

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman  
Michael C. Moffet  
Joseph F. Harkins

In the Matter of the Application of )  
Southwestern Bell Telephone Company for )  
Price Deregulation of Residential ) Docket No. 10-SWBT-019-PDR  
Telecommunications Services in the )  
Abilene, Chanute, Clay Center, Ellsworth, )  
Emporia, Independence, Minneapolis, )  
Neodesha, and Parsons, Kansas Exchanges )  
Pursuant to K.S.A. 2008 Supp. 66-  
2005(q)(1).

**ORDER APPROVING APPLICATION OF SOUTHWESTERN BELL  
TELEPHONE COMPANY FOR PRICE DEREGULATION OF  
RESIDENTAL TELECOMMUNICATIONS SERVICES IN THE  
ABILENE, CHANUTE, ELLSWORTH, EMPORIA, INDEPENDENCE, NEODESHA,  
AND PARSONS, KANSAS EXCHANGES, AND DENYING APPLICATION IN THE  
CLAY CENTER AND MINNEAPOLIS, KANSAS, EXCHANGES**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

1. On July 6, 2009, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T), filed this application requesting price deregulation of residential telecommunications services in the Abilene, Chanute, Clay Center, Ellsworth, Emporia, Independence, Minneapolis, Neodesha, and Parsons exchanges in Kansas. AT&T filed its application pursuant to K.S.A. 2008 Supp. 66-2005(q)(1). The Citizens' Utility Ratepayer Board (CURB) filed a petition to intervene on July 8, 2009, which the Commission granted on July 10, 2009. The Commission suspended AT&T's application on July 17, 2009, until August 26, 2009, at Staff's request.

2. On August 18, 2009, Staff filed a memorandum presenting Staff's recommendation to the Commission on AT&T's application. Staff noted that in 2006 K.S.A. 66-2005, the statute governing price deregulation, was amended by the Kansas Legislature. K.S.A. 2008 Supp. 66-2005(q)(1) governs price regulation for the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation. Specifically, K.S.A. 2008 Supp. 66-2005(q)(1)(C) and (D) address the price deregulation of telecommunications services of price cap carriers in exchanges in which there are fewer than 75,000 local exchange access lines served by all providers.

3. Staff notes that, when considering deregulation of residential access lines, K.S.A. 2008 Supp. 66-2005(q)(1)(D) states:

In any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial radio services in that exchange.

**Abilene**

4. Staff's memorandum states that the Abilene exchange has fewer than 75,000 local exchange access lines and advises the Commission of its belief that the application was correctly filed pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(D). Staff notes that in the application, AT&T indicates Big River Telephone Company, LLC (Big River) is a facilities-based carrier providing telecommunications service to residential access lines in the Abilene exchange. In

addition, AT&T claims USCOC of Kansas/Nebraska, LLC (US Cellular), Alltel Kansas Limited Partnership (Alltel), Sprint Communications, LP, T-Mobile, and Verizon Wireless, which are not affiliated with the local exchange carrier, also provide telecommunications service as providers of commercial mobile radio service (CMRS) in the Abilene exchange. In support of its claims, AT&T cites number porting data as of April 30, 2009, E911 data as of March 31, 2009, and documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

5. Staff also asked the companies named as competitive carriers in AT&T's application if it provides a residential access line in this exchange and how that service is provisioned (e.g., own facilities, resale, etc.). Big River responded that it does provide a residential access line to more than one customer in this exchange. Sprint Spectrum, L.P., when asked the same questions, stated that it provides residential access lines to more than one customer in the Abilene exchange via its own facilities. Alltel stated it uses its own facilities to provide wireless service to more than one customer with a billing address in the Abilene exchange. T-Mobile indicated that it does not have numbering resources assigned to it by the North American Numbering Administrator nor the Pooling Administrator from the Abilene exchange; however, according to the Federal Communications Commission's local number portability rules, more than one customer has ported their telephone number from another carrier and the Abilene exchange to T-Mobile. T-Mobile provisions service through its own facilities.

6. With the above information, Staff states that it appears that AT&T has sufficiently demonstrated, as required by K.S.A. 66-2005(q)(1)(D) that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange

provider, providing telecommunications services to residential customers in the Abilene exchange. As required, one nonaffiliated carrier, Big River, is a facilities-based carrier. Sprint qualifies as the second provider of telecommunications services.

