

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

STATE CORPORATION COMMISSION

JUL 17 2009



Docket No. 08-GIMT-1023-GIT

In the Matter of the Petition of Sprint  
Communications Company L.P., Sprint  
Spectrum L.P., and Nextel West Corp., d/b/a  
Sprint, to Conduct General Investigation  
into the Intrastate Access Charges of United  
Telephone Company of Kansas, United  
Telephone Company of Eastern Kansas,  
United Telephone Company of South  
Central Kansas, and United Telephone  
Company of Southeastern Kansas,  
d/b/a Embarq. )

**POST-HEARING REPLY BRIEF OF  
THE CITIZENS' UTILITY RATEPAYER BOARD**

COMES NOW the Citizens' Utility Ratepayer Board ("CURB") and files its Post-Hearing Reply Brief. In support of its Post-Hearing Reply Brief, CURB states as follows:

**A. Introduction.**

1. CURB's positions on the issues to be decided by in this docket were articulated in its post-hearing brief. With the exception of the brief responses below, CURB is satisfied that the post-hearing briefs of Sprint and AT&T have not argued any relevant points or issues not covered by the post-hearing briefs of CURB, Staff, and Embarq. By declining to reiterate its positions in this reply brief, CURB is not abandoning any positions previously taken, nor should its silence be interpreted as acquiescence to any contrary positions of Sprint and AT&T presented in their post-hearing briefs.

**B. Parity Is Not Required Under K.S.A. 66-2005(c).**

2. Consistent with its Petition<sup>1</sup> and the testimony of its witness James Appleby,<sup>2</sup> Sprint premises its post-hearing brief on the erroneous position that the language of K.S.A. 66-2005(c) requires that Embarq's intrastate access charges be reduced to the same level as Embarq's interstate access charges.<sup>3</sup>

3. AT&T likewise continues to contend<sup>4</sup> that the language of K.S.A. 66-2005(c) mandates parity: "As one element of this process, the legislature *mandated* that implicit subsidies be removed from access rates; not for three years, but for as long as the competitive market continued to exist."<sup>5</sup> AT&T's position is intriguing, given the fact it (SWBT) took the exact opposite position in Docket No. 01-GIMT-082-GIT ("082 Docket"):

The Kansas State Telecommunications Act of 1996 ("the 1996 Act or the Act") defined for the Kansas Corporation Commission ("KCC or Commission") the manner in which one-time access charge reductions were to occur for non-rural telephone companies, using a phase down to interstate levels, beginning after the passage of the Act and to be completed within three years thereafter. The non-rural companies (SWBT and Sprint United) implemented those access charge reductions as mandated by the Act and approved by the KCC in Docket 190,492-U. Although the Act mandates additional access reductions to interstate levels for rural companies to occur every two years thereafter, it does not allow for additional reductions in the access rates of non-rural, price cap companies. K.S.A. 66-2005(c). Without specific authorization to mandate additional access reductions, the KCC cannot impute such authority into the Act.<sup>6</sup>

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<sup>1</sup> Sprint Petition, ¶ 1 ("Sprint seeks an immediate reduction in the intrastate carrier access rates charged by the Embarq companies to be in parity with its interstate access charges *as required by K.S.A. 66-2005(c)*." (emphasis added)).

<sup>2</sup> Appleby D., at 2 ("K.S.A. 66-2005(c) *requires* non-rural LECs (i.e., AT&T and Embarq) to reduce their intrastate access charges to interstate levels, subject to the Commission's approval." (emphasis added)).

<sup>3</sup> Post-Hearing Brief of Sprint Communications Company L.P., Sprint Spectrum, L.P., and Nextel West Corp. ("Sprint Brief"), p. 1 ("The time is now for the Commission *to comply with the plain language of the statute* and the will of the legislature and *require Embarq's intrastate access charges to be reduced to the same level as that Embarq charges for interstate calls using the identical network facilities.*" (emphasis added)). (Because Sprint failed to number its paragraphs as required by K.A.R. 82-1-219(c), CURB will reference only the page number).

<sup>4</sup> AT&T witness Lawrence Bax testified that testified that with the exception of making sure a carrier's rates don't fall below their costs, the Commission's only authority with respect to intrastate access rate reductions is the ministerial act of approving such reductions. Bax, Tr. Vol. 2, at 252-253. (Because AT&T failed to number its paragraphs as required by K.A.R. 82-1-219(c), CURB will reference only the page number).

