

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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) Docket No. 17-SWBT-158-MIS
Telecommunications Carrier Designation in)
Specified Areas, and Notice Pursuant to K.S.A.)
2015 Supp. 66-2005(d) of Intent to Cease)
Participation in the Kansas Lifeline Service)
Program)

**STAFF'S REPLY TO AT&T KANSAS' COMMENTS ON STAFF REPORT AND
RECOMMENDATION**

The Staff of the Kansas Corporation Commission (Staff) states the following in response to the *AT&T Kansas' Comments on Staff Report and Recommendation* (AT&T's Comments) filed by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T) on March 8, 2017:

BACKGROUND

1. On February 28, 2017, Staff submitted a Report and Recommendation (R&R) to the Commission recommending it: (1) authorize AT&T to cease participation in the Kansas Lifeline Service Program (KLSP) effective May 31, 2017; and (2) provide notice of AT&T's Eligible Telecommunications Carrier (ETC) relinquishment request to ETCs that will remain in AT&T's relinquished service areas and allow them to intervene.

2. AT&T does not take issue with Staff's recommendation (1) in this proceeding and urges the Commission to confirm that AT&T can cease participation in the KLSP effective May 31, 2017, as allowed by K.S.A. 2015 Supp. 66-2006(d).¹

¹AT&T Kansas' Comments on Staff Report and Recommendation, p. 1 (Mar. 8, 2017) (AT&T Comments).

3. AT&T, however, does oppose Staff's recommendation (2) for the following reasons:

- It will delay the proceeding for at least an additional six weeks;²
- ETCs have had notice for four months;³
- ETCs' legal rights are unaffected by AT&T's Application;⁴
- AT&T meets the standard for relinquishing its ETC designation under 47 U.S.C. § 214(e)(4), as every wire center in the relinquishment area is served by seven to 14 other ETCs, a fact which Staff does not dispute, which means as a matter of law the Commission *must* allow relinquishment;⁵
- AT&T will *not* stop providing any services other than Lifeline in its relinquishment areas, therefore, Staff's concerns regarding customers continuing to receive service are unfounded;⁶
- Staff's concerns regarding a hypothetical future situation wherein AT&T *might* seek to discontinue voice service are outside the scope of this case, and even if the situation did arise, federal law ensures the Commission will have notice and an opportunity to be heard or take action as necessary;⁷
- Staff is using ETC relinquishment oversight as a back-door way to reimpose Carrier of Last Resort (COLR) obligations that the Kansas legislature removed in 2013;⁸ and
- Staff's argument regarding AT&T's request to relinquish ETC designation by census block is factually incorrect, as AT&T's request is to *retain* ETC designation by census block and relinquish all areas outside the retained census blocks, which means AT&T's request does not impact other ETCs' designated service areas.⁹

4. Ultimately, AT&T requests that the Commission: (1) confirm it may cease participation in the KLSP, effective May 31, 2017; (2) reject Staff's proposal to solicit input from competitive ETCs; and (3) approve AT&T's ETC relinquishment request immediately.¹⁰

STAFF'S ARGUMENTS IN RESPONSE

5. Staff will take each argument in turn.

²AT&T Comments at 2, 5-6.

³Id.

⁴Id at 2, 5.

⁵Id at 2, 4.

⁶See Id. at 2, 7-8.

⁷Id. at 3, 9-12.

⁸See Id at 3, 10.

⁹See Id. at 12-13.

¹⁰See Id. at 13.

- **[Staff's request] will delay the proceeding for at least an additional six weeks**

6. There is no statutory deadline on ETC relinquishment requests. Furthermore, although AT&T sees its request as simple and subject to automatic approval, Staff disagrees. The purpose of Staff's recommendation is not to "further delay this proceeding" as AT&T suggests.¹¹ Staff's recommendation is to provide "sufficient notice" to other ETCs in accordance with the text of 47 U.S.C. § 214(e)(4).

- **ETCs have had notice for four months**

7. This docket has been open for four months. However, Staff is not recommending the Commission give notice for the sake of giving notice. Staff recommends the Commission give notice pursuant to 47 U.S.C. § 214(e)(4) which states in part:

Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, **the State commission...** shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and **shall require sufficient notice** to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. (Emphasis added)¹²

8. As is indicated by the text of 47 U.S.C. § 214(e)(4), remaining ETCs shall be required by the Commission to ensure customers currently served by AT&T will continue to be served. The statute further states the Commission "shall require sufficient notice" of potential obligations to permit purchase or construction of adequate facilities by remaining ETCs. As noted by AT&T, the word "shall" imposes a mandatory, binding obligation upon the Commission.¹³ "Sufficient notice" is a requirement of the statute in the event remaining ETCs

¹¹See AT&T Comments at 2.

