

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

JUL 16 2009

In the Matter of the Application of)
Southwestern Bell Telephone Company for)
Price Deregulation of Business)
Telecommunications Services in the Dodge)
City, Garden City, Humboldt, Larned and)
Lindsborg, Kansas Exchanges Pursuant to)
K.S.A. 2008 Supp. 66-2005(q)(1).)

Susan K. Duffy Docket Room
Docket No. 09-SWBT-937-PDR

NOTICE OF FILING OF STAFF REPORT AND RECOMMENDATION

COMES NOW the Staff of the State Corporation Commission of the State of Kansas
(Staff and Commission, respectively) and files its further report and recommendation on
Southwestern Bell Telephone Company's application for price deregulation of business services
in the Lindsborg, Kansas exchange.

WHEREFORE Staff requests the Commission consider its report and recommendation
and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,

Colleen R. Harrell

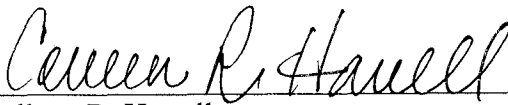
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VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

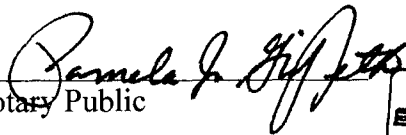
Colleen R. Harrell, of lawful age being first duly sworn upon oath states:

That she is the attorney for the Corporation Commission Staff in this matter; that she has read and is familiar with the foregoing Notice and that the statements made therein are true and correct to the best of her information, knowledge and belief.

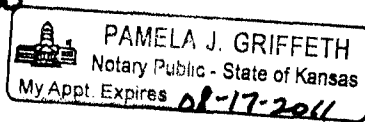


Colleen R. Harrell

Subscribed and sworn to before me Thursday, July 16, 2009.



Notary Public



My appointment expires:

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Wright
Commissioner Moffet
Commissioner Harkins

FROM: Christine Aarnes

DATE: July 15, 2009

DATE SUBMITTED TO LEGAL: 7/15/09

DATE SUBMITTED TO COMMISSIONERS: 7/16/09

RE: Docket No. 09-SWBT-937-PDR

In the Matter of the Application of Southwestern Bell Telephone Company for Price Deregulation of Business Telecommunications Services in the Dodge City, Garden City, Humboldt, Larned and Lindsborg, Kansas Exchanges Pursuant to K.S.A. 2008 Supp 66-2005(q) (1).

BACKGROUND:

This application was filed on June 5, 2009, by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T), and requests price deregulation of business telecommunications services in the Dodge City, Garden City, Humboldt, Larned and Lindsborg exchanges in the state of Kansas pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C).

On June 10, 2009, Citizens' Utility Ratepayer Board (CURB) filed a request for intervention. On July 12, 2009, the Commission issued an order granting CURB's request for intervention.

On June 24, 2009, Commission Staff (Staff) filed its Report and Recommendation, in which Staff recommended approval of AT&T's entire application.

On June 25, 2009, CURB filed a response to Staff's Report and Recommendation and stated its opposition to Staff's recommendation with regard to the Lindsborg exchange. CURB voiced concern that it could not identify with specificity any entity other than Cox Communications providing single-line business services in the Lindsborg exchange. CURB asserts AT&T failed to provide substantial confident evidence that the Lindsborg exchange could be price deregulated pursuant to the statute. Since ALLTEL and US Cellular do not distinguish between residential and single-line business wireless customers, CURB asserts there has been no demonstration by AT&T that either company is actually providing business service in the Lindsborg exchange. On June 26, 2009, the Commission issued an order granting AT&T's request for price deregulation

of business services in the Dodge City, Garden City, Humboldt and Larned exchanges and suspended for 30 days the portion of the application pertaining to the Lindsborg exchange to allow for additional time for investigation.

On July 9, 2009, AT&T filed its response to the Commission's June 26, 2009 order.

