

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of the Application of Southwestern)
Bell Telephone Company for Approval of)
Interconnection Agreement Under the) Docket No. 03-SWBT-305-IAT
Telecommunications Act of 1996 With)
BullsEye Telecom, Inc.)

ORDER APPROVING AMENDED INTERCONNECTION AGREEMENT

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 record and being duly advised in the premises, the Commission makes the following findings:

1. On March 2, 2020, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) filed an Application requesting Commission approval of an Amended Interconnection Agreement between Southwestern Bell Telephone Company and BullsEye Telecom, Inc. (BullsEye). This Agreement removes certain analog Unbundled Network Elements and certain wholesale resale offerings from the original Agreement as a result of the Federal Communications Commission (FCC) Order 19-72 and the resale forbearance in the Order, which was issued August 2, 2019.¹ Other changes in the Agreement consist of removing the requirement for DS1/DS3 Unbundled Dedicated Transport between Tier 1 wire centers and wire centers subject

¹ FCC 19-72, *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, August 2, 2019.

to forbearance under FCC Order 19-66² and Public Notice DA 19-733³ dated August 1, 2019. Certain protections were incorporated in the Agreement to include grandfather provisions adopted by the FCC for Unbundled Network Elements and DS1/DS3 Unbundled Dedicated Transported in the referenced FCC Orders.

2. AT&T is the largest telecommunication carrier operating in Kansas and maintains the status of an “electing carrier,” with major service areas in Kansas City, Topeka and Wichita. It is headquartered in Topeka, Kansas. BullsEye is headquartered in Southfield, Michigan and is registered to do business as a Foreign For-Profit corporation with the Kansas Secretary of State. BullsEye was granted authority as a Competitive Local Exchange Access provider in Docket No. 03-BLET-066-COC and as an Interexchange Access Service provider in Docket No. 03-BLEC-065-C0C.

3. AT&T Kansas states that the Amendment to Interconnection Agreement entered into between AT&T Kansas and BullsEye modifies the Interconnection Agreement by recognizing FCC regulatory changes and forbearance related to Unbundled Network Elements and wholesale resale offerings as well as the removal of the requirements relative to DS1/DS3 Unbundled Dedicated Transport. The subject Interconnection Agreement and Amendments to the Interconnection Agreement are collectively referred to herein as “amended Agreement”. AT&T Kansas indicates the amended Agreement fully complies with Section 252(e) of the Telecommunications Act of 1996 (Federal Act) and is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier.⁴

² FCC 19-66, *Report And Order On Remand* (WC Docket Nos. 05-25, 16-143; GN Docket No. 13-5) And *Memorandum Opinion And Order* (WC DOCKET NO. 18-141), July 12, 2019.

³ FCC DA 19-733, *Wireline Competition Bureau Releases List Of Common Language Location Identification Codes For Price Cap Incumbent Local Exchange Carrier Wire Centers Subject To UNE Transport Forbearance*, August 1, 2019.

⁴ Application at 2.

4. The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 2018 Supp. 66-1,188. K.S.A. 66-1,190 requires all telecommunications public utilities doing business in Kansas to:

...publish and file with the commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate, and shall furnish the commission copies of all rules and regulations and contracts between such telecommunications public utilities pertaining to any and all jurisdictional services to be rendered by such telecommunications public utilities.

5. Section 252(e)(2) of the Federal Act [47 U.S.C. §252(e)(2)] requires the Commission to presume that interconnection agreements entered into through negotiation and submitted for Commission approval are valid unless:

- (1) the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (2) the implementation of such an agreement (or portions thereof) is not consistent with the public interest, convenience, and authority.

6. On March 17, 2020, the Commission Staff (Staff) submitted its Report and Recommendation, advising the Commission to approve the amended Agreement between AT&T Kansas and BullsEye. Citing Section 252(e) of the Federal Act, Staff acknowledges the amended Agreement fully complies with Section 252(e) of the Federal Act and supports approval of the Agreement as being consistent with the public interest and convenience and necessity. Staff accordingly recommends the Commission grant AT&T Kansas' Application and approve the amended Agreement.

7. The Commission adopts Staff's recommendation of March 17, 2020, as stated in its Report and Recommendation, which is attached and made a part of this Order, and finds that AT&T Kansas' Application should be granted, and the amended Agreement between AT&T Kansas and BullsEye be approved.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Southwestern Bell Telephone Company d/b/a AT&T Kansas' Application filed March 2, 2020, is hereby granted and the amended Interconnection Agreement between AT&T Kansas and BullsEye Telecom, Inc. approved.

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).⁵

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 04/21/2020



Lynn M. Retz
Executive Director

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⁵ K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

Susan K. Duffy, Chair
Shari Feist Albrecht, Commissioner
Dwight D. Keen, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Susan K. Duffy
Commissioner Shari Feist Albrecht
Commissioner Dwight D. Keen

FROM: Paula Artzer, Senior Telecommunications Analyst
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: March 17, 2020

SUBJECT: 03-SWBT-305-IAT
In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement Under the Telecommunications Act of 1996 with BullsEye Telecom, Inc.