¹²47 U.S.C. § 214(e)(4) (certain portions omitted).

¹³See AT&T Comments at 4.

may be ordered to purchase or construct facilities. The Commission should adopt Staff's recommendation and provide notice immediately.

- **ETCs' legal rights are unaffected by AT&T's Application**

9. It is possible that not all ETCs being served with notice are affected. However, there are some ETCs that could be ordered to ensure AT&T's existing customers will continue to be served and/or ordered to purchase/construct facilities. To the extent that Staff's recommendation was interpreted to allow blanket intervention to any ETC that wants to intervene, that was not Staff's intent. Intervention should only be granted upon a showing of an affected legal interest.

- **AT&T meets the standard for relinquishing its ETC designation under 47 U.S.C. § 214(e)(4), as every wire center in the relinquishment area is served by seven to 14 other ETCs, a fact which Staff does not dispute, which means as a matter of law the Commission *must* allow relinquishment**

10. Staff did not address whether AT&T meets the standard for relinquishing its ETC designation in its R&R because it has not completed its investigation. Furthermore, Staff did not confirm that seven to 14 other ETCs serve every wire center in the relinquishment area, nor did Staff determine that all customers served by the relinquishing carrier will continue to be served, as required by 47 U.S.C. § 214(e)(4). However, Staff did note in its R&R that some of the ETCs listed by AT&T are Lifeline-only ETCs that do not possess facilities (pure resellers). Thus, it may not be possible or legal for the Commission to order such ETCs to build out facilities, especially to a customer that does not qualify for Lifeline.

11. The Federal Communications Commission (FCC) has stated the following in this regard:

Most fundamentally, the section 214(e)(4) relinquishment process allows for the states (or the Commission, if applicable) to conduct an inquiry at a sufficiently granular level to ensure that the customers in that area 'will continue to be served.' The

relinquishment process not only entails an evaluation of what service providers are present in an area at a given point in time, but of the practical ability of those providers to take on additional consumers as might be needed once the relinquishing carrier is no longer an ETC subject to associated obligations in that area. Indeed, section 214(e)(4) not only involves an inquiry regarding the capabilities of other service providers, but, to the extent needed, includes a grant of authority to obligate remaining ETCs to acquire adequate facilities within a defined time period.¹⁴

Staff considers this FCC guidance to be instructive and believes a proper evaluation of the remaining ETCs and their ability to meet AT&T's relinquished obligations is appropriate.

12. AT&T asserts that any evaluation of other ETCs and their ability to serve relinquished customers is beyond the scope of this proceeding, and argues that the Commission's duty to "ensure that 'all customers served by the relinquishing carrier will continue to be served'" is an entirely separate matter from determining an ETC's right to relinquish.¹⁵ AT&T argues that this is supported by the fact that the federal regulation governing relinquishment - 47 C.F.R. § 54.205 - contains multiple subsections.¹⁶ The fallacy of this argument is that because all subsections of 47 C.F.R. § 54.205 are concerning the same subject matter, they should be read together when interpreting them.¹⁷ Both 47 U.S.C. § 214(e)(4) and 47 C.F.R. § 54.205(b) contain the language: "prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission...shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by

¹⁴Memorandum Opinion and Order, *In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, Lifeline and Link Up Reform and Modernization, Connect America Fund*, WC Docket Nos. 14-192, 11-42, 10-90, 31 FCC Rcd. 6157, ¶ 111 (Adopted Dec. 17, 2015) (USTelecom Order).

¹⁵AT&T Comments at 4-5.

¹⁶AT&T Comments at fn. 3.

¹⁷*See Newman Memorial Hospital v. Walton Const. Co., Inc.*, 37 Kan. App. 2d 46, 67 (2007).

the relinquishing carrier will continue to be served...” (emphasis added).¹⁸ This language should be read together with the other language pertaining to relinquishment and given effect.

- **AT&T will *not* stop providing any services other than Lifeline in its relinquishment areas, therefore, Staff’s concerns regarding customers continuing to receive service are unfounded**

13. Staff stated in its R&R that AT&T, upon relinquishment, would be under no obligation to continue to serve existing customers in the relinquished areas. To the extent that AT&T must acquire a certificate of discontinuance from the Federal Communications Commission (FCC) pursuant to 47 U.S.C. § 214(a), Staff stands corrected.

14. However, Staff is focused on the language from 47 U.S.C. § 214(e)(4) which states: “the State commission... shall require the remaining [ETC] or [ETCs] to ensure that all customers served by the relinquishing carrier will continue to be served...”¹⁹ AT&T has applied to relinquish all of its ETC obligations²⁰ under 47 U.S.C. § 214(e)(4) which contains this specific language. Therefore, the question of whether AT&T will continue to serve is a red herring. 47 U.S.C. § 214(e)(4) states the Commission shall require the *remaining ETCs* to ensure customers will continue to be served.

