

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

Before Commissioners:                      Andrew J. French, Chairperson  
   Dwight D. Keen  
   Susan K. Duffy

In the Matter of the Transfer of Ownership of    )  
S&A Telephone Company from US Connect    ) Docket No. 21-S&AT-423-ACQ  
Holdings, Inc. to ITC Broadband Holdings,    )  
LLC.    )

**ORDER APPROVING ACQUISITION AND RELATED RELIEF**

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records and being duly advised in the premises, the Commission makes the following findings:

**Background: Joint Application**

1.       On May 17, 2021, S&A Telephone Company (S&A), ITC Broadband Holdings, LLC (ITC) and USConnect Holdings, Inc. (USConnect), (collectively, Joint Applicants) filed a Joint Application for approval of a transaction whereby an ITC wholly-owned subsidiary would acquire one hundred percent (100%) of the issued and outstanding equity interests of USConnect (the Transaction).<sup>1</sup> The Joint Applicants also submitted Direct Testimony from Jerry Elliot, CEO of ITC Broadband Holdings, explaining the Transaction and its benefits for Kansas consumers.

2.       The Joint Application explains that S&A is an incumbent local exchange carrier (ILEC) and reseller of interexchange (IXC) telecommunications services pursuant to authority granted by and subject to the ongoing jurisdiction of the Commission.<sup>2</sup> USConnect Acquisitions II, Inc. (UCAII) currently owns one hundred percent (100%) of the issued and outstanding stock

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<sup>1</sup>Joint Application, p. 1 (May 17, 2020).

<sup>2</sup>Id.

of S&A, and USConnect currently owns one hundred percent (100%) of the issued and outstanding stock of UCAII.<sup>3</sup>

3. The Joint Applicants have reached an agreement memorialized through a Stock Purchase Agreement by and among ITC, USConnect, and the shareholders of USConnect dated April 30, 2021, a redacted copy of which was attached as Exhibit “A” to the Joint Application, which in conjunction with a series of assignments, contributions, and conversions will result in ITC’s wholly-owned subsidiary ITC Broadband Operating, LLC (ITC Broadband Operating) owning one hundred percent (100%) of the equity interests of USConnect.<sup>4</sup> The conversions referred to in the Stock Purchase Agreement also include converting S&A from a corporation to a limited liability company under Kansas law, and the Joint Applicants seek approval of both the conversion and the resulting name change from S&A Telephone Company, Inc. to S&A Telephone Company, LLC, as part of the Transaction.<sup>5</sup>

4. The Joint Applicants explain that the Transaction will not result in any change to the direct ownership or day-to-day management of S&A.<sup>6</sup> There will be no change to or assignment of S&A’s Certificates of Convenience and Necessity, other than the aforementioned change from “Inc.” to “LLC”<sup>7</sup> and the assignment of S&A’s IXC certificate to S&A’s subsidiary S&A Communications, Inc. (which will also convert to an LLC).<sup>8</sup> The Joint Applicants note that customers will receive notice of the Transaction and associated name change, but S&A will be the same legal and substantive entity that it was before the statutory conversion and will continue doing business in the same trade name - S&A Telephone Company.<sup>9</sup> There will be no changes to

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<sup>3</sup>Id.

<sup>4</sup>Id. at 1-2.

<sup>5</sup>Id. at 2.

<sup>6</sup>Id.

<sup>7</sup>Id.

<sup>8</sup>Id.

<sup>9</sup>Id.

the tariffs of S&A or S&A Communications, except for the name change, or to the services or prices provided to any of its current subscribers.<sup>10</sup> The Transaction will not result in any change to or disrupt the services that subscribers currently purchase from S&A, nor will there be any material changes to its current S&A management personnel.<sup>11</sup>

5. In support of the Joint Application, the Joint Applicants also provided the Commission with notice of the Joint Applicants' intention to issue notes and other evidences of debt in order to finance the Transaction.<sup>12</sup> Such financing will entail a secured loan with CoBank, ACB (the Lender), an institutional lender, the collateral for which shall include a pledge of (i) all of the equity interests of all of ITC's subsidiaries, including the LECs and (ii) substantially all of the assets of all of ITC's subsidiaries including S&A Telephone, Inc. and S&A Communications, Inc.<sup>13</sup>

6. The Joint Applicants also provided certain financial and commercial records in support of their Joint Application.<sup>14</sup>

7. The specific relief requested by the Joint Applicants was for a Commission Order approving the Joint Application in all respects, including without limitation:

- i. the closing and performance of the Stock Purchase Agreement, the Financing, consummation of the Transaction, and all other associated transactions contemplated thereby and hereby, and any other such transactions as are described herein and in the attached Exhibits;

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<sup>10</sup>Id.

<sup>11</sup>Id.

<sup>12</sup>Id.

<sup>13</sup>Id. at 2-3.

<sup>14</sup>Id. at 3.

- ii. the conversion of S&A from a corporation to a limited liability company under Kansas law;
- iii. amending S&A's certificates to reflect the resulting name change from S&A Telephone Company, Inc. to S&A Telephone Company, LLC;
- iv. the assignment of S&A's IXC certificate to S&A Communications, LLC;
- v. waiver of any otherwise potentially applicable hearing, publication, or similar such notice requirements for the instant Joint Application; and
- vi. granting such other and additional relief as the Commission may deem just and proper.

**Background: Asserted Benefits**

8. The Joint Applicants assert that they possess the technical, managerial, and financial qualifications to warrant Commission approval of the Transaction.<sup>15</sup> Furthermore, the Joint Applicants will be leaving S&A's current operational, technical, and managerial staff in place, resulting in a smooth and seamless transition following closing of the Stock Purchase Agreement and ultimate consummation of the Transaction.<sup>16</sup>

9. The Joint Applicants assert that S&A's operations will remain unchanged following the Transaction, and it will continue to offer the same high-quality services at reasonable rates customers in Kansas have come to expect.<sup>17</sup> Furthermore, S&A's technical support staff and marketing personnel will be enhanced by ITC's management team's experience and resources.<sup>18</sup>

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<sup>15</sup>Joint Application at 9.

<sup>16</sup>Id. at 10.

<sup>17</sup>Id. at 11.

<sup>18</sup>Id.

10. The Joint Applicants assert that the purchase price, which did not include an acquisition premium, was reasonable.<sup>19</sup>

11. The Joint Applicants assert that the Transaction is anticipated to be beneficial to both the Kansas local economies served by S&A, by providing stable, efficient, and economic communication services to the communities served by S&A, with the potential for future financial investment and expansion of services gained through the enhanced financial security and managerial expertise of ITC.<sup>20</sup> Moreover, by maintain S&A's existing workforce, the Transaction will not create labor dislocations that may be particularly harmful to local communities.<sup>21</sup>

12. The Joint Applicants assert that the Transaction minimizes the potential for expense and disruption that could result from transfer to a different purchaser lacking TVM's experience in the operations of rural Kansas telecommunications, and the advantages of economies of scale and of increased market size under common ownership will tend to make additional and improved service offerings possible.<sup>22</sup> This includes expansion of advanced communications capabilities.<sup>23</sup> The Joint Applicants also note that the Transaction will not create labor disruptions.<sup>24</sup>

13. These asserted benefits, among others, are provided for in the Joint Application, as well as in Elliott's Direct Testimony.

#### **Jurisdiction and Standard of Review**

14. In order to be approved, acquisitions must "promote the public convenience and necessity" as provided in K.S.A. 66-131.

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<sup>19</sup>Id.

<sup>20</sup>Id. at 12.

<sup>21</sup>Id.

<sup>22</sup>Id. at 6.

<sup>23</sup>Id. at 7.

<sup>24</sup>Id.

