

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

In the Matter of the Application of)
Southwestern Bell Telephone Company)
for Price Deregulation of Business)
Telecommunications Services in the)
Dodge City, Garden City, Humboldt,)
Larned and Lindsborg, Kansas)
Exchanges Pursuant to K.S.A. 2008)
Supp. 66-2005(q)(1).)

Docket No. 09-SWBT-937-PDR

STATE CORPORATION COMMISSION

JUN 25 2009

**CURB'S RESPONSE AND OPPOSITION
TO STAFF REPORT AND RECOMMENDATION**

 Docket
Room

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and files its response and opposition to the report and recommendation on Southwestern Bell Telephone Company's application for price deregulation in the designated exchanges filed by the Staff of State Corporation Commission of the State of Kansas ("Staff"). In support of its response, CURB states and alleges as follows:

1. On June 05, 2009, Southwestern Bell Telephone Company ("AT&T") filed an application for price deregulation of business telecommunications services in the Dodge City, Garden City, Humboldt, Larned, and Lindsborg, Kansas exchanges pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C).

2. On June 24, 2009, Staff filed its Report and Recommendation with the Commission in this docket. In its Report and Recommendation, Staff recommended the Commission grant AT&T's request for price deregulation of single-line business service in the Dodge City, Garden City, Humboldt, Larned, and Lindsborg, Kansas exchanges pursuant to K.S.A. 66-2005(q)(1)(C).

3. CURB has no objection to Staff's recommendation regarding the Dodge City, Garden City, Humboldt, and Larned exchanges.

4. CURB opposes Staff's recommendation regarding the Lindsborg exchange at this time. AT&T has failed to provide substantial competent evidence sufficient to support granting price deregulation of single-line business service in the Lindsborg exchange pursuant to K.S.A. 66-2005(q)(1)(C).

5. In support of its recommendation, Staff indicated that in addition to Cox, the facilities-based carrier providing residential and single-line business service to access lines in the Lindsborg exchange,

In addition to the service provided by Cox, AT&T claims ALLTEL, US Cellular, and Westlink, which is not affiliated with the local exchange carrier, also provides business service as providers of commercial mobile radio services in the Lindsborg exchange. In support of its claims, AT&T cites number porting information that indicates 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.¹

5. Staff's Report and Recommendation indicates it queried the companies named as competitive carriers in AT&T's application:

The request for information asked carriers if they provide a business access line to more than one customer in the Lindsborg exchange and how the service is provisioned.²

6. With respect to Westlink, Staff's Report and Recommendation indicates that Westlink "responded in the negative, that it does not provide a single-line business access line to more than one customer in the Lindsborg exchange."

¹ Staff Report and Recommendation, pp. 5-6.

² Id., at p. 6.

7. With respect to ALLTEL and US Cellular, Staff's Report and Recommendation indicates that "ALLTEL indicated that it provides wireless service to more than one customer with a billing address in the Lindsborg exchange. US Cellular indicated that it does not distinguish between single-line residential and single-line business wireless service, but it does provide single-line wireless service to more than one customer in the Lindsborg exchange."

8. Unlike Staff's Report and Recommendation in KCC Docket 09-SWBT-936-PDR ("936 Docket"), Staff's Report and Recommendation in this docket does not comment on the failure of ALLTELL or US Cellular's response to differentiate between residential and business customers, nor did it prompt Staff to send a follow-up data requests to ALLTEL or US Cellular as it did in the 936 Docket on June 23, 2009.

9. Nonetheless, Staff's Report and Recommendation in this docket concludes that AT&T has demonstrated that the requirements of K.S.A. 66-2005(q)(1)(C) have been satisfied in the Lindsborg exchange and recommends that the Commission grant AT&T's request for price deregulation of business services in the Lindsborg exchange.

10. CURB respectfully disagrees with the conclusions made by Staff and submits AT&T has failed to provide substantial competent evidence to support a finding that price deregulation should be granted for the Lindsborg exchange.

11. K.S.A. 66-2005(q)(1)(C) requires that the requesting local exchange carrier (AT&T) demonstrate that "*there are two or more nonaffiliated telecommunications carriers ... providing local telecommunications service to business customers.*" This means that the nonaffiliated carriers must be actually providing business service to customers, not that they are providing residential or business service

to customers. Since ALLTEL and US Cellular don't distinguish between residential and single-line business wireless customers, there has been no demonstration by AT&T that either company is actually providing *business* service in the Lindsborg exchange. Without further evidence, it is entirely possible that all of the wireless service provided in the Lindsborg exchange is residential.

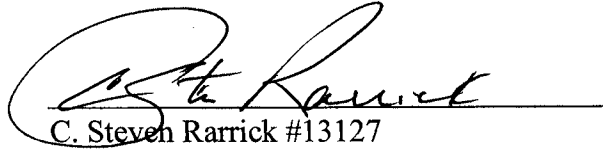
12. Second, K.S.A. 66-2005(q)(1)(C) requires "a demonstration by the requesting local telecommunications carrier that there are two or more nonaffiliated telecommunications carriers or other entities, that are nonaffiliated with the local exchange carrier, providing local telecommunications service to business *customers*." The plural use of the word, "customers" indicates the nonaffiliated carriers must provide business or residential service to more than one customer.³ Again, since ALLTEL and US Cellular don't distinguish between residential and single-line business wireless customers, there has been no demonstration by AT&T that either company is providing service to more than one business customer (plural).

13. The record presented to the Commission in Staff's Report and Recommendation does not contain substantial competent evidence upon which the Commission can grant price deregulation of business local service in the Lindsborg exchange under K.S.A. 66-2005(q)(1)(C).

WHEREFORE, CURB RESPECTFULLY REQUESTS THE Commission deny Southwestern Bell Telephone Company's application for price deregulation of single-line business service in the Lindsborg exchange.

³ Staff's initial data requests appear to acknowledge this requirement because they asked "if the carriers provided a business line to *more than one customer* in the Lindsborg exchange. Staff Report and Recommendation, p. 6.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a solid horizontal line. The signature is fluid and cursive, with a large initial "C" that loops back.

C. Steven Rarrick #13127

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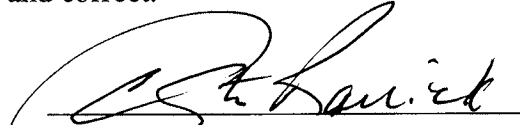
Facsimile: (785) 271-3116

VERIFICATION

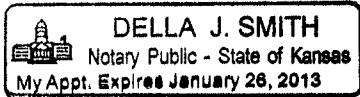
STATE OF KANSAS)
COUNTY OF SHAWNEE) ss:

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the Citizens' Utility Ratepayer Board, that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 25th day of June, 2009.




Notary Public

My Commission expires: 01-26-2013.

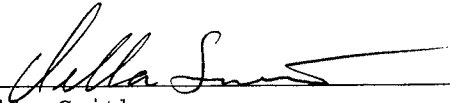
CERTIFICATE OF SERVICE

09-SWBT-937-PDR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed, or hand-delivered this 25th day of June, 2009, to the following:

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Della Smith

* Denotes those receiving the Confidential version