

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of Certification of Compliance)
with Section 254(e) of the Federal) Docket No. 18-GIMT-394-GIT
Telecommunications Act of 1996 and)
Certification of Appropriate Use of Kansas)
Universal Service Fund Support.)

**STAFF'S RESPONSE TO MOTION OF SOUTHWESTERN BELL TELEPHONE
COMPANY FOR WAIVER AND EXEMPTION FROM CERTAIN FILING
REQUIREMENTS; ENLARGEMENT OF TIME TO FILE**

The Staff of the Kansas Corporation Commission ("Staff") states the following in response to the *Motion of Southwestern Bell Telephone Company for Waiver and Exemption from Certain Filing Requirements; Enlargement of Time to File* ("Motion"), filed on June 28, 2018:

I. BACKGROUND

1. On October 2, 2006, the Commission issued its *Order Adopting Requirements for Designation of Eligible Telecommunications Carriers* ("Additional ETC Reporting Requirements Order") in Docket No. 06-GIMT-446-GIT, which outlined, among other things, additional information eligible telecommunications carriers ("ETCs") are required to provide to certify compliance with ETC requirements to the Federal Communication Commission ("FCC") pursuant to the authority delegated to state commissions by 47 U.S.C. § 214(e)(2).¹

2. On October 2, 2007, the Commission issued its *Order Addressing Comments Regarding Revisions to Eligible Telecommunications Carrier Certification Forms* ("Approved Forms Order") in Docket No. 06-GIMT-446-GIT. Therein the Commission approved the entirety of "Attachment 6," which included requests for information needed for the Commission to comply

¹ Order Adopting Requirements for Designation of Eligible Telecommunications Carriers, October 2, 2006, ¶75-76.

with its responsibility, as delegated by 47 U.S.C. § 214(e)(2), to find that a requesting carrier complies with 47 U.S.C. § 254(e). The Order specifically addressed the comments of Southwestern Bell Telephone Company (“AT&T”) and Staff’s responses to those comments before outlining the Commission’s approved revisions to Attachment 6 to be used going forward.²

3. On July 27, 2012, the Commission issued its *Order Discontinuing Quarterly Reporting Requirement and Closing Docket* in Docket No. 06-GIMT-446-GIT. Therein, the Commission modified Attachment 6 to include the number of requests for service from potential customers within the recipient’s service areas that were unfulfilled during the prior calendar year. Previously, as required by the Additional ETC Reporting Requirements Order, this information was reported to the Commission on a quarterly basis, but with the inception of the FCC’s new requirement to include this information in an ETC’s annual certification filings, the Commission modified its filing frequency to annually, as well.

4. On April 5, 2018, the Commission issued its *Order Opening Docket* (“Opening Order”) in this Docket for the purposes of receiving information and the certifications of ETCs to ensure compliance with Section 254(e) of the Federal Telecommunications Act of 1996 and ensure appropriate use of federal and Kansas Universal Service Fund (“KUSF”) support.

5. Ordering Clause B of the Opening Order required ETC certifications for the year 2019, as well as worksheet(s) attached to the Opening Order, be filed in the instant docket on or before July 2, 2018.

6. On April 17, 2018, the Commission issued its *Amended Order Opening Docket* (“Amended Order”) clarifying that the FCC no longer requires the submission of Form 481 to state commissions.

² Order Addressing Comments Regarding Revisions to Eligible Telecommunications Carrier Certification Forms, October 2, 2007.

7. No party filed a Petition for Reconsideration of the Opening Order or the Amended Order in this matter.

8. On June 28, 2018, two business days before the July 2, 2018 deadline for ETCs to file their required documents with the Commission, AT&T filed its Motion, seeking to be excluded from the requirement to file certain worksheets with the Commission.

9. AT&T specifically seeks to eliminate its responsibility to respond to portions of Attachment 6, specifically subparts 6.1 (Detailed Outage Information), 6.2 (Number of Unfulfilled Requests for Service), 6.3 (Number of Complaints per 1,000 connections), 6.4 (Wireline and Wireless Quality of Service Certifications) and 6.7 (with regard to the Local Usage Plan pricing portion only).

10. AT&T argues that through these subparts, the Commission is essentially requiring it to file information that has been removed from the FCC's Form 481. AT&T relies on a July 7, 2017 Report and Order wherein the FCC, among other things, outlined reasons why it would no longer require the filing of certain information previously required to be included on its Form 481.³

11. Based on the FCC's decision to no longer require this information to be filed at the federal level, AT&T requests an order from the Commission waiving and exempting AT&T from the reporting provisions of Kansas ETC Certification Form, Attachment 6, but not the annual comparability certification. Additionally, AT&T requests that the Commission enlarge and extend the date, from July 2, 2018 to July 16, 2018, by which all ETCs in Kansas are required to file their Kansas ETC Certification information forms in order to have consistency between the Commission's requirements and those of the FCC.

