

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

STATE CORPORATION COMMISSION

AUG 11 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



**SOUTHWESTERN BELL TELEPHONE COMPANY'S PETITION FOR
RECONSIDERATION OF ORDER APPROVING IN PART AND DENYING IN PART
APPLICATION FOR PRICE DEREGULATION OF BUSINESS AND RESIDENTIAL
TELECOMMUNICATIONS SERVICES IN THE ERIE, KANSAS EXCHANGE**

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T") pursuant to K.S.A. 66-118b, K.S.A. 2008 Supp. 77-529 and K.A.R. 82-1-235, and petitions the Kansas Corporation Commission ("KCC" or "Commission") for reconsideration of its Order Approving In Part and Denying In Part Southwestern Bell Telephone Company's Application for Price Deregulation of Business and Residential Telecommunications Services in the Erie, Kansas Exchange dated July 24, 2009 (hereinafter the "Order"), in the above referenced docket. In support of its petition, AT&T shows the Commission as follows:

Summary

1. Although AT&T appreciates the Commission's approval of at least a portion of its application, the Commission's ruling in this proceeding would require that verified, customer-specific information be scrutinized in order to confirm that wireless service is available to customers in a specific exchange. This ruling effectively modifies the process that has been used until now, i.e. AT&T provides exchange-specific collateral from wireless companies as evidence that wireless service is available.

2. The move, in this proceeding, from company provided information and collateral regarding wireless service coverage and availability areas to a regulatorily mandated requirement of verified, customer-specific information appears to contemplate or promote an unfounded theory that while a wireless carrier offers service in a specific area, they may not actually be providing service to any individual business or residential customers in that area. This contemplation ignores the fact and the reality that economics of wireless service are very different than competitive local exchange carrier (“CLEC”) telephone service. For example, a reselling CLEC might incur very little fixed cost in order to claim that they are offering service in a certain geography because they rely on the ILEC network. Consequently, a resale CLEC may claim that their service is available in various geographic areas when they actually are not providing any service at all. In sharp contrast, wireless carriers must incur very large, fixed costs (e.g. towers, transmission equipment, backhaul facilities, switching arrangements, interconnection facilities) in order to claim that service is available in a certain geographic area. One broad estimate is that a carrier must process about 300,000 minutes of use each month in order to simply break-even on the fixed cost of providing service from one cell tower. In view of these significant requirements, coupled with pervasive evidence that the global culture is transitioning to wireless services, it is just not practical to question whether a national wireless carrier such as Verizon/Alltel or U.S. Cellular would include a specific Kansas community/exchange in their coverage map, have cell sites in the area, but not actually be serving any customers. The Commission should be willing to rely on exchange/community-specific sales collateral from national wireless carriers as evidence that wireless service is being provided rather than a statutory interpretation that ignores the reality of the marketplace and imposes significant new regulatory burdens not intended by the Kansas legislature when it rewrote the statute in 2006.

Relevant Procedural History

3. On June 5, 2009, AT&T filed its application for price deregulation of residential and business telecommunications services in its Kinsley and Erie, Kansas exchanges.

4. On June 12, 2009, the Commission issued its order granting the Citizen's Utility Ratepayer's Board ("CURB") petition to intervene.

5. On June 24, 2009, the Commission Staff filed its Report and Recommendation in this proceeding. Staff recommended approval of the application and concluded that "Staff believes AT&T has demonstrated that the requirements of K.S.A. 66-2005(q)(1)(C) and (D) have been satisfied in the Kinsley and Erie exchanges." Staff Report and Recommendation at p. 4.

6. On June 25, 2009, CURB filed its response opposing Staff's Report and Recommendation with regard to the Erie exchange.

7. On June 26, 2009, the Commission issued its order approving AT&T's application for price deregulation of residential and business telecommunications services in the Kinsley, Kansas exchange. The Commission's order suspended AT&T's application with regard to the Erie exchange for an additional 30-days to allow time for additional investigation of the application and consideration of Staff's Report and Recommendation and CURB's objection. June 26, 2009 Order at ¶ 15.

8. On July 10, 2009, AT&T filed a response to the Commission's June 26, 2009 Order suspending AT&T's application with regard to the Erie exchange, including evidence of individuals and businesses served with cellular/wireless service from Alltel.

9. On July 15, 2009, Staff submitted a follow-up Report and Recommendation to the Commission. In its report, Staff concluded that Cox satisfied the statutory requirement for non-affiliated facilities based carriers. Staff further noted that ALLTEL provides wireless service to more than one customer with a billing address in the Erie exchange. July 15th Report and Recommendation at p. 3. In addition Staff recognized and reported that:

[w]ireless 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.