15. To determine whether an acquisition promotes the public convenience and necessity, the Commission has adopted standards to analyze mergers and acquisitions.<sup>25</sup> The standards include the following:

(a) The effect of the transaction on consumers, including:

(i) the effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur;

(ii) reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range;

(iii) whether ratepayer benefits resulting from the transaction can be quantified;

(iv) whether there are operational synergies that justify payment of a premium in excess of book value; and

(v) the effect of the proposed transaction on the existing competition.

(b) The effect of the transaction on the environment.

(c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.

(d) Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state.

(e) The effect of the transaction on affected public utility shareholders.

(f) Whether the transaction maximizes the use of Kansas energy resources.

(g) Whether the transaction will reduce the possibility of economic waste.

(h) What impact, if any, the transaction has on the public safety.

16. The Commission has noted that each transaction is fact dependent, and some factors may be expanded or removed depending on the circumstances.<sup>26</sup>

17. Acquirers of a CLEC certificate must demonstrate they possess the technical, managerial and financial ability to meet the Commission's quality of service (QOS) standards

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<sup>25</sup>See generally Order on Merger Standards, Docket No. 16-KCPE-593-ACQ (Aug 9, 2016).

<sup>26</sup>See Id. at 3.

pursuant to K.S.A. 66-2005(w).

### **Staff's Report and Recommendation**

18. On June 18, 2021, Staff filed its Report and Recommendation in this matter, attached hereto as Exhibit A and made a part hereof by reference.

19. Staff provided a background of the companies involved, consistent with what was provided in the Joint Application.<sup>27</sup> Staff noted that S&A is one of eight telephone companies owned by USConnect and its only operations in Kansas.<sup>28</sup> ITC is a closely held corporation and the ultimate parent company to a diverse group of technology, communications, and service companies.<sup>29</sup> Furthermore, Staff noted that although there are complex intermediate steps involved in completing the Transaction, the end result is rather straight forward; ITC will purchase one-hundred percent of the equity of USConnect and as a result, ITC becomes the ultimate parent of S&A and S&A Communications.<sup>30</sup>

20. Staff found that ITC possesses the requisite technical, managerial, and financial ability to run S&A and that there is evidence to suggest that the Transaction will result in experienced, knowledgeable personnel at S&A and ITC who will be able to successfully operate the S&A exchanges and meet the Commission's QoS standards.<sup>31</sup> Staff noted that because ITC is a closely-held business, it was somewhat more difficult to evaluate the effects of the Transaction on its financial health.<sup>32</sup> However, based on financial statements and discovery responses provided by the Joint Applicants, Staff found that ITC demonstrated that it could stay within its loan covenants and maintain access to capital from CoBank.<sup>33</sup> Through discovery responses, ITC

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<sup>27</sup>Staff's Report and Recommendation, 2-3 (June 18, 2021).

<sup>28</sup>Id. at 3.

<sup>29</sup>Id.

<sup>30</sup>Id.

<sup>31</sup>Id. at 5-6.

<sup>32</sup>Id. at 6.

<sup>33</sup>Id.



committed to adequately capitalize S&A Telephone and guarantee that S&A Telephone will have access to capital to carry out its public utility obligations.<sup>34</sup>

21. Staff then reviewed all of the Commission's Merger Standards and noted general agreement with the assertions regarding the public convenience asserted by the Joint Applicants.<sup>35</sup>

22. With respect to the effect on customers, Staff found that USConnect and ITC Broadband Holdings are financially sound, successful enterprises and together with ITC's commitments to adequately capitalize S&A and provide adequate capital going forward via CoBank and ITC investors, financial condition post-transaction was not a concern.<sup>36</sup> Staff reviewed the purchase price for the Transaction and did not find it to be unreasonable – it was agreed to by sophisticated parties with substantial knowledge of the industry.<sup>37</sup> Additionally, customers are protected by ITC's commitments that the Transaction would not impact rates and it would not seek recovery of an acquisition premium.<sup>38</sup> Staff also agreed with the Joint Applicants that customers would benefit from ITC's size, experience, and its ability to bring benefits to S&A's customers in terms of fiber deployment, information technology, supply chain, and workforce development.<sup>39</sup> Lastly, although the breadth of the Transaction did not allow Staff to verify that no acquisition premium was paid, the Joint Applicants pledged never to seek recovery of an acquisition premium from S&A customers.<sup>40</sup>

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<sup>34</sup>Staff's Report and Recommendation at 6.

<sup>35</sup>Id. at 6-12.

<sup>36</sup>Id. at 7-8.

<sup>37</sup>Id. at 8.

<sup>38</sup>Id.

<sup>39</sup>Staff's Report and Recommendation at 8-9.

<sup>40</sup>Id. at 9.



23. Staff found no negative effects on competition because prior to the Transaction ITC Broadband Holdings did not provide telephony services to the territory served by S&A Telephone and S&A Communications.<sup>41</sup> Nor did Staff find any negative effects on the environment.<sup>42</sup>

24. Staff found that the transaction would be beneficial to the state and local economies served by S&A Telephone and S&A Communications because the Joint Applicants can ensure continuity and enhancement of telephony services.<sup>43</sup> Furthermore, S&A customers will benefit from the managerial and financial resources of ITC as an added resource to the existing S&A management team as detailed in ITC's response to Staff data requests.<sup>44</sup>

25. Staff found that the Transaction would not cause any change to Commission jurisdiction over S&A Telephone and S&A Communications.<sup>45</sup> S&A Telephone will remain the ILEC, COLR, and ETC in the exchanges it now serves and must continue to meet all of its related obligations within those exchanges.<sup>46</sup>

26. Staff agreed with the Joint Applicants that the Transaction would have zero to *de minimus* impact on shareholder interests as the parties would not have entered into the Transaction if it were adverse to shareholders' interests.<sup>47</sup>

27. Rounding out the Merger Standards, Staff found that the Transaction would not have a negative impact on Kansas energy resources, lead to economic waste, or negatively impact public safety.<sup>48</sup>

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<sup>41</sup>Id. at 10.

<sup>42</sup>Id.

<sup>43</sup>Id. at 10-11.

<sup>44</sup>Id. at 11.

<sup>45</sup>Id.

<sup>46</sup>Staff's Report and Recommendation at 11.

<sup>47</sup>Id. at 11.

<sup>48</sup>See Id. at 11-12.

28. Staff recommended the Commission grant the requests made by the Joint Applicants in their Joint Application.<sup>49</sup>

29. No parties filed in opposition to Staff's Report and Recommendation.

**Findings and Conclusions**

30. The Commission finds Staff's findings and recommendations to be reasonable and hereby adopts the same.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Joint Application filed May 17, 2021, is approved in full. The Joint Applicants are authorized to proceed with the Transaction as contemplated therein.

B. S&A is authorized to convert to an LLC, and S&A's certificates shall be amended to reflect the resulting name change from S&A Telephone Company, Inc. to S&A Telephone Company, LLC.

C. S&A's IXC certificate assignment to S&A Communications, LLC is approved.

D. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>50</sup>

**BY THE COMMISSION IT IS SO ORDERED.**

French, Chairperson; Keen, Commissioner; Duffy, Commissioner

Dated: 06/24/2021  
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Lynn M. Retz  
Executive Director

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<sup>49</sup>Id. at 12-13.

