

SENATE BILL No. 606

By Committee on Commerce

2-15

AN ACT concerning telecommunications; relating to regulation of local exchange carriers; amending K.S.A. 2001 Supp. 66-123, 66-1,187, 66-2008, 66-2009 and 66-2010 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 66-1,197, 66-2012, 66-2013 and 66-2016.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Any local exchange carrier may file with the commission a notice of its election to be an investing company and to be regulated pursuant to this act, such election to be effective immediately upon filing.

New Sec. 2. (a) An investing company, or its affiliates, upon the receipt of a bona fide request for service from a requesting community, shall provide in such requesting community broadband data services in accordance with this section.

(b) An investing company shall have fulfilled its obligations under this section for a requesting community, if within 18 months of receipt of a bona fide request from the requesting community:

(1) It, or an affiliated company, has, in a central office serving the requesting community, placed equipment that is capable of providing broadband data services over an all-copper loop facility that originates and terminates in such central office and that is less than 14,000 feet in length measured from the central office to the customer's premises; or

(2) it, or an affiliated company, either directly or through a joint marketing arrangement with another provider, is offering to provide broadband data services to the requesting community by means of any technology, including but not limited to: Wireline, fiber optic, cable modem, satellite or fixed wireless technology.

(c) Should a disagreement arise between the investing company and a requesting community as to whether a request for service is a bona fide request, or whether the investing company has fulfilled its obligation under subsection (b), the commission shall make a final and binding decision in the matter. Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If the request is determined to be a bona fide request, the time requirements established in subsection (b) shall begin running from the date of the issuance of such

1 decision by the commission.

2 (d) Each investing company has the duty to provide digital subscriber
3 line (DSL) transport services to any provider of internet access services
4 on the same terms and conditions at which such services are made avail-
5 able to an investing company's affiliated internet access operations.

6 New Sec. 3. (a) (1) Upon a filing by a local exchange company to be
7 an investing company, all rates, terms and conditions for the services
8 provided by that local exchange carrier contained in the tariffs and con-
9 tracts that were in effect on the date of the filing shall be deemed just
10 and reasonable.

11 (2) However, nothing herein shall restrict any customer's right to
12 complain to the commission regarding quality of service, billing, collec-
13 tions, slamming, cramming or the commission's right to enforce such
14 rules and standards which are equally imposed on all telecommunications
15 public utilities and investing companies.

16 (3) Except as provided in section 5, and amendments thereto, nothing
17 herein shall restrict the commission's authority over number administra-
18 tion, interconnection, resale and unbundling, as provided for in the fed-
19 eral act. As provided in 47 U.S.C. 251 and 252, the commission's authority
20 with respect to interconnection, resale and unbundling is limited to the
21 rates, terms, conditions and agreements pursuant to which a local
22 exchange carrier will provide interconnection, resale or unbundling to a
23 competing telecommunications public utility or investing company in the
24 provision of telecommunications services to end-user customers.

25 (b) The earnings of an investing company shall not be subject to price
26 cap, rate of return or rate-base monitoring or regulation, and the com-
27 mission shall not consider rate of return, rate base or the earnings of an
28 investing company, or any other form of earnings or revenue or cost
29 review in connection with rate changes made pursuant to this section.

30 (1) Upon the filing by a company to be regulated as an investing
31 company, rates, terms and conditions for all services other than basic local
32 residential exchange service and switched-access telecommunications
33 services, except as provided herein, shall not be subject to price or rate
34 regulation. An investing company may change the rates, terms and con-
35 ditions for these services by filing a tariff with the commission. The tariff
36 shall not require commission approval.

37 (2) The tariff shall be effective upon filing or at a future time as the
38 investing company shall designate.

39 (3) An investing company may package any of its services, including
40 basic local residential exchange service, with any other service it or its
41 affiliates offer, with or without a discount; however, an investing com-
42 pany must offer customers the option to subscribe to basic local residen-
43 tial exchange service on a stand alone basis separate from any package.