Id. However, even in light of this widely recognized wireless industry standard and practice, Staff sought to verify the additional information provided by AT&T concerning actual end-users, residential and business, of ALLTEL and U.S. Cellular’s service in the Erie exchange. Staff’s July 15th Report and Recommendation concluded that while Staff could verify the statutory requirements with regard to business telecommunications services being provided by a wireless carrier, it could not for residential service. Further, Staff recommended “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.” *Id.* at p. 4.

10. Subsequently, on July 24, 2009, the Commission issued its order in this proceeding granting in part AT&T’s application for price deregulation of business telecommunications services, but denying price deregulation of residential telecommunications services in the Erie exchange. In denying that part of the application concerning residential services, the Commission concluded that “the request for price deregulation for residential telecommunications services in that exchange should be denied due to lack of verification.” July 24th Order at ¶ 9. The Commission’s order adopted Staff’s July 15th Report and Recommendation “as if fully set out herein.” *Id.*

Petition for Reconsideration

11. AT&T hereby requests the Commission reconsider those portions of its July 24th Order denying AT&T’s application for price deregulation of residential telecommunications

services in the Erie, Kansas exchange and adopting extra-statutory, vague, ambiguous, arbitrary and capricious “verification” requirements without due process of law that led to the denial of AT&T’s application.

12. In both its June 24th and July 15th Report and Recommendations, the Commission Staff succinctly recognized and put forward its view of the current state of how the wireless industry operates for the purposes of proceedings such as those contemplated under K.S.A. 66-2005(q)(1)(C) and (D). See June 24th Report and Recommendation at p. 4; July 15th Report and Recommendation at p.4. In these proceedings, AT&T has consistently agreed with Staff’s understanding of the wireless industry, Staff’s previously relied upon verification process and Staff’s interpretation of the wireless information provided as sufficiently demonstrating that in the identified exchanges, including the Erie, Kansas exchange, two or more nonaffiliated telecommunications carriers, including wireless carriers, are providing service to residential and business customers. AT&T has consistently met and satisfied its statutory burden of proof for price deregulation.

13. In this proceeding, however, CURB now seeks to have the Commission forget everything we know to be true about the most competitive segment of the telecommunications marketplace – wireless. CURB’s position to require an additional or higher level of “verification” of the provisioning of any specific wireless or even facilities-based service in this proceeding would do nothing less than effectively turn back the clock on the 2006 legislative rewrite of the price deregulation provisions of K.S.A. 66-2005(q). CURB’s position would have the Commission ignore the realities of what it takes financially to actually provide cellular or wireless service in Kansas’ smaller communities and more rural exchanges, unlike certain of the CLEC models of competition. CURB’s position would have the Commission ignore the fact that there are more wireless subscribers in Kansas today than there are traditional end-user switched

access lines.¹ CURB's position would do all of this simply because it fails to recognize that, as an industry, wireless telecommunications providers offer their services in a wildly competitive marketplace, without the trappings, burdens or definitions of archaic, legacy rate regulation.² The wireless industry does not function or do business like a regulated local exchange company.³ It is this reality that CURB does not seem to appreciate or want to understand, it is instead attempting to fit the wireless business model in a regulatory box for purposes of this proceeding and that leads to an absurd result.

14. Surely, the Commission does not believe that, as CURB's articulated positions would argue or suggest, in an era when wireless subscribers far out number landlines in the state there may be no residential wireless subscribers in the Erie, Kansas exchange. AT&T simply does not believe it and further, in AT&T's July 10th response, provided additional proof of the contrary. Instead, AT&T submits to the Commission that, as the Commission's own staff once previously and correctly recognized, both Alltel and US Cellular are significant wireless service providers who market to **residential and business customers** in the Erie exchange. Accordingly, AT&T requests the Commission reconsider its adoption of CURB's position in this proceeding and, instead, adopt the reasonable and well articulated position of the Commission Staff's June 24th Report and Recommendation and conclude that AT&T has met its statutory

¹ Local Telephone Competition: Status as of June 30, 3008; Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, July 2009 at Tables 9, 10 and 14. According to the FCC's July 2009 Report there are approximately 1.35 million CLEC and ILEC served end-user switched access lines in Kansas, while there are roughly 2.32 million mobile wireless subscribers in the state. A difference of almost 1 million subscribers/end-users.

² Further, contrary to CURB's assertions, there is also simply no statutory requirement that AT&T show there to be service to more than one residential or one business customer. Had the legislature intended such an explicit showing, it could have included such a requirement as it did when discussing how many alternative providers serve an exchange. The Kansas legislature included no such explicit requirement. Similarly, the language employed by the statute refers to "telecommunications services" and contains no requirement that a wireless carrier provide "single line business" or a "standalone residential access line."

³ Just one example of this is the fact that in the wireless world, a customer is not limited to the regulatory restrictions of declaring it requested service as either residence or business. Instead, a wireless customer is free to purchase one telephone and use it for both residential and business service.

burden of proof having demonstrated that the requirements of K.S.A. 66-2005(q)(1)(C) and (D) have been satisfied for the Erie exchange.

