Kansas Senate Utilities Committee
KRITC/SITA, Rural Telco Testimony SB 346
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Thanks, Jason. Good afternoon Chairman Olson and members of the Committee. My name is Catherine Moyer and I am the CEO and General Manager of Pioneer Communications in Ulysses, Kansas. As Jason stated, we appear today in support of SB 346.

Today we are asking for your support of SB 346, and will suggest a few changes to the language after working with other members of the telecommunications industry. These statutory changes will impact only rural telcos. As you look at the changes, keep in mind that the rural telcos are not looking to get out of any regulation. We are seeking these changes so that we are allowed the opportunity to present our actual revenue streams and costs for review by the KCC. None of these changes will diminish the KCC's authority to request records, audit our financials and make its decisions about the costs we have already incurred.

As many of you have heard me testify to before, the KUSF system is not one that simply gives money to each rural telco at the start of the year and asks the companies to invest. A rural telco must first spend money on a qualified project. It is not until that project is completed, or near completion, that a rural telco can then apply for recovery of the intrastate portion of costs associated with the project. The system is set up so that rural telcos make an investment in plant, frequently using borrowed money, wait a period of time, often more than a year, and then have an **opportunity** to recover some of the investment from the KUSF. And I stress that the recovery of the investment is an opportunity, not a guarantee. Even then, most rural telcos will receive only part of their investment back in the form of payments from the KUSF.

The following are the key changes in SB 346:

10:1 Speed. The intent of this change on page 1 was to require broadband speed to schools, hospitals and libraries be 10:1. After talking with other parties, we don't think this change is necessary, and may have other statutory implications. We recommend this language be removed.

Policy Statement. The intent of this change on page 3 was to codify what we already know intuitively--for economic development to occur in our state, we must have reliable and affordable broadband service. While we continue to believe this is important to the Kansas economy, this is not an integral part of the bill. We have been talking with other parties, and have also determined this language is not necessary and would recommend it be removed.

Now we get to the more technical changes in the bill. As you will recall, large carries and wireless carriers are almost completely unregulated and can charge whatever rate they deem appropriate without any oversight by the KCC. However, the rural telcos are heavily regulated by the KCC and the FCC. The FCC has jurisdiction over interstate costs and charges. The KCC reviews all intrastate costs, approves any changes in the rates the rural telcos charge and decides which costs, in what amounts, are eligible for recovery from the KUSF. Both of these agencies review, question and scrutinize the rural telcos to ensure the funds are utilized appropriately. Aside from regulatory proceedings, each rural telco submits around 100 reports and filings each year so that the FCC and KCC can oversee the use of USF and KUSF dollars.

Intrastate Costs. The changes on pages 18 and 19 are drafted to ensure the KCC consider all reasonable intrastate costs incurred by the rural telcos when the KCC sets a rural telco's revenue requirement which ultimately determines its KUSF draw. It does not guarantee we will receive all of the costs we have presented to the KCC, however, we should have the opportunity to recover all of the costs approved by the KCC and associated with providing service within the state. We are only asking for a reasonable opportunity to recover all of our intrastate costs when the KCC has determined a company's revenue requirement under traditional rate of return regulation. In order for the language to read a bit more clearly, I will suggest that 4 words be inserted at the end of line 42 on page 18 following ensure: the reasonable opportunity for. This section of the sentence would then read "shall ensure the reasonable opportunity for recovery of such carrier's intrastate embedded costs..." This language is the same language used to describe "traditional rate of return regulation" that is the mode of regulation under which, by law, we operate and the KCC is required to govern us.

3 years ago, the legislature passed a major overhaul of the Kansas Telecom Act. At the time the bill was presented to the legislature, the rationale of section 2 on page 19 which states "no KUSF support received by a local exchange carrier...to operate under traditional rate of return regulation shall be used to offset any loss of federal universal service fund support..." was to make sure the state would not be obligated to replace any federal support that might be cut by the FCC as a result of its major 2011 Transformation Order. We understood that concern and agreed to the language because we wanted to alleviate concerns articulated by the KCC that the KUSF would balloon out of control by being asked to fund reductions that occurred after the major FCC reforms. However, the language is now being interpreted by the KCC in a way that while technically correct, is not appropriate nor is it in keeping with the intent of the 2013 legislation and the principles of rate of return regulation.

As an example: A company is at the KCC in a rate case in 2015. The company was eligible to receive $1 million from the federal USF in 2014, but only eligible to receive $500,000 in 2015. The KCC would use the $1 million figure when calculating the KUSF even though the company received only $500,000. This "phantom" funding is then used as part of the overall revenue streams when the KCC calculates the amount of KUSF the company should receive. The application by the KCC is wrong for two specific reasons. 1. It is inappropriate for the KCC to mix interstate and intrastate costs. 2. We do not believe the legislature ever intended the KCC to impute revenue that was never received by the company as a way to reduce KUSF support. For comparison, this would be like if you were paid $50,000 for your job 2 years ago and then last year your pay was cut to $40,000 but the state required you to pay taxes on the $50,000 since you had at one time received that amount. KUSF support should be determined on the actual revenues and actual costs.

Local Rate. On page 6 is the language that deals with the local rate charged by the rural telcos to their customers. The FCC has released what they call a local rate floor for consumers across the United States. The FCC is in the process of phasing-in this local rate floor for rural telcos. If a rural telco's rate is lower than the local rate floor, the company must raise its local rate. If the rural telco does not raise its local rate, it will give up that amount in federal USF support dollars.

For example, if the local rate floor is $18.00 and a rural telco's local rate is $17.00, the rural telco must increase its local rate to $18.00, or lose the difference, in this case $1.00/month/subscriber, in federal USF. If a company has 10,000 subscribers, that's $10,000/month or $120,000/year in federal USF loss.

Before the FCC established the local rate floor, the KCC looked at local rates every 2 years and established a statewide local rate for the rural telcos. This language change on page 6 is to clarify that when the FCC requires a rural telco to increase its local rate, the KCC shall approve the rural telco's application to increase its local rate, so as to not place the rural telco in danger of losing federal USF support for failing to increase its local rate.

In talking with other parties there is concern with the second sentence referencing “no loss” of KUSF support. We agree with those other parties and would suggest that language be removed.

As I stated at the outset, these statutory changes only impact rural telcos. As you look at these changes, keep in mind the rural telcos are not trying to get out of any regulation. None of these changes will diminish the KCC's authority to request records, audit our financials and make their decision about the costs we have already incurred.

Thank you for allowing me to appear before you today. I would be happy to stand for any questions you might have.