<sup>5</sup> Post-Hearing Brief of AT&T ("AT&T Brief"), p. 10 (emphasis added).

<sup>6</sup> Brief of Southwestern Bell Telephone Company, March 19, 2001, KCC Docket No. 01-GIMT-082-GIT, p. 1.

4. AT&T goes further in its attempt to argue parity:

Rather than attempting to rebalance 100% of the access subsidy to other local service rates and/or to the KUSF at that time, *the parties agreed to a partial reduction in access, with the intent of continuing the process of reaching interstate parity in the future.*<sup>7</sup>

5. AT&T is attempting to rewrite history, without any supporting facts in the record.

The fact is, nothing in the 082 Docket S&A references any intent by the parties to continue the process of reaching interstate parity in the future, and AT&T knows this to be the fact. AT&T witness Lawrence Bax admitted, “I’m not saying that that expectation of a revisiting of rates at a later time was in the S&A that was signed by AT&T, not as an explicit statement within the Stipulation, to the best of my recollection.”<sup>8</sup>

6. AT&T’s Brief, however, attempts to support this erroneous statement by the following quotation: “The Stipulation is reasonable because it achieves interstate and intrastate parity, or as close to parity as is reasonable at this time.”<sup>9</sup> While AT&T fails to accurately reference the Order this quote is taken from, it appears to have taken from the Order Approving Stipulation and Agreement, September 25, 2001, ¶ 30. Unfortunately, neither the quotation nor the Order itself provides any support to AT&T’s contention that the parties intended to revisit the process of reaching interstate parity in the future.

7. Contrary to the erroneous premise mistakenly relied upon by Sprint and AT&T, the Commission has already determined in this and prior dockets that it has broad discretion on this issue and is not mandated to arrive at any particular conclusion.<sup>10</sup> “The Act does not

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<sup>7</sup> AT&T Brief, p. 8 (emphasis added).

<sup>8</sup> Bax, Tr. Vol. 2, at 247.

<sup>9</sup> AT&T Brief, p. 8.

<sup>10</sup> Order Opening General Investigation and Denying Motion to Dismiss, ¶ 43. *See also*, Order on Briefed Issues, KCC Docket No. 99-GIMT-784-GIT, November 30, 1999, ¶ 27.

mandate non-rural companies to make further reductions in intrastate access rates beyond the three-year period referenced in K.S.A. 1998 Supp. 66-2005(c).”<sup>11</sup>

8. As a result, Sprint and AT&T premise their entire briefs on the erroneous interpretation that K.S.A. 66-2005(c) requires parity. This interpretation is erroneous; the Commission has broad discretion under K.S.A. 66-2005(c), and nothing has changed since Docket No. 01-GIMT-082-GIT to require further reductions at this time.

**C. Further Intrastate Access Reductions Should Not be Ordered in Light of Pending Intercarrier Compensation Proposals Before the Federal Communications Commission that Penalizes Early Adopters.**

9. With respect to the further harm Kansas consumers will receive if the Commission reduces Embarq’s intrastate access rates and the FCC subsequently takes action that does not give consideration to “early adopter” states such as Kansas,<sup>12</sup> Sprint argues the Commission “simply cannot predict what will happen at the federal level” and AT&T argues “there is very little chance the FCC would act in such a manner.” Given the specifics contained in Appendices A and C of the Intercarrier Compensation Order,<sup>13</sup> and the statement by the FCC that, “we can wait no longer to begin the process of comprehensive intercarrier compensation reform”,<sup>14</sup> both Sprint and AT&T appear to be urging this Commission to hide its head in the sand and ignore the FCC’s own declaration that it will not allow further unnecessary delays to

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<sup>11</sup> Order on Briefed Issues, KCC Docket No. 99-GIMT-784-GIT, November 30, 1999, ¶ 27.

<sup>12</sup> Aarnes D., at 2-6; Aarnes, Tr. Vol. 3, at 609; Idoux R, at 10-12; Idoux SR, at 20.

<sup>13</sup> *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*; WC Docket No. 05-337; CC docket No. 96-45; WC Docket No. 05-337; CC Docket No. 96-45; WC Docket No. 03-109; WC Docket No. 06-112; CC Docket No. 00-200; CC Docket No. 96-98; CC Docket No. 01-92; CC Docket No. 99-68; WC Docket No. 04-36; Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, rel. Nov. 5, 2008 (Intercarrier Compensation Order); Appendix A, ¶ 295, ¶¶ 303-325; Appendix C, ¶ 290, ¶¶ 298-321.