EXECUTIVE SUMMARY:

On March 2, 2020, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) filed an Application for approval of an Interconnection Agreement (Agreement) between AT&T and BullsEye Telecom, Inc. (BullsEye). Staff recommends approval of the filing.

BACKGROUND:

On December 27, 2019, AT&T and BullsEye entered into an Amended Agreement for the removal of certain analog Unbundled Network Elements (UNE) (Analog Loops) and certain wholesale resale offerings from the original Agreement per the Federal Communications Commission (FCC) Order FCC 19-72, FCC UNE and resale forbearance Order dated August 2, 2019¹. Additional modifications were made to the Agreement to remove the requirement for DS1/DS3 Unbundled Dedicated Transport (DS1/DS3 UDT) between Tier 1 wire centers and/or wire centers subject to

¹ FCC 19-72, *Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Released August 2, 2019; <https://docs.fcc.gov/public/attachments/FCC-19-72A1.pdf>.

UDT forbearance under Order FCC 19-66² and Public Notice DA 19-733³, dated August 1, 2019. Any analog UNE qualifying service ordered before February 1, 2020, considered existing embedded base, is grandfathered until August 2, 2022. Any DS1/DS3 qualifying service considered UDT embedded base, ordered on or before January 11, 2020, is grandfathered until July 12, 2022. AT&T filed for approval of this Amended Agreement between AT&T and BullsEye. The Amendment expires concurrent with the existing Agreement.

The original FCC rules were imposed under the Telecommunications Act of 1996 and were written to require the Incumbent Local Exchange Company (ILEC) to lease existing facilities to the Competitive Local Exchange Company (CLEC) at wholesale prices. The rules allowed the CLEC to compete in the telecommunications market against the ILEC without the upfront expense of constructing the CLEC's own telecommunications network. The current FCC Orders remove the requirement for the ILEC to provide CLEC access to certain analog facilities owned by the ILEC provided over copper. As telecommunications companies transition to newer Internet Protocol (IP) technologies with fiber facilities, the copper facilities are being replaced. The initial rules were written based on the Time Division Multiplexing (TDM) technology that was utilized at that time which worked with analog copper facilities. Telecommunications companies are updating their company infrastructure to remain competitive. The rules applying to TDM and copper facilities no longer apply.

AT&T is the largest local exchange carrier operating in Kansas. The Company's largest service areas are Kansas City, Topeka, and Wichita. AT&T is headquartered in Topeka, Kansas.

BullsEye is headquartered in Southfield, Michigan. BullsEye received a Certificate of Convenience and Authority in Docket 03-BLEC-065-COC in August of 2002 to provide Interexchange Access Service in the State of Kansas and in September of 2002 in Docket No. 03-BLET-066-COC to provide CLEC and Exchange Access Service. BullsEye is registered with the Kansas Secretary of State's office and is "active and in good standing" with that office.

ANALYSIS:

The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 66-1,188. K.S.A. 66-1,190 requires all telecommunications public utilities doing business in Kansas over which the Commission has control to "publish and file with the commission copies of all schedules of rates, joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate, and shall furnish the commission copies of all rules and regulations and contracts between such telecommunications public utilities pertaining to any and all jurisdictional services to be rendered by such telecommunications public utilities."

² FCC 19-66, *Report And Order On Remand (WC Docket Nos. 05-25, 16-143; GN Docket No. 13-5) And Memorandum Opinion And Order (WC DOCKET NO. 18-141)*, Released July 12, 2019; <https://docs.fcc.gov/public/attachments/FCC-19-66A1.pdf>.

³ FCC DA 19-733, *Wireline Competition Bureau Releases List Of Common Language Location Identification Codes For Price Cap Incumbent Local Exchange Carrier Wire Centers Subject To UNE Transport Forbearance*, Released August 1, 2019; <https://docs.fcc.gov/public/attachments/DA-19-733A1.pdf>.

The U.S. Congress and the FCC have pre-empted certain aspects of state regulation of interconnection between telecommunications carriers. Section 252(e)(2) of the Federal Telecommunications Act of 1996 (47 U.S.C. §252(e)(2)) requires the Commission to presume that interconnection agreements entered into through negotiation and submitted for Commission approval are valid unless:

- 1) the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- 2) the implementation of such an agreement (or portions thereof) is not consistent with the public interest, convenience, and necessity.

AT&T affirms that implementation of this Amendment complies fully with Section 252(e) of the Federal Act because the Amendment is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. AT&T deems this Amendment promotes diversity in providers, provides interconnectivity, and will increase customer choices for telecommunications services.

Staff does not have any concerns regarding this Application. Staff reviewed the Amendment and did not find any language that discriminates against other telecommunications carriers not a party to the Amendment. Implementation of this Amendment is in the public interest because it provides additional telecommunications carrier options for the consumer.

RECOMMENDATION:

Staff recommends the Commission grant approval of this Interconnection Agreement Amendment between AT&T and BullsEye Telecom, Inc. Staff finds no evidence of discrimination against other parties and finds that it is in the public interest, convenience and necessity of the citizens of Kansas to have additional options in their choice for telecommunications providers.

CERTIFICATE OF SERVICE

03-SWBT-305-IAT

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 04/21/2020.

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/S/ DeeAnn Shupe

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