ANALYSIS:

K.S.A. 66-2005 was amended in 2006 to include provisions that establish procedures for price deregulation of price cap regulated services. K.S.A. 66-2005(q)(1) governs price regulation for the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation. Specifically, K.S.A. 66-2005(q)(1)(C) and (D) address the price deregulation of telecommunications services of price cap carriers in exchanges in which there are fewer than 75,000 local exchange access lines served by all providers.

When considering deregulation of business lines, K.S.A. 66-2005(q)(1)(C) states:

In any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial radio services in that exchange.

With regard to the Lindsborg exchange, AT&T indicated in its application that Cox is a facilities-based carrier providing business service to access lines in the Lindsborg exchange. In addition to service provided by Cox, AT&T claimed ALLTEL, US Cellular, and WestLink, which are not affiliated with the local exchange carrier, also provide business service as providers of commercial mobile radio services (CMRS) in the Lindsborg exchange. In its application, AT&T provided number porting information that indicated number porting data as of April 30, 2009; E911 data as of March 31, 2009; and, documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

Staff additionally queried the companies named as competitive carriers in AT&T's application, inquiring whether the carriers provide a business access line to more than one customer in the Lindsborg exchange and how the service is provisioned.

Cox, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a single-line business access line to more than one customer in the Lindsborg, Kansas exchange using its own facilities. ALLTEL indicated that it provides wireless service to more than one customer with a billing address in the Lindsborg exchange. US Cellular indicated that it does not distinguish between single-line residential and single-line business wireless service, but it does provide single-line wireless service to more than one customer in the Lindsborg exchange. WestLink responded in the negative, that is does not provide a single-line business access line to more than one customer in the Lindsborg exchange.

Wireless carriers typically do not differentiate between residential or business customers – the rate and service are the same regardless of the type of customer subscribing to the service – and the service is available and provided to residential and business customers alike. This is a customary practice for carriers in the wireless industry and not something AT&T could control or change, at least with regard to wireless carriers not affiliated with AT&T.

Staff determined in its June 24, 2009 Report and Recommendation that it appeared that as required by K.S.A. 66-2005(q)(1)(C), there was a sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to business customers in the Lindsborg exchange. However, as noted above, CURB voiced concerns over the level of certainty regarding the provisioning of telecommunications services by US Cellular and ALLTEL to business customers since US Cellular and ALLTEL do not distinguish between residential and business customers.

In its response filed July 9, 2009, AT&T provided copies of electronic mail (e-mail) messages from the City of Lindsborg and Smoky Valley USD 400 confirming that both businesses contract with US Cellular for wireless telecommunications service, to support its previous claims. AT&T additionally provided a copy of an e-mail message from state Senator Jay Emler confirming his personal knowledge of ALLTEL customers in the area.

On July 14, 2009, Staff contacted the Director of Finance for USD 400 and the City Manager of Lindsborg and confirmed that the e-mails are an accurate reflection of each business' CMRS provider. The City of Lindsborg is obviously in the Lindsborg exchange. Staff further validated that the Smoky Valley USD 400 office is in fact in Lindsborg.

RECOMMENDATION:

Staff believes that the requirements of K.S.A. 66-2005(q)(1)(C) have been satisfied in the Lindsborg exchange and Staff recommends the Commission grant AT&T's requests for price deregulation of business services in the Lindsborg exchanges. However, Staff recommends AT&T provide copies of bill statements and/or verified statements from the subscribers and location documentation with its future applications in order for AT&T to fully demonstrate that the requirements of the statute have been met.

cc: Don Low Susan Duffy Pat Shurtz
Tom Stratton Colleen Harrell

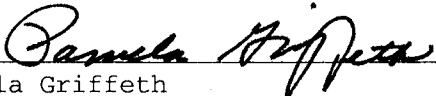
CERTIFICATE OF SERVICE

09-SWBT-937-PDR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 16th day of July, 2009, to the following:

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Administrative Specialist