

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Brian J. Moline, Chair
 Robert E. Krehbiel
 Michael C. Moffet

In the Matter of the Application of)	
Wildflower Telecommunications, LLC for a)	Docket No. 06-WLDT-1005-COC
Certificate of Convenience and Authority)	Telecom-CLEC
to Provide Local Exchange and Exchange)	
Access Service within the State of Kansas.)	

ORDER AND CERTIFICATE

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:

Background

1. On March 7, 2006, Wildflower Telecommunications, LLC (Wildflower) filed an application seeking authority to provide local exchange and exchange access telecommunications services in the State of Kansas.
2. Wildflower is properly registered with the Kansas Secretary of State's office and is currently listed as "active and in good standing" with that office.
3. On April 20, 2006, Commission staff (Staff) submitted a memorandum stating it had reviewed the application wherein Wildflower proposes to provide facilities-based and local exchange services using a combination of bundled and unbundled network elements, resold facilities, and its own facilities.

4. In its April 20, 2006 memorandum, Staff stated to the extent Wildflower's presence in Kansas would increase consumer options, Staff believes the general public would benefit from Commission approval of this application.

5. The Commission notes Wildflower is currently prohibited from serving customers in rural Kansas exchanges by the rural exemption guidelines established by this Commission. Initial authority for Wildflower will be limited to AT&T and Embarq Communications exchanges in Kansas due to the existing rural exemption guidelines outlined in Docket No. 190,492-U.¹

Findings and Conclusions

6. The Commission has jurisdiction to supervise and control telecommunications public utilities doing business in Kansas pursuant to K.S.A. 66-1,188. Wildflower is a telecommunications public utility pursuant to K.S.A. 66-1,187 and is therefore subject to the Commission's jurisdiction.

A. Technical, Managerial and Financial Capabilities

7. In Docket No. 190,492-U, in an Order dated May 5, 1995, the Commission established an expedited certification process. In granting certification to a second company for the Hill City exchange in December 1995, the Commission stated:

“[O]nce the Commission has considered these factors and allowed competitive entry into a particular service category, subsequent applications by additional providers may be given expedited treatment...Therefore, the focus of proceedings regarding additional providers may be limited to those provider's technical, managerial and financial capabilities.”

8. The Commission finds that Wildflower has demonstrated sufficient managerial, technical and financial capabilities to operate as a telecommunications public utility. A review

¹ Order dated December 27, 1996 and Order on Reconsideration dated February 3, 1997.

of the materials submitted demonstrates that Wildflower has management and employees with telecommunications experience. It is clear that Wildflower possesses the requisite expertise and ability to provide efficient and sufficient local exchange and exchange access services.

B. Public Convenience and Necessity

9. The Public Utilities Act, K.S.A. 66-101 *et seq.*, does not define the term public convenience. However, the term has been discussed by the Kansas Supreme Court. In *Central Kansas Power Co. v. State Corporation Commission*, 206 Kan. 670, 676, 482 P.2d 1 (1971), the Court stated:

Public convenience means the convenience of the public, not the convenience of particular individuals. [citations omitted.] Public necessity does not necessarily mean there must be a showing of absolute need. As used, the word ‘necessity’ means a public need without which the public is inconvenienced to the extent of being handicapped.

See also, *General Communications Systems, Inc. v. State Corporation Commission*, 216 Kan. 410, 418, 532 P.2d 1341 (1975); *Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission*, 130 Kan. 777, 288 P.2d 755 (1930). Public convenience is a relative term, established by proof of the conditions existing in the territory to be served. *Atchison* at 781.

10. In *Central Kansas Power Co.* at 677, citing *Kansas Gas & Electric Co. v. Public Service Comm.*, 122 Kan. 462, 251 P.2d 1097, the Court stated as follows:

[i]n determining whether such certificate of convenience and necessity should be granted, (1) the public convenience ought to be the commission’s primary concern; (2) the interest of public utility companies already serving the territory secondary; and (3) the desires and solicitations of the applicant a relatively minor consideration.

The Commission has considered the public convenience to be the primary factor in granting this certificate, as well as a consideration of the additional criteria cited in *Central Kansas Power Co.*, *supra*, and in the May 5, 1995 Order in Docket No. 190,492-U.