### **Chanute**

7. Staff indicates the Chanute exchange has fewer than 75,000 access lines so the application was correctly filed pursuant to K.S.A. 66-2005(q)(1)(D). In its application, AT&T indicates that Level 3 Communications (Level 3) and Frontier Communications are facilities-based carriers providing residential service to access lines in the Chanute exchange. Although AT&T named Level 3 as a nonaffiliated facilities-based carrier, it clarified that it believes Level 3 has a business relationship with Cable One and that Cable One may be the underlying company offering digital telephone service to those listings.

8. In addition to the facilities-based carriers, Staff's memorandum indicates that AT&T claims Alltel, Nexus Communications, Sprint, US Cellular, and Verizon Wireless, which are not affiliated with the local exchange carrier, also provide residential service as providers of CMRS in the Chanute exchange. In support of its claims, AT&T cites number porting data as of April 30, 2009, E911 data as of March 31, 2009, and documented service offerings by nonaffiliated CMRS providers. According to number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

9. Staff sent data requests to the companies named as competitive carriers in AT&T's application, inquiring if the carrier provides a residential access line to more than one customer in the Chanute exchange and how that service is provisioned.

10. Level 3 responded to Staff's request for information and stated that it does not provide a residential access line to more than one customer in the Chanute, Kansas exchange using its own facilities. AT&T did identify Cable One as the possible underlying carrier for Level 3 in this exchange; therefore, Staff sent Cable One the same data request. Its response indicated that it does provide a residential access line to more than one customer in the Chanute exchange. Cable One indicates that provisioning is a combination of Cable One and Level 3; Cable one takes care of provisioning the phone line and features in its softswitch, voice mail system, and EMTAs, and Level 3 takes care of all CLEC provisioning such as E911, directories, calling name, and local exchange routing guide.

11. Although AT&T identified Frontier Communications (Frontier) as a facilities-based carrier, Staff could not locate a Kansas-certificated carrier by that name. In addition, Staff indicated AT&T did not provide any information in its application to demonstrate that Frontier provides residential local exchange service.

12. According to Staff's memorandum, Sprint Spectrum, L.P., when asked the data request questions, responded that it provides a residential access line to more than one customer in the Chanute exchange via its own facilities. Nexus responded that it does not provide residential service to more than one customer in the Chanute exchange via its own facilities. Alltel indicated that it uses its own facilities to provide wireless service to more than one customer with a billing address in the Chanute exchange.

13. With the above information, Staff states that it appears that AT&T has sufficiently demonstrated, as required by K.S.A. 66-2005(q)(1)(D) that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to residential customers in the Chanute

exchange. As required, one nonaffiliated carrier, Cable One, is a facilities-based carrier. Sprint qualifies as the second provider of telecommunications services.

**Clay Center**

14. Staff indicates that Clay Center has fewer than 75,000 local exchange access lines and that, therefore, AT&T appropriately filed the application pursuant to K.S.A. 66-2005(q)(1)(D). AT&T, for Clay Center, indicated Big River is the facilities-based carrier, and that Alltel, US Cellular, and Verizon Wireless, also provide residential service as CMRS providers in the Clay Center exchange. As normal, Staff submitted data requests to the carriers named in AT&T's application, asking each named carrier if it provides a residential access line to more than one customer and how that service is provisioned.

15. Big River, the nonaffiliated facilities-based carrier, responded to Staff that it provides a residential access line to more than one customer in the Clay Center exchange via its own facilities. US Cellular responded that it does not distinguish between single line residential or business service, but does provide single line wireless service to more than one customer in the Clay Center exchange via its own facilities. Alltel also uses its own facilities to provide wireless service to more than one customer with a billing address in the Clay Center exchange.

16. Staff notes that wireless carriers typically do not differentiate between residential or business customers; the rate and service are the same regardless of the type of customer subscribing to the service and the service is available and provided to residential and business customers like. Staff states this is a customary practice and not something AT&T can either control or change; however Staff understands the statute requires the requesting telecommunications carrier to demonstrate that the requirements of the statute have been met and in this case AT&T has not sufficiently demonstrated that more than one carrier actually provides

telecommunications services to residential customers in the Clay Center exchange. Although US Cellular and Alltel indicate they provide telecommunications service to customers, neither can distinguish whether that customer is residential or business. AT&T provided number porting information and advertisements for both carriers, but none of this demonstrates specifically that residential service is provided by the carriers in the Clay Center exchange.

