

**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. 17-SWBT-328-IAT
Telecommunications Act of 1996 With)
Midcontinent Communications, a South Dakota)
General Partnership.)

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 January 17, 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 Midcontinent Communications, a South Dakota General Partnership (Midcontinent). 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 to forbearance under FCC Order 19-66² and

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.

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.

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 Transport 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. Midcontinent is a South Dakota general partnership and is registered to do business in Kansas. Midcontinent is a Competitive Local Exchange Carrier (CLEC) in Kansas that was granted authority in Docket No. 17-MCCT-252-COC and is an Interexchange Service Carrier as approved in Docket No. 17-MCCT-253-COC. Midcontinent is also an Eligible Telecommunication Carrier for federal state Lifeline purposes. Both companies are *active and in good standing* with the Kansas Secretary of State.

3. AT&T Kansas states that the Amendment to Interconnection Agreement entered into between AT&T Kansas and Midcontinent 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

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. 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 10, 2020, the Commission Staff (Staff) submitted its Report and Recommendation dated March 4, 2020, advising the Commission to approve the amended Agreement between AT&T Kansas and Midcontinent. 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 4, 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 Midcontinent be approved.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Southwestern Bell Telephone Company d/b/a AT&T Kansas' Application filed January 17, 2020, is hereby granted and the amended Interconnection Agreement between AT&T Kansas and Midcontinent Communications be approved.

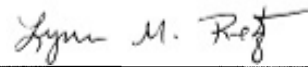
B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).⁵

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: 03/17/2020



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).

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

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

FROM: Kelly Mabon, Senior Telecommunications Analyst
Christine Aarnes, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: March 4, 2020

SUBJECT: Docket No. 17-SWBT-328-IAT
In the Matter of the Application of Southwestern Bell Telephone Company for
Approval of Interconnection Agreement Under the Telecommunications Act of
1996 With Midcontinent Communications, a South Dakota General Partnership.

BACKGROUND:

On January 17, 2020, Southwestern Bell Telephone Company d/b/a AT&T Kansas (SWBT) filed an Application for modification of the Interconnection Agreement with Midcontinent Communications, a South Dakota General Partnership (Midcontinent). Staff recommends approval of this Application.

The Commission action date is **Monday, April 20, 2020.**

BACKGROUND:

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 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.”

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 Modification removes certain analog Unbundled Network Elements (UNE) (Analog Loops) and certain wholesale resale offerings from the original Agreement per the Federal Communications Commission (FCC), FCC 19-72 FCC UNE and resale forbearance Order dated August 2, 2019^[1]. 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 UDT forbearance under FCC 19-66^[2] and Public Notice DA 19-733^[3], dated August 1, 2019. Any Analog UNE qualifying service ordered before February 1, 2020, considered existing embedded base are grandfathered until August 2, 2022. Any DS1/DS3 qualifying service considered UDT embedded base, ordered on or before January 11, 2020, are grandfathered until July 12, 2022. AT&T filed for approval of this Amended Agreement between AT&T and Midcontinent. The Amendment expires **concurrent** with the existing Agreement.

The current FCC Orders remove the requirement for the Incumbent Local Exchange Company (ILEC) to provide Competitive Local Exchange Company (CLEC) access to certain analog facilities owned by the ILEC, provided over copper facilities at wholesale rates. Those rules were imposed under the Telecommunications Act of 1996. The original rules were written to require ILEC companies to lease the existing facilities to CLEC companies at wholesale prices. This would have 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.

SWBT 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.

^[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*; <https://docs.fcc.gov/public/attachments/FCC-19-72A1.pdf>.

^[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>.

Having reviewed the Agreement between SWBT and Midcontinent, 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 this Application for a Modification to the Interconnection Agreement between SWBT and Midcontinent.

CERTIFICATE OF SERVICE

17-SWBT-328-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 03/17/2020.

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/S/ DeeAnn Shupe

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