

STATE CORPORATION COMMISSION

AUG 21 2009



**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) Docket No. 09-SWBT-937-PDR
Dodge City, Garden City, Humboldt,)
Larned and Lindsborg, Kansas)
Exchanges Pursuant to K.S.A. 2008)
Supp. 66-2005(q)(1).)

**CURB'S RESPONSE TO SWBT'S
PETITION FOR LIMITED RECONSIDERATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and files its response to Southwestern Bell Telephone Company's ("AT&T") Petition for Limited Reconsideration of a Portion of the Order Approving Application for Price Deregulation of Business Telecommunications Services in the Lindsborg, Kansas Exchange ("Petition for Limited Reconsideration"). In support of its response, CURB states and alleges as follows:

I. Procedural History

1. On June 5, 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 12, 2009, the Commission granted CURB's Petition to Intervene.

3. 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).

4. On June 25, 2009, CURB filed its response and opposition to Staff's Report and Recommendation, asserting AT&T had failed to provide substantial competent evidence sufficient to support granting price deregulation of single-line business service in the Lindsborg exchange under K.S.A. 66-2005(q)(1)(C). Specifically, CURB argued that AT&T had failed to demonstrate that the alternative carriers identified by AT&T were providing local telephone service to more than one business customer, as required by statute.

5. On June 26, 2009, the Commission issued its order approving AT&T's application for price deregulation of business telecommunications services in the Dodge City, Garden City, Humboldt and Larned, Kansas exchanges. With respect to the Lindsborg exchange, the Commission suspended AT&T's application 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.¹

6. On July 9, 2009, AT&T filed its response to the Commission's June 26th Order, where it provided the demonstration required by K.S.A. 66-2005(q) that two or more nonaffiliated telecommunications carriers provided local telephone service to at least two business customers.

7. On July 16, 2009, Staff filed a second Report and Recommendation, wherein Staff concluded that the requirements of K.S.A. 66-2005(q)(1)(c) had been satisfied in the Lindsborg exchange by AT&T's July 9th filing and recommended that the

¹ June 26, 2009 Order, ¶ 23.

Commission grant AT&T's request for price deregulation of business services in the Lindsborg exchange. Staff additionally recommended in its July 16th Report and Recommendation that AT&T provide copies of bill statements and/or verified statements from the subscribers and location documentation with its future applications in order for AT&T to "fully demonstrate that the requirements of the statute have been met."²

8. On July 24, 2009, the Commission issued its Order Approving Application for Price Deregulation of Business Telecommunications Services in the Lindsborg Exchange. In the July 24th Order, the Commission adopted Staff's Report and Recommendation, finding it to be thorough and reasonable. Consistent with Staff's recommendation, the Commission suggested that AT&T provide the documentation recommended by Staff in future price deregulation applications.³

II. Response to Summary Provided by AT&T

9. In the "summary" contained in its Petition for Limited Reconsideration, AT&T states that the Commission's suggestion that AT&T provide the documentation recommended by Staff in future price deregulation applications "effectively modifies the process that has been used until now, i.e., AT&T provides exchange-specific collateral from wireless companies (non-consumer specific) as evidence that wireless service *is available* and that information is verified by the Commission Staff."⁴

² Staff Report and Recommendation, July 16, 2009, p. 3.

³ Order Approving Application for Price Deregulation of Business Telecommunications Services in the Lindsborg Exchange, ¶ 8.

⁴ Southwestern Bell Telephone Company's Petition for Limited Reconsideration of a Portion of the Order Approving Application for Price Deregulation of Business Telecommunications Services in the Lindsborg, Kansas Exchange ("Petition for Limited Reconsideration"), ¶ 1.

10. AT&T has misrepresented the process that has been used until now. It is true that in this and previous price deregulation applications filed by AT&T, AT&T merely provides nonspecific evidence regarding alternative carriers that *may be offering* wireless telephone service in the applicable exchange. However, contrary to AT&T's representation, Staff does not merely verify the *availability* of wireless services; in all of the price deregulation applications filed by AT&T, Staff has verified that the alternative carriers were *actually providing service to more than one customer*.