<sup>50</sup>K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

**\*PUBLIC VERSION\***  
**REPORT AND RECOMMENDATION**

To: Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Susan K. Duffy, Commissioner

From: Adam Gatewood, Senior Managing Financial Analyst  
Sandra Reams, Assistant Chief of Telecommunications  
Justin Grady, Chief of Revenue Requirements, Cost of Service and Finance  
Jeff McClanahan, Director of Utilities

Date: June 18, 2021

Re: Docket No. 21-S&AT-423-ACQ

In the Matter of the Transfer of Ownership of S&A Telephone Company from USConnect Holdings, Inc. to ITC Broadband Holdings, LLC

**EXECUTIVE SUMMARY:**

The S&A Telephone Company, ("S&A"), ITC Broadband Holdings, LLC ("ITC") and USConnect Holdings, Inc. ("USConnect"), (collectively, the "Applicants") request Commission approval of ITC's acquisition of one-hundred percent of the stock of USConnect, and the resulting transfer of control of S&A ("Transaction"). Specifically the Applicants request authority from the Commission to:<sup>1</sup>

1. close and perform under the terms of the Stock Purchase Agreement<sup>2</sup> and associated financing agreements as discussed in the Application;<sup>3</sup>
2. convert S&A and S&A Communications from corporations to limited liability companies;
3. amend S&A's certificate to reflect its name change from S&A Telephone Company, Inc. to S&A Telephone Company, LLC; and
4. assign S&A's Interexchange (IXC) certificate to S&A Communications, LLC.

The Application addresses the Commission's Merger Standards and contends the Transaction meets those standards and statutes necessary to deem that the Transaction is in the public interest. Staff's review and analysis of the Application is based on Kansas statutes and the Commission's Merger Standards with an emphasis on the Commission's established policy.

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<sup>1</sup> Application at 12 & 13

<sup>2</sup> Application Exhibit A

<sup>3</sup> Application Exhibit E

Staff supports Applicants' assertion that the Transaction promotes the public interest and recommends the Commission approve the Transaction. There is evidence that the acquirer meets the managerial, technical, and financial qualifications. The Applicants discuss benefits of the Transaction that it believes will accrue to consumers and the communities served by S&A Telephone. Staff notes that those benefits are qualitative; the Applicants did not perform a formal study. Staff generally supports recognition of qualitative benefits in a merger or acquisition as long as benefits are backed by a commitment from the acquiring party and there is a reasonable expectation that those benefits will occur. Staff believes it is not absolutely necessary to perform a formal study of potential savings that could be shared with consumers when such a study could be cost prohibitive relative to the size of the transaction. Those commitments must also address potential costs that could erode the qualitative benefits. Staff believes the fact that the Transaction connects a seller with a qualified buyer that commits to continue to serve the exchanges and enhance those services in the future is a benefit to consumers in those exchanges and the State of Kansas. S&A is the Carrier of Last Resort (COLR), the Incumbent Local Exchange Carrier (ILEC), and an Eligible Telecommunications Carrier (ETC) for federal and Kansas purposes in its service area and remains subject to those obligations and the Commission's jurisdiction post-Transaction.

In this investigation, Staff found that ITC:

- 1) possesses the technical, managerial, and financial viability to operate and maintain the acquired Kansas telecommunications assets;
- 2) expects benefits to customers to occur via cost savings and access to additional advanced services;
- 3) did not include an acquisition premium in the purchase price and committed that it will not seek recovery of an acquisition premium;
- 4) commits to provide adequate capital to S&A Telephone for it to meet its obligations as a public utility; and
- 5) will not be financially impaired by the Transaction.

Finally, Staff agrees with the Applicants' proposal to assign S&A's IXC certificate to S&A Communications, LLC as this change correctly reflects the manner in which the IXC has operated in the past should be operated going forward.

## **BACKGROUND:**

### **Parties to the Transaction**

S&A is a Kansas Corporation that is the COLR, ILEC, and ETC for federal and Kansas purposes in its service area. S&A's wholly-owned subsidiary, S&A Communications, is a Kansas Corporation and a reseller of IXC services pursuant to authority granted by and subject to the ongoing jurisdiction of the Kansas Corporation Commission (Commission).<sup>4</sup> S&A is one of eight

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<sup>4</sup> S&A Telephone provides high-speed internet and voice services to the Kansas communities of Allen, Admire, and Scranton, as well as the surrounding rural territories in Wabaunsee, Lyon, and Osage Counties in Kansas. (<https://satelephone.com/about-us/> & [https://kcc.ks.gov/images/PDFs/maps/ks\\_telephone\\_certified\\_areas.pdf](https://kcc.ks.gov/images/PDFs/maps/ks_telephone_certified_areas.pdf))



telephone companies owned by USConnect and its only operations are in Kansas.

ITC is a Delaware limited liability company. ITC is the ultimate parent company to a diverse group of technology, telecommunications, and service companies.<sup>5</sup> ITC is a closely held corporation owned by three families.<sup>6</sup> Several wholly owned subsidiaries of ITC will carry out the Transaction and related financing. Those subsidiaries are thoroughly discussed in the Application.<sup>7, 8</sup>

### **The Transaction**

The Transaction and intermediate steps that are necessary to complete the terms of the Stock Purchase Agreement<sup>9</sup> are detailed in paragraphs 17-23 of the Application. As complex as the intermediate steps in completing the Transaction may appear, the end result is rather straight forward; ITC will purchase one-hundred percent of the equity of USConnect and as a result, ITC becomes the ultimate parent of S&A and S&A Communications.

Beyond authority to execute the Stock Purchase Agreement, the Applicants request authority from the Commission to convert USConnect and all of its subsidiaries, including S&A and S&A Communications to limited liability companies. The Commission does not have authority over this proposed change in corporate designation *except* to prohibit it if such a change causes harm to customers of the utility. The Applicants state the proposed conversion does not harm consumers. Even if such a conversion appears harmless, it is the ITC's responsibility to remedy any harm to consumers caused by this conversion. The Commission has the authority to order any such remedy. Reading the entirety of the Application, it appears that the Applicants have pledged to hold harmless customers of S&A although it's not directly stated.<sup>10</sup> In response to a question by Staff directly to that point, the Applicants agree to hold consumers harmless for costs associated with the conversion.<sup>11</sup>

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<sup>5</sup> The ITC companies can be found at <https://www.itchold.com/companies>

<sup>6</sup> Response to KCC Staff data request 1

<sup>7</sup> Application at 11.

<sup>8</sup> The Applicants explain their corporate structures and placement of the regulated assets in the corporate family. Staff recognizes that the regulated assets might be held in a wholly-owned subsidiary of the parent, created to facilitate this and other acquisitions or transactions. The creation of those subsidiaries does not change the obligations of the ultimate corporate parent, thus Staff's Report and Recommendation will not focus on those subsidiaries, but rather on ITC Holdings as the ultimate parent to S&A. Those wholly-owned subsidiaries are shown on the corporate organization chart in Exhibit D of the Application.

<sup>9</sup> The Stock Purchase Agreement By and Among ITC Broadband Holdings LLC, USConnect Holdings, Inc, William E. King, as the Shareholder Representative Dated as of April 30, 2021 is attached to the Confidential Application filed May 17, 2021, as Exhibit A. ("Stock Purchase Agreement")

<sup>10</sup> Application at 4 and 20.

<sup>11</sup> Response to KCC Staff data request 2

### **Standards of Review**

The Transaction affects the ultimate ownership and control of a rural LEC and an IXEC pursuant to K.S.A. 66-131, 66-136, 66-2005(w), and 66-2005(z)(1), therefore, the Commission has jurisdiction to review this Transaction to ensure it promotes the public convenience. K.S.A. 66-131 and 66-136 provide that a public utility cannot transact business in Kansas until it obtains a Certificate of Convenience and Authority (COC) from the Commission, that the public convenience will be promoted and the Commission approves the assignment or transfer of a COC. Specifically, K.S.A. 66-136 states:

No franchise or certificate of convenience and necessity granted to a common carrier or public utility governed by the provisions of this act shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting such franchise or certificate of convenience and necessity or right thereunder be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the commission...

K.S.A. 66-2005(w) and K.S.A. 66-2005(z)(1) are specific to the telecommunications industry and require that the Commission approve the transfer of a COC, just as it would grant authority to a new party seeking to operate as a wireline telecommunications carrier. K.S.A. 66-2005(w) requires, in part:

[T]elecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996 ... must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission.

