

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

JUL 16 2009

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 to K.S.A. 2008 Supp. 66-)
2005(q)(1).)

Docket No. 09-SWBT-936-PDR  Docket Room

NOTICE OF FILING OF STAFF REPORT AND RECOMMENDATION

COMES NOW the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) and files its further report and recommendation on Southwestern Bell Telephone Company's application for price deregulation of residential and business services in the Erie, Kansas exchange.

WHEREFORE Staff requests the Commission consider its report and recommendation and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

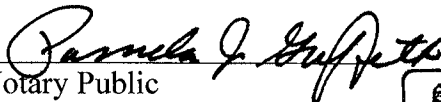
Colleen R. Harrell, of lawful age being first duly sworn upon oath states:

That she is the attorney for the Corporation Commission Staff in this matter; that she has read and is familiar with the foregoing Notice and that the statements made therein are true and correct to the best of her information, knowledge and belief.



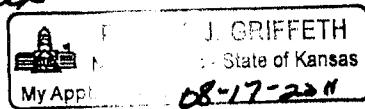
Colleen R. Harrell

Subscribed and sworn to before me Thursday, July 16, 2009.



Notary Public

My appointment expires:



**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Wright
Commissioner Moffet
Commissioner Harkins

FROM: Christine Aarnes

DATE: July 15, 2009

DATE SUBMITTED TO LEGAL: 7/15/09

DATE SUBMITTED TO COMMISSIONERS: 7/16/09

RE: Docket No. 09-SWBT-936-PDR

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 to K.S.A. 2008 Supp 66-2005(q) (1).

BACKGROUND:

This application was filed on June 5, 2009, by Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T), and requests price deregulation of residential and business telecommunications services in the Kinsley and Erie exchanges in the state of Kansas pursuant to K.S.A. 2006 Supp. 66-2005(q)(1)(C) and (D).

On June 10, 2009, Citizens' Utility Ratepayer Board (CURB) filed a request for intervention. On July 12, 2009, the Commission issued an order granting CURB's request for intervention.

On June 24, 2009, Commission Staff (Staff) filed its Report and Recommendation, in which Staff recommended approval of AT&T's entire application.

On June 25, 2009, CURB filed a response to Staff's Report and Recommendation and stated its opposition to Staff's recommendation with regard to the Erie exchange. CURB voiced concern that it could not identify with specificity any entity other than Cox Communications providing single-line residential and business services in the Erie exchange. CURB asserted AT&T failed to provide substantial confident evidence that the Erie exchange could be price deregulated pursuant to the statute. Since ALLTEL does not distinguish between residential and business customers, CURB asserted there has been no demonstration by AT&T that either company is actually providing business and/or residential service in the Erie exchange.

On June 26, 2009, the Commission issued an order granting AT&T's request for price deregulation in the Kinsley exchange and suspended for 30 days the portion of the application pertaining to the Erie exchange to allow for additional time for investigation.

On July 10, 2009, AT&T filed its response to the Commission's June 26, 2009 order.

ANALYSIS:

K.S.A. 66-2005 was amended in 2006 to include provisions that establish procedures for price deregulation of price cap regulated services. K.S.A. 66-2005(q)(1) governs price regulation for the residential and single-line business service basket and the miscellaneous services basket for local exchange carriers subject to price cap regulation. Specifically, K.S.A. 66-2005(q)(1)(C) and (D) address the price deregulation of telecommunications services of price cap carriers in exchanges in which there are fewer than 75,000 local exchange access lines served by all providers.

When considering deregulation of business lines, K.S.A. 66-2005(q)(1)(C) states:

In any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all business telecommunication services upon 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, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial radio services in that exchange.

When considering deregulation of residential lines, K.S.A. 66-2005(q)(1)(D) states:

In any exchange in which there are fewer than 75,000 local exchange access lines served by all providers, the commission shall price deregulate all residential telecommunication services upon 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 residential customers, regardless of whether the entity provides local service in conjunction with other services in that exchange area. One of such nonaffiliated carriers or entities shall be required to be a facilities-

based carrier or entity and not more than one of such nonaffiliated carriers or entities shall be a provider of commercial radio services in that exchange.