11. Because the evidence submitted in AT&T's application is routinely insufficient to constitute substantial competent evidence upon which the Commission could approve price deregulation under K.S.A. 66-2005(q),⁵ Staff has been placed in the untenable position of either recommending against approval of the application, or carrying AT&T's burden of "demonstrating" the criteria required under K.S.A. 66-2005(q). While the burden of demonstrating that the alternative carriers provide local service to more than one customer should be AT&T's burden as the "requesting local telecommunications carrier,"⁶ Staff appears to have chosen to accept this burden and has developed data requests to obtain information sufficient to meet this burden. As a result, contrary to AT&T's representations, Staff has not simply verified that wireless service is simply *available*; Staff has carried AT&T's burden of demonstrating that two or more

⁵ See discussion of AT&T's burden under K.S.A. 66-2005(q) in Section III below.

⁶ K.S.A. 66-2005(q)(1)(C): 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 mobile radio services in that exchange; (emphasis added).*

carriers are actually *providing* local telephone service to more than one customer as required by K.S.A. 66-2005(q).

12. AT&T is statutorily required to meet this burden, and the evidence is easily obtainable through discovery upon the issuance of a protective order. As a result, the process that has been previously used *should be changed* – AT&T should be required to make the statutorily required demonstration that two or more carriers are *providing* local telephone service to more than one customer, not merely that alternative service is *available* to customers in the applicable exchange.

III. Response to Petition for Limited Reconsideration

13. In its Petition for Limited Reconsideration, AT&T curiously focuses on CURB and purported positions of CURB, rather than on the recommendation made by Staff that was adopted by this Commission. AT&T makes numerous unfounded allegations about CURB’s position regarding price deregulation under K.S.A. 66-2005(q) in its Petition for Limited Reconsideration:

- “CURB sought to have the Commission forget everything we know to be true about the most competitive segment of the telecommunications marketplace – wireless.”
- “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 do all 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.”⁷

14. Contrary to AT&T’s unfounded assertions, CURB’s position in this and other price-deregulation dockets has nothing to do with “turning back the clock,”

⁷ Petition for Limited Reconsideration, ¶ 13.

“ignoring reality,” or “archaic, legacy rate regulation.” CURB does, however, support Staff’s recommendation and the Commission’s adoption of a “higher level of verification”⁸ of the *provisioning* of alternative local telecommunications service. The Commission was both legally and factually correct in requiring AT&T to make the “demonstration” *required* under K.S.A. 66-2005(q), the price deregulation provisions AT&T aggressively lobbied the legislature to enact.

15. As CURB pointed out to the Commission in CURB’s Response and Opposition to Staff’s Report and Recommendation, 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.

16. AT&T takes issue with CURB’s interpretation that the plural use of the word “customers,” yet fails to acknowledge that Staff also shares this interpretation. Staff data requests, utilized in all of AT&T’s recent price deregulation applications, specifically request confirmation from each alternative carrier identified by AT&T that it *is providing service to more than one customer:*

Is ALLTEL *providing* a [residential] [single-line business] access line *to more than one customer* in the [SPECIFIED], KS exchange? If yes, please explain how ALLTEL is provisioning the service (e.g., resale, LWC, own facilities).⁹

17. CURB has difficulty understanding AT&T’s objection to meeting the minimal statutory criteria to obtain price deregulation. All AT&T must do is demonstrate

⁸ Petition for Limited Reconsideration, ¶ 13.

⁹ Staff June 5, 2009, Information Request Nos. 5-9 to ALLTEL (emphasis added).

that there *are* two or more nonaffiliated telecommunications carriers that *provide* local telephone service to two business customers. This certainly isn't a high hurdle to clear in order to obtain price deregulation in a specified exchange. AT&T has been absolved of its prior burden of proving that *actual competition exists* – it now must merely demonstrate that there are two other nonaffiliated carriers that actually provide local service to *only two* customers in the exchange. Surely AT&T, with all its resources, can meet this minimal burden.

18. Instead, AT&T would have this Commission conclude that evidence that a wireless carrier “*offers service in a specific area*”¹⁰ or “*is available*”¹¹ meets its statutory burden under K.S.A. 66-2005(q). AT&T’s proposition that it must merely identify wireless carriers that *offer* local service or that wireless service *is available* in the applicable exchange is without merit and contrary to the plain language contained in K.S.A. 66-2005(q).