In determining whether a COC should be assigned or transferred, the public convenience ought to be the Commission's primary concern, the interest of the public utility serving the territory secondary, and the desires of the Applicants, a relatively minor consideration.<sup>12</sup> The public convenience means the convenience of the public, not of any particular individual. Public necessity means a public need without which the public would be inconvenienced.<sup>13</sup> The public convenience and necessity is established by proof of the conditions existing in the territory to be served.<sup>14</sup>

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<sup>12</sup> Kansas Gas & Electric Co. v. Public Service Commission, 122 Kan. 462, 466, 251 P.1097 (1977).

<sup>13</sup> Atchison, Topeka & Santa Fe Railway Co v. Public Service Commission, 130 Kan. 777, 288 P. 755 (1930); Central Kansas Power Co. v. State Corporation Commission, 206 Kan 670, 482 P.2d 1 (1970).

<sup>14</sup> Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission, 130 Kan 777, 288 P.755 (1930).



The Commission has determined mergers and acquisitions involving Kansas utilities must provide *positive benefits* to the State of Kansas to be in the public interest.<sup>15</sup> (emphasis added) The Commission established Merger Standards to analyze the level of benefits arising from such a transaction and to assess whether a transaction meets the public interest test. The Merger Standards were derived through an analysis of a transaction that involved two electric utilities with aggregate customer counts of over a half-million Kansas retail customers; however, the Commission has recognized that each jurisdictional utility acquisition and/or merger is unique in the manner and the degree to which it affects Kansas communities, consumers, and the utilities' shareholders. The Merger Standards have been applied to many transactions since 1991; transactions of various size and complexity, demonstrating that the Merger Standards are a reasonable and useful tool for the Commission to use in evaluating the public interest test.

### **ANALYSIS:**

#### **Technical, Managerial, and Financial Qualifications**

Pursuant to K.S.A. 66-2005(w), the Commission must determine whether ITC, as the acquiring party and ultimate parent of S&A, possesses the technical, managerial, and financial ability to operate and maintain the acquired Kansas telecommunications assets and provide services in an efficient and sufficient manner. Staff found that there is evidence that ITC has industry experience and skillsets to meet the technical, managerial, and financial qualifications.

#### **Technical & Management Qualifications to Meet Quality of Service Standards**

The principal measure of an entity's technical qualifications is its experience and ability to meet industry accepted service standards. The Joint Applicants are required to comply with the Commission's Quality of Service (QoS) Standards.<sup>16</sup> Staff reviewed the Commission's files and found no evidence that S&A has been found in violation of those standards. The Application and testimony state that current S&A personnel will continue after the Transaction; several of whom have more than two decades of relevant industry experience.<sup>17,18</sup> Thus, based on the Commission's records, it appears S&A personnel have a history of successfully operating the Company and Staff believes that can continue if ITC, as the new owner, understands and is supportive of that goal.

Key management personnel of ITC collectively possess more than 40 years of experience in the rural telecommunications industry. ITC traces its roots back to a family run rural telephone company in Georgia.<sup>19</sup> The same family continues as one of the owners today. Exhibit B of the Application contains brief biographies of ITC senior management. Those individuals have direct, relevant experience in the financing and managing successful ventures in the telecommunications and technology industries.<sup>20</sup> ITC states that to the best of its knowledge, none of its subsidiaries

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<sup>15</sup> *Id.* See also Docket Nos. 172-745 and 174-155-U, Order, Nov. 15, 1991; and Docket No 97-WSRE-676-MER, Order on Merger Application, Sept. 28, 1999.

<sup>16</sup> Docket No. 95-GIMT-047-GIT, May 23, 2008 Order.

<sup>17</sup> Applicant at 28, 29, 30; Elliott Direct p4, ln 4-9, ln17-23.

<sup>18</sup> Response to KCC Staff data requests 5 & 10

<sup>19</sup> Elliott Direct p.4, ln 17-23

<sup>20</sup> Application Exhibit B

have been subject of a Quality of Service investigation by a regulatory body during the past three years.<sup>21</sup>

Staff recognizes that decades of experience, no matter how relevant it might be to operating a rural LEC, does not guarantee adherence to QoS standards, such experience does point to a strong underlying knowledge of the rural telecommunications industry and utility regulation which includes the vital importance that this Commission places on adhering to QoS. Staff finds that there is evidence that the Transaction will result in experienced, knowledgeable personnel at S&A and ITC who would be able to successfully operate the S&A exchanges and meet the Commission's QoS standards.

### **Financial Qualifications**

ITC is a closely-held business, which does make it somewhat more difficult to evaluate the effects of the Transaction on its financial health. The Applicants provided financial statements for ITC and USConnect in the Confidential Application.<sup>22</sup> Based on those financial statements and responses to Staff data requests, the acquiring parties are financially sound. A portion of the Transaction will be financed with loans from CoBank.<sup>23</sup> ITC demonstrated that, with the Transaction and related financing, it can stay within its loan covenants and maintain access to capital from CoBank in the future.<sup>24, 25</sup> As the ultimate parent, Staff insists that ITC commit to ensuring S&A has access to an adequate amount of capital at reasonable costs even to the extent that ITC's owners provide that capital. In response to a Staff data request, ITC has committed to adequately capitalize S&A Telephone and guarantee that S&A Telephone will have access to capital for it to carry out its public utility obligations.<sup>26</sup> Staff concludes that there is evidence ITC is financially qualified to become the ultimate parent of S&A Telephone.

### **Merger Standards to Evaluate the Public Interest Standard**

The proposed Transaction affects a Kansas RLEC and provision of telecommunications services to approximately 500 access lines in Kansas.<sup>27</sup> In tandem with the evaluation of the Applicant's managerial, technical, and financial qualifications, the Applicants and Staff viewed the Transaction in light of the Merger Standards, as follows:

- a. The effect of the transaction on customers, including:

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<sup>21</sup> Response to KCC Staff data request 9

<sup>22</sup> Application Exhibit C; Response to KCC Staff data request 7

<sup>23</sup> CoBank is a national cooperative bank serving vital industries across rural America. CoBank provides loans, leases, export financing and other financial services to agribusinesses and rural power, water, and communications providers in all 50 states. For decades, CoBank has provided loans and leases to the full range of telecommunications providers: incumbent local exchange carriers, competitive local exchange carriers, wireless and cable companies, data centers, and tower and fiber companies. CoBank reports that it has \$4.5 billion in loan commitments to 170 telecommunications customers. (<https://www.cobank.com/corporate/industry/communications>)

<sup>24</sup> Response to KCC Staff data request 3 (confidential)

<sup>25</sup> Response to KCC Staff data request 8 (confidential)

<sup>26</sup> Response to KCC Staff data request 6

<sup>27</sup> S&A Telephone 2020 KCC Annual Report Section 28.

- i. The effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur;
- ii. Reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range;
- iii. Whether ratepayer benefits resulting from the transaction can be quantified;
- iv. Whether there are operational synergies that can justify payment in excess of book value; and
- v. The effect of the proposed transaction on the existing competition.
- b. The effect of the transaction on the environment.
- c. Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.
- d. Whether the proposed transaction will [preserve] the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state.
- e. The effect of the transaction on affected public utility shareholders.
- f. Whether the transaction maximizes the use of Kansas energy resources.
- g. Whether the transaction will reduce the possibility of economic waste.
- h. What impact, if any, the transaction has on public safety.

The Merger Standards assist in determining whether a proposed transaction provides a net benefit to ratepayers, shareholders, and the public generally and thereby, “promotes the public interest.” In most merger and acquisition cases, the appropriate focus is whether the transaction results in benefits for the public that can be quantified. The Commission has recognized that with regard to evaluating a proposed transaction in light of the Merger Standards, some factors may be less relevant than others in the present proceeding.<sup>28</sup> This section of Staff’s R&R summarizes the Applicants’ position on each Merger Standard, Staff’s analysis of the Applicants’ position, and Staff’s recommendation regarding whether the Transaction meets the standard.