1 (c) If, at any time following the filing of a company to be regulated
2 as an investing company, within any exchange of the investing company
3 an alternative provider is offering basic local residential exchange service,
4 an investing company may commence determining its rates for basic local
5 residential exchange service in the same manner that it determines its
6 rates for other services, pursuant to subsection (b). Thereafter, if the
7 commission finds that there is no longer an alternative provider offering
8 basic local residential exchange service within an investing company's lo-
9 cal exchange, then the investing company's basic local residential service
10 rate shall be capped at the rate in effect as of the date that the alternative
11 provider ceased offering basic local residential exchange service in such
12 exchange. The rate cap shall remain in effect until an alternative provider
13 is offering basic local residential exchange service or until modified pur-
14 suant to subsection (d).

15 (d) On and after July 1, 2005, an investing company may commence
16 determining its rates for basic local residential exchange service and
17 switched-access services in the same manner that it determines its rates
18 for all other services, pursuant to subsection (b).

19 (e) Notwithstanding any other provisions of this act, a rate group clas-
20 sification of an exchange from one rate group to another occurring as a
21 result of access line growth or loss of exchange access arrangements shall
22 be allowed by the commission on request of a local exchange carrier.

23 (f) Except as provided in subsections (a) through (e), upon the filing
24 by a company to be regulated as an investing company, rates for basic
25 local residential exchange service and switched-access services may only
26 be adjusted in accordance with the commission's September 25, 2001,
27 order in docket no. 01-GIMT-082-GIT, for investing companies whose
28 rates are adjusted by that order. However, nothing herein shall restrict
29 an investing company from decreasing such rates, or subsequent to a
30 decrease, increasing such rates to their level prior to the decrease.

31 (g) Investing companies shall not be subject to the requirements of
32 K.S.A. 66-109, 66-117, 66-117b, 66-127, 66-128, 66-129, 66-1213a, 66-
33 1214 or 66-1403 or K.S.A. 2001 Supp. 66-2005 and 66-2007, and amend-
34 ments thereto.

35 New Sec. 4. (a) Regarding the earnings, rates of return, rate-base
36 calculation or contracts of any investing company, the commission shall
37 not:

38 (1) Require the filing of any cost information, financial report, state-
39 ment or other document for the purpose of reviewing, monitoring or
40 regulating rate base, earnings or rates of return;

41 (2) conduct any investigation of rate base, earnings or rates of return;

42 or

43 (3) modify terms of service established for customers by an investing

1 company, unless such modification is made pursuant to section three
2 (a)(2).

3 New Sec. 5. (a) Neither the commission, nor any other agency of the
4 state, any subdivision thereof, or any local unit of government shall have
5 authority to regulate the rates, charges, terms or conditions for, or entry
6 into the provision of, or any network element to the extent it is used in
7 the provision of, any broadband data service or internet access service
8 provided by an investing company or its affiliates.

9 (b) Notwithstanding subsection (a), an investing company shall be
10 required to provide unbundled access to network elements only to the
11 extent specifically required under 47 C.F.R. 51.319 (or any successor
12 regulations issued by the federal communications commission "FCC").
13 The commission will retain its authority under 47 U.S.C. 251 and 252, to
14 set the rates, charges, terms or conditions for, or entry into the provision
15 of, the network elements, specifically required under 47 C.F.R. 51.319.

16 (c) Notwithstanding any state commission, agency or political subdivi-
17 sion ruling or order to the contrary, except as specifically required under
18 47 C.F.R. 51.319, 51.321 or 51.323, an investing company shall not be
19 required to:

20 (1) Provide unbundled access to the high frequency portion of the
21 loop at any point in the network;

22 (2) unbundle its packet switching functionality or packet transport
23 functionality, including but not limited to the provision of various asyn-
24 chronous transfer mode ("ATM") quality of service offerings or such
25 ATM quality of service offerings at any bandwidth levels, and forms or
26 types of digital subscriber line technology, beyond those voluntarily of-
27 fered by the investing company;

28 (3) provide physical or virtual collocation arrangements, whether in
29 the investing company's central offices, remote terminals or any other
30 places in the network; or arrangements in which a carrier places equip-
31 ment or components thereof inside an investing company's next genera-
32 tion digital loop carrier (NGDLC) system equipment or any other system
33 or equipment; or

34 (4) unbundle any broadband data service or any serving architecture
35 over which a broadband data service may be provided such as NGDLC
36 or other fiber or copper and fiber hybrid based network architecture.