15. AT&T also requests the Commission reconsider the imposition of additional levels of “verification” requirements in this proceeding. The Commission Staff’s past practice of verifying the competitive information provided by AT&T ensured compliance with the statute and involved no overtly burdensome regulatory requirements aimed at making the task of seeking price deregulation more burdensome. The Commission must recognize that “verification” is a legal term of art and its use and definition in this proceeding, as well as in future proceedings, when applied to AT&T’s application is vague, ambiguous, arbitrary and capricious. Similarly, denial of AT&T’s instant application due to “lack of verification” before a formal, defined “verification” requirement existed, is a clear deprivation of AT&T’s constitutional right to due process.⁴ Again, the ordered “verification” requirements resulting from CURB’s unreasonable and unrealistic positions in this proceeding are unnecessary, arbitrary, capricious and unworkable. Competitors are, understandably, unwilling to provide AT&T with their specific customer information; customers who have a competitor’s service similarly may not wish to share this information with another competing provider; and, being required to convince a competitor’s customer give a sworn statement on behalf of AT&T is at once both unduly burdensome, more likely than not unworkable and certainly not contemplated by the applicable statute. As a result, the vague and arbitrary additional verification standards urged by CURB will effectively short circuit the legislative intent of the price deregulation statutory provisions enacted in 2006. Instead, AT&T urges the Commission to reconsider and affirm the methodology and statutory interpretation previously used by Staff to confirm that wireless providers do provide services in the exchanges at issue. AT&T believes the approach

⁴ AT&T’s July 10, 2009, supplemental responsive filing did provide confirmation that wireless providers serve both residence and business consumers with service in the Erie, Kansas exchange.

previously employed by the Commission was a very reasonable, logical and common sense approach to the intent, application and implementation of the statutory standard.⁵

WHEREFORE, for AT&T respectfully requests an order of the Commission granting its petition for reconsideration of Commission's July 24, 2009 Order in the above captioned proceeding for the above and foregoing reasons.

Respectfully submitted,



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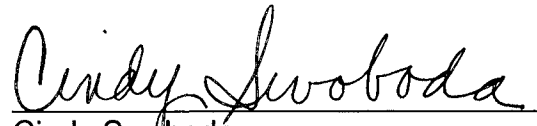
Attorney for Southwestern Bell Telephone
Company d/b/a AT&T Kansas

⁵ AT&T recognizes that the market is such that wireless competitors may not always differentiate billing between business and residence accounts. Nevertheless, if a national carrier confirms that it offers service generally in an area, it is both reasonable and logical to assume that the carrier serves both business and residential customers in that area.

VERIFICATION

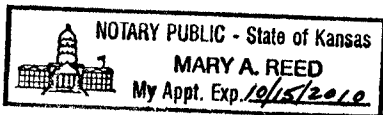
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Cindy Swoboda, of lawful age, and being first duly sworn, now state: I am Area Manager – Regulatory Relations. I have read Southwestern Bell Telephone Company's Petition for Reconsideration of Order Approving in Part and Denying in Part Application for Price Deregulation of Business and Residential Telecommunications Services in the Erie, Kansas Exchange, and verify the statements contained herein to be true and correct to the best of my knowledge and belief.



Cindy Swoboda

Subscribed and sworn to before me this 11th day of August, 2009.





Notary Public

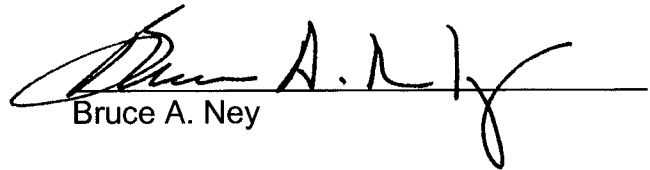
My appointment expires: October 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of Southwestern Bell Telephone Company's Petition for Reconsideration of Order Approving in Part and Denying in Part Application for Price Deregulation of Business and Residential Telecommunications Services in the Erie, Kansas Exchange was sent via U.S. Mail or hand-delivered on this 11th day of August, 2009, to:

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August 11, 2009

Susan K. Duffy
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STATE CORPORATION COMMISSION

AUG 11 2009

Re: KCC Docket No. 09-SWBT-936-PDR

Dear Ms. Duffy:

Enclosed you will find an original and seven copies of Southwestern Bell Telephone Company's Petition for Reconsideration of Order Approving in Part and Denying in Part Application for Price Deregulation of Business and Residential Telecommunications Services in the Erie, Kansas Exchange, for filing in the above referenced docket.

Sincerely,

Bruce A. Ney
General Attorney

BAN:mr
Enclosures

cc: Parties of Record