### **Ellsworth**

17. Staff indicated AT&T properly filed its application pursuant to K.S.A. 66-2005(q)(1)(D) since the Ellsworth exchange has fewer than 75,000 access lines. AT&T identifies Big River as the required facilities-based carrier, and Alltel, Nex-Tech Wireless, Sprint, US Cellular, Verizon Wireless, and WestLink, carriers unaffiliated with AT&T, as CMRS providers of residential service in the Ellsworth exchange. In support, AT&T cites number porting data as of April 30, 2009, E911 data as of March 31, 2009, and documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

18. Staff also indicated that Big River, as the nonaffiliated facilities-based carrier responded that it provides residential service to more than one customer in the Ellsworth, Kansas exchange using its own facilities.

19. Sprint's reply, according to Staff, stated it provides a residential access line to more than one customer in the Ellsworth exchange via its own facilities. WestLink's response shows that it has four active subscribers in the Ellsworth exchange, but that it does not differentiate between residential and business subscribers. Nex-Tech states that it does provide a residential access line to more than one customer in the Ellsworth exchange using its own

facilities. US Cellular states it does not distinguish between single line residential or business, but that it is providing single line wireless service to more than one customer in the Ellsworth exchange via its own facilities. Alltel states it uses its own facilities to provide wireless service to more than one customer with a billing address in the Ellsworth exchange.

20. Staff indicates that with the above information it appears AT&T has sufficiently demonstrated that there are two or more nonaffiliated telecommunications carriers or other entities not affiliated with AT&T as the local exchange provider providing telecommunications services to residential customers in the Ellsworth exchange. As required, one nonaffiliated carrier, Big River, is the facilities-based carrier. Sprint and Nex-Tech qualify as the second provider of telecommunications service.

### **Emporia**

21. Staff's memorandum states that the application was also properly filed under K.S.A. 66-2005(q)(1)(D) since Emporia is an exchange with fewer than 75,000 access lines. AT&T claims Level 3 as a facilities-based carrier providing residential service to access lines in the Emporia exchange. In addition, AT&T claims Alltel, Sprint, US Cellular, T-Mobile, and Verizon Wireless, which are not affiliated with AT&T, as providing residential CMRS service in the Emporia exchange. For support, AT&T cites number porting data as of April 30, 2009, E911 data as of March 31, 2009, and documented service offerings by nonaffiliated CMRS providers. According to the porting data, numbers were ported from AT&T to a competitive local exchange or wireless carrier.

22. Staff issued standard data requests to companies named by AT&T as competitive carriers. Level 3's response stated that it does not provide a residential access line to more than one customer in the Emporia exchange using its own facilities. AT&T, in its application,



identified Cable One as the possible underlying carrier for Level 3 in this exchange. Staff sent Cable One the same data request and its response indicated it provides a residential access line to more than one customer in the Emporia exchange, and stated provisioning is a combination of Cable One and Level 3. Cable One provides the phone line and features in its softswitch, voice mail system, and EMTAs, and Level 3 takes care of all CLEC provisioning such as E911, directories, calling name, and local exchange routine guide.

23. Sprint's response to Staff's questions indicates it provides a residential access line to more than one customer in the Emporia exchange via its own facilities. US Cellular responded that it does not distinguish between single line residential or single line business wireless services, but that it does provide single line wireless service to more than one customer in the Emporia exchange via its own facilities. Alltel's response states it uses its own facilities to provide wireless service to more than one customer with a billing address in the Emporia exchange. T-Mobile states it provides CMRS service to more than one end user numbering resource rated out of the Emporia exchange via its own facilities.

24. Staff's memorandum states that with this information, it appears there has been sufficient demonstration by AT&T that there are two or more nonaffiliated telecommunications carriers or other entities not affiliated with AT&T as the local exchange provider, providing telecommunications services to residential customers in the Emporia exchange. As required, one nonaffiliated carrier, Cable One, is a facilities-based carrier. Sprint qualifies as a second, CMRS provider of telecommunications service.

### **Independence**

25. Staff indicates the Independence exchange also qualifies under K.S.A. 66-2005(q)(1)(D) with fewer than 75,000 access lines. Level 3 is cited by AT&T as a nonaffiliated

facilities-based carrier and AT&T indicated that it believes Level 3 has a business relationship with Cable One, and that Cable One may be the Level 3's underlying carrier offering digital telephone service to those listings.