19. AT&T goes further in its twisted interpretation of the unambiguous language contained in K.S.A. 66-2005(q), by suggesting that the Commission should engage in speculation about whether there *may or may not* be any business or commercial wireless subscribers in the Lindsborg, Kansas exchange.¹² The statute contains no language suggesting the Commission should speculate, assume, or estimate the number of wireless subscribers that *may or may not* be in an exchange. To the contrary, the statute clearly and unambiguously states that the carrier requesting price deregulation must make a *demonstration* that there *are* (as opposed to *may*) two or more nonaffiliated

¹⁰ Petition for Limited Reconsideration, ¶ 2.

¹¹ Petition for Limited Reconsideration, ¶ 1.

¹² Petition for Limited Reconsideration, ¶ 14.

telecommunications carriers that *provide* local telephone service to business *customers* (plural).

20. AT&T goes on to argue that its July 10, 2009¹³ response to the Commission's June 26th Order "provided additional proof to the contrary" (that there may be no business or commercial wireless subscribers in the Lindsborg, Kansas exchange). To the contrary, what AT&T's July 9, 2009 response to the Commission's June 26th Order proved is that AT&T is able to meet its burden under K.S.A. 66-2005(q) to demonstrate that two or more nonaffiliated telecommunications carriers are providing local telephone service to at least two business customers. Furthermore, AT&T could have met this burden shortly after filing its application much more easily through the use of data requests issued under the Commission's protective order.

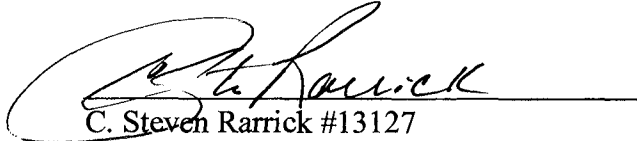
IV. Conclusion

21. The Commission's July 24th Order suggesting that AT&T provide the documentation recommended by Staff in future price deregulation applications is reasonable and consistent with the requirements of K.S.A. 66-2005(q). The burden of demonstrating two or more nonaffiliated telecommunications carriers are providing local telephone service to business customers is AT&T's burden, not Staff's burden. AT&T should be required to meet this burden in each application for price deregulation it chooses to file under K.S.A. 66-2005(q).

22. As a result, CURB respectfully requests that the Commission deny AT&T's Petition for Limited Reconsideration.

¹³ CURB assumes AT&T is referring to its July 9, 2009 response to the Commission's June 26th Order.

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

Citizens' Utility Ratepayer Board

1500 S.W. Arrowhead Road

Topeka, KS 66604

Telephone: (785) 271-3200


Facsimile: (785) 271-3116

VERIFICATION

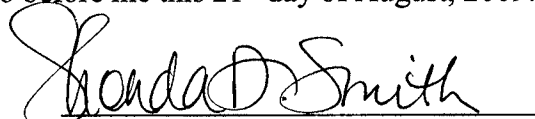
STATE OF KANSAS)
COUNTY OF SHAWNEE) ss:

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

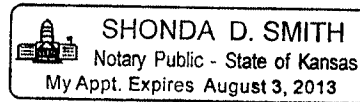
That he is an attorney for the Citizens' Utility Ratepayer Board, that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 21st day of August, 2009.


Notary Public

My Commission expires: 08-13-2013.



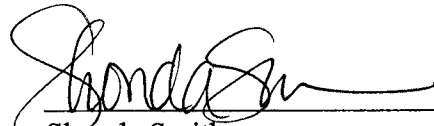
CERTIFICATE OF SERVICE

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, or hand-delivered this 21st day of August, 2009, to the following:

* COLLEEN HARRELL, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
c.harrell@kcc.ks.gov
**** Hand Deliver ****

* BRUCE A NEY, ATTORNEY, ROOM 515
SOUTHWESTERN BELL TELEPHONE CO.
D/B/A AT&T
220 EAST SIXTH STREET
TOPEKA, KS 66603
Fax: 785-276-1948
bruce.ney@att.com



Shonda Smith