**a. The effect of the transaction on customers, including:**

- i. The effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur**

Applicants’ Position:

The Applicants state that S&A consumers can benefit from ITC management’s extensive industry experience, and networking resources that will facilitate provision of enhanced services.<sup>29</sup>

Staff’s Response:

The Application does not contain an analysis that directly addresses this Merger Standard - the

<sup>28</sup> Order Approving Joint Application, ¶38, Docket No. 13-BHCG-509-ACQ, Oct. 3, 2013.

<sup>29</sup> Application at 32; Elliott Direct p5, ln 12-15.



financial health of the acquired assets with and without the Transaction. It is difficult for Staff to conduct an independent assessment on this Merger Standard when the primary parties involved are privately, closely-held companies. That being said, it is clear to Staff, based on the operating history and financial documents provided in the Application and responses to data requests, that both USConnect and ITC Broadband Holdings are financially sound, successful enterprises. After the Transaction, the Applicants will remain within financial parameters set by ITC's lender, thus enabling the Applicants to access additional capital if it is needed. Staff is relying heavily on commitments by ITC to adequately capitalize S&A and provide adequate capital going forward via CoBank and ITC investors.<sup>30</sup> With those commitments and pro-forma financials that indicate it remains within its lender's credit metrics, Staff believes the Transaction meets this Merger Standard.

**ii. Reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range**

Applicants' Position:

The Applicants maintain that the purchase price is reasonable as it is constrained by the purchasers' need to provide economically viable operations and meet conditions of its lender.<sup>31</sup> There was no formal study of potential savings and no plans to reduce costs.<sup>32</sup>

Staff's Response:

Even though the Applicant does not discuss how it arrived at a value for the Transaction, while making it clear that it did not perform an analysis of potential savings that would have been considered in arriving at a value for the company,<sup>33</sup> It appears that the negotiated price was agreed to by sophisticated parties that have substantial knowledge of the industry. The Merger Standards established by the Commission are also well known to the parties. In Staff's view, ITC's position that there would be no impact on rates<sup>34</sup> and no acquisition premium in the purchase price or attempt to recover an acquisition premium in rates<sup>35</sup> demonstrate its understanding of the Merger Standards. With these commitments in place, Staff believes the Applicants have met this Merger Standard.

**iii. Whether ratepayer benefits resulting from the transaction can be quantified**

Applicants' Position:

The Applicants did not attempt to perform an analysis of potential savings.<sup>36</sup> There is the potential for future investments in telephony assets to provide expanded services through enhanced financial security and managerial expertise of ITC.<sup>37</sup>

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<sup>30</sup> Response to KCC Staff data request 3 (confidential), 6, 7, & 8 (confidential)

<sup>31</sup> Application at 37.

<sup>32</sup> Elliott Direct p 5, lines 16-19.

<sup>33</sup> Elliott Direct p4, ln 16.

<sup>34</sup> Elliott Direct p3, ln19 and Response to KCC data request 11

<sup>35</sup> Response to KCC Staff data request 2

<sup>36</sup> Elliott Direct p4, ln 16.

<sup>37</sup> Application at 40-41

Staff's Response:

Staff believes it is not absolutely necessary to perform a formal study of potential savings that could be shared with consumers when such a study could be cost prohibitive relative to the size of the transaction. It is important for the Applicants to recognize that orders issued by the Commission have set a "positive net-benefits" standard as the threshold in Kansas. Merely not seeking recovery of an acquisition premium does not satisfy the Commission's "positive net-benefits" requirement, in Staff's opinion. There are qualitative benefits for consumers that the Applicants claim are made possible through ITC's collaboration with the existing S&A management team, but they offer no guarantee or commitment to those benefits in the Application.<sup>38</sup> Staff sought additional explanation from the Applicants on those qualitative benefits. In response, ITC stated that deployment of fiber to S&A customers will be a benefit of the Transaction. ITC also noted that its experience and size can bring efficiencies, to the benefit of S&A customers, in fiber deployment, information technology, supply chain, and workforce development.<sup>39</sup>

Staff believes the Applicants proposal viewed in its entirety satisfies this Merger Standard. Local rates will not change as a result of the Transaction. The Company's KUSF and Federal support amounts will not be impacted by the Transaction. There are qualitative benefits proffered by the Applicants coupled with protections from costs. Additionally, Staff recommends the Commission consider the benefits of a transaction between a willing seller and a qualified buyer that will ensure continuity and likely, enhanced services to these exchanges. In Staff's opinion, such a transaction is a benefit to Kansas and customers served by S&A Telephone.

**iv. Whether there are operational synergies that can justify payment in excess of book value**

Applicants' Position:

The Applicants state that there is no acquisition premium paid in this Transaction<sup>40</sup> and there was no analysis quantifying savings from the Transaction.<sup>41</sup>

Staff's Response:

The assets of S&A and S&A Communications are only a relatively small portion of the totality of this Transaction which involves the acquisition of all the assets under the USConnect Corporation. Thus, verifying that there is no acquisition premium involved specifically tied to the Kansas regulated assets is very difficult. Such a task is not necessary to protect Kansas consumers as the Applicants have pledged to never seek recovery of an acquisition premium from S&A customers.<sup>42</sup> The net book value of S&A's assets that are used to determine its rate base will not change as a result of this Transaction.

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<sup>38</sup> Elliott Direct p4, ln 7-16.

<sup>39</sup> Response to KCC Staff data requests 4, 10, 12 & 14

<sup>40</sup> Application at 37.

<sup>41</sup> Elliott Direct p5, ln 16-19

<sup>42</sup> Response to KCC Staff data request 2

**v. The effect of the proposed transaction on the existing competition**

Applicants' Position:

The Applicants state that the Transaction is neutral to the number of market participants.<sup>43</sup>

Staff's Response:

In Staff's view, the Transaction should not have a negative effect on competition because prior to the Transaction, ITC Broadband Holdings did not provide telephony services to the territory served by S&A and S&A Communications and will continue the services currently offered by S&A and S&A Communications. The Transaction also does not affect any current competitive service provider operating in S&A's exchanges. Any potential wireline competitor would need to be granted a Certificate from the Commission and any competitive wireless or Voice over Internet Protocol (VoIP) provider may offer services wherever it deems appropriate.

**b. The effect of the transaction on the environment**

Applicants' Position:

The Applicants state the Transaction will have no material impact on the environment.<sup>44</sup>

Staff's Response:

In Staff's view, this particular Merger Standard lends itself to evaluation of transactions involving energy production and distribution assets. Staff generally agrees with the Joint Applicants' position on this Standard. More importantly, this Transaction does not have any negative impact on Kansas environment that could reduce the positive benefits of this Transaction.

**c. Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.**

Applicants' Position:

The Applicants maintain that the Transaction is beneficial to the local economies served by S&A and S&A Communications as they can continue to provide stable, efficient, and economic communications services to the communities they serve. Additionally, the Transaction provides the potential for future investments in telephony assets to provide expanded services through enhanced financial security and managerial expertise of ITC. The Transaction will not create labor dislocation in S&A's service territories.<sup>45</sup> The Applicants further state that ITC will bring the latest technology to S&A, including improvements to its broadband network by adding additional fiber.

Staff's Response:

Staff believes it is beneficial to the State and the local communities that the Applicants can ensure the continuity and enhancement of telephony services and plan to deploy additional fiber to S&A's

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<sup>43</sup> Application at 38.

<sup>44</sup> Application at 39.

<sup>45</sup> Application para 40,41; Direct p4, ln 1-6; Response to KCC Staff data request 6



broadband network.<sup>46</sup> S&A consumers will benefit from the managerial and financial resources of ITC as an added resource to the existing S&A management team as detailed in ITC's response to Staff data requests.

