

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 Its 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.)
66-2006(d) of Intent to Cease Participation in the)
Kansas Lifeline Services Program.)

H&B CABLE SERVICE, INC. PETITION FOR LEAVE TO INTERVENE
AND
RESPONSE TO STAFF'S SECOND REPORT AND RECOMMENDATION

Comes now H&B Cable Service, Inc. ("H&B") and requests leave to intervene as a party in this proceeding. In support thereof H&B states as follows:

1. The rights and interests of H&B are at issue in this proceeding. Specifically H&B is an Eligible Telecommunications Carrier ("ETC") in the Chase exchange and would be subject to the order recommended by Commission Staff ("Staff") in its Second Report and Recommendation. Adoption by the Commission of that recommendation would impose increased service obligations on other carriers in the Chase exchange, adversely affecting H&B.
2. No other party in this proceeding is able to represent the interests of H&B effectively.
3. Allowing H&B's intervention herein will not delay resolution of this proceeding.
4. Further, subject to the requested grant of intervention, H&B submits the following response to Staff's Second Report and Recommendation as it affects the interests of H&B.

5. H&B was designated an Eligible Telecommunications Carrier for the Chase and Claflin exchanges in this Commission's Docket No. 04-HBCT-1107-ETC subject to H&B's assurance, *inter alia*, that it was able to provide local telecommunications service to all requesting customers within the Chase exchange. H&B's assertion of its capability to do so was made substantially in reliance on the statutory obligations of AT&T, existing at the time of H&B's application, to serve as carrier of last resort throughout the exchange and to permit resale of AT&T's services.

6. H&B has advised Staff, in response to an information request issued in the instant proceeding, that to the extent AT&T is relieved of its obligations to provide service to all requesting customers throughout the exchange or to permit resale of its services H&B will not thereafter have the capability to provide service to all requesting customers in the exchange. H&B therefore will be rendered unable to meet the obligations of an ETC in the Chase exchange as a result of the relief requested herein by AT&T.

7. H&B has, in fact, only one telecommunications customer in the Chase exchange. That customer is the Chase Unified School District. H&B has constructed facilities specifically to meet this public entity's communications needs. H&B otherwise lacks facilities and capability to provide telecommunications services generally to other consumers in the exchange, and further lacks access to resources that would enable it timely to construct or acquire the additional facilities necessary to serve requesting customers throughout the exchange.

8. H&B separately has requested that the Commission approve relinquishment of H&B's own ETC status in the Chase exchange. That request is pending in this Commission's Docket No. 17-HBCT-508-ETC.

9. If the Commission were to grant the request of AT&T for relinquishment of its ETC status in the Chase exchange and simultaneously, as recommended by Commission Staff, to “[r]equire the remaining ETCs to ensure that all customers served by AT&T will continue to be served,” (Notice of Filing of Staff’s Second Report and Recommendation, ¶ 3, p.1) a service obligation and burden would be imposed on H&B materially different from that obligation assumed when H&B applied for ETC status.

10. It appears H&B is the only wireline provider of local service in the exchange other than AT&T. Although AT&T assures the Commission it would continue to provide legacy voice service in the exchange it is unclear whether this commitment is enforceable; further, it may be that AT&T would be under no obligation to fulfill any new request for service in the exchange – particularly if such a request would require provision of new facilities to serve a new or existing customer. Thus under Staff’s recommendation H&B could be compelled to acquire and/or construct new facilities to serve any new customer seeking additional or differing wireline service in the exchange area. Such an obligation, without any provision for cost recovery, is beyond the duties voluntarily accepted by H&B in its original application for ETC status in the Chase exchange.

11. H&B notes a statement of AT&T in this proceeding: “It is one thing to voluntarily retain an ETC obligation; it is a far different thing to be forced to retain an obligation one has decided to (and is legally authorized to) relinquish.” (AT&T Response, 5-18, Footnote 4 at p.6). It is yet another thing to be subjected to a newly expanded duty as a direct result of another carrier’s relinquishment of ETC status.

12. H&B, under the order recommended in Staff’s Second Report and Recommendation and noted in ¶ 9 above, would become the *de facto* carrier of last resort for wireline local service in the Chase exchange. Absent a designation of H&B as

successor COLR under K.S.A. 66- 2009, however, the company would not enjoy the express right to cost recovery provided by that statute. To the contrary, the provisions of K.S.A. 2016 Supp. 66-2008(c)(4) initiated a phase-out of H&B's right to receive KUSF support as a competitive ETC. As of March 1, 2018, H&B will receive no further KUSF support for high cost service in any exchange.

13. The universal service support heretofore received by H&B and noted at ¶ 8 of Staff's Second Report and Recommendation has been received on a per-line basis primarily for, and appropriately applied to, the costs of serving consumers in other exchanges. That revenue cannot now be applied to meet a future expanded service obligation in the Chase exchange.

14. H&B is unaware of any factual or legal basis to distinguish its pending request for relinquishment of ETC status from that of AT&T. Staff has recommended approval of that request by AT&T as to the Chase exchange, where identical relief is sought by H&B in Docket No. 17-HBCT-508-ETC.

