

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

In the Matter of the Application of)
Southwestern Bell Telephone Company, L.P.)
for Approval of Interconnection Agreement) Docket No. 06-SWBT-366-IAT
Under the Telecommunications Act of 1996)
with XO Communications Services, LLC)

ORDER APPROVING AMENDMENT TO INTERCONNECTION AGREEMENT

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 records and being duly advised in the premises, the Commission makes the following findings:

1. On January 26, 2023, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas)¹ filed an Application for Approval of Amendments to Interconnection Agreement (Amendments) between itself and XO Communications Services, LLC (XO Communications), originally approved in this Docket on October 24, 2005. The proposed Amendments modify the DS1 and DS3 transport rates that supersede the rates in the Agreement and provides a notification provision for XO Communications related to the purchase of commercial local transport. AT&T Kansas also states that the proposed Amendments implement the Federal Communications Commission's (FCC's) Unbundled Network Element (UNE) and Resale Forbearance Orders and the FCC's UNE Relief Order.

2. The Commission has jurisdiction to review negotiated interconnection agreements

¹Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) is an "electing carrier" referenced under K.S.A. 66-2005(x). See Docket No. 12-SWBT-797-MIS.

(and amendments thereto) entered into by SWBT pursuant to K.S.A. 66-2005(z)(2)(A) and 47 U.S.C. §252(e).

3. 47 U.S.C. §252(e)(2) provides that the Commission may reject a negotiated interconnection agreement only if it finds that the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement; or the implementation of such an agreement (or portions thereof) is not consistent with the public interest, convenience, and necessity.

4. Commission Staff submitted a Report and Recommendation, dated March 15, 2023, recommending approval of the Amendments, attached hereto as Exhibit A and made a part hereof by reference. Staff explained that the Amendments adds Pricing Sheets to modify DS1 and DS3 transport rates to supersede the rates for the corresponding elements in the Agreement and provides a notification provision for XO Communications related to the purchase of commercial local transport. Staff also explained the specifics of the FCC UNE and Resale Forbearance Orders, as well as the FCC UNE Relief Order. Staff further explained the related changes to the interconnection agreement between AT&T Kansas and XO Communications pertaining to those Orders. Staff found no evidence to conclude the Interconnection Agreement Amendments discriminate against any telecommunications carrier, nor that they are inconsistent with the public interest, convenience, or necessity. Staff recommended approval of the Interconnection Agreement Amendments.

5. The Commission finds Staff's findings and recommendation to be reasonable and hereby adopts the same.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Interconnection Agreement Amendments filed January 26, 2023, between AT&T Kansas and XO Communications is 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).²

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; Keen, Commissioner; French, Commissioner

Dated: 03/23/2023



Lynn M. Retz
Executive Director

WAH

²K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

Susan K. Duffy, Chair
Dwight D. Keen, Commissioner
Andrew J. French, Commissioner

Laura Kelly, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Susan K. Duffy, Chair
Dwight D. Keen, Commissioner
Andrew J. French, Commissioner

FROM: Steve Garrett, Senior Telecommunications Analyst
Sandy Reams, Assistant Chief of Telecommunications
Bryan Seamans, Chief of Telecommunications
Jeff McClanahan, Director of Utilities

DATE: March 15, 2023

SUBJECT: Docket No. 06-SWBT-366-IAT

In the Matter of the Application of Southwestern Bell Telephone, L.P. for Approval of Interconnection Agreement Under the Telecommunications Act of 1996 with XO Communications Services, LLC

EXECUTIVE SUMMARY:

On January 26, 2023, Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) filed an *Application for Approval of Amendments to Interconnection Agreement* under the Telecommunications Act of 1996 between AT&T Kansas and XO Communications Services, LLC (XO Communications) to implement the Federal Communications Commission's (FCC) Order 20-152 in WC Docket No. 19-308 (UNE Relief Order). The Amendment also modifies the DS1 and DS3 transport rates, and implements FCC Orders 19-66 and 19-72 (FCC UNE and Resale Forbearance Order). Staff recommends approval of the Amendments to the Agreement.

The Commission action date is April 26, 2023.

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.

The FCC's Orders remove the requirement for the Incumbent Local Exchange Company (ILEC) to provide a Competitive Local Exchange Company (CLEC) access to certain analog facilities owned by the ILEC since the original rules were imposed under the Telecommunications Act of 1996 and written to require ILECs to lease the existing facilities to CLECs at wholesale prices. This allowed the CLEC to compete in the telecommunications market against the ILEC without the upfront expense of constructing its own telecommunications network. As telecommunications companies transition to newer Internet Protocol (IP) technologies with fiber, the copper facilities are being replaced by updated technology and facilities.