11. Anytime a competitor enters a previously non-competitive market, customers stand to benefit from increased options, lower prices, better services, etc. These benefits may come from the incumbent as well as the competitive local exchange carrier. The telecommunications infrastructure will grow and the benefits of competition should assist economic development. The Commission has taken all these competitive matters into consideration in reviewing this application and finds that approving this application will benefit the public in the area to be served by Wildflower.

C. The Effect On: Universal Service, Economic Development and Infrastructure, and Incumbent's Revenues.

12. The Commission must acknowledge the obligations of Wildflower to aid in attaining the goal of universal service. No evidence has been presented in this docket that indicates that granting Wildflower's application will have a detrimental effect on Universal Service, economic development and infrastructure, or the incumbent's revenues.

D. Local Franchises

13. The Kansas Supreme Court has determined that "the power of a city to grant franchises does not confer upon that city any power to decide whether a telephone company should be granted a certificate of convenience and necessity (K.S.A. 12-2002)." *United Telephone Co. of Kansas v. City of Hill City*, 258 Kan. 208, 221 (1995). Conversely, the Commission may not determine which company shall be granted a franchise to operate within a city. December 8, 1995 Order in Docket No. 192,521-U at 13.

14. The Supreme Court also stated:

[T]he KCC is granted the authority to issue certificates of convenience and necessity allowing telephone companies to do business in certain areas of the state so that the statewide telecommunications system will not be impeded. K.S.A. 66-131. While a telephone company with a certificate of convenience and necessity to serve an area may construct lines through a city, it may not serve that city

without a franchise. While a city may grant a franchise to a telephone company, that company must obtain a certificate of convenience and necessity from the KCC. Finally, while the KCC may grant or deny certificates of convenience and necessity based on its powers to regulate the statewide telecommunications system, it may not force a city to grant a franchise to a telephone company. *Id.* at 223.

By granting this certificate to Wildflower, the Commission is in no way compelling the cities to grant a franchise to Wildflower, nor guaranteeing to Wildflower that a franchise will necessarily be obtained from the city. The lack of a franchise agreement may prevent Wildflower from serving a specified area if the pertinent governing body refuses to grant a franchise. This does not, however, prevent Wildflower from being certificated by this Commission.

E. Service in Rural Areas

15. Wildflower may be subject to the requirements of Section 251(f) of the Telecommunications Act of 1996 should it desire to provide local exchange service in a rural area. Section 251(f) exempts rural local exchange companies from certain competitive entry requirements and establishes an explicit procedure for the lifting the exemption. Certification in a rural telephone company's service area is also governed by K. S. A. 1997 Supp. 66-2004.

F. Issuance of Certificate

16. The Commission finds that Wildflower should be issued a certificate of convenience and authority in accordance with the provisions of K.S.A. 66-131 to transact the business of a telephone public utility to provide local exchange and exchange access services throughout AT&T territories. Wildflower may be subject to the requirements of Section 251(f) of the Telecommunications Act of 1996 should it desire to provide local exchange service in a rural area.

17. Wildflower is required to file an annual report with the Commission and to notify the Commission of any changes in its structure or operation. Wildflower must file an annual

report with the Commission and pay any Commission assessments. Wildflower shall also report its revenues, using the KUSF Carrier Remittance Worksheet, as well as any changes in its name or corporate structure, to the KUSF Administrator for Kansas Universal Service purposes.

18. Resale and/or interconnection agreements between Wildflower and AT&T and Embarras must be filed with and approved by this Commission before the Company may offer competitive local end user services

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The application of Wildflower Telecommunications, LLC for a Certificate of Convenience and Authority to provide local exchange and exchange access services in Kansas, pursuant to K.S.A. 66-131, is approved, as set out above. Resale and/or interconnection agreements between Wildflower and AT&T and Embarras Communications must be filed with and approved by the Commission before the company may offer competitive local services.

B. Wildflower is required to file an annual report with the Commission and to notify the Commission of any changes in its structure or operation. Wildflower must file an annual report with the Commission and pay any Commission assessments. Wildflower shall also report its revenues, using the KUSF Carrier Remittance Worksheet, as well as any changes in its name or corporate structure, to the KUSF Administrator for Kansas Universal Service purposes. Failure to comply with these obligations could result in revocation of the certificate.

C. 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. 2005 Supp. 77-529(a)(1).

D. 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 AND CERTIFIED.

ORDER MAILED

Moline, Chr.; Krehbiel, Com; Moffet, Com.

Dated: **MAY 01 2006**

MAY 01 2006

 Executive
Director

Susan K. Duffy, Executive Director

RLL:jtg