**d. Whether the proposed transaction will [preserve] the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state**

Applicants' Position:

The Applicants' state that S&A will remain fully subject to the Commission's jurisdiction and all applicable Kansas laws with no impact on the Commission's jurisdiction.<sup>47</sup>

Staff's Position:

Staff agrees that the Transaction will not cause any change to the Commission's authority. After the Transaction, the Commission will continue to have the same authority to regulate S&A and S&A Communications just as it does now. S&A Telephone will remain the ILEC, COLR, and ETC in the exchanges it now serves and must continue to meet all of its related obligations within those exchanges.

**e. The effect of the transaction on affected public utility shareholders**

Applicants' Position:

The Applicants maintain that the Transaction will have zero to a *de minimis* impact on shareholder interests as the Parties would not enter into the Transaction if it were to be adverse to shareholders' interests.<sup>48</sup>

Staff's Response:

Staff agrees with Applicants' position on this Merger Standard. The Applicants are not publicly-traded companies with a widely-diverse set of shareholders as the Commission commonly sees in larger transactions. The Parties involved in the Transaction are, instead, closely-held by a small number of shareholders with decades of experience owning and operating telephony assets among other, diverse holdings. The executive manage team at ITC clearly has extensive experience in the telecommunications industry, as well as specific experience in negotiating mergers and acquisitions.<sup>49</sup> This Merger Standard is not an impediment to meeting the public interest test.

**f. Whether the transaction maximizes the use of Kansas energy resources**

Applicants' Position:

The Applicants state that the Transaction is expected to have no material impact on the use of Kansas energy resources.<sup>50</sup>

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<sup>46</sup> Response to KCC Staff data request 4

<sup>47</sup> Application at 42.

<sup>48</sup> Application at 43.

<sup>49</sup> Application, Exhibit B

<sup>50</sup> Application at 44.

Staff's Response:

This particular Merger Standard lends itself to evaluation of transactions involving electric generation or natural gas distribution assets. Staff generally agrees with the Joint Applicants' position on this standard. More importantly, this Transaction does not have any negative impact on Kansas energy resources that could diminish the alleged, qualitative positive benefits of this Transaction.

**g. Whether the transaction will reduce the possibility of economic waste**

Applicants' Position:

The Applicants suggest that the Transaction does not result in economic waste as they maintain the purchase price is reasonable, S&A will continue to be financially sound, and there is no change in the market participants.<sup>51</sup>

Staff's Response:

The Transaction is the result of an arm's-length negotiation between sophisticated and knowledgeable parties with the purchaser knowing that any acquisition premium will not be recovered through regulated rates or KUSF funding. In Staff's view, the Applicants' commitment not to ever seek recovery of an acquisition premium<sup>52</sup> is important in meeting the public interest standard as the commitment will protect the positive net benefits of the Transaction.

**h. What impact, if any, the transaction has on public safety**

Applicants' Position:

To this element of the Merger Standards the Applicants state the Transaction will have no material impact on public safety.<sup>53</sup>

Staff's Response:

The Applicants are claiming no consumer benefits associated with this Merger Standard. Although Staff would note that the pandemic has reminded policy makers just how important telecommunications infrastructure is to public safety and health. Staff views continuity of telephony services by a qualified party, with commitments to make enhancements in these exchanges, as a positive outcome of the Transaction on public safety.

**RECOMMENDATION:**

Staff recommends the Commission grant the requests the Applicants proposes in the Application. Applicants demonstrated that ITC possesses the technical, managerial, and financial expertise to acquire, operate and maintain S&A Telephone. It is also Staff's opinion that the acquisition meets the Commission's Merger Standards as it provides positive benefits to consumers and the State of Kansas, thus the Transaction is in the public interest. Granted, the benefits from the Transaction are not quantified in a formal study and the benefits are generally, qualitative in nature. Critical to meeting the Commission's Merger Standards is the Applicants' commitments to protect consumers

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<sup>51</sup> Application at 45.

<sup>52</sup> Response to KCC Staff data request 1

<sup>53</sup> Application at 46.

from costs and service reductions associated with the Transaction that could diminish the potential benefits. Absent such commitments, Staff believes the Transaction could not meet the Merger Standards. Specifically, the Applicants committed to not recovering any acquisition premium from S&A customers, holding S&A Telephone customers harmless for any cost increases caused by the conversion to limited liability companies, and adequately capitalizing S&A Telephone so that it can meet its obligations as a public utility.

**PUBLIC VERSION**

**21-S&AT-423-ACQ**

**Responses to Staff Data Requests**

**Kansas Corporation Commission  
Information Request**

Request No: 1

Company Name                      S&A TELEPHONE COMPANY, INC.                      S&AT  
Docket Number                      21-S&AT-423-ACQ  
Request Date                      May 20, 2021  
Date Information Needed      June 1, 2021

RE: Ownership of ITC Broadband Holding's equity

**Please Provide the Following:**

Please provide a discussion of the ownership of ITC Broadband Holding, LLC. It appears to Staff that its equity is not publicly traded, but it is not clear from the Application who owns the ITC's equity.

Submitted By   Gatewood

Submitted To   ITC Broadband Holdings

**RESPONSE:** ITC is a closely held company with ownership held predominantly by three families.

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

*Alan Spurlark*

Date: \_\_\_\_\_

*5/21/2021*

**Kansas Corporation Commission  
Information Request**

Request No. 2

Company Name	S&A TELEPHONE COMPANY, INC.	S&AT
Docket Number	21-S&AT-423-ACQ	
Request Date	May 20, 2021	
Date Information Needed	June 1, 2021	
RE:	Limited Liability Corporation Conversion	

**Please Provide the Following:**

At paragraph 20 of the Application, the Applicants state that ITC plans to convert USConnect and all of its subsidiaries (including S&A Telephone Company and S&A Communications) to limited liability companies. Based on the totality of the Application it appears that ITC believes such a conversion will not cause harm to the customers of S&A Telephone or S&A Communications.

- a) Please explain why ITC believes the conversion will not cause harm to S&A Telephone Company.
- b) Is ITC willing to commit to hold customers of S&A Telephone Company harmless for increased costs caused by this conversion?

Submitted By Gatewood

Submitted to ITC Broadband Holdings

**RESPONSE:**

a) The change in corporate format from a C corporation to an LLC will cause no harm whatsoever to S&A Telephone Company and will only have positive future consequences for the company. This is a change in format only and is being done to provide a more beneficial tax and flexible business structure that will further strengthen the organization. As a practical matter, this corporate format change will have no affect upon the day-to-day management, financial resources, technical expertise, operations, rates, terms, or conditions of service now in place for S&A Telephone Company. This will be a statutory conversion, and as such will ensure a continuum of legal existence for S&A Telephone Company, with no disruption or changeover to a new entity entailed. The company will continue to operate under the same name as today, S&A Telephone Company, with no loss in brand value or recognition and no customer confusion resulting from the conversion or the Transaction. Finally, USConnect currently operates other local exchange telephone companies, like S&A Telephone, as LLCs in other jurisdictions with no adverse effects



whatsoever, and this provides a solid indicator that S&A Telephone Company's conversion to an LLC format will present no problems or negative impacts to the company or its customers.

b). Yes. ITC hereby commits to hold the customers of S&A Telephone Company harmless from increased costs that directly result from the planned conversion of its business format from a C corporation to an LLC.

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

#### **Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spunholz

Date: 5/21/2021

**Kansas Corporation Commission  
Information Request**

Request No: 3

Company Name S&A TELEPHONE COMPANY, INC. S&AT  
Docket Number 21-S&AT-423-ACQ  
Request Date May 26, 2021  
Date Information Needed June 7, 2021

RE: Access to Capital

**Please Provide the Following:**

Please discuss in detail S&A's access to debt and equity necessary to fulfill the statutory obligation of providing efficient and sufficient telecommunication services after this Transaction closes.

