

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

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

ORDER GRANTING HEARING

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed its files and records, and being fully advised in the premises, the Commission makes the following findings:

1. On October 27, 2016, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) filed an Application requesting relinquishment of its Eligible Telecommunications Carrier (ETC) designation in all currently designated areas *except* for the census blocks identified in Exhibit B to the Application.¹
2. On February 28, 2017, Commission Telecommunications Staff (Staff) filed an initial Report and Recommendation (R&R #1), to which AT&T and Staff filed responsive pleadings.
3. On April 4, 2017, the Citizens' Utility Ratepayer Board (CURB) and on April 27, 2017, Cox Kansas Telcom, LLC (Cox) were granted intervention, respectively.

¹ Application of Southwestern Bell Telephone Company for an Order Confirming Relinquishment of its Eligible Telecommunications Carrier Designation in Specified Areas, and Notice of Intent to Cease Participation in the Kansas Lifeline Services Program, pp. 1-3 (Oct. 27, 2016) (Application).

4. On May 4, 2017, Staff filed a second Report and Recommendation (R&R #2), to which AT&T, CURB, and Staff filed responsive pleadings.

5. On July 27, 2017, the Commission stayed this proceeding until AT&T should notify the Commission of its desire to lift the stay and continue the proceeding.²

6. On May 17, 2018, the Commission lifted the stay and directed the Prehearing Officer to convene a Status Conference to establish a procedural schedule.³ The Prehearing Officer subsequently scheduled a Status Conference for June 13, 2018.⁴

7. On June 13, 2018, AT&T, CURB, Cox, Colleen Jamison, and Staff held a Status Conference. At the Status Conference, the parties agreed to a procedural schedule. AT&T stated at the Status Conference that it wanted to reserve its right to request an evidentiary hearing, if necessary.

8. On June 28, 2018, the Commission issued an *Order Setting Procedural Schedule*, providing the following deadlines:

Staff's 3 rd Report and Recommendation	DUE: October 1, 2018
Responses to Staff's R&R	DUE: October 15, 2018
Replies to Responses	DUE: October 22, 2018
Commission Order	DUE: November 27, 2018 ⁵

9. On October 1, 2018, Staff filed its Third Report and Recommendation (R&R #3).

10. On October 3, 2018, CURB filed a response to Staff's R&R #3.

11. On October 15, 2018, AT&T filed a response to Staff's R&R #3, asking the Commission to hold oral argument on its Application.⁶

² *Order Granting AT&T's Motion for Stay of Proceeding*, Ordering Clause A (July 27, 2017).

³ *Order Granting AT&T's Motion for Order Lifting Stay of Proceeding*, Ordering Clauses A & B (May 17, 2018).

⁴ *Prehearing Officer Order Scheduling Status Conference*, Ordering Clause A (May 22, 2018).

⁵ *Order Setting Procedural Schedule*, ¶ 14 (June 28, 2018).

⁶ AT&T Kansas' Response to Staff's Third Report and Recommendation, ¶ 23 (Oct. 15, 2018).

12. On October 22, 2018, Staff filed a Response to AT&T's Response, asking the Commission to deny AT&T's request for oral argument.⁷ Staff argued that AT&T has no statutory entitlement to an oral argument and its request to have oral argument over its entire Application is overly broad.⁸ Staff further argued that exhaustive legal briefing has been conducted, and oral argument will delay the proceeding by requiring the parties to rehash the same arguments.⁹

13. On October 22, 2018, AT&T filed a Supplemental Response to Staff's R&R #3.

14. On October 25, 2018, AT&T filed a Reply to Staff's Response to AT&T Kansas' Request for Oral Argument (Reply). AT&T noted Staff's opposition to AT&T's desire to be heard on its own Application.¹⁰ AT&T asserted that the Commission has discretion to hold a hearing.¹¹ AT&T also argued that, "while [it] believes the law and facts are clear, it also should have the opportunity to further elucidate the issues for the Commission and address any questions, through either oral argument or the presentation of evidentiary witnesses, concerning the validity and impact of Staff's recommendation."¹² AT&T stated it "wants to be sure the Commission has a full understanding of the facts and law applicable to its decision on AT&T Kansas' Application."¹³

15. On October 30, 2018, Staff filed its Response to AT&T's Reply to Staff's Response to AT&T's Request for Oral Argument. Staff stated that "[i]f the Commission desires oral argument to ask questions, Staff is not opposed to ensuring the Commission has such opportunity, however, Staff believes the pleadings and briefs already filed contain adequate analysis of the law. Additionally, Staff would request that any oral argument be limited to the question of how to

⁷ Response to AT&T's Response, ¶ 11 (Oct. 22, 2018).

⁸ *Id.*

⁹ *Id.* at ¶ 13.

¹⁰ Reply, ¶ 2.

¹¹ Reply, ¶ 3.

¹² Reply, ¶ 6.

¹³ Reply, ¶ 7.

interpret 47 U.S.C. § 214(e)(4).”¹⁴ Staff also argued that an evidentiary hearing is unnecessary based on its belief that this dispute is legal in nature and AT&T’s information about plans to continue serving the subject area or regarding usage patterns is irrelevant.¹⁵ Staff argued that this matter can be handled as a summary proceeding pursuant to K.S.A. 77-537.¹⁶

16. The Commission finds that it has discretion to hold an oral argument or evidentiary hearing,¹⁷ and although this matter has been extensively briefed, the Commission finds there is no reasonable basis to deny AT&T its request to be heard before the Commission on its Application. Further, the Commission finds that its own opportunity to question the parties will allow for a clearer record. Therefore, the Commission grants AT&T’s request to be heard on its Application. In addition, the Commission will not limit the hearing to arguments on the interpretation of 47 U.S.C. § 214(e)(4), as Staff requested. Instead, the Commission will allow the parties to address both legal and factual questions and will give any admitted evidence its due weight.

17. Based on the above, the Commission finds that a hearing shall be held on Tuesday, January 8, 2019, at 10:00 a.m., immediately following the Commission’s Business Meeting, in the First Floor Hearing Room at the Commission’s Topeka Office, 1500 SW Arrowhead Road, Topeka 66604.

THEREFORE, THE COMMISSION ORDERS:

A. A hearing on shall be held on January 8, 2019 at 10:00 a.m., in the First Floor Hearing Room at the Commission’s Topeka Office.

¹⁴ Staff’s Response to AT&T Kansas’ Reply to Staff’s Response to AT&T Kansas’ Request for Oral Argument, ¶ 2 (Oct. 30, 2018).

¹⁵ *Id.* at ¶ 3.

¹⁶ *Id.*

¹⁷ *See* K.S.A. 66-1,194.

B. 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).¹⁸

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 11/08/2018



Lynn M. Retz
Secretary to the Commission

MJD

¹⁸ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

17-SWBT-158-MIS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 11/08/2018.

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CERTIFICATE OF SERVICE

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