<sup>14</sup> Intercarrier Compensation Order, Appendix A, ¶ 189; Appendix C, ¶ 184

intercarrier compensation reform. Reform is coming, sooner than later, and the Commission should not ignore the real threat that further harm to Kansas consumers may result from reducing Embarras's intrastate access rates at this time.

**D. The KUSF May Not Be Used As A Revenue Recovery Mechanism.**

10. AT&T argues the Commission can rebalance some or all of any proposed intrastate access revenue reduction to the KUSF.<sup>15</sup> While AT&T admits this will cause issues with the KUSF being cost-based, AT&T states it is not appropriate to consider these concerns when making the decision to lower access to parity.<sup>16</sup> CURB finds AT&T's argument unpersuasive and lacking credibility, since these *exact concerns* were raised by AT&T (then, SWBT) in the 082 Docket:

However, although the Act allows for recovery of access reductions from local service rates or the KUSF, at this point in the process of rebalancing, the Commission should order that SWBT obtain recovery of all lost revenues due to access reductions through increases in local service rates, not from the KUSF. Over the past few years, the Commission has worked diligently to establish the KUSF as a cost-based fund (SWBT Docket No. 98-SWBT-677-GIT, Sprint United Docket No. OO-UTDT-455GIT, and KUSF General Investigation Docket No. 99-GIMT-326-GIT.) *Rebalancing a portion of an additional access reduction for SWBT into the KUSF could cause the fund to be out of compliance with the requirement that it be cost-based. K.S.A. 66-2008(d).*<sup>17</sup>

11. AT&T's position that the Commission should not consider the administrative effort and cost of performing a cost study to develop a cost model is likewise without merit. Staff witness Sandy Reams testified that the cost model performed nearly 10 years ago was based on an FCC cost model with Kansas specific input, but there isn't a current FCC model available that takes into account new technologies, nor is Ms. Reams aware of whether Sprint, AT&T, or any VoIP provider would be willing to provide their cost to develop such a cost

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<sup>15</sup> AT&T Brief, pp. 35-38.

<sup>16</sup> *Id.*, at 36.

<sup>17</sup> Brief of Southwestern Bell Telephone Company, March 19, 2001, KCC Docket No. 01-GIMT-082-GIT, p. 8-9 (emphasis added).

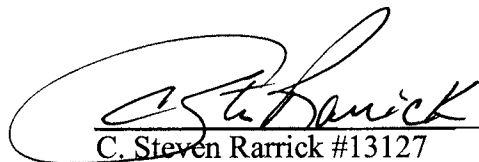
model.<sup>18</sup> Moreover, even ignoring the modeling input issues, examining Embarq's embedded costs would be a lengthy and expensive proceeding, the costs of which would ultimately be borne by ratepayers.<sup>19</sup>

12. AT&T would have the Commission completely ignore these facts – something the Commission simply cannot do in considering whether reducing Embarq's intrastate access rates are in the public interest.

**E. Conclusion.**

13. CURB respectfully requests that the Commission deny the request of Sprint and AT&T to further reduce Embarq's intrastate access rates.

Respectfully submitted,



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<sup>18</sup> Reams, Tr. Vol. 3, at 653.

<sup>19</sup> *Id.*, at 654-655.

**VERIFICATION**

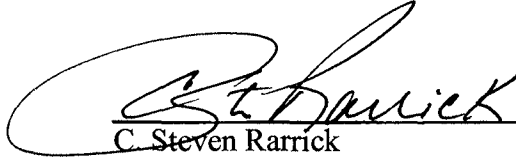
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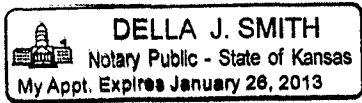
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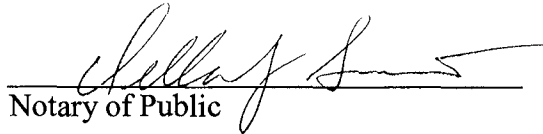
I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner; 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 17th day of July, 2009.



  
Notary of Public

My Commission expires: 01-26-2013.

**CERTIFICATE OF SERVICE**

08-GIMT-1023-GIT

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 17th day of July, 2009, to the following:

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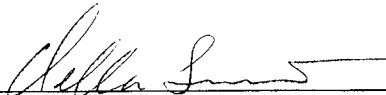
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