37 Sec. 6. K.S.A. 2001 Supp. 66-123 is hereby amended to read as fol-
38 lows: 66-123. Every public utility and common carrier governed by the
39 provisions of this act, *with the exception of investing companies*, when,
40 and as required by the corporation commission, shall file with the cor-
41 poration commission an annual report and such monthly or other regular
42 reports, or special reports, and such other information as the corporation
43 commission may require. When required by the corporation commission

1 such reports and information shall be certified under oath by a duly au-
2 thorized officer having knowledge of the matters therein contained. The
3 corporation commission may at any time require from any public utility
4 or common carrier specific answers to any questions upon which it may
5 desire information in connection with matters pending before them.

6 *For investing companies, the corporation commission may require an*
7 *annual report, however, the form of the annual report for investing com-*
8 *panies shall consist of only the company's gross intrastate revenues.*

9 The corporation commission may, in its discretion, grant extensions of
10 the time within which reports and information are required to be filed.
11 Annual reports shall be filed on or before May 1 for the preceding cal-
12 endar year unless otherwise specified by commission order or rule and
13 regulation.

14 Any public utility or common carrier, except motor carriers as defined
15 in K.S.A. 66-196, *et seq.*, and amendments thereto, governed by this act
16 which fails, neglects or refuses to file with the corporation commission
17 any annual reports, statements, monthly or regular reports or special re-
18 ports required by the commission pursuant to statute or rules and regu-
19 lations shall be subject to a civil penalty of not more than \$500.

20 Sec. 7. K.S.A. 2001 Supp. 66-1,187 is hereby amended to read as
21 follows: 66-1,187. As used in this act:

22 (a) ~~“Broadband” means the transmission of digital signals at rates~~
23 ~~equal to or greater than 1.5 megabits per second~~ “Broadband data serv-
24 ices” means those services that provide a capability to transmit informa-
25 tion at a rate that is generally not less than 200 kilobits per second in at
26 least one direction, regardless of the technology or medium used. Such
27 term does not include special access service offered through dedicated
28 transport links between a customer's premises and an interexchange car-
29 rier's switch or point of presence.

30 (b) “CLASS services” means custom local area signaling services,
31 which include automatic callback, automatic recall, calling number iden-
32 tification, selective call rejection, selective call acceptance, selective call
33 forwarding, distinctive ringing and customer originated trace.

34 (c) “Commission” means the state corporation commission.

35 (d) “Dialing parity” means that a person that is not an affiliate of a
36 local exchange carrier is able to provide telecommunications services in
37 such a manner that customers have the ability to route automatically,
38 without the use of any access code, their telecommunications to the tel-
39 ecommunications carrier of the customer's designation from among two
40 or more telecommunications carriers, including such local exchange
41 carrier.

42 (e) “Federal act” means the federal telecommunications act of 1996,
43 P.L. 104-104 (amending the communications act of 1934, 47 U.S.C. 151,

1 *et seq.*)

2 (f) "ISDN" means integrated services digital network which is a net-
3 work and associated technology that provides simultaneous voice and data
4 communications over a single communications channel.

5 (g) "LATA" has the meaning ascribed to it in the federal act.

6 (h) "Local exchange carrier" means any telecommunications public
7 utility, *investing company* or ~~its successor~~ *their successors* providing
8 switched telecommunications service within any local exchange service
9 area, as approved by the commission on or before January 1, 1996. How-
10 ever, with respect to the Hill City exchange area, in which multiple car-
11 riers were certified by the commission prior to January 1, 1996, the com-
12 mission's determination, subject to any court appeals, of which authorized
13 carrier shall serve as the carrier of last resort will determine which carrier
14 shall be deemed the local exchange carrier for that exchange.

15 (i) "Number portability" has the meaning ascribed to it in the federal
16 act.

17 (j) "1+ intraLATA dialing parity" means the ability of a local exchange
18 service customer to specify the telecommunications or local exchange
19 carrier that will carry the intraLATA long distance messages when that
20 customer dials either "1" or "0" plus a 10-digit number.

21 (k) "Operating area" means:

22 (1) In the case of a rural telephone company, operating area or service
23 area means such company's study area or areas as approved by the federal
24 communications commission;

25 (2) in the case of a local exchange carrier, other than a rural telephone
26 company, operating area or service area means such carrier's local
27 exchange service area or areas as approved by the commission.