Submitted By Gatewood

Submitted To S&A Tele/ITC Broadband

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**21-S&AT-423-ACQ**  
**Response to Staff Data Request #3**  
**Is Confidential**

**Kansas Corporation Commission  
Information Request**

Request No. 4

Company Name	S&A TELEPHONE COMPANY, INC.	S&AT
Docket Number	21-S&AT-423-ACQ	
Request Date	May 26, 2021	
Date Information Needed	June 7, 2021	
RE:	Provision of enhanced services	

**Please Provide the Following:**

The Direct Testimony and Application alludes to the notion that the acquisition by ITC Broadband Holdings will result in added/increased operational efficiency and economies of scale, including an increase in company resources that may result in the provision of additional advanced telecommunications and broadband services to S&A's customers. (Elliott Direct p4, lines8-16; p5, line 3; p5, lines 12-15; Application at para 40)

A) Identify the advanced telecommunications and broadband services ITC believes it can provide S&A customers as a result of this Transaction;

B) Identify and provide a detailed explanation of the operational efficiencies and economies of scale that ITC believe will be achieved through the Transaction; and

C) Provide all analysis, including cost studies and feasibility analysis on which the Applicants relied, to determine operational efficiencies and economies of scale benefits will occur as a result of the Transaction.

Submitted By: Gatewood

Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:**

A) ITC plans to bring the latest technology to the S&A serving area. This will include strategic improvements to the broadband network including additional deployment of fiber. Fiber is widely viewed as offering the most secure and highest quality of service to local telephone customers, such as the S&A base.

B) ITC has deep knowledge of telecommunications infrastructure and operations and will be able to utilize its vast experience and subject matter experts to:

- **Improve efficient and expedient fiber deployment**
- **Improve shared information technology**
- **Improve buying power and supply chain efficiencies with key vendors**
- **Improve sales and marketing and the overall customer experience**
- **Continue development of a highly-skilled local workforce, enhanced with an exceptional new national leadership and expanded infrastructure**

**C) Applicants did not believe the expense of a formal feasibility or cost study were reasonably necessary or appropriate due to the size of S&A. Consequently, ITC has not performed cost studies and feasibility analysis to determine operational efficiencies and economies of scale. The expected benefits were able to be determined based on similar historical experiences with such transactions.**

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

#### **Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spunler

Date: 6/1/2021

**Kansas Corporation Commission  
Information Request**

Request No. 5

Company Name	S&A TELEPHONE COMPANY, INC.	S&AT
Docket Number	21-S&AT-423-ACQ	
Request Date	May 26, 2021	
Date Information Needed	June 7, 2021	

RE: S&A Management Bios

**Please Provide the Following:**

At para 29 of the Application, it stated that qualifications of S&A management are on file with the Commission and can be found in other dockets. So that Staff is absolutely clear regarding those individuals and their qualifications, provide an organization chart of S&A management before and after the transaction along with the experience and qualifications of those members of the S&A management team that will remain to operate S&A after the Transaction.

Submitted By: Gatewood

Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:**

**All S&A staff and management will remain the same pre and post transaction.**

**Deb Rand – President of S&A Telephone. Ms. Rand has over 25 years of experience in the rural telecommunication industry holding positions both in operations and management.**

**Josh Reece – Operations Supervisor of S&A Telephone. Mr. Reece has worked for S&A Telephone for over 17 years, holding a variety of positions.**

**Randy Jackson – Technician II at S&A Telephone. Mr. Jackson has worked for S&A Telephone for over 17 years, holding a variety of positions.**

**Logan McQuiston – Technician I at S&A Telephone. Mr. McQuiston has worked for S&A Telephone for over 1 year.**

**Shirley Vincent – Customer Service Specialist. Ms. Vincent has worked for S&A Telephone for over 26 years.**



**Wendy Linsey – Customer Service Specialist. Ms. Linsey has worked for S&A Telephone for over 6 years.**

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spaulding

Date: 6/1/2021

**Kansas Corporation Commission  
Information Request**

Request No. 6

Company Name	S&A TELEPHONE COMPANY, INC.	S&AT
Docket Number	21-S&AT-423-ACQ	
Request Date	May 26, 2021	
Date Information Needed	June 7, 2021	

RE: S&A Access to Capital

**Please Provide the Following:**

As the ultimate parent company of S&A Telephone, does ITC Broadband Holdings commit to the Commission that:

- A) it will adequately capitalize S&A telephone; and
- B) it will guarantee S&A Telephone has access to capital necessary for it to carry out its obligations as a public utility?

Submitted By: Gatewood

Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:**

- A) ITC will adequately capitalize S&A Telephone.
- B) ITC will guarantee that S&A Telephone will have access to capital necessary for it to carry out its public utility obligations.

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spurlink

Date: 6/1/2021

**Kansas Corporation Commission  
Information Request**

Request No. 7

Company Name	S&A TELEPHONE COMPANY, INC.	S&AT
Docket Number	21-S&AT-423-ACQ	
Request Date	May 26, 2021	
Date Information Needed	June 7, 2021	

RE: Access to capital after the Transaction

**Please Provide the Following:**

Regarding Exhibit C (confidential financials) Please provide detail and context to the ITC Broadband Consolidated financial statement in this exhibit. Is it inclusive of all subsidiaries shown in Exhibit D, post Transaction, inclusive of CoBank loans discussed in Exhibit E, and investor contributed capital discussed in paragraph 24 of the Application?

Submitted By: Gatewood

Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:**

**Exhibit C is inclusive of all subsidiaries in Exhibit D, post Transaction, inclusive of CoBank loans discussed in Exhibit E, and inclusive of investor contributed capital.**

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spurlink

Date: 6/1/2021

**Kansas Corporation Commission  
Information Request**

Request No: **8**

Company Name                      S&A TELEPHONE COMPANY, INC.                      S&AT  
Docket Number                      21-S&AT-423-ACQ  
Request Date                      May 26, 2021  
Date Information Needed      June 7, 2021

RE: Access to capital after the Transaction

**Please Provide the Following:**

Regarding Exhibit E: (CoBank Mandate Letter) Staff requests the Applicant provide some discussion of the language next to the heading Incremental Facilities.

A) Does this language mean that ITC Broadband Holdings, LLC will continue to have access to capital through CoBank if it maintains its Total Net Leverage Ratio with the stated range?

B) At the close of this Transaction, do the Applicants project to be within that range, thus having access to additional capital from CoBank? If so, please provide evidence and projections.

Submitted By Gatewood

Submitted To S&A Tele/ITC Broadband

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



**21-S&AT-423-ACQ**  
**Response to Staff Data Request #8**  
**Is Confidential**

**Kansas Corporation Commission  
Information Request**

Request No. 9

Company Name                      S&A TELEPHONE COMPANY, INC.                      S&AT  
Docket Number                      21-S&AT-423-ACQ  
Request Date                      May 26, 2021  
Date Information Needed                      June 7, 2021

RE:    ITC Broadband QoS experience

**Please Provide the Following:**

Has any public utility that is controlled by ITC Broadband Holdings been subject to a quality of service investigation by a regulatory authority during the past three years? If so, provide an explanation and cites to the relevant dockets.

Submitted By: Gatewood  
Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:**

**To ITC's best knowledge and belief, no entity owned or controlled by ITC Broadband Holdings has been subject to any quality of service investigation by a regulatory authority during the past three years. ITC strives to provide excellent quality of service to its customers at all times in its operations.**

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Sankorb

Date: 6/1/2021

**Kansas Corporation Commission  
Information Request**

Request No. **10**

Company Name	S&A TELEPHONE COMPANY, INC.	S&AT
Docket Number	21-S&AT-423-ACQ	
Request Date	May 28, 2021	
Date Information Needed	June 8, 2021	

RE: Reduction in local services and employment

**Please Provide the Following:**

Identify any reductions or modifications to company headquarters, payment centers, customer service locations, and reductions in personnel and personnel costs, including S&A Telephone's employee salaries and benefits, arising from the Transaction. If ITC is planning no changes to these services and costs, please state whether ITC is willing to make a commitment for that plan and state the time frame of that commitment.

