

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

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

In the Matter of the Application of Southwestern)
Bell Telephone Company for Approval of)
Interconnection Agreement Under the) Docket No. 09-SWBT-609-IAT
Telecommunications Act of 1996 with HCI)
Telcom, 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 11, 2022, 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 HCI Telcom, Inc. (HCI). The Amended Interconnection Agreement incorporates certain provisions relating to the Federal Communications Commission (FCC) with regard to certain loop and transport unbundling and resale obligations. The FCC modified unbundling and resale regulations by eliminating requirements, subject to reasonable transition periods, for enterprise-grade DS1 and DS3 loops with evidence of actual and potential competition, for broadband-capable DS0 loops in densely populated areas and voice-grade narrowband loops nationwide.¹ The FCC further

¹ *In the Matter of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Memorandum and Opinion FCC 20-152, 35 FCC Rcd 12425.

eliminated certain unbundled dark fiber transport within a half-mile of competitive fiber networks, subject to a transition period.²

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. . HCI is headquartered in Buhler, Kansas, and is registered as a Domestic For Profit Corporation. HCI is a Competitive Local Exchange Carrier (CLEC) in Kansas that was granted authority in Docket No. 09-HCIT-245-COC.

3. AT&T Kansas states that the Amendments to Interconnection Agreement entered into and between AT&T Kansas and HCI change the Interconnection Agreement by modifying provisions related to the implementation of FCC Order 20-152 in WC Docket No. 19-308, the UNE Relief Order. 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.³

4. The Commission derives its authority and jurisdiction of telecommunications public utilities from K.S.A. 66-2005 (z).

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 *Id.*

³ Application at 2.

- (2) the implementation of such an agreement (or portions thereof) is not consistent with the public interest, convenience, and authority.

6. On April 18, 2022, the Commission Staff (Staff) submitted its Report and Recommendation, advising the Commission to approve the amended Agreement between AT&T Kansas and HCI. 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 highlights the changes made by the FCC to its loop and transport unbundling and resale requirements, noting extensive modifications for analog and digital Unbundled Network Elements (UNE), DS1/DS3 Unbundled Dedicated Transport, DS1 and DS3 UNE loops, UNE dark fiber transport, and UNE Subloops, or UNE Network Interface Devices, that have been incorporated into the Agreement. The Staff describes certain transition periods established for the FCC's evolving timeframe for implementing the unbundling, transport and resale requirements. Staff further identifies the effect of the FCC Orders removing requirements to provide Competitive Local Exchange Company access to certain analog facilities provided over copper facilities at wholesale rates in view of technological advances in the deployment of digital and fiber networks.

7. The Commission adopts Staff's recommendation of April 18, 2022, 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 HCI be approved.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Southwestern Bell Telephone Company d/b/a AT&T Kansas' Application filed March 11, 2022, is hereby granted and the amended Interconnection Agreement between AT&T Kansas and HCI Telcom, Inc., is 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).⁴

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.

Keen, Chair; Duffy, Commissioner; French, Commissioner

Dated: 04/28/2022



Lynn M. Retz
Executive Director

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⁴ K.S.A. 66-118b; K.S.A. 77-503(c); and K.S.A. 77-531(b).

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Dwight D. Keen, Chair
Susan K. Duffy, Commissioner
Andrew J. French, Commissioner

FROM: Hemant Bhagat, Senior Telecommunications Analyst
Sandy Reams, Assistant Chief of Telecommunications
Bryan Seamans, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: April 18, 2022

SUBJECT: Docket No. 09-SWBT-609-IAT

In the Matter of the Application of Southwestern Bell Telephone Company for
Approval of Interconnection Agreement Under the Telecommunications Act of
1996 With HCI Telcom, Inc.

EXECUTIVE SUMMARY:

On March 11, 2022, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) filed an Application for Approval of Amendment to Interconnection Agreement under the Telecommunications Act of 1996 between AT&T Kansas and HCI Telcom, Inc. (HCI) to implement the Federal Communications Commission's (FCC) Order 20-152 in WC Docket No. 19-308 (UNE Relief Order).¹

Staff recommends approval of the Amendment to the Agreement.