28 (l) "Rural telephone company" has the meaning ascribed to it in the
29 federal act, excluding any local exchange carrier which together with all
30 of its affiliates has 20,000 or more access lines in the state.

31 (m) "Telecommunications carrier" means a corporation, company,
32 individual, association of persons, their trustees, lessees or receivers that
33 provides a telecommunications service, including, but not limited to, in-
34 terexchange carriers and competitive access providers, but not including
35 local exchange carriers certified before January 1, 1996.

36 (n) "Telecommunications public utility" means any public utility, as
37 defined in K.S.A. 66-104, and amendments thereto, which owns, controls,
38 operates or manages any equipment, plant or generating machinery, or
39 any part thereof, for the transmission of telephone messages, as defined
40 in K.S.A. 66-104, and amendments thereto, or the provision of telecom-
41 munications services in or throughout any part of Kansas, *but not includ-*
42 *ing investing companies.*

43 (o) "Telecommunications service" means the provision of a service

1 for the transmission of telephone messages, or two-way video or data
2 messages.

3 (p) “Universal service” means telecommunications services and fa-
4 cilities which include: single party, two-way voice grade calling; stored
5 program controlled switching with vertical service capability; E911 ca-
6 pability; tone dialing; access to operator services; access to directory as-
7 sistance; and equal access to long distance services.

8 (q) “Enhanced universal service” means telecommunications serv-
9 ices, in addition to those included in universal service, which shall include:
10 Signaling system seven capability, with CLASS service capability; basic
11 and primary rate ISDN capability, or the technological equivalent; full-
12 fiber interconnectivity, or the technological equivalent, between central
13 offices; and broadband capable facilities to: All schools accredited pur-
14 suant to K.S.A. 72-1101 *et seq.*, and amendments thereto; hospitals as
15 defined in K.S.A. 65-425, and amendments thereto; public libraries; and
16 state and local government facilities which request broadband services.

17 (r) “Investing company” means a local exchange carrier that elects to
18 be regulated pursuant to section 1, and amendments thereto.

19 (s) “Internet access service” means a service that combines computer
20 processing, information storage, protocol conversion, and routing with
21 transmission to enable users to access internet content and services;

22 (t) “Subscriber request” means a written request submitted by a retail
23 customer of an investing company, to an investing company at its prin-
24 ciple place of business in the state of Kansas, or other location as desig-
25 nated by the investing company, declaring the customer’s commitment to
26 purchase broadband data services from the investing company. The writ-
27 ten request should consist of the customer’s name, address and phone
28 number and in the case of a business, the number of requested lines.

29 (u) “Bona fide request” means 500 subscriber requests, or the equiv-
30 alent, submitted on or before July 1, 2005, from a requesting community
31 and the commitment from an entity that it will provide internet access
32 service in conjunction with the investing company’s broadband data serv-
33 ices to the requesting community.

34 (v) “Remote terminal” means an accessible terminal located outside
35 of the central office to which analog signals are carried from customer
36 premises, in which such signals are converted to digital, and from which
37 such signals are carried, generally over fiber, to the central office.

38 (w) “Requesting community” means a community in which the in-
39 vesting company’s retail customers served by a wire center submit a bona
40 fide request pursuant to section 2, and amendments thereto.

41 (x) “Packet switching” has the same meaning as provided in 47 C.F.R.
42 51.319.

43 (y) “Collocation” has the same meaning as provided in 47 C.F.R.

1 51.321 and 51.323.

2 (z) "Wire center" means the area served by a central office.

3 (aa) "Alternative provider" means a firm offering a telecommunica-
4 tions service, regardless of the technology or medium used, that is sub-
5 stitutable for the investing company's basic local exchange service by
6 means of fixed wireless, wireline or satellite cable.

7 Sec. 8. K.S.A. 2001 Supp. 66-2008 is hereby amended to read as
8 follows: 66-2008. On or before January 1, 1997, the commission shall
9 establish the Kansas universal service fund, hereinafter referred to as the
10 KUSF.