³ *In the Matter of Connect America Fund ETC Annual Reports and Certifications*, WC Docket No. 10-90, 14-58, Report and Order, Rel. July 7, 2017.

12. AT&T is an ETC for federal support purposes and is obligated to file ETC annual certification with state commissions to determine its compliance with 47 U.S.C. § 254(e).

II. STAFF'S RESPONSE

13. AT&T's request for a "waiver and exemption" is improperly filed. The deadline for filing for reconsideration of the Commission's Opening Order or Amended Order passed on April 20, 2018, and May 2, 2018, respectively.⁴ The substantive requirements of these orders has been in place for three months, yet AT&T chose to file its Motion only two business days before the deadline for complying with the Orders. Additionally, AT&T provides no statutory basis for its request for a "waiver or exemption" at this late date, offering no authority for the Commission to grant such a specialized exception to the Order or foundation to make such a request outside of a Petition for Reconsideration. AT&T's request for a "waiver and exemption" and concerns regarding the substantive requirements of the Commission's Orders in this docket should have been filed in the time period required for filing a Petition for Reconsideration.

14. AT&T conflates its responsibility to submit Form 481 to the FCC with its obligations to submit data required by Attachment 6 pursuant to the Additional ETC Reporting Requirements and Approved Forms Orders issued in 2006 and 2007, respectively. As a matter of convenience, the Commission previously permitted ETCs to not provide information on Attachment 6 if the information was reported on Form 481, which was previously required to be filed with state commissions by July 1 of each year. However, ETCs were obligated, since the Commission's issuance of the Additional ETC Reporting Requirements and Approved Forms Orders, to provide that data as part of Attachment 6 and that obligation remains independent of the FCC's revisions to Form 481.

⁴ K.S.A. 77-529(a)(1).

15. In fact, the FCC has not eliminated AT&Ts' requirement to report much of the data eliminated from Form 481. Although, in its Order that was issued almost one year ago, the FCC eliminated several areas of the Form 481 filing requirements, the FCC continues to collect much of the eliminated data from ETCs through other sources, therefore, continuing to require AT&T to collect and report such information. The FCC simply found that duplicating that reporting through Form 481 was unnecessary. Staff will address each portion of Attachment 6 objected to by AT&T in turn.

A. Part 6.1 (Detailed Outage Information)

16. The FCC eliminated the outage requirement because carriers already have an obligation to file this information through the Network Outage Reporting System (NORS). "Centralizing our collection of outage information in NORS will reduce the burden on ETCs of filing multiple requests for confidential treatment for the same information."⁵ The Commission had already determined that outage information provided in response to Attachment 6 would be confidential in the Approved Forms Order in 2007 ("The Commission agrees with Staff and SWBT that the information reported in this Section shall be reported as confidential information."⁶).

17. The FCC further states that, "to the extent that state agencies want network outage information for their own purposes, they can, and some do, obtain such information through their own mechanisms."⁷ The Commission has requested outage information not only in order to

⁵ *In the Matter of Connect America Fund ETC Annual Reports and Certifications*, WC Docket No. 10-90, 14-58, Report and Order, Rel. July 7, 2017. ¶4

⁶ Order Addressing Comments Regarding Revisions to Eligible Telecommunications Carrier Certification Forms, October 2, 2007. ¶11

⁷ *In the Matter of Connect America Fund ETC Annual Reports and Certifications*, WC Docket No. 10-90, 14-58, Report and Order, Rel. July 7, 2017. ¶5

comply with responsibilities delegated to it by the FCC, but also because it “is a helpful way to monitor ETCs’ outage history.”⁸

18. AT&T is obligated to continue to collect outage information to report to the FCC and, as acknowledged by the FCC, a state commission can collect such information for its purposes. Furthermore, the only justification AT&T provided for eliminating this reporting requirement was because it “has no business purpose to gather and maintain”⁹ the information, which is inaccurate because it continues to be required to report this information to the FCC through the NORS. Therefore, Staff believes AT&T’s longstanding obligation to provide such information as required by Attachment 6 should remain in place.

B. Part 6.2 (Number of Unfulfilled Requests for Service)

19. The FCC eliminated the collection of information regarding Unfulfilled Requests for Service from Form 481 because the FCC found that the rule, as written, was not appropriately tailored to further its goal of monitoring carriers’ progress in deploying broadband pursuant to the reasonable request standard. However, the FCC found that information regarding where service is available remains useful to consumers and state commissions and directed the Universal Service Administrative Company (“USAC”) to develop an online map for the public.¹⁰

20. Because Staff believes the information remains useful in determining whether ETCs are complying with the obligation to provide service to all reasonable requests for service, Staff does not believe the Commission’s reporting requirement should be eliminated.