The FCC determined that forbearance from unbundling obligations was appropriate for certain DS1/DS3 dedicated interoffice transport between price cap incumbent LEC wire centers; two-wire and four-wire analog voice grade copper loops; and avoided-cost resale obligations in price cap incumbent LECs service areas.¹ The FCC also continued the process of changing unbundling and resale regulations by eliminating requirements, subject to reasonable transition periods, for enterprise-grade DS1 and DS3 loops with evidence of actual and potential competition, for broadband-capable DS0 loops in densely populated areas and voice-grade narrowband loops nationwide.² The FCC further eliminated certain unbundled dark fiber transport within a half-mile of competitive fiber networks, subject to a transition period.³

ANALYSIS:

The Amendments remove 2-Wire Digital UNE Loops (Digital Loops) and DS1 UNE Loops (DS1 Loops) in Wire Centers as of February 8, 2023, per the FCC UNE Relief Order. Any existing Digital Loops and DS1 Loops ordered on or before February 8, 2023, are grandfathered until February 8, 2025, and August 8, 2024, respectively.

¹ See, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160 (c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 et al., Report and Order on Remand and Memorandum Opinion and Order, 34 FCC Rcd 5767, 5772-5775 (2019); and *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160 (c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Memorandum Opinion and Order, 34 FCC Rcd 6503, 6508-6531 (2019).

² *In the Matter of Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Report and Order, FCC 20-152, 35 FCC Rcd 12425, 12435-12509 (2020).

³ *Id.*

XO Communications may no longer order any 2-Wire or 4-Wire Analog UNE Loops (Analog Loops). Any existing Analog Loops ordered on or before February 1, 2020, are grandfathered until August 2, 2022. DS1/DS3 Unbundled Dedicated Transport (DS1/DS3 UDT) between Tier 1 wire centers and/or wire centers subject to UDT forbearance under Public Notice DA 19-733, dated August 1, 2019.⁴ Any DS1/DS3 UDT ordered on or before January 11, 2020, are grandfathered until July 12, 2022.

Additionally, the Amendments remove DS3 UNE Loops (DS3 Loops), UNE Dark Fiber Transport (DFT), and UNE Subloops or UNE Network Interface Devices (NIDs) as of February 8, 2021, per the UNE Relief Order. DS3 Loops and DFTs ordered on or before February 8, 2021, are grandfathered until February 8, 2024, and February 8, 2029, respectively. The Amendment expires concurrent with the existing Agreement.

The Amendments, as of February 8, 2021, further restrict conversion of existing Special Access circuits to UNEs and requires XO Communications to provide AT&T Kansas with a forecast of the total number of UNE Loops that it plans to migrate (if there are 50 or more) to an alternate product or service.

The Amendments also modify the DS1 and DS3 transport rates in the Agreement. The Amendments include the foregoing recitals and terms and conditions, with prices modified in Exhibit A: Product AT&T LOCAL WHOLESALE TRANSPORT, and Exhibit B: Product UNBUNDLED DEDICATED TRANSPORT. The rates specified in Exhibit A supersede the prior rates for the corresponding elements previously set forth in the Pricing Sheet to the Agreement.

If XO Communications no longer purchases commercial local transport under a separate agreement using the Universal Services Ordering Code (USOC) and Basic Classes of Services listed in Exhibit A, the Company must notify AT&T Kansas to enforce the rates listed in Exhibit B. After confirming that XO Communications will no longer purchase commercial local transport, AT&T Kansas will implement the rates in Exhibit B.

AT&T Kansas contends that implementation of the Amendments 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.

Having reviewed the Amendments to the Agreement between AT&T Kansas and XO Communications, Staff finds no evidence to conclude the Amendments discriminate 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.

⁴ 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.

AT&T Kansas and XO Communications are registered with the Kansas Secretary of State and are active and in good standing with that office.⁵

RECOMMENDATION:

Staff recommends the Commission grant approval of the Amendments to the Agreement between AT&T Kansas and XO Communications.

⁵ Office of Secretary of State Business Entity Search, Southwestern Bell Telephone Company and XO Communications,
<https://www.kansas.gov/bess/flow/main.jsessionid=A86F6A64E432122784A6A911BAE0C550.aptc03-inst1?execution=els5>, last viewed March 14, 2023.

CERTIFICATE OF SERVICE

06-SWBT-366-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 03/23/2023.

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/S/ KCC Docket Room

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