The Commission action date is June 11, 2022.

BACKGROUND:

The Commission derives its authority to supervise telecommunications public utilities from K.S.A. 66-1,188 and K.S.A. 66-2005. 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

¹ *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, Report and Order, WC Docket No. 19-308, FCC 20-152 (rel. Oct. 28, 2020).

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.

The U.S. Congress and the Federal Communications Commission (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.

ANALYSIS:

The FCC's UNE Relief Order: (1) eliminated unbundling requirements, subject to reasonable transition periods, for enterprise DS1 and DS3 loops in areas with sufficient evidence of competition, broadband-capable DS0 loops and subloops in the most densely populated areas, voice-grade narrowband loops nationwide, multiunit premises subloops and network interface devices nationwide, and operations support systems nationwide except for the purposes of managing other unbundled network elements, number portability, and interconnection; (2) preserved the unbundling requirements for DS0 loops in less densely populated areas and DS1 and DS3 loops in areas without sufficient evidence of competition; (3) eliminated unbundling requirements for dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks, but provided an eight-year transition period for existing circuits so as to avoid stranding investment and last-mile deployment by competitive LECs that may harm consumers; and (4) forbore from the Avoided-Cost Resale obligation where it still existed, subject to a three-year transition period.

The Amendment removes 2-wire Digital UNE Loops (Digital Loop) and DS1 UNE Loops (DS1 Loops) in wire centers as of February 8, 2023, per the FCC UNE Relief Order. Any existing Digital Loops and DS1 Loops ordered on or before February 8, 2023, are grandfathered until February 8, 2025, and July 8, 2024, respectively.

Additionally, the Amendment removes DS3 UNE Loops (DS3 Loops), UNE Dark Fiber Transport (DFT), and UNE Subloops or UNE Network Interface Devices (NIDs) as of February 8, 2021, per the UNE Relief Order. DS3 Loops and DFTs ordered on or before February 8, 2021, are grandfathered until February 8, 2024, and February 8, 2029, respectively. The Amendment expires concurrent with the existing Agreement.

The Amendment further restricts conversion of existing Special Access circuits to UNEs and requires HCI to provide AT&T Kansas with a forecast of the total number of UNE Loops that it plans to migrate (if there are 50 or more) to an alternate product or service.

The FCC Order removes the requirement for the Incumbent Local Exchange Company (ILEC) to provide a Competitive Local Exchange Company (CLEC) access to certain analog facilities owned by the ILEC, provided over copper facilities at wholesale rates. The original rules were imposed under the Telecommunications Act of 1996 and written to require ILECs to lease the existing facilities to CLECs at wholesale prices. This allowed the CLEC to compete in the telecommunications market against the ILEC without the upfront expense of constructing its own telecommunications network. The initial rules were written based on the technology at that time, which was analog copper facilities. As telecommunications companies transition to newer Internet Protocol (IP) technologies with fiber, the copper facilities are being replaced by updated technology and facilities.

AT&T Kansas contends that implementation of this Agreement complies fully with Section 252(e) of the Federal Act and believes approval is consistent with the public interest, convenience, and necessity and does not discriminate against any telecommunications carrier.

Having reviewed the modifications to the Agreement between AT&T Kansas and HCI, Staff finds no evidence to conclude this Agreement discriminates against any telecommunications carrier, nor is it inconsistent with public interest, convenience, or necessity. Staff believes the public will generally benefit from KCC approval of this Application.

The Companies are registered with the Kansas Secretary of State and are active and in good standing with that office.

RECOMMENDATION:

Staff recommends the Commission grant approval of Amended Agreements between AT&T Kansas and HCI.

CERTIFICATE OF SERVICE

09-SWBT-609-IAT

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 04/28/2022.

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/S/ DeeAnn Shupe

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