11 (a) The initial amount of the KUSF shall be comprised of local
12 exchange carrier revenues lost as a result of rate rebalancing pursuant to
13 subsection (c) of K.S.A. 2001 Supp. 66-2005 and amendments thereto
14 and subsection (a) of K.S.A. 2001 Supp. 66-2007 and amendments
15 thereto. Such revenues shall be recovered on a revenue neutral basis. The
16 revenue neutral calculation shall be based on the volumes and revenues
17 for the 12 months prior to September 30, 1996, adjusted for any rate
18 changes.

19 (b) The commission shall require every telecommunications carrier,
20 telecommunications public utility, *investing company* and wireless tele-
21 communications service provider that provides intrastate telecommuni-
22 cations services to contribute to the KUSF on an equitable and nondis-
23 criminatory basis. Any telecommunications carrier, telecommunications
24 public utility, *investing company* or wireless telecommunications service
25 provider which contributes to the KUSF may collect from customers an
26 amount equal to such carrier's, utility's or provider's contribution, except
27 that before January 1, 2000, no such carrier, provider or utility shall collect
28 from customers an amount in excess of 8.89% of its intrastate retail rev-
29 enues as provided in commission docket no. 190-492-U but such carrier,
30 provider or utility may collect a lesser amount from its customer.

31 Prior to January 1, 2000, with respect to wireless telecommunications
32 service providers, an equitable and nondiscriminatory rate shall be an
33 amount equal to the rate of contributions of wireline telecommunications
34 service providers, as determined by the commission, reduced by the per-
35 centage minutes of usage initiated and terminated entirely over the wire-
36 less network as determined by the commission. The commission shall
37 establish such rate for wireless telecommunications service providers no
38 later than December 31, 1998. Any contributions in excess of distributions
39 collected in any reporting year shall be applied to reduce the estimated
40 contribution that would otherwise be necessary for the following year.

41 (c) Pursuant to the federal act, distributions from the KUSF shall be
42 made in a competitively neutral manner to qualified telecommunications
43 public utilities, *investing companies*, telecommunications carriers and

1 wireless telecommunications providers, that are deemed eligible both un-
2 der subsection (e)(1) of section 214 of the federal act and by the
3 commission.

4 (d) The commission shall periodically review the KUSF to determine
5 if the costs of qualified telecommunications public utilities, *investing com-*
6 *panies*, telecommunications carriers and wireless telecommunications
7 service providers to provide local service justify modification of the
8 KUSF. If the commission determines that any changes are needed, the
9 commission shall modify the KUSF accordingly.

10 (e) Any qualified telecommunications carrier, *investing company*, tel-
11 ecommunications public utility or wireless telecommunications service
12 provider may request supplemental funding from the KUSF based upon
13 a percentage increase in access lines over the 12-month period prior to
14 the request. The supplemental funding shall be incurred for the purpose
15 of providing services to and within the service area of the qualified tele-
16 communications carrier, *investing company*, telecommunications public
17 utility or wireless telecommunications service provider. Supplemental
18 funding from the KUSF shall be used for infrastructure expenditures
19 necessary to serve additional customers within the service area of such
20 qualifying utility, provider or carrier. All affected parties shall be allowed
21 to review and verify a request of such a qualified utility, carrier or provider
22 for supplemental funding from the KUSF, and to intervene in any com-
23 mission proceeding regarding such request. The commission shall issue
24 an order on the request within 120 days of filing. Additional funding also
25 may be requested for: The recovery of shortfalls due to additional rebal-
26 ancing of rates to continue maintenance of parity with interstate access
27 rates; shortfalls due to changes to access revenue requirements resulting
28 from changes in federal rules; additional investment required to provide
29 universal service and enhanced universal service, deployed subject to sub-
30 section (a) of K.S.A. 66-2005, and amendments thereto; and for infra-
31 structure expenditures in response to facility or service requirements es-
32 tablished by any legislative, regulatory or judicial authority. *In no event*
33 *shall an investing company be allowed to obtain supplemental funding*
34 *from the KUSF to recover any investment made pursuant to section 2,*
35 *and amendments thereto.* Such requests shall be subject to simplified
36 filing procedures and the expedited review procedures, as outlined in the
37 stipulation attached to the order of November 19, 1990 in docket no.
38 127,140-U (Phase IV).