With regard to the Erie exchange, AT&T indicated that Cox is a facilities-based carrier providing residential and single-line business service to access lines in the Erie exchange. In addition to Cox, AT&T claimed ALLTEL, which is not affiliated with the local exchange carrier, also provides residential and single-line business service as a provider of commercial mobile radio services (CMRS) in the Erie exchange. In its application, AT&T cited number porting information that indicated number porting data as of April 30, 2009; E911 data as of March 31, 2009; and, documented service offerings by nonaffiliated CMRS providers to support its claims. 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.

Staff additionally queried the companies named as competitive carriers in AT&T's application. The request for information asked carriers if they provide a residential access 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.

Cox, as the nonaffiliated facilities-based carrier responded in the affirmative, that it provides a residential access line to more than one customer and a single-line business access line to more than one customer in the Erie, Kansas exchange using its own facilities. ALLTEL, when asked the same questions responded affirmatively, that it provides wireless service via its own facilities to more than one customer with a billing address in the Erie exchange.

Wireless carriers typically do not differentiate between residential or business customers – the rate and service are the same regardless of the type of customer subscribing to the service – and the service is available and provided to residential and business customers alike. This is a customary practice for carriers in the wireless industry and not something AT&T could control or change, at least with regard to wireless carriers not affiliated with AT&T.

Staff determined in its June 24, 2009 Report and Recommendation that, as required by K.S.A. 66-2005(q)(1)(C) and (D), there was a sufficient demonstration that there are two or more nonaffiliated telecommunications carriers or other entities, not affiliated with AT&T as the local exchange provider, providing telecommunications services to both residential and business customers in the Erie exchange. However, as noted above, CURB voiced concerns over the level of certainty regarding the provisioning of telecommunications services to residential and/or business customers by ALLTEL since ALLTEL does not distinguish between residential and business customers.

In its response filed July 10, 2009, AT&T filed copies of electronic mail (e-mail) messages from Gayle Ballard, Dea Autrey, Steve Ballard, Linda Powers, and Deb Miller regarding their personal or business cellular service providers.

With regard to residential service, AT&T filed a copy of an e-mail message from Gayle Ballard

noting that she resides in Erie, Kansas and has an ALLTEL account with four users on it. Staff attempted to contact Ms. Ballard, but was unable to reach Ms. Ballard to confirm the information. AT&T also provided an e-mail message from Dea Autrey stating that she resides in Erie and is an ALLTEL customer. No further contact information was provided for Ms. Autrey; therefore, Staff was unable to contact Ms. Autrey to verify this information.

With regard to business service, AT&T filed a copy of an e-mail message from Steve Ballard who states that he lives in Erie and uses ALLTEL cellular for his business service needs. Again, no further contact information was provided, even regarding the company for whom he represents; therefore, Staff was unable to contact Mr. Ballard to verify this information. AT&T also provided a copy of an e-mail message from Linda Powers who is the Deputy County Clerk for Neosho County. The e-mail message from Ms. Powers indicates Neosho County uses ALLTEL wireless for its employees' wireless service needs. On July 15, 2009, Staff contacted Ms. Powers who verified that Neosho County does use ALLTEL wireless service for its employees' phone needs in Erie, Kansas. Staff further verified that the Neosho County office is in Erie, Kansas. Lastly, AT&T provided a copy of an e-mail message from the Kansas Secretary of Transportation, Deb Miller, which states that the Kansas Department of Transportation contracts with US Cellular for the wireless needs of its employees in Erie, Kansas. On July 15, 2009, Staff attempted to contact Ms. Miller to verify this information; however, Ms. Miller was out of the office. Staff was able to reach Ms. Miller's assistant, Peggy Hansen-Nagy, who researched this information and provided Staff with a contact at the District Office for Erie, which is in Chanute, Kansas. Staff spoke with Debra Bailey at the Chanute office, who confirmed that the Kansas Department of Transportation contracts with US Cellular for all of its wireless service needs.

RECOMMENDATION:

Staff believes the information provided by AT&T that was verified by Staff would fulfill the requirements of K.S.A. 66-2005(q)(1)(C), with regard to business service in the Erie exchange; however, Staff has not been able to verify the information provided by AT&T with regard to residential service in the Erie exchange.

Staff recommends AT&T provide copies of bill statements and/or verified statements from subscribers and subscriber location documentation with its future applications, in order to fully demonstrate that the requirements of the statute have been met.

cc: Don Low Susan Duffy Pat Shurtz
Tom Stratton Colleen Harrell

CERTIFICATE OF SERVICE

09-SWBT-936-PDR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 16th day of July, 2009, to the following:

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