26. According to Staff, in addition to the facilities-based carrier, AT&T cites Alltel, Pioneer Cellular, Sprint, US Cellular, and Verizon Wireless, none of which are affiliated with AT&T, as providers of CMRS residential service in the Independence exchange. In support, AT&T cites number porting data as of April 30, 2009, E911 data as of March 31, 2009, and documented service offerings by nonaffiliated CMRS providers. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

27. Staff sent data requests to the carriers named in AT&T's application asking if the carrier provides a residential access line to more than one customer in the Independence exchange and how that service is provisioned. Level 3 responded that it does not provide a residential access line using its own facilities; however, AT&T identified Cable One as a possible underlying carrier to Level 3 so Staff sent Cable One a data request with the same query. Cable One responded in the affirmative and that provisioning is a combination of Cable One and Level 3, with Cable One provisioning the phone line and features in its softswitch, voice mail and EMTAs, and Level 3 providing all CLEC provisioning, such as E911, directories, calling name, and local exchange routing guide.

28. Sprint, when asked the same questions, responded to Staff that it provides a residential access line to more than one customer in the Independence exchange via its own facilities. US Cellular and Pioneer Cellular both responded that the carriers do not distinguish between single line residential or single line business wireless services, but that each carrier

provides single line wireless service in the Independence exchange via its own facilities. Alltel indicated that it uses its own facilities to provide wireless service to more than one customer with a billing address in the Independence exchange.

29. Staff's memorandum indicates that it's Staff's belief that, as required by K.S.A. 66-2005(q)(1)(D), AT&T has sufficiently demonstrated that there are two or more nonaffiliated telecommunications carriers or other entities not affiliated with AT&T as the local exchange carrier providing telecommunications services to residential customers in the Independence exchange. As required, one nonaffiliated carrier, Cable One, is a facilities-based carrier. The other carriers may be a CMRS carrier and, as such, Sprint qualifies as the second provider of residential telecommunications services.

### **Minneapolis**

30. According to Staff, the Minneapolis exchange also has fewer than 75,000 local exchange access lines and, as such, AT&T's application was correctly filed for this exchange pursuant to K.S.A. 66-2005(q)(1)(D). For this exchange, AT&T indicates Big River as the facilities-based carrier providing residential service, and cites Alltel, WestLink, US Cellular, and Verizon Wireless, entities not affiliated with AT&T, as CMRS residential service providers. In support, AT&T cites number porting data as of April 30, 2009, E911 data as of March 31, 2009, and documented service offerings by the CMRS provider nonaffiliates. According to the number porting information, numbers were ported from AT&T as the local exchange carrier to a competitive local exchange carrier or wireless carrier.

31. Staff sent data requests to all providers named by AT&T in the application, inquiring if each carrier provides a residential access line to more than one customer in the Minneapolis exchange and, if so, how the service is provisioned. Big River responded that it

does provide a residential access line to more than one customer in the Minneapolis, Kansas, exchange using its own facilities. WestLink, US Cellular, and Alltel all similarly responded that although all provide service to more than one customer in the Minneapolis exchange, none differentiate between residential and business service.

32. As Staff has noted previously, wireless carriers typically do not differentiate between residential or business customers; the rate and service are the same regardless of the type of customer subscribing to the service and the service is available and provided to residential and business customers alike. This is a customary practice for the wireless industry and not something AT&T can control or change; however, Staff reads K.S.A. 66-2005(q)(1)(D) to require the applicant, here AT&T, to demonstrate that the requirements of the statute have been met and in this case AT&T has not sufficiently demonstrated that more than one carrier provides telecommunications services to residential customers in the Minneapolis exchange.

33. Staff notes that although AT&T provided number porting and E911 information, neither demonstrates that the wireless carrier is providing residential service to more than one customer in the exchange. AT&T also provided advertisements demonstrating that US Cellular and Alltel offer service in the Minneapolis exchange, but the advertisements do not demonstrate that US Cellular and Alltel are actually providing service to residential customers in the Minneapolis exchange. It is Staff's opinion, therefore, that AT&T has not demonstrated that there is a second provider providing telecommunications service in the Minneapolis exchange to residential customers.

### **Neodesha**

34. The Neodesha, Kansas, exchange qualifies under K.S.A. 66-2005(q)(1)(D) as an exchange with fewer than 75,000 access lines. In its application for the Neodesha exchange,

AT&T indicates that Level 3 is a facilities-based carrier providing residential service to access lines in the Neodesha exchange, but also indicated that it believes Level 3 has a business relationship with Cable One and that Cable One may be the underlying company offering digital telephone service to those listings. AT&T also listed Alltel, Pioneer Cellular, Sprint, US Cellular, and Verizon, all unaffiliated with AT&T, as providers of residential CMRS service in the Neodesha exchange. In support of these claims, AT&T cites number porting data as of April 30, 2009, E911 data as of March 31, 2009, and documented service offerings by nonaffiliated CMRS providers. According to the number porting data, numbers were ported from AT&T to a competitive local exchange carrier or wireless carrier.