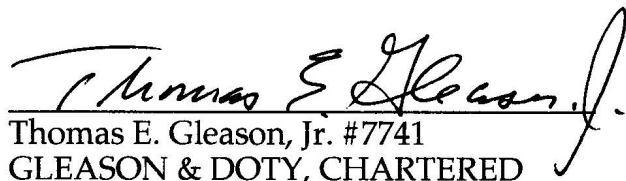
15. Even assuming reasonably prompt approval of H&B's request to relinquish its own ETC status it is possible and reasonably likely H&B could receive a request to provide new, additional or differing local service to a customer in the Chase exchange as a result of the Commission's approval of AT&T's ETC relinquishment. In such case the result would be either an unreasonable demand on H&B for the construction and installation of facilities or alternatively consumer confusion and dissatisfaction upon H&B being granted relief thereafter from such obligation.

16. It is reasonable and in the public interest for the Commission to avoid either such adverse result, specifically by providing that H&B's request for approval of relinquishment of its ETC status in Docket No. 17-HBCT-508-ETC be granted no later than any approval of AT&T's proposed relinquishment of such status in the Chase

exchange. Approval of that portion of AT&T's relinquishment proposal is consistent with Staff's Second Report and Recommendation.

WHEREFORE H&B Cable Service, Inc. requests that it be granted leave to intervene herein; that its foregoing Response to Staff's Second Report and Recommendation be accepted and considered herein; and that the relief requested, to-wit: approval of H&B's relinquishment of ETC status specifically as to the Chase exchange in Docket No. 17-HBCT-508-ETC, be granted no later than any approval of AT&T's relinquishment of ETC status in that exchange.

Respectfully submitted,



Thomas E. Gleason, Jr. #7741
GLEASON & DOTY, CHARTERED
PO Box 6
Lawrence, KS 66044-0006
(785) 842-6800 voice
(785) 856-6800 fax
gleason@sunflower.com



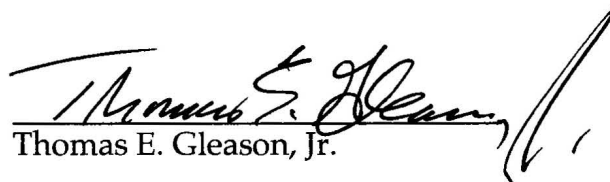
Mark Doty #14526
GLEASON & DOTY, CHARTERED
P.O. Box 490
Ottawa, KS 66067
(785) 242-3775 voice
(785) 242-3855 fax
doty.mark@gmail.com
Attorneys for H&B Cable Service, Inc.

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

Thomas E. Gleason, Jr., of lawful age, being first duly sworn upon oath, states:

I am an attorney for the H&B Cable Service, Inc. I have read the above and foregoing Petition and Response, and upon information and belief, state that the matters therein appearing are true and correct.

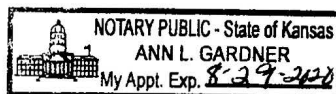

Thomas E. Gleason, Jr.

SUBSCRIBED AND SWORN to before me this 21st day of July, 2017.


Notary Public

My Commission Expires:

8-29-2020



CERTIFICATE OF SERVICE

Thomas E. Gleason, Jr. certifies a correct copy of the above and foregoing pleading was delivered to each of the following by electronic service this 21st day of July, 2017:

THOMAS J. CONNORS, Attorney at Law
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
tj.connors@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
D.NICKEL@CURB.KANSAS.GOV

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

SHONDA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
sd.smith@curb.kansas.gov

ROB LOGSDON, DIRECTOR REGULATORY AFFAIRS**
COX KANSAS TELCOM, L.L.C. D/B/A COX COMMUNICATIONS, INC
11505 WEST DODGE RD
OMAHA, NE 68154
ROB.LOGSDON@COX.COM

SUSAN B. CUNNINGHAM, ATTORNEY
DENTONS US LLP
7028 SW 69TH ST
AUBURN, KS 66402-9421
susan.cunningham@dentons.com

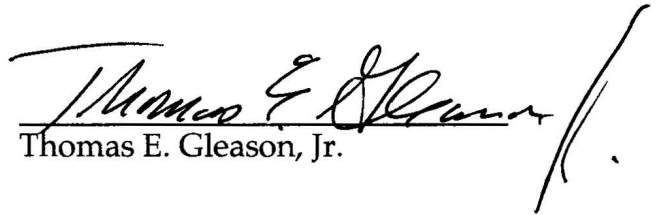
MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
m.duenes@kcc.ks.gov

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
a.latif@kcc.ks.gov

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
m.neeley@kcc.ks.gov

JANET ARNOLD, AREA MANAGER EXTERNAL AFFAIRS
SOUTHWESTERN BELL TELEPHONE CO. D/B/A AT&T KANSAS
220 SE SIXTH ST.
ROOM 505
TOPEKA, KS 66603-3596
JS0746@ATT.COM

BRUCE A. NEY, ATTORNEY
SOUTHWESTERN BELL TELEPHONE CO. D/B/A AT&T KANSAS
816 CONGRESS AVE
SUITE 1100
AUSTIN, TX 78701-2471
bn7429@att.com


Thomas E. Gleason, Jr.