⁸ Order Addressing Comments Regarding Revisions to Eligible Telecommunications Carrier Certification Forms, October 2, 2007. ¶9

⁹ AT&T’s Motion, June 28, 2018. ¶10

¹⁰ *In the Matter of Connect America Fund ETC Annual Reports and Certifications*, WC Docket No. 10-90, 14-58, Report and Order, Rel. July 7, 2017. ¶7

Furthermore, AT&T did not provide justification for eliminating this requirement other than that AT&T now has no business purpose to gather the information.

C. Part 6.3 (Number of Complaints per 1,000 connections)

21. The FCC eliminated requiring this information on Form 481 because the data, as collected, was not as useful as the data collected by the Consumer and Governmental Affairs Bureau (CGB) through the complaint process. First, the Commission does not have access to the FCC's CGB complaint data. Second, the Commission directed the collection of such data not solely for the purpose of ETC certification, but because such high-level information "will be useful to the [Kansas Corporation] Commission and consumers."¹¹ Because it provides useful information to the Kansas Corporation Commission and to consumers situated in Kansas, Staff argues the Commission should continue to require AT&T to report complaint information. Furthermore, AT&T did not provide any rationale for no longer reporting this information beyond that it has no business purpose to gather the information.

D. Part 6.4 (Wireline and Wireless Quality of Service Certifications)

22. Staff agrees with AT&T and the FCC that "ETCs have an independent obligation to comply with all applicable service quality standards and consumer protection rules..."¹² that goes beyond the ETC certification process. The FCC states that it would prefer to enforce these rules through independent investigations instead of through the ETC certification process, stating that both the FCC and USAC possess "sufficient authority to investigate, audit, and pursue recovery of high-cost support for violation of program rules."¹³

¹¹ Order Addressing Comments Regarding Revisions to Eligible Telecommunications Carrier Certification Forms, October 2, 2007. ¶19

¹² *In the Matter of Connect America Fund ETC Annual Reports and Certifications*, WC Docket No. 10-90, 14-58, Report and Order, Rel. July 7, 2017. ¶13

¹³ *In the Matter of Connect America Fund ETC Annual Reports and Certifications*, WC Docket No. 10-90, 14-58, Report and Order, Rel. July 7, 2017. ¶13

23. Again, AT&T provides no rationale for eliminating this reporting obligation beyond its generic statement that it has no business purpose to gather the information. The quality of service obligation is simply a signed certification that the ETC is complying with the quality of service requirements. There is no information to be gathered. AT&T did not provide any rationale for why it should no longer provide this certification and the request should be denied.

E. Part 6.7 (with regard to the Local Usage Plan pricing portion only)


24. Section 7 of Attachment 6 is only applicable to competitive ETCs; therefore, there is no need to waive this requirement for AT&T.

III. ENLARGMENT OF TIME TO FILE

25. Staff does not oppose AT&T's request to extend the date by which it can file its Kansas ETC Certification information forms to July 16, 2018. However, Staff requests that future requests for an extension of time (in future proceedings) be made in a timelier manner – not two business days before the due date.

WHEREFORE, for the reasons stated above, Staff respectfully requests that the Commission issue an order denying Southwestern Bell Telephone Company's Motion for Waiver and Exemption from Certain Filing Requirements, and granting its Motion for Enlargement of Time to File.

Respectfully submitted,



Ahsan A. Latif, #24709

Litigation Counsel

Kansas Corporation Commission

1500 SW Arrowhead Road

Topeka, Kansas 66604

(785) 271-3181 (Telephone)

(785) 271-3124 (Facsimile)

a.latif@kcc.ks.gov (E-mail)

For Commission Staff

CERTIFICATE OF SERVICE

18-GIMT-394-GIT

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Motion of SWBT Company for Waiver and Exemption from Certain Filing Requirements; Enlargement of Time to File was served via electronic service this 6th day of July, 2018, to the following:

BRUCE NEY, ATTORNEY

816 CONGRESS AVE
SUITE 1100
AUSTIN, TX 78701-2471
Fax: 512-870-3420
bruce.ney@att.com

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

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

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

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

SUSAN B CUNNINGHAM, ATTORNEY
CEBRIDGE TELECOM KS, LLC
D/B/A SUDDENLINK COMMUNICATIONS
DENTONS US LLP
7028 SW 69TH ST
AUBURN, KS 66402-9421
Fax: 816-531-7545
susan.cunningham@dentons.com

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

KEVIN K. ZARLING, SR. COUNSEL
EMBARQ COMMUNICATIONS, INC.
D/B/A CENTURYLINK COMMUNICATIONS
400 W 15TH STREET
STE 315
AUSTIN, TX 78701-1600
Fax: 512-472-8362

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

MARK E. CAPLINGER
MARK E. CAPLINGER, P.A.
7936 SW INDIAN WOODS PL
TOPEKA, KS 66615-1421
mark@caplingerlaw.net

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Vicki Jacobsen