39 (f) Additional supplemental funding from the KUSF, other than as
40 provided in subsection (e) of this section, may be authorized at the dis-
41 cretion of the commission. However, the commission may require ap-
42 proval of such funding to be based upon a general rate case filing. With
43 respect to any request for additional supplemental funding from the

1 KUSF, the commission shall act expeditiously, but shall not be subject to
2 the 120 day deadline set forth in subsection (e).

3 Sec. 9. K.S.A. 2001 Supp. 66-2009 is hereby amended to read as
4 follows: 66-2009. (a) Local exchange carriers that provided switched local
5 exchange services in the state prior to January 1, 1996, or their successors,
6 shall serve as the carrier of last resort in their exchanges and shall be
7 eligible to receive KUSF funding. ~~However, with respect to the Hill City~~
8 ~~exchange area in which multiple carriers were certified prior to January~~
9 ~~1, 1996, the commission's determination, subject to court appeals, shall~~
10 ~~determine which authorized carrier shall serve as carrier of last resort.~~
11 The local exchange *eligible telecommunications* carrier serving as the
12 carrier of last resort shall ~~remain the carrier of last resort and shall~~ be entitled
13 to recover the costs of serving as carrier of last resort *from the KUSF*.

14 (b) Beginning March 1, 1997, the amount of KUSF funds owed to
15 each qualifying telecommunications carrier, *investing company*, telecom-
16 munications public utility or wireless telecommunications service pro-
17 vider in the state, ~~based upon the revenue requirements assigned to the~~
18 ~~funds for such qualifying utility, carrier or provider,~~ shall be allocated by
19 the fund administrator in equal monthly installments.

20 Sec. 10. K.S.A. 2001 Supp. 66-2010 is hereby amended to read as
21 follows: 66-2010. (a) The commission shall utilize a competitive bidding
22 process to select a neutral, competent and bonded third party to admin-
23 ister the KUSF.

24 (b) The administrator shall be responsible for: (1) Collecting and au-
25 diting all relevant information from all qualifying telecommunications
26 public utilities, *investing companies*, telecommunications carriers or wire-
27 less telecommunications service providers receiving funds from or pro-
28 viding funds to the KUSF; (2) verifying, based on the calculations of each
29 qualifying telecommunications carrier, telecommunications public utility,
30 *investing company* or wireless telecommunications service provider, the
31 obligation of each such qualifying carrier, utility or provider to generate
32 the funds required by the KUSF; (3) collecting all moneys due to the
33 KUSF from all telecommunications public utilities, *investing companies*,
34 telecommunications carriers and wireless telecommunications service
35 providers in the state; and (4) distributing amounts on a monthly basis
36 due to qualifying telecommunications public utilities, *investing compa-*
37 *nies*, wireless telecommunications service providers and telecommuni-
38 cations carriers receiving KUSF funding.

39 (c) Any information made available or received by the administrator
40 from carriers, utilities or providers receiving funds from or providing
41 funds to the KUSF shall not be subject to any provisions of the Kansas
42 open records act and shall be considered confidential and proprietary.

43 (d) The administrator shall be authorized to maintain an action to

1 collect any funds owed by any telecommunications carrier, public utility
2 or wireless telecommunications provider in the district court in the county
3 of the registered office of such carrier, utility or provider or, if such car-
4 rier, utility or provider does not have a registered office in the state, such
5 an action may be maintained in the county where such carrier's, utility's
6 or provider's principal office is located. If such carrier, utility or provider
7 has no principal office in the state, such an action may be maintained in
8 the district court of any county in which such carrier, utility or provider
9 provides service.

10 (e) The KUSF administrator shall be responsible to ensure that funds
11 do not fall below the level necessary to pay all amounts collectively owed
12 to all qualifying telecommunications public utilities, *investing companies*,
13 wireless telecommunications service providers and telecommunications
14 carriers. The administrator shall have the authority to retain and invest
15 in a prudent and reasonable manner any excess funds collected in any
16 period to help ensure that adequate funds are available to cover amounts
17 payable in other periods.

18 Sec. 11. K.S.A. 2001 Supp. 66-123, 66-1,187, 66-1,197, 66-2008, 66-
19 2009, 66-2010, 66-2012, 66-2013 and 66-2016 are hereby repealed.

20 Sec. 12. This act shall take effect and be in force from and after its
21 publication in the statute book.

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