Order granted ETC obligation forbearance to incumbent ETCs (including AT&T) in every census block except underserved high-cost and extremely high-cost census blocks.⁶ The Appellants argued that this decision was arbitrary and capricious and contrary to the federal Communications Act of 1934.⁷

8. The DC Court of Appeals described the nature of the Forbearance Order as follows:

Then, in 2015, the FCC denied Petitioners' request with regard to those remaining census blocks, holding in place the incumbent ETCs' residual service obligations pending completion of the transition. *See 2015 Order*, 31 FCC Rcd. at 6211–12. The agency reasoned that Petitioners had not met their burden to demonstrate that underserved individuals and *1241 areas would retain access to essential services in the absence of incumbent ETC landline service. *Id.* at 6216–17. Petitioners failed to marshal sufficiently fine-grained evidence that all vulnerable areas and individuals would continue to have access, and their aggregate data suggested that there would be service shortfalls. *Id.* As a consequence, the FCC decided that available opportunities for Petitioners to seek case-by-case, area-specific forbearance or additional funding to compensate for shortfalls remained the best course.⁸

9. Both the FCC's Forbearance Order and the Court's opinion strike at the heart of AT&T's arguments in this docket. If Lifeline-only ETCs or common carriers were proper substitutes for AT&T's ETC obligations, it is likely the FCC would have granted blanket forbearance because their concerns would have been alleviated. Likewise, the Court would have overturned the Forbearance Order as arbitrary, capricious, or unlawful.

⁴AT&T, Inc. v. FCC, 886 F. 3d 1236 (Apr. 6, 2018).

⁵31 FCC Rcd. 6157. Also referred to in Staff's original pleading as the "USTelcom Order."

⁶*See Id.* at 1240.

⁷*See Id.* at 1241.

⁸*Id.* at 1240-41.

10. The Court did not overturn the Forbearance Order, and specifically found that the FCC’s arguments that “in the absence of interim landline ETC obligations, a significant number of otherwise underserved individuals might lose telecommunications service altogether...” and “retaining incumbent ETCs’ residual obligations in high-cost census blocks would ‘serve the public interest’ and advance universal service,” were reasonable and adequately reasoned.⁹ Furthermore, no proposal other than ETC obligation retention “would provide assurance that [those] customers will continue to have access to voice service at reasonably comparable rates...”¹⁰

11. Since AT&T could not get the FCC to grant ETC forbearance in the high-cost and extremely high-cost census blocks, and it could not get the DC Court of Appeals to overturn the order, it now relies on the Commission to have it grant ETC relinquishment in the exact same census blocks. The Commission should decline in those census blocks where there are no alternative ETCs that can ensure all customers will continue to be served.

Question 3: 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?

12. Staff’s argument remains current and does not need to be updated. If the hypothetical were true, there would be no point. However, it is false - ETCs and common carriers have different obligations.

Question 4: If remaining ETCs are common carriers, and thus are legally required to serve all customers in their service area – including non-Lifeline customers – upon

⁹Id. at 1250.

¹⁰Id.

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.

13. Staff’s argument remains current in that Lifeline-only ETCs are not legally required by their common carrier designation to serve *all* customers in their service area.

14. However, Staff would update the record to show that reliance on Lifeline-only ETCs to ensure continued service when AT&T relinquishes its ETC obligations is tenuous because the FCC is considering discontinuing Lifeline support for non-facilities based networks.¹¹

15. As Staff has explained in earlier pleadings, most Lifeline-only ETCs in Kansas are wireless resellers that do not own any facilities.¹² Therefore, if AT&T’s ETC obligations go away, and the FCC revokes Lifeline-only ETC status to resellers, there will be certain census blocks with no providers to ensure continued service.

Question 5: 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)?

16. Staff’s argument remains current and does not need to be updated. The assertion is incorrect.

WHEREFORE, Staff respectfully requests that the Commission consider its update in determining the outcome of this matter.

¹¹Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 2017 WL 6015800, ¶ 67 (Rel. Dec. 1, 2017).

¹²See Notice of Filing of Staff’s Second Report and Recommendation, p. 9 of 11 (May 4, 2017).

Respectfully Submitted,



Michael Neeley, S. Ct. #25027
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3173
E-Mail: m.neeley@kcc.ks.gov

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

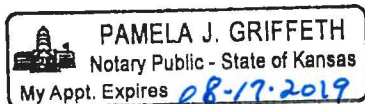
VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Update to its July 21, 2017, Response to Additional Commission Questions* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 25th day of June, 2018.



Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

17-SWBT-158-MIS

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Update to Its July 21, 2017, Response to Additional Commission Questions was served by electronic service on this 25th day of June, 2018, to the following:

THOMAS J. CONNORS, ATTORNEY AT LAW
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
tj.connors@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

ROB LOGSDON, DIRECTOR REGULATORY AFFAIRS**
COX KANSAS TELCOM, L.L.C.
D/B/A COX COMMUNICATIONS, INC
11505 WEST DODGE RD
OMAHA, NE 68154
Fax: 402-933-0011
rob.logsdon@cox.com

SUSAN B. CUNNINGHAM, ATTORNEY
DENTONS US LLP
7028 SW 69TH ST
AUBURN, KS 66402-9421
Fax: 816-531-7545
susan.cunningham@dentons.com

MARK DOTY
GLEASON & DOTY CHTD
401 S MAIN ST STE 10
PO BOX 490
OTTAWA, KS 66067-0490
Fax: 785-842-6800
doty.mark@gmail.com

THOMAS E. GLEASON, JR., ATTORNEY
GLEASON & DOTY CHTD
PO BOX 6
LAWRENCE, KS 66049-0006
Fax: 785-856-6800
gleason@sunflower.com

COLLEEN R. JAMISON
JAMES M. CAPLINGER, CHARTERED
823 SW 10TH AVE
TOPEKA, KS 66612-1618
Fax: 785-232-0724
colleen@caplinger.net

CERTIFICATE OF SERVICE

17-SWBT-158-MIS


MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
m.duenes@kcc.ks.gov

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
a.latif@kcc.ks.gov

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3167
m.neeley@kcc.ks.gov

JANET ARNOLD, AREA MANAGER EXTERNAL AFFAIRS
SOUTHWESTERN BELL TELEPHONE CO.
D/B/A AT&T KANSAS
220 SE SIXTH ST.
ROOM 505
TOPEKA, KS 66603-3596
Fax: 785-276-1988
js0746@att.com

BRUCE A. NEY, ATTORNEY
SOUTHWESTERN BELL TELEPHONE CO.
D/B/A AT&T KANSAS
816 CONGRESS AVE
SUITE 1100
AUSTIN, TX 78701-2471
Fax: 512-870-3420
bn7429@att.com



Pamela Griffeth
Administrative Specialist