15. Furthermore, the FCC has indicated that the 214(a) analysis is different than the 214(e)(4) analysis:

In evaluating an application for discontinuance authority, the existence, availability, and adequacy of alternatives is one of five factors the Commission typically considers. This balancing that the Commission undertakes in evaluating section 214(a) discontinuance applications differs from the section 214(e)(4) relinquishment process, where Congress made clear that the sole focus is whether *all* consumers that were served by an ETC would

¹⁸47 U.S.C. § 214(e)(4); 47 C.F.R. 54.205(b).

¹⁹47 U.S.C. § 214(e)(4).

²⁰See AT&T Comments at fn. 14.

continue to be served if that ETC were to relinquish its ETC designation.²¹

- **Staff's concerns regarding a hypothetical future situation wherein AT&T *might* seek to discontinue voice service are outside the scope of this case, and even if the situation did arise, federal law ensures the Commission will have notice and an opportunity to be heard or take action as necessary**

16. Staff did not address a hypothetical future situation in its R&R. AT&T has injected 47 U.S.C. § 214(a) into this proceeding on its own accord to justify its ETC relinquishment.²² AT&T attempted to use 47 U.S.C. § 214(a) as both a sword and a shield by arguing that hypothetical discontinuance in the future is beyond the scope of this case²³ and at the same time extensively argued that 47 U.S.C. § 214(a) is a federal safeguard that ensures AT&T will continue to provide service.²⁴ The Commission should reject appeals to 47 U.S.C. § 214(a) because such sub-section is irrelevant to determining whether AT&T should be granted ETC relinquishment under 47 U.S.C. § 214(e)(4). As noted in paragraphs 14 and 15, above, the evaluations performed under each sub-section are different, and 47 U.S.C. § 214(e)(4) states that the Commission shall require the *remaining ETCs* to ensure all customers served by AT&T will continue to be served. The fact that AT&T retains an obligation to serve until discontinuance authority is sought is irrelevant under 47 U.S.C. § 214(e)(4).

- **Staff is using ETC relinquishment oversight as a back-door way to re-impose Carrier of Last Resort (COLR) obligations that the Kansas legislature removed in 2013**

17. Staff disagrees. Staff is merely ensuring that the statutory requirements of 47 U.S.C. § 214(e)(4) are met prior to recommending the Commission approve the relinquishment request.

²¹USTelecom Order at ¶ 119.

²²See AT&T Comments at 11-12.

²³See AT&T Comments at 3,

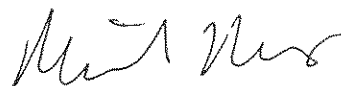
²⁴See AT&T Comments at 11-12.

- **Staff argument regarding AT&T's request to relinquish ETC designation by census block is factually incorrect, as AT&T's request is to *retain* ETC designation by census block and relinquish all areas outside the retained census blocks, which means AT&T's request does not impact other ETCs' designated service areas**

18. Staff simply stated that the dichotomy between exchange or wire center level and census block level ETC designation may be worthy of comment by intervening ETCs. As correctly pointed out by AT&T, census blocks are the geographic unit the FCC now uses to allocate high-cost funding to ETCs; however, pursuant to 47 U.S.C. § 214(e)(5), “[t]he term ‘service area’ means a geographic area established by a State commission...for the purpose of determining universal service obligations and support mechanisms.” Therefore, the definition of “service area” ultimately resides with this Commission.

WHEREFORE, Staff requests that the Commission adopt the recommendations contained in Staff's Report and Recommendation filed February 28, 2017, and deny AT&T's request to issue an order confirming AT&T's relinquishment of its status as an ETC under 47 U.S.C. § 214(e)(4) in the relinquishment area designated in its Application, as it has not been demonstrated that the statutory requirements have been met.

Respectfully Submitted,



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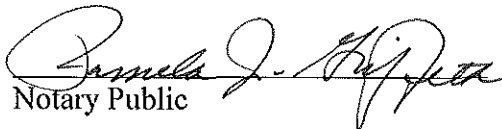
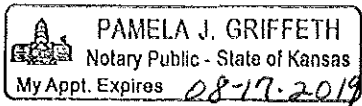
VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Reply to AT&T Kansas' Comments on Staff Report and Recommendation* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 13th day of March, 2017.



Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

17-SWBT-158-MIS

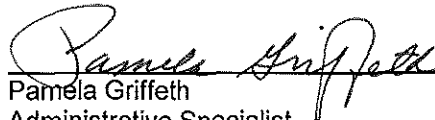
I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Reply to AT&T Kansas' Comments on Staff Report and Recommendation was served by electronic service on this 13th day of March, 2017, to the following:

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