Submitted By: Gatewood  
Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:**

**There will be no reductions, modifications or changes to company headquarters, payment centers or customer service locations, nor will there be any reductions in S&A personnel or personnel costs, including salaries or benefits, due to or resulting from the Transaction. S&A's operations will remain unchanged immediately following the transaction and for the reasonably foreseeable future and no less than one year post Transaction.**

**Beyond this, current uncertainties in the US and global economic picture, including our still grappling with the unprecedented impacts of the COVID-19 pandemic, and the continued accelerated pace of technology and competition in telecommunications and broadband services, make it difficult to commit to rigid business plans for S&A. ITC is nonetheless fully committed to taking all prudent and reasonable steps, always utilizing sound business practices within its reasonable power and control, and devoting fully sufficient financial and human resources to ensuring that its investments in S&A and its sister telcos produce high quality, exceptional value services to its customers going forward. Moreover, ITC is committed to improving fiber deployment to its customer base, which we believe will provide the most important and enduring assurance of high quality/cost effective services going forward for our valued S&A customers.**

**ITC likewise values the existing highly skilled S&A team and all their excellent contributions and achievements to date, and ITC is committed to doing all in its reasonable power and control to maintain and enhance existing personnel levels, salaries, and benefits for S&A's people going forward.**

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spaulink

Date: 6/4/2021



**Kansas Corporation Commission  
Information Request**

Request No. 11

Company Name                      S&A TELEPHONE COMPANY, INC.                      S&AT  
Docket Number                      21-S&AT-423-ACQ  
Request Date                      May 28, 2021  
Date Information Needed              June 8, 2021  
  
RE:    Changes in local rates

**Please Provide the Following:**

The Application states the Transaction will not affect Kansas customers' rates, terms, or conditions of service. Please confirm ITC Broadband Holdings does not intend any operational changes at S&A that will result in an increase in local service rates beyond the affordable rate increase being addressed in Docket No. 21-GIMT-095-GIT.

Submitted By: Gatewood  
Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:** There are no operational changes planned at S&A immediately following or in the near future after the Transaction. There will be no increases in local service rates as a result of the Transaction. In addition, the recently Commission approved S&A KUSF rates authorized in Docket No. 21-GIMT-095-GIT (and 21-S&AT-293-TAR) are not anticipated to be changed as a result of the Transaction.

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spink

Date: 6/4/2021

**Kansas Corporation Commission  
Information Request**

Request No. 12

Company Name                      S&A TELEPHONE COMPANY, INC.                      S&AT

Docket Number                      21-S&AT-423-ACQ

Request Date                      May 28, 2021

Date Information Needed                      June 8, 2021

RE:    Advanced Services

**Please Provide the Following:**

Is S&A Telephone or any affiliate subject to conditions under which the Company is required and/or committed to build out and deploy advanced telecommunications and/or broadband services due to funding received by any federal or state agency? If yes:

- A. Describe the conditions placed on the company
- B. Identify the agency with oversight of the funding and/or commitment
- C. Identify the funding mechanism (ACAM, SPARKS, RDOF, etc.), the amount of funding provided and funding type (loan, federal/state grant, etc.)
- D. Timeline for each project and the commitment period
- E. The exchange/town in which services will be deployed

Submitted By: Gatewood  
Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:**

**Yes.**

- A. S&A must deploy broadband at required speeds to the number of locations listed below in our response to item D.**
- B. The FCC has oversight of this broadband speed commitment.**
- C. Revised ACAM 1. Remaining Payments are \$674,524 per year, for 2021-2028. Federal Universal Support – Grant.**
- D. 187 locations at 25 down/3 meg up, 188 locations at 10 meg down/3 meg up, and 26 locations at 4 meg down/1 meg up by 2028.**

**The revised ACAM offer came with interim buildout obligations that require 25/3 Mbps build out to 40% of "fully funded" locations by the end of year 4 (2022), and an additional 10%/year buildout in subsequent years, ultimately leading to at least 95% buildout by the end of the "new" 10-year term (2028). The initial 10/1 Mbps broadband build out to 40% of "fully funded" locations by the end of year 4 (2020), with an additional 10%/year buildout in subsequent years, ultimately leading to at least 95% buildout by the end of year 10 (2026), remain in effect.**

**E. These services are being deployed in: Scranton, Kansas and Allen, Kansas.**

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spurlock

Date: 6/4/2021

**Kansas Corporation Commission  
Information Request**

Request No. **13**

Company Name	S&A TELEPHONE COMPANY, INC.	S&AT
Docket Number	21-S&AT-423-ACQ	
Request Date	May 28, 2021	
Date Information Needed	June 8, 2021	

RE: USF Subsidies

**Please Provide the Following:**

Identify all federal USF subsidies received for S&A Telephone, to include:

- A. The federal high-cost support mechanism elected by each entity (Legacy, ACAM, ACAM I, etc.);
- B. Amount of federal support the company received for 2019, 2020, and projected amount for 2021;
- C. Whether the Transaction will result in any modification to the federal USF program or funding amounts received for the Company.

Submitted By: Gatewood

Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:**

- A. Revised ACAM
- B. 2019 – ACAM – \$745,980 , CAF ICC – \$59,136  
2020 – ACAM – \$702,108, CAF ICC – \$61,926  
2021 – ACAM – \$674,520, CAF ICC – \$60,402
- C. The Transaction will not result in any modification to the federal USF program or funding amounts received for the Company.

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.



### Verification of Response

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spurluck

Date: 6/4/2021

**Kansas Corporation Commission  
Information Request**

Request No. 14

Company Name	S&A TELEPHONE COMPANY, INC.	S&AT
Docket Number	21-S&AT-423-ACQ	
Request Date	May 28, 2021	
Date Information Needed	June 8, 2021	

RE: Advanced Services

**Please Provide the Following:**

Will the Transaction result in the provision of any additional advanced telecommunications and broadband services beyond those required as a result of federal and/or state funding (grants, loans, ACAM, etc.)? Provide all analysis, including cost studies, take-rate analysis, preliminary deployment plans, etc. regarding the feasibility and cost to deploy these services after the Transaction is closed. Include a detailed explanation regarding how each project will be financed.

Submitted By: Gatewood

Submitted to: S&A Tel / ITC Broadband Holdings

**RESPONSE:** Yes, S&A has met its current required network deployment obligations, but is still expanding fiber deeper into its network. With the additional expertise and support of the ITC team, S&A plans to accelerate fiber deployment even further, which will make advanced services available to a greater portion of residents located in S&A's service territory on a faster timeline. That anticipated expanded fiber architecture and networking will allow continued enhancements to and delivery of all advanced telecommunications and broadband services using high speed Internet access as new services and features are developed.

Applicants did not believe the expense of a formal feasibility or cost study on these points were reasonably necessary, justified, or appropriate due to the comparatively small size of the S&A footprint. Moreover, ITC's deep institutional knowledge and past experience regarding similar such transactions has provided real world insights that offer a better guide to anticipated results than traditional feasibility studies. Consequently, ITC has not incurred the costs to perform a cost studies or feasibility analysis in this instance, with the expected benefits able to have been determined based on similar historical experiences with such transactions.

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Alan Spurluck

Date: 6/4/2021

## CERTIFICATE OF SERVICE

21-S&AT-423-ACQ

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 06/24/2021.

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/s/ DeeAnn Shupe  
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