35. Staff sent data requests to all providers named by AT&T in the application, inquiring if each carrier provides a residential access line to more than one customer in the Neodesha exchange and, if so, how the service is provisioned. Level 3, cited by AT&T as the nonaffiliated facilities-based carrier, responded that it does not provide a residential access line to more than one customer in the Neodesha, Kansas exchange using its own facilities; however, AT&T also identified Cable One as Level 3's underlying carrier. Staff queried Cable One, which responded that it does provide a residential access line to more than one customer in the Neodesha exchange. Cable One indicates that it does provide an access line to more than one customer in the Neodesha exchange, and that provisioning is a combination of Cable One and Level 3. Cable One provisions the phone line and features in its softswitch, voice mail system, and EMTAs, and Level 3 takes care of all CLEC provisioning such as E911, directories, calling name, and local exchange routing guide.

36. Sprint Spectrum, L.P., when asked the same questions, responded that it does provide a residential access line to more than one customer in the Neodesha exchange via its own

facilities. Pioneer Cellular's responded that it does not provide residential service to more than one customer in the Neodesha exchange. US Cellular does not distinguish between single line residential or single line business wireless services, but that it does provide single line wireless service to more than one customer in the Neodesha exchange via its own facilities. Alltel indicated that it uses its own facilities to provide wireless service to more than one customer with a billing address in the Neodesha exchange.

37. With the above information, it appears to Staff that, pursuant to K.S.A. 66-2005(q)(1)(D), AT&T has sufficiently demonstrated that there are two or more nonaffiliated telecommunications carriers or other entities not affiliated with AT&T as the local exchange carrier providing telecommunications services to residential customers in the Neodesha exchange. As required, one nonaffiliated carrier, Cable One, is a facilities-based carrier. The other carrier may be a CMRS provider and in this exchange Sprint qualifies as the second provider of residential telecommunications services.

**Parsons**

38. According to Staff, the Parsons exchange also has fewer than 75,000 access lines and, as such, AT&T properly filed this application pursuant to K.S.A. 66-2005(q)(1)(D). In the application, AT&T cites Level 3 as a facilities-based carrier providing residential service to more than one customer in the Parsons exchange, but clarified that it believes Level 3 has a business relationship with Cable One and that Cable One may be the underlying company offering digital telephone service to those listings. In addition, AT&T cites Alltel, Sprint, US Cellular, and Verizon wireless as CMRS nonaffiliates of AT&T's providing residential service in the Parsons exchange.

39. Staff sent data requests to the carriers named in AT&T's application asking each carrier if it provides a residential access line to more than one residential customer in the Parsons exchange and, if so, how the service is provisioned. Level 3, cited by AT&T as the nonaffiliated facilities-based carrier responded that it does not provide a residential access line to more than one customer in this exchange; however, AT&T identified Cable One as the possible underlying carrier. Staff also sent a similar data request to Cable One, which responded that it does provide a residential access line to more than one customer in the Parsons exchange, and indicated that provisioning is a combination of Cable One and Level 3. Cable One provisions the phone line and features in its softswitch, voice mail system, and EMTAs, and Level 3 takes care of all CLEC provisioning such as E911, directories, calling name, and local exchange routing guide.

40. Sprint's response to Staff's data request reflected that it provides a residential access line to more than one customer in the Parsons exchange via its own facilities. US Cellular and Alltel both indicated that they did not distinguish between residential and business service, but each indicated that it provides wireless service to more than one customer in the Parsons exchange.

41. Staff's memorandum indicates that it believes AT&T has sufficiently demonstrated that there are two or more nonaffiliated telecommunications carriers or other entities not affiliated with AT&T as the local exchange provider providing telecommunications to residential customers in the Parsons exchange. As required, one nonaffiliated carrier, Cable One, is a facilities-based carrier. K.S.A. 66-2005(q)(1)(D) requires a second carrier not affiliated with AT&T or the facilities-based carrier, which can be a CMRS provider, to be providing residential service in the exchange; in this case Sprint qualifies.

