

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

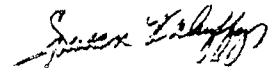
In the Matter of the Application of )  
Southwestern Bell Telephone Company )  
for Price Deregulation of Residential and )  
Business Telecommunications )  
Services in the Kinsley and Erie, Kansas )  
Exchanges Pursuant of K.S.A. 2008 )  
Supp. 66-2005 (q) (1). )

Docket No. 09-SWBT-936-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") on June 24, 2009. 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 residential and business telecommunications services in the Kinsley and Erie, Kansas exchanges pursuant to K.S.A. 2008 Supp. 66-2005(q)(1)(C) and (D).

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 residential service in the Kinsley and Erie exchanges pursuant to K.S.A. 66-2005(q)(1)(D), and for single-line business service in the Kinsley and Erie exchanges pursuant to K.S.A. 66-2005(q)(1)(C).

3. CURB has no objection to Staff's recommendation regarding the Kinsley exchange.

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

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 Erie exchange,

AT&T claims ALLTEL, which is not affiliated with the local exchange carrier, also provides residential and single-line business service as a provider of CMRS in the Erie 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.<sup>1</sup>

6. 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 residential line to more than one customer in the Erie exchange and if the carriers provide a single-line business line to more than one customer in the Erie exchange. The request further inquired how the service is provisioned.<sup>2</sup>

7. With respect to ALLTEL, Staff's Report and Recommendation indicates that ALLTEL "responded affirmatively, that it provides wireless service via its own facilities to more than one customer with a billing address in the Erie exchange."

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<sup>1</sup> Staff Report and Recommendation, p. 3.

<sup>2</sup> *Id.*

8. Staff's Report and Recommendation indicates that the failure of ALLTEL's response to differentiate between residential and business customers prompted Staff to send a follow-up data request to ALLTEL on June 23, 2009:

That said, since ALLTEL and Cox are the only two carriers identified by AT&T as competitors in the Erie exchange, Staff sent a follow-up data request to ALLTEL on June 23, 2009, *to be confident that ALLTEL's level of service would be sufficient to satisfy the requirements of K.S.A. 66-2005(q)(1)(C) and (D) as the second nonaffiliated telecommunications carrier.*" Staff asked ALLTEL *if it provides an access line to more than four customers in the Erie exchange, and how the service is provisioned.* ALLTEL responded in the affirmative, that it does provide wireless service via its own facilities to more than four customers with a billing address in the Erie, Kansas exchange. *Therefore, Staff feels confident that one or more lines could be residential lines and one or more lines could also be business lines. As stated previously, the telecommunications service is available to residential and business customers alike; therefore, there is no reason for Staff to believe that ALLTEL's service does not satisfy the second provider requirement of the statute.*<sup>3</sup>

9. 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 Erie exchange.

10. Staff's statement that it "feels confident that one or more lines "could be" residential lines and one or more lines "could also be" business lines" fails to comply with two statutory requirements.

11. First, K.S.A. 66-2005(q)(1)(C) and (D) both require "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] [residential]

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<sup>3</sup> *Id.*, at 4 (Emphasis added).

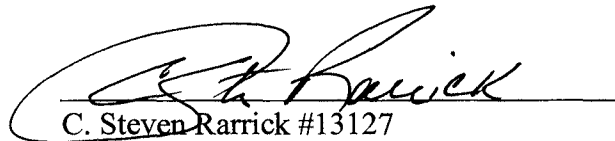
customers.” The plural use of the word, “customers” indicates the nonaffiliated carriers must provide business or residential service to more than one customer.<sup>4</sup>

12. Second, K.S.A. 66-2005(q)(1)(C) and (D) both require that the requesting local exchange carrier (AT&T) demonstrate that “*there are two or more nonaffiliated telecommunications carriers ... providing local telecommunications service to [business] [residential] customers.*” This means that the nonaffiliated carriers must be actually providing residential or business service to customers, not that they “could be” providing residential or business service to customers.

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 or residential local service in the Erie exchange under K.S.A. 66-2005(q)(1)(C) or (D).

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

Respectfully submitted,



C. Steven Rarrick #13127  
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<sup>4</sup> Staff’s initial data requests appear to acknowledge this requirement because they asked “if the carriers provided a residential access line to *more than one customer* in the Erie exchange and if the carriers provided a single-line business line to *more than one customer* in the Erie exchange. Staff Report and Recommendation, p. 3.

VERIFICATION

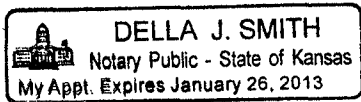
STATE OF KANSAS                    )  
COUNTY OF SHAWNEE            )     ss:

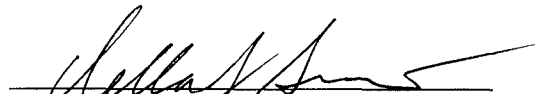
I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

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 25<sup>th</sup> day of June, 2009.



  
Notary Public

My Commission expires: 01-26-2013.

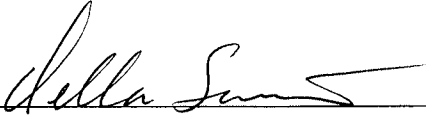
**CERTIFICATE OF SERVICE**

09-SWBT-936-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