### **Recommendation**

42. Staff believes AT&T has demonstrated that the requirements of K.S.A. 2008 Supp. 66-2005(q)(1)(D) have been satisfied in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha, and Parsons, Kansas, exchanges, but not in the Clay Center and Minneapolis exchanges. Staff recommends the Commission grant AT&T's request for price deregulation in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha, and Parsons, Kansas, exchanges, pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(D), and to deny AT&T's application for price deregulation of residential telecommunications services in the Clay Center and Minneapolis, Kansas, exchanges.

### **Pending Petitions for Reconsideration**

43. A few months ago AT&T filed for price deregulation of certain exchanges in Docket Nos. 09-SWBT-936-PDR (936 Docket) and 09-SWBT-937-PDR (937 Docket). In both the 936 Docket and the 937 Docket, AT&T was unable, in its initial application, for a specific exchange in each docket, to show a second nonaffiliated CMRS provider offering service to more than one of a particular class of customer due to the wireless carriers not distinguishing between residential or business customers. The Commission suspended the applications in order to allow AT&T the opportunity to sufficiently demonstrate the existence of the specific classes of customers required by K.S.A. 66-2005(q)(1)(C) (business) and K.S.A. 66-2005(q)(1)(D) (residential). In response, AT&T provided Staff with emails which, on their face, purported to be from customers of wireless carriers in the subject exchanges claiming to have either business or residential service with a particular wireless carrier. Staff then attempted to verify the emails in order to be able to make a reasoned, informed recommendation to the Commission.



44. With respect to the 936 Docket, Staff was able to verify that the information provided by AT&T in two emails was correct and that other wireless carriers in the Erie exchange provided business telecommunications services. Staff was unable, however, to make contact with any of the authors of the emails regarding residential service in the Erie exchange.<sup>1</sup> In the 937 Docket, Staff was able to affirm the accuracy of the additional documentation provided by AT&T with respect to business services in the Lindsborg exchange. In both dockets the Commission, by orders dated July 24, 2009, granted price deregulation for business telecommunications services but, in the Erie exchange declined to grant price deregulation of residential telecommunications services since AT&T was unable to demonstrate that there was, in fact, one or more residential subscribers to a nonaffiliated.

45. On August 11, 2009, AT&T filed petitions for reconsideration in both the 936 and 937 dockets. In order to ensure consistency, the Commission reaches the same conclusion in this docket, as it held in the 936 and 937 dockets regarding the sufficiency of the supporting documentation provided by AT&T. However, the Commission has not reached a decision on the petition for reconsideration of the 936 and 937 dockets, and realizes that the decision could affect the resolution of the issues presented in this docket. Of course, any party which finds itself aggrieved by the Commission's decision here may petition the Commission for reconsideration of its decision.

### **Findings and Conclusion**

46. The Commission finds and concludes that AT&T has met the requirements of K.S.A. 2008 Supp. 66-2005(q)(1)(D) with respect to the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha, and Parsons, Kansas exchanges and approves AT&T's application for

---

<sup>1</sup> See Staff Notice of Filing of Staff Report and Recommendation, and attached Staff Memorandum, at p. 4, filed July 16, 2009, in the 936 Docket.

price deregulation of residential telecommunications services in the these exchanges. AT&T has sufficiently demonstrated to the Commission that, in these exchanges, there is a facilities-based carrier not affiliated with AT&T providing residential telecommunications service to more than one customer, and that there is also a second carrier, that may be a CMRS provider not affiliated with AT&T providing residential telecommunications service to more than one customer.

47. With respect to the Clay Center and Minneapolis exchanges, the Commission finds that AT&T has not met the requirements of K.S.A 2008 Supp. 66-2005(q)(1)(D) in that AT&T has not sufficiently demonstrated that there is a second provider, other than Big River as the nonaffiliated facilities-based provider, providing telecommunications services to more than one residential customer.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The application of Southwestern Bell Telephone Company d/b/a AT&T Kansas for price deregulation of residential telecommunications services in the Abilene, Chanute, Ellsworth, Emporia, Independence, Neodesha, and Parsons, Kansas exchanges is granted. The application of Southwestern Bell Telephone Company d/b/a AT&T Kansas for price deregulation of residential telecommunications services in the Clay Center and Minneapolis, Kansas, exchanges is denied, as indicated above.

B. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2008 Supp. 77-529(a)(1).

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

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn.; Moffet, Com; Harkins, Com.

Dated: AUG 26 2009

**ORDERED MAILED**

**AUG 26 2009**

*Susan Duffy* EXECUTIVE  
DIRECTOR

---

Susan K